RACING APPEAL PANEL NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY COREY BROWN

AGAINST DECISION OF THE STEWARDS GIVEN ON SATURDAY 8 JULY 2017

Racing NSW Offices
Sydney

Appeal Panel**:**	**Mr T Hale SC (Convenor)**
	Mr A Marney
	Mr J Murphy
Date of hearing:	**8 July 2017**
Date of decision:	**18 July 2017**
Appearances**:**	**Mr C Brown - licensed jockey**
	Mr P O'Sullivan - assisting Mr Brown
	Mr P C Dingwall (Deputy Chairman of Stewards) appeared on behalf of Racing NSW Stewards

REASONS FOR DECISION

(The Convenor gave the following ex tempore decision on behalf of the Panel**)**

1. Corey Brown (the appellant) is a licensed jockey.

2. On Saturday, 8 July 2017 he rode *La Chica Bella* in race 4 at Warwick Farm in Theraces Handicap over 1400m. His mount finished third.

3. Later that day there was a stewards' inquiry into running in the race, which was chaired by Mr P C Dingwall. The appellant was charged and subsequently found guilty of a breach of AR 137(b). He was suspended for a period commencing on Sunday, 16 July to Saturday, 29 July 2017, on which day he was permitted to resume riding.

4. The appellant applied for and was granted a stay pending determination of the appeal to this Panel.

5. The appellant appealed to the Panel from the decision of the stewards, both on conviction and penalty, pursuant to s.42 of the *Thoroughbred Racing Act 1996*. The appeal is by way of a new hearing.

6. At the hearing of this appeal Mr Dingwall appeared on behalf of the stewards and Mr O'Sullivan appeared on behalf of the appellant.

7. AR 137(b) provides:

> ***AR 137.*** *Any rider may be penalised if, in the opinion of the Stewards,*
>
> *(b) He fails to ride his horse out to the end of the race and/or approaching the end of the race.*

The particulars of the charge are that:

> [*You], Corey Brown, the rider of the third placegetter La Chica Bella in race 4, conducted at the Warwick Farm Racecourse on July 8, 2017, did fail to ride that filly out to the end of the race.*

The appellant pleaded not guilty.

8. *La Chica Bella* was beaten in a photo finish into third place by the second placegetter *Aquatic*. The margin was a nose.

9. It is important at this stage to give consideration to the particular words of the rule. The operative words are: "*He fails to ride his horse out to the end of the race"*. This rule and its predecessor, which is in similar terms that do not affect the consideration in the present case, have been considered in a number of appeals to this Tribunal.

10. In the appeal by Ben Looker of 9 July 2008 the Chairman, Mr Hiatt, pointed out:

> *"The Panel has not concerned itself with whether the horse would or would not have run second place. The issue is the appellant did not ride his horse out to the finish. The evidence establishes that the appellant put his stick away and sat up on his horse which, to use his own words, 'went to the line under his own steam'. It was beaten for second place by a nose.*
>
> *However, the rule is important in the framework of racing and a breach of it is a serious matter because the public's confidence in the integrity of racing depends upon adherence to the rules.*
>
> *The Panel cannot disregard the fact that the breach occurred at a Saturday meeting and the consequences, as far as prize money and betting interests of racing participants, has been taken into account*."

11. In the appeal to this Panel by Zac Purton on 15 February 2005 the Principal Member, then Mr Capelin QC, said:

> *"The charge of failing to ride his horse out is one that depends, firstly, on the actions and mindset of the jockey but, secondly, on the conclusion that one would draw from an objective examination of the facts."*

He then went on:

> "*The racing industry cannot proceed if every time a jockey mounts a horse he is entitled to make any decision that he wishes, to take any course that he wishes without regard to the rules or other competitors. In close finishes, or at any time during the running of a race, a jockey is entitled to assume that other riders will ride within the rules."*

Then he continued:

> *"A jockey is obliged to ride his horse in accordance with the rules and to make reasonable decisions based upon the facts of the matters that are appearing as he rides in the race, and based also on the rules."*

12. In the appeal by James Innes on 2 June 2006, again to this Panel, in which the Principal Member was again Mr Capelin QC, he said in relation to a rule in similar terms:

> *"The point is that the horse was denied the opportunity to do its best and to respond to vigorous riding, of which the appellant is very capable.*
>
> *It is not sufficient for a jockey to appear to give a gentle application of the whip to a horse or to vary his normal style of riding because the horse might be having its first run from a spell. A jockey is obligated, as this Panel has said on prior occasions, to use every endeavour to get the best out of the horse and to be, and appear to be, fully focussed on getting the best out of the horse."*

