RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR HUGH BOWMAN

Appeal Panel:	**Mr R. Beasley SC – Principal Member; Mr J Fletcher; Mrs L Olsen**
Date of hearing:	**5 February 2018**
Date of decision:	**5 February 2018**
Appearances	**Appellant – Mr P O'Sullivan, Solicitor**
	Racing New South Wales – Mr Phillip Dingwall, Deputy Chairman of Stewards

REASONS FOR DECISION

Introduction

1. The appellant, licensed Jockey Mr Hugh Bowman, rode the racehorse 'Tswalu' in the TAB Rewards Hcp, which was race 5 run over 1200m at the Warwick Farm Racecourse on 26 January 2018 ('the Race'). Tswalu, which started as third favourite at $5.50, won the race.

2. Following the race, the Stewards conducted an inquiry into an incident at the 700m mark that involved the appellant's mount, and the horses Bold Chance, Reiby Rampart and Phoebe's Lass. Following evidence being given, the appellant was charged with a breach of AR 137 (a), which is in the following terms:

> AR 137 Any rider may be penalised if, in the opinion of the Stewards,
> (a) He is guilty of careless, reckless, improper, incompetent or foul riding.

3. The particulars of the charge were as follows:

   "....that approaching the 700metres you permitted your mount to shift in when insufficiently clear of Bold Chance, caused that horse to be steadied and taken onto Reiby Rampart, which was crowded in onto Phoebe's Lass, which in turn was also hampered. In this in (sic) Bold Chance then lost its rightful running."

4. The appellant pleaded guilty to the charge. After a brief further discussion, the Stewards imposed a penalty of a seven-meeting suspension. That penalty was arrived at by the application of the penalty guidelines for careless riding. The Stewards graded the level of carelessness as medium, and assessed the consequences as "checked and/or lost rightful running". This results in a base penalty of a seven-meeting suspension. The Stewards then discounted the penalty by 10% for the appellant's early plea, and by a further 10% given the important meetings the penalty would prevent the appellant riding at. These discounts however were matched by a 20% penalty premium that was imposed on the appellant for his record – that is, as a rider who has competed in more than 400 rides in the last 12 months, he was been suspended 5 times. After relevant discounting and the application of the premium the penalty remained a seven-meeting suspension.

5. On appeal to the Panel today, the appellant maintains his plea of guilty to the charge. He wishes only to challenge the severity of the penalty imposed. By leave, he was represented by his solicitor, Mr O'Sullivan. The Stewards were represented by Mr Phillip Dingwall, the Deputy Chairman of Stewards.

Evidence and submissions

6. While an appeal to this panel from a determination of the Stewards is by way of re-hearing, both parties relied on the transcript from the Stewards' Inquiry, and the film of the race (exhibits A and B on the appeal).

7. Three witnesses gave oral evidence. Mr Dingwall called Mr Van Gestel, the Chairman of Stewards. The appellant gave oral evidence concerning his ride, and Mr O'Sullivan also called licenced jockey Blake Shinn – the rider of Bold Chance in the race – to give evidence.

8. Mr Van Gestel gave evidence concerning the creation of the penalty guidelines, and concerning the relevant aspects of the appellant's ride. Unsurprisingly, Mr Van Gestel's opinion was that the appellant's ride was rightly graded as of 'medium' carelessness. He did so on the basis of the appellant failing to take a second look immediately before crossing Bold Chance, and because at the point of crossing the appellant's horse was only a length to a length and a quarter clear of Bold Chance. This was in clear breach of what has been described by the Panel in previous appeals as the Golden Rule for crossing in front of another horse – that is, there should at least be a two-length margin between horses to ensure safety.

9. Mr Van Gestel was also of the view that Bold Chance lost its rightful running, pointing out that the film showed that as the appellant crossed in front of that horse, Mr Shinn was hampered to a degree, and had to shift from 3 wide to 4 wide to avoid the real risk of clipping heels with the appellant's horse.

10. In his evidence, Mr Bowman conceded an error of judgement. When he first looked before crossing he said his horse was at least 2 lengths clear of Mr Shinn's mount, but agreed that margin had been reduced to a length and a quarter at the time of crossing. By straightening once he realised this, Mr Bowman felt he made the situation slightly worse. He however assessed his own carelessness as low, and considered that Mr Shinn on Bold Chance had ultimately ended up in the position he was always going to be in or wanted to be in despite his own actions. When questioned by Mr Dingwall, Mr Bowman frankly conceded that for a stride or two the heels of his horse were very close to the heels of Bold Chance, necessitating Mr Shinn to shift out.

