

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR RORY HUTCHINGS

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr T Marney; Mrs J Foley**

Date of hearing: **15 August 2017**

Date of decision: **15 August 2017**

Appearances **Appellant – Himself**
Racing New South Wales – Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION

The Panel

Introduction

1. The appellant is a licenced jockey who rode the racehorse ‘So Hard to Catch’ (“the horse”) in the Australian Insurance Builders Handicap, which was a 1400 m race conducted at the Kembla Grange Racecourse on 5 August 2017 (“the Race”).
2. Following the race, the Stewards conducted an inquiry into alleged interference caused by the appellant approaching the 1100m mark. He was ultimately 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:

“....as the rider of So Hard to Catch ...did....near the 1100m, permit your mount to shift in when insufficiently clear of Bukzel ridden by Koby Jennings, which was steadied and lost its rightful running, and further resulted in Air Apparent, which was racing on its inside, being crowded and steadied.”

4. The appellant pleaded guilty to the charge. After hearing submissions, the Stewards imposed a penalty of a six meeting suspension – such penalty commencing on 13 August and ending on 26 August. The penalty was arrived at by the application of the Penalty Guidelines for Careless Riding. The carelessness involved in the appellant’s ride was found to be ‘Medium’, and the level of interference was graded as 2 – ‘checked and or lost rightful running’. A ten percent discount was applied for the guilty plea, but this was counterbalanced by a 10% premium for the appellant’s record. This would ordinarily result in a 7 meeting suspension. The penalty imposed however was a six meeting suspension.
5. In this appeal, the appellant has changed his plea to not guilty, and also appeals against the severity of penalty imposed.

Evidence and resolution on guilt

6. The appellant represented himself on appeal. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards. No oral evidence was called on the appeal. Both parties instead relied on the transcript from the Stewards’ Inquiry, and the film of the race (exhibits A and B on the appeal).
7. In the Panel’s view, the film of the race clearly shows that the appellant crossed in front of Koby Jennings’s mount (Bukzel) when less than two lengths clear. The appellant admitted this in the Stewards’ Inquiry: See T2 L 81-89 and T3 L 103-105. We think the margin was just over a length. While not the worst carelessness, we are comfortably satisfied that there was a level of carelessness in the appellant’s ride, and the finding of guilt must be sustained. There was no good reason as to why the appellant should not have been two lengths clear before crossing the other horses.

8. Mr Van Gestel submitted that the grading of carelessness should be medium. The appellant denies carelessness, but at most suggests a low grade. The Panel's view is that the carelessness was of a medium degree. As Mr Van Gestel submitted, the appellant's decision to cross when only just over a length in front of Bukzel created a degree of unnecessary danger.
9. Where we disagree with the Stewards is in relation to the consequences of the appellant's actions. Mr Van Gestel submitted that Bukzel had to be checked, or lost its rightful running. Our observations of the film have convinced us that the consequences of the appellant's actions were less than this. We do not consider that Mr Jennings had to stop riding or "check" his horse. At worst he was hampered for a stride.

Penalty

10. The Panel has said many times it is not bound by the Penalty Guideline. However, no submission was made the guideline should not be applied, nor is there any good reason not to apply it. A careless ride graded as "medium", with the consequence that a horse is hampered, results in a 5 meeting suspension. The appellant's record attracts a premium of 10%. He no longer has the benefit of a discount for plea. However, as he has convinced us that the consequences of this ride were less than assessed by the Stewards, we consider we should round the penalty down to remain as a five meeting suspension.

Orders

11. The Panel makes the following orders:
 1. Appeal against finding of guilt dismissed
 2. Finding of guilt for breach of AR 137(a) confirmed.
 3. Appeal against severity of penalty allowed.
 4. Penalty of a six meeting penalty set aside, and in lieu a penalty of a five meeting suspension is imposed. That penalty commenced on 13 August, and concludes on 24 August, on which date the appellant is free to ride.
 5. Half of appeal deposit to be refunded.