He then continued in that case:

> *"He failed to ride his horse out to the end of the race. Not only was the failure culpable, but also it is patent, that is, clear, that any analysis of the film would lead an objective viewer to the conclusion that Perique was not ridden out to the end of the race and the appellant must take responsibility for that."*

13. At the hearing before the stewards, the appellant was shown the film of the finish of the race and the following question was then asked and answered:

> "***CHAIRMAN**: Would you concede that over the last stride it doesn't appear as if you're pushing the horse out?*
>
> ***C BROWN**: I would say half a stride, sir."* (Lines 111 to 113)

The appellant went on to say that, due to the momentum of the horse, he did not believe that this cost the horse second place (line 119). At lines 134 to 139 the appellant conceded that there was no reason why he "couldn't just stay down and push it (the horse) out fully."

14. At the hearing before us the appellant gave evidence. He did not resile from these concessions.

15. At the hearing, Mr Livingstone gave evidence on behalf of the stewards. He observed the race from the stewards' room and he formed a view then that there may have been a breach of AR 137(b) by the appellant. This is an opinion that he still holds and he gave evidence by reference to the film. Amongst other things, he referred to the changed body position of the appellant in the last stride or last half a stride. In particular, he referred to the appellant's knees straightening.

16. It should be said there has been some debate as to whether that change took place in the last half a stride, as the appellant said, or one stride. We

do not see that in the scheme of things we need to resolve that. We do not see that as a matter of essential importance.

17. As I have mentioned, the appellant gave evidence. We were also favoured with the evidence of Mr Ron Quinton, who of course is well known as a jockey and in the industry more generally. He said that the appellant "did stop". The appellant submitted and, indeed, there was considerable evidence to this effect, both from the appellant and Mr Quinton, that the horse was not affected by the appellant's action and it would not have affected his position in the race, namely third. The contention was that it had little opportunity to achieve second place. We do not see that this is relevant to whether or not the offence had been established, but would be relevant on the question of penalty.

18. In all the circumstances and particularly having regard to the frank admissions made by the appellant, we are comfortably satisfied that the charge has been established and the appeal on conviction is therefore dismissed.

(Having given the decision of the Panel on the appeal against conviction the Convenor made the following comments.)

19. That then leads us to the question of penalty. We, of course, have not heard submissions on this and, judging by the transcript, it appears the appellant has a good record. I am sure we will be provided with more evidence on this issue when the parties address on penalty. Our tentative view at the moment is that a fine would be an appropriate penalty, rather than a period of suspension. We say this so that in your submissions you may give consideration to the imposition of a fine rather than a period of suspension. You may very well change our mind and persuade us that a period of suspension is appropriate, but that is our tentative position.

(The parties then made submissions on penalty. After a short adjournment the Convenor gave the decision of the Panel)

20. We have confirmed the conviction of the appellant Corey Brown for breach of AR 137(b). We have now heard submissions on the question of penalty.

21. As we have mentioned in our findings in relation to conviction, in this case, we are concerned with what occurred on the last stride or half stride before the finish line. We cannot know whether the conduct of the appellant cost the horse second place and we will never know. We do so see, however, that the conduct was principally a result of an error of judgement.

22. This Panel has on a number of occasions referred to the principles that apply generally to the imposition of a penalty for breaches of the Rules of Racing. Of particular significance is that a penalty should be imposed so as to protect and enforce the integrity of racing and also the importance of enforcing compliance with the Rules of Racing.

23. In the present circumstances the stewards imposed a penalty of almost two weeks. As we indicated at the conclusion of giving judgment in relation to conviction, we had formed a tentative view that such a period of suspension was not justified in all the circumstances. Now having heard submissions, we confirm that view.

24. We consider that it is appropriate that a penalty should be imposed which, amongst other things, vindicates the important principles to which I have earlier referred. We take into account the fact of the appellant's good record, the fact that what occurred was in the last half stride or stride and the view that we have formed that the breach was principally due to an error of judgement on the part of the appellant.

25. In all the circumstances we consider that an appropriate fine is $5,000 and that there should be no suspension. Therefore, the formal orders on the appeal will be:

ORDERS

1. The appeal on conviction is dismissed and the conviction is confirmed;
2. The appeal on penalty will be allowed and in lieu of it there will be imposed a fine of $5,000 with no period of suspension; and
3. The appeal deposit is to be refunded.