11. Mr Shinn's evidence was that he was instructed to ride his mount positively, which may have contributed to Mr Bowman's error of judgement. He said he was inconvenienced to a degree when the appellant crossed, but did not have to check or stop riding. He did have to shift out and come off his line, but did not end up in a position he didn't want to be. This evidence was consistent with the evidence Mr Shinn gave at the Stewards' Inquiry where he agreed he was "carried off his line" and had to come to the appellant's "outside", but "didn't have to check": See T 2 L 83-89, and T 3 L 110. Mr Shinn's assessment at the time was that Mr Bowman's horse was

only about a length clear when crossing his, but on refection he felt the margin was more like a length and a quarter, a matter supported by the film.

12. In the submissions he made to the Panel, Mr Dingwall described the appellant's ride as a "textbook" 2 and 2. By that he meant, first, clearly of medium carelessness. This was based on the margin when the horses crossed – no more than a length and a quarter – and the failure of the appellant to look again just before crossing Bold Chance. Secondly, Mr Dingwall was referring to what he said was the clear consequence of the appellants actions – Mr Shinn had to steady Bold Chance, and then shift out at least a horse to avoid the risk of clipping heels.

13. Mr O'Sullivan submitted that taking into account all matters demonstrated by the film, the Panel should assess the carelessness here as in the low range. He said Mr Bowman did look initially, and Mr Shinn was pushing his mount along. There are many other examples of more careless riding, and the Panel would not be comfortably satisfied that the ride fell into the medium category.

14. Mr O'Sullivan also submitted that Mr Shinn's horse did not lose its rightful running under a proper construction of that term. While Mr Shinn did shift out, he ended up where he wanted to be and was always going to be. Either he didn't in truth lose his rightful running, or the Panel should consider this when it comes to Penalty.

15. Mr O'Sullivan also submitted that even if the Panel took the view that the ride was of medium carelessness and that Bold Chance did lose its rightful running, taking into account all aspects of the ride the Panel should take the view that the 7-meeting penalty that would result from the strict application of the guidelines was not warranted. The possibility of imposing a fine was mentioned, but not developed.

Resolution

16. Having viewed the film on many angles and on numerous occasions, we are comfortably satisfied that the actions of the appellant in crossing in front of Bold Chance were of medium carelessness. In our view the margin between the horses was barely a length and a quarter. Mr Bowman did not take a second look. The fact that Mr Shinn was riding positively on his mount is something that could occur in any race. For at least a few strides, the heels the appellant's mount and Bold Chance were

very close. That does raise a safety concern. We have no doubt the appellant's actions were properly graded as of medium carelessness.

17. We are also comfortably satisfied that Bold Chance lost its rightful running. That was established from the film, and confirmed by Mr Shinn's evidence at the Stewards' Inquiry. The appellant's actions caused Mr Shinn to shift his horse to the outside by at least a horse – that is sufficient to satisfy any sensible definition of "lost rightful running".

18. As Mr O'Sullivan correctly submitted, the Panel is not bound by the guidelines. However, we do not consider it is to be lightly departed from. The guidelines were drafted in consultation with the jockey's association, and while they cannot work perfectly in every circumstance, they have the great advantages of consistency, transparency, and in most instances fairness. They fulfil the main principle of sentencing at a tribunal like this, which is to uphold the integrity and interests of racing.

19. In this case, the base penalty is 7 meetings. After applying discounts for plea and the importance of upcoming meetings, but a premium for record, the penalty remains seven meetings. There are many instances of worse riding than the appellant's in this case, and the charge is of carelessness and nothing more serious. However, the Panel considers the penalty imposed to be a reasonable reflection of the appellant's breach of the rule, and we would apply the guideline in this case, meaning the appeal must be dismissed.

The Panel makes the following orders:

1. Appeal against severity of penalty dismissed.
2. Penalty of a seven-meeting suspension confirmed
3. Such penalty commenced on 29 January, and expires on 10 February, on which day the appellant may ride.
4. Appeal deposit forfeited.