

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF LEE MAGORRIAN

Appeal Panel: **Mr R Beasley SC – Principal Member**
 Mr P Losh
 Mrs J Foley

Appearances: **Racing NSW: Mr M Van Gestel, Chairman of Stewards**
 Appellant: Himself

Date of Hearing: **6 February 2019**

Date of Decision **6 February 2019**

REASONS FOR DECISION

1. Licenced jockey Lee Magorrian rode the horse Kashtan in race 7 at the meeting at Muswellbrook Racecourse on 29 January 2019.
2. Following the race, Mr Magorrian was charged with a breach of AR 137(a) of the Australian Rules of Racing, which relates to the offence of careless riding. The particulars of the charge were that as the rider of Kashtan, Mr Magorrian allowed that horse to shift in at the 200m whilst riding it along when insufficiently clear of the horse Rawson Crossing, resulting in that horse having to be checked.
3. After hearing evidence, the Stewards charged Mr Magorrian with a breach of the rule. He initially pleaded guilty to the charge, but then changed his plea to not guilty. He was found guilty, and his breach was found to be of medium grade. On application of the penalty guidelines for careless riding, he was suspended for 6 meetings.
4. Mr Magorrian has today pleaded not guilty on appeal to breach of the rule, and also appeals against the penalty imposed.
5. Submissions for the Stewards were made by Mr Marc Van Gestel, Chairman of Stewards. He tendered the appeal book containing the transcript of the Steward's inquiry, and film of the race.

6. The Stewards case is simple. They say Kashtan shifted in at the 200m, and Mr Magorrian kept riding that horse in circumstances where he should have attempted to straighten his mount, and stop riding with vigour. Mr Van Gestel pointed to the fact that the appellant struck Kashtan with the whip after it had clearly started to shift in when insufficiently clear of Rawson Crossing. They suggest he made no real attempt to stop riding or straighten his mount, and hence the carelessness is comfortably in the medium range.
7. Mr Magorrian submitted he was not guilty of breaching the rule as he was not careless. Rather, his horse ducked in quickly, and too quickly for him to straighten and stop riding it before it caused a check to Rawson Crossing. He said that the horse is a big, “green” horse, and it took him by surprise. The second strike of the whip referred to by Mr Van Gestel was made by him in circumstances where the horse had shifted in too abruptly for him to stop that action. He raised some other matters about other horses shifting out slightly that the Panel does not consider to be relevant.
8. Having viewed the film multiple times, and listened carefully to the submissions made by Mr Van Gestel and Mr Magorrian, we accept that the horse Kashtan did shift in quickly. It is no doubt a tough horse to ride. However, we do not accept that the appellant had insufficient time to stop riding the horse. We think he clearly struck the horse with the whip after he would have been aware it was shifting in. Instead of that action, he should have been trying with more commitment to straighten the horse rather than continue to ride with vigour.
9. In the circumstances, we find the appellant in breach of the careless riding rule, and consider the carelessness should be assessed as medium for the reasons given by Mr Van Gestel.
10. We see no reason in this matter for not applying the penalty guidelines for careless riding. In relation to that, the appellant submitted, and Mr Van Gestel accepted, that a 25 % discount for good record should apply rather than 15 %, as a careless riding breach was attributed to him that should not have been. Mr Magorrian’s penalty then should be varied from 6 meetings to 5.

11. The Panel makes the following orders:

1. Appeal against finding of breach of AR 137(a) dismissed.
2. Finding of breach of AR 137(a) confirmed.
3. Penalty varied as a result of an error in the application of the penalty guideline. In lieu of a 6-meeting suspension the appellant is suspended instead for 5 meetings. Such suspension is to commence on 7 February, and expires on 12 February, on which day he is free to ride.
4. Appeal deposit forfeited.