

APPEAL PANEL OF RACING NSW

APPEAL OF LICENCED JOCKEY JAMES MCDONALD

Panel: Mr R Beasley SC (Principal Member); Mr C Tuck; Mr S Parr

Appearances: The Stewards: Mr T Moxon
 The Appellant: Mr W Pasterfield, Solicitor

Date of Hearing: 2 June 2021

Date of Reasons: 2 June 2021

REASONS FOR DECISION

The Principal Member

1. On 26 May 2021, licensed jockey James McDonald (**appellant**) was charged with a breach of the careless riding rule (AR131(a)) following his ride on *Vigorous Flow* in race 6 at the Canterbury Park Racecourse that day, run over 1900m.
2. The particulars of the charge brought against the appellant were as follows:

“...you, James McDonald, as the rider of Vigorous Flow in Race 6did, near the 400m, shift your mount out into the rightful running of Azaryah resulting in that runner being severely hampered”.
3. The appellant pleaded not guilty to breach of the rule, but was found to have ridden carelessly by the Stewards. They assessed the appellant’s carelessness as “medium” grade, and applying the Careless Riding Penalty Template, suspended the Appellant’s license to ride for 3 meetings.

4. The appellant has appealed against the finding of breach of the rule, and the severity of the penalty imposed upon him. He was represented on appeal by Mr W Pasterfield, solicitor, while the Stewards were represented by Mr T Moxon.
5. An appeal book was tendered that contained the transcript of the Stewards' Inquiry into the race (Ex. A), as was film of the race (Ex. B). The appellant also gave oral evidence.
6. There is no doubt that at the 400-metre mark Vigorous Flow, who went on to win the race, shifts out abruptly. There is no doubt this did severely hamper Azaryah, ridden by Keegan Latham. The issue on the appeal is, why did Vigorous Flow shift out so abruptly?
7. The Stewards submit that the incident was caused by the appellant's carelessness. They say he was travelling behind the leader Montserrat approaching the 400-metre mark, with Azaryah immediately to his outside. There was no run for the appellant's mount between Montserrat and Azaryah for the appellant to take, but rather than biding his time to see if a run came as he should have, he shifted out suddenly to "take" or "force" a run that was not there, and thereby caused the interference to Azaryah. They accept that the appellant then tried to correct the extent of the shift out, but it was too late, and the hampering had already occurred.
8. The appellant's evidence was consistent with the evidence he gave at the Stewards' Inquiry. In short, he blamed his horse. His evidence is best summed up by what he said to the Stewards, which was largely repeated to the Panel:

*"..I've actually gentled out and it's just quickly just shot out. You can see I've done everything in my power. I've grabbed the right rein as quickly as I could. I just think you've – I just don't know what you – if I sat there and, what, waited for...": T5
L228-230*

9. Other matters were raised by both Mr Pasterfield and the appellant to explain what they submitted was the horse's sudden shift out – the fact that it was in blinkers for the first time; the fact that it was new to the track which is tight on the home turn; the

fact that the horse had an easy run and was travelling well and reacted to seeing “daylight”.

10. The incident concerned in this race is one of those where reasonable minds, viewing the same film, can reach a different conclusion as to whether the careless riding rule has been breached.
11. Mr Parr and I would allow the appeal. In doing so, we fully understand why the charge was laid. Safety is a paramount concern in racing, and a considerable degree of interference was caused to Azaryah by Vigorous Flow. However, we are not comfortably satisfied that the rule has been breached. There is certainly nothing obvious in the manner of the appellant’s ride that establishes that it was his own actions as a rider that caused the abrupt shift out. Nearing the 400 metres the appellant was looking for, and then angling for, a run. While that is clear, we did not see any action by him as a rider that caused the sudden shift out of his mount. For that reason we cannot exclude – and ultimately accept - his explanation that the horse’s own actions principally caused the interference here.
12. Mr Tuck has a slightly different view. He considers that the appellant rode impatiently, and did angle prematurely for a run to a greater extent than he should have, and that the horse then contributed further by shifting out more than the appellant intended. He would dismiss the appeal, but would have graded the carelessness as “low” (meaning a reprimand, not a suspension).
13. By majority, the Panel’s orders are as follows:
 1. Appeal against finding of breach of AR131(a) allowed.
 2. Finding of breach of AR 131(a) set aside.
 3. Penalty of a 3-meeting suspension set aside.
 4. Appeal deposit to be refunded.