

RACING APPEAL PANEL NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY MARK ZAHRA

Heard at Racing NSW Offices on Thursday 18 April 2019

APPEAL PANEL: Mr R Beasley SC - Principal Member
Mr C Tuck
Ms J Masden

APPEARANCES: Mr Marc Van Gestel, for the Stewards
Mr Paul O'Sullivan for Jockey Zahra

REASONS FOR DECISION

1. **PRINCIPAL MEMBER:** The appellant, licensed jockey Mark Zahra, rode the horse *Power Scheme* in race 1 at Randwick on Saturday, 13 April 2019. Unfortunately, near the winning post, the horses *Persan* and *War Baron* fell.
2. At the Stewards' Inquiry after the race Mr Zahra was charged with breach AR131, the careless riding rule. The particulars of the charge were that, as the rider of *Power Scheme*, over the concluding stages he permitted that colt to shift out whilst riding along when insufficiently clear of *Persan*, resulting in *Persan* being crowded for room and having to be checked, striking the heels of *Power Scheme* and falling. This also resulted in *War Baron*, which was positioned to the outside of *Persan*, also falling when struck by *Persan*, and also then resulting in *Aspect Ratio*, which was positioned to the outside of *War Baron*, being hampered.
3. Mr Zahra pleaded guilty to the breach. The careless riding was graded as "high", with the consequence of causing a fall. Applying the Penalty Guidelines for careless riding ('the Guidelines'), Mr Zahra's licence to ride was suspended for 25 meetings.
4. Upon application of a procedure agreed to at the time the Guidelines were negotiated between the Stewards and the NSW Jockeys Association, the penalty

of the 25 meeting suspension commences on 23 April 2019, and expires on 2 June 2019, on which day Mr Zahra is free to ride. He was also fined \$3,800.

5. Mr Zahra appealed the penalty imposed. He was represented on this appeal today by Mr P O'Sullivan, solicitor. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
6. Only one issue is raised on appeal. There was no challenge to the "high" grading of the carelessness, or to the ultimate penalty of the 25 meeting suspension. It is the end date of 2 June that is challenged. Mr Zahra claims that a suspension to 2 June in effect penalises him for 32 meetings, not 25 - see paragraph 8 of Mr Zahra's statutory declaration sworn on 18 April 2019 (exhibit B on the appeal).
7. A similar - although Mr O'Sullivan submits distinguishable issue - was raised in the recent Panel decision of *Gibbons* of 11 March 2019. In *Gibbons*, evidence was given concerning how meetings are selected for the purpose of suspensions in New South Wales - see paragraph 12 of that decision. It was submitted by Mr Gibbons that the agreed process suspended him in effect for six meetings, not four, which was the penalty imposed. By majority, for the reasons outlined in paragraphs 17 and 18 in *Gibbons*, the Panel dismissed that appeal.
8. Mr O'Sullivan says that *Gibbons* is distinguishable. While Mr Gibbons was a New South Wales based jockey, Mr Zahra is a Victorian jockey. He is from another jurisdiction. Mr O'Sullivan says that, to reach a fair decision, the meetings that Mr Zahra intends to ride at in Victoria should be considered, not New South Wales meetings. To apply a Guideline that considers meetings in New South Wales, results in a particular unfairness to Mr Zahra, it was submitted.
9. While the suspension of 23 April to 2 June 2019 accounts for 25 meetings in New South Wales under the manner meetings are selected for suspension in NSW, this time period constitutes 32 meetings in Victoria that Mr Zahra intends to ride in, rather than 25. The unfairness then, it was submitted, is that Mr Zahra is in effect suspended for seven more meetings than he should be in accordance with the penalty imposed.

10. Further, Mr O'Sullivan noted the Guidelines arose from agreement in 2006 between the New South Wales Jockeys Association, and the New South Wales Stewards. the Victorian Jockeys Association was not involved.
11. Mr Van Gestel submitted that all these matters are irrelevant. He said that Mr Zahra has been found in breach of AR131 while riding in Sydney. He submitted consistency in sentencing demands that he be penalised in accordance with the manner that meetings are selected in New South Wales, and have been over the course of the last 13 years.
12. The Panel agrees with Mr Van Gestel. While we acknowledge that a suspension ending on 2 June 2019 may have the effect Mr Zahra asserts, and while we understand why he feels aggrieved, we do not consider this appeal is properly distinguishable from *Gibbons*. In our view, there are many benefits in a consistent approach to the entire operation of the careless riding Guidelines, including what meetings are selected for a suspension, irrespective of whether the jockey is based in New South Wales, Victoria, or is a jockey that usually rides overseas. We hold this view for similar reasons to those expressed in paragraphs 17 and 18 of *Gibbons*.
13. Accordingly, we dismiss the appeal. The orders are follows:
 - (1) Appeal dismissed.
 - (2) Penalty of a 25 meeting suspension confirmed. Such suspension commences on 23 April and ends 2 June 2019, on which day the appellant may ride.
 - (3) Appeal deposit forfeited.
