

APPEAL PANEL OF RACING NEW SOUTH WALES

THE APPEAL OF MADISON WATERS

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

Appearances: **Mr T Vassallo, for the Stewards**
Mr W Pasterfield ,for the Appellant

Date of Hearing: **17 August 2020**

Date of Reasons and Orders: **17 August 2020**

REASONS FOR DECISION

1. On 14 July 2020, Racing NSW Stewards charged the appellant to this Appeal, apprentice jockey Madison Waters, with a breach of AR 228(b) of the Australian Rules of Racing. That rule provides that a person must not engage in “misconduct, improper conduct or unseemly behaviour”. The particulars of the charge were that she engaged in improper conduct by striking a 2 year old colt in the head twice with the whip after pulling up from trackwork on 21 May 2020. As a result of this action, the colt suffered an injury to his eye, which caused inflammation, required veterinary care, and treatment by antibiotics.
2. The appellant pleaded guilty to the charge. The penalty then imposed by the Stewards was a full suspension of the appellant’s license to ride for 2 months. She has appealed against what she claims is the severity of the penalty imposed.
3. On appeal, the appellant was represented by Mr Wayne Pasterfield. The Stewards were represented by the Steward who was the Chair of the Panel that penalised the appellant, Mr T Vassallo.

4. The facts are not in dispute. Following trackwork at Kembla Grange racecourse on 21 May, the appellant struck the horse she had ridden with her whip several times, including twice in the head. The horse suffered an injury, which required some veterinary care, and treatment by antibiotics, as outlined in the report of Dr R Pellegrini, which is contained in the Appeal Book (Exhibit A on the Appeal, with the report being Ex 6).
5. The Panel considers these are the relevant matters for the determination of an appropriate penalty in this Appeal:
 - (a) The appellant's actions of whipping the horse after trackwork in the manner she did – as evidenced by witness statements in Exhibit A, and her own evidence at the Stewards' Inquiry - were reckless in that they risked the occurrence of what occurred: an injury to the horse. The striking of the horse was deliberate. It was clearly improper conduct. However, while that conduct carried with it a high risk of hitting the horse in the head, that was not the appellant's intent. Further, we accept she did not intend to strike the horse in the eye and injure it.
 - (b) Even without an intent to hit the horse in the eye and injure it however, the appellant's actions constitute a serious breach of AR 228(b). Whenever a licensed person strikes a horse recklessly, and injures it, they can expect to either be suspended or disqualified. It is conduct that is damaging to the image of racing.
 - (c) The purpose of the penalty power in the rules is largely to protect the image and integrity of racing. The prime consideration for the Panel in determining the appropriate penalty here is that it needs to send a message to the public that racing will not condone such acts, and will enforce its rules to deter such conduct, and protect and uphold the image of the sport.
 - (d) The appellant is a 17 year old apprentice. It goes without saying she is of limited experience. She is, as someone not yet an adult, required to manage a very powerful animal. The horse she was riding was giving her difficulties. That is not an excuse, but her age and the difficulty she was experiencing are proper matters of context, and must be considered by the Panel.
 - (e) The appellant is entitled to a discount for her guilty plea.

6. The Panel was provided with one previous decision of Stewards of relevance, relating to the conduct of Jockey Belinda Hodder, who at a race meeting in October 2018, punched a horse in the nose, and then struck it on the head with the butt end of the whip on half a dozen occasions. Hodder was suspended for a month. Frankly, that appears to be a lenient penalty, but the Panel will say no more about it, as we do not have all the facts before us.
7. Having considered all the matters relevant to this Appeal, we consider that the suspension of the appellant's license in full for two months – while an entirely reasonable penalty – differs slightly from the penalty we would impose. While we also are of the view that the appellant's license should be suspended for two months, we consider that it should not be suspended in full for the majority of that period. Instead, we would suspend the appellant's license in full for two weeks, while the for the balance of the period the suspension should only be a suspension from riding in races.
8. The Panel makes these orders:
 1. Appeal against severity of penalty allowed.
 2. Penalty of a full suspension of the appellant's license to ride for two months set aside.
 3. In lieu of that penalty, the appellant's license is suspended for two months, but only the first two weeks of that period is a full suspension, with the balance of that period being a suspension of her license to ride in races only. The full suspension commences on 24 August, and expires on 7 September. That part of the suspension relating to riding in races only commences on 8 September, and expires on 24 October, on which day the appellant may ride.
 4. Appeal deposit to be refunded.