

because a suspension of the appellant's licence now will result in him missing some upcoming feature races. This 45% mitigation factor was reduced however by 15% to 30% as the careless riding occurred in a feature race. Ultimately, the application of the Template in this fashion resulted in the appellant's licence to ride being suspended for 8-meetings. He was also fined \$2000.

4. The appellant has appealed to the Panel challenging the severity of the penalty imposed upon him. He was represented on appeal by Mr W Pasterfield, solicitor, while the Stewards were represented by the Chairman of Stewards, Mr M Van Gestel.
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.

AR 131(a)

6. As with some appeals relating to AR131(a) where matters of judgment and impression are involved, reasonable minds can differ as to either whether the rule has been breached, or, in a severity appeal, whether the carelessness involved should be graded as "low", "medium", or "high". Further, while the Panel pays particular regard to the Penalty Template, and often applies it in a similar fashion to the Stewards, we are not bound by it. It is however a valuable aid to imposing penalties, and greatly assists with consistency in the determination of penalties.
7. AR 131(a) is an important rule of racing. The careless riding rule is primarily about safety, and safety must be paramount in racing. The consequence of a careless ride can sometimes be minor. On other occasions, carelessness from a rider may jeopardise his or her safety, and the safety of their mount, as well as the safety of other riders and horses. Carelessness can lead to injuries to both riders and horses, or worse. When that happens, it not only has serious consequences for those hurt, but also has a detrimental impact on the sport.

Evidence and Submissions

8. The film of the race clearly shows the appellant's horse shifting in several horses when inside the final 100m. Despite this, the appellant continues to ride his mount with full vigour, using the whip in his left hand. His horse is only about a length (at most) clear of Black Duke when it shifts in. Black Duke is dramatically checked, with rider Keegan Latham having to use forceful restraint. The action of shifting in on Black Duke causes that horse to make bumping contact with the horse Ellsberg, which was further to the inside.

9. Mr Van Gestel's submission was that the appellant's ride should be graded as highly careless because:
 - (a) when his mount started to shift in, rather than straighten his horse, he kept riding with full vigour; and
 - (b) when he did so, Exoboom was at best a length and probably marginally less than that in front of Black Duke; and
 - (c) at no relevant stage did the appellant pay any proper regard or look for horses to his inside; and
 - (d) even after the interference caused to Black Duke, the appellant continued to ride with full vigour in order to win the race.

10. In summary, Mr Van Gestel submitted that if the conduct of the appellant in this race as particularised in the charge was graded as "medium" and not "high" carelessness, then riding showing a greater lack of care is likely to fall more within the category of "reckless", "improper" or "foul riding" territory of AR131(a), rather than "careless".

11. Mr Pasterfield offered two reasons for grading the carelessness here as "medium" rather than "high". First, the appellant was unaware that Black Duke was so close behind him and to his inside. Secondly, the rider of Black Duke, although not obliged to, did not issue a shout or a call to the appellant that he was shifting in on him. Further, Mr Pasterfield submitted that the consequence of the appellant's actions was a check, but not a severe check.

Resolution

12. Having viewed the film of the race on multiple occasions, the Panel is in no doubt that the proper grading of carelessness here is “high”, for the reasons given by Mr Van Gestel (see [9] above). The film of the race beyond doubt in our view demonstrates that a high degree of carelessness was evident in the appellant’s conduct – his horse shifts in substantially in the concluding stages of the race. It does so when just less than a length clear of Black Duke, creating a dangerous situation. Rather than straighten his mount, or attempt to, the appellant continues to ride with full vigour, and his horse shifts in further. While we accept there was no call, and that the appellant was not aware where Black Duke was, that is not a reason to lower the grading of carelessness here. The appellant’s conduct was of course not deliberate in the sense that he did not deliberately seek to interfere with Black Duke, but it was highly careless.
13. We are also comfortably satisfied that Black Duke was “severely checked”. The film of the race allows no other rational conclusion. Keegan Latham has to take relatively extreme action to restrain his horse to prevent a worse outcome.
14. In light of the above, the appeal must be dismissed in relation to the suspension imposed, as the Panel agrees with the mitigation and premium factors that are the inputs into the Penalty Template. However, in addition to the suspension, the appellant was fined \$2000. Mr Van Gestel described this as a further deterrence, especially in circumstances where a careless ride results in a win or place. Ordinarily, we would completely agree. Mr Pasterfield however made some submissions as to recent difficulties the appellant has had, and that he is only now striving to get back fully on his feet as a rider. As an exercise of discretion then, we feel there must be some fine, but we have reduced it to \$1000.

Orders

15. The Panels orders are as follows:
1. Appeal against severity of suspension imposed dismissed.
 2. Penalty of an 8-meeting suspension confirmed.
 3. In lieu of a fine in the sum of \$2000, the appellant is fined \$1000.
 4. Appeal deposit forfeited.