

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF REBEKA PREST

Panel: Mr R Beasley SC, Presiding Member; Mr J Murphy; Mr L Vellis

For the Stewards: Mr M Van Gestel, Chairman of Stewards

For the Appellant: Mr T Donnelly, the Appellant's Master.

REASONS FOR DECISION

1. On 29 June 2019, apprentice jockey Rebeka Prest rode the horse Cosmo Star in a 1400M Hcp at Gundagai. The horse finished 8th, beaten 2.2L. It started at \$15.
2. Following the race, the Stewards conducted an inquiry into the appellant's ride. Evidence was given at that inquiry on the day of the race, and subsequently on 10 July 2019. The appellant was ultimately charged with a breach of AR 129(2) of the Australian Rules of Racing, which is in the following terms:

AR 129(2) A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.

3. Three particulars of breach of the rule were alleged. In summary it was alleged that:
 - (i) Between the 700m and the 400m the appellant failed to attempt to approve her position and take up racing behind Monkery.

- (ii) Over the final 400M, the appellant did not ride with sufficient vigour.
 - (iii) Approaching 50m the appellant directed her horse to the inside and away from an available run between Zardabba and Keep Me Posted when it was reasonable to take that run
4. At the conclusion of the evidence, the Stewards found the appellant to have breached the rule on the basis that each particular was made out. She was penalised with a suspension of her licence of 5 weeks. That penalty had been reduced from 6 weeks given the appellant is an apprentice (albeit an experienced one, with zero claim, having ridden about 200 winners in about 2000 races).
 5. The appellant has appealed both the finding of breach of the rule, and the severity of penalty imposed upon her. She was represented at the appeal by Mr T Donnelly, a licenced trainer, who is her Master. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
 6. The appeal book, containing transcript of the Stewards' Inquiry, was admitted into evidence as Exhibit A. Film of the race was admitted as Exhibit C, as was film of various other races involving Cosmo Star and the appellant. A list of various performances by the horse was also tendered by Mr Donnelly: see Ex A1. Oral evidence was given by Mr W Birch, a senior stipendiary steward, and a statement of opinion made by him was tendered as Exhibit B.
 7. Before discussing the evidence, something should be said about the rule. The leading appeal about how to analyse and apply it remains the Appeal of Munce (5 June 2003), where the Principal Member, Mr TEF Hughes QC, said the following about administering what is now AR 129(2):

“The task of administering this rule is not always easy. One must keep in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the tribunal considering a

charge under the rule is comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race. The relevant circumstances in such a case may be numerous. They include the seniority and experience of the person charged. They include the competitive pressure under which a person charged was riding in the particular race. They include any practical necessity for the person charged to make a sudden decision between alternative causes of action. The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria that I have described.”

8. The Panel takes the view that the rule is an important one, central to the integrity and image of racing.
9. In relation to the various particulars, the evidence was as follows.
10. Particular 1: Mr Birch’s evidence (supported by Mr Van Gestel’s submissions) was that the failure of the appellant to improve her position from the 700m to the 400m, and remained a clear last, was not reasonable in the circumstances. His expectation was that prior to the 400m the appellant should have ridden her horse up to join the horses in front of her, and to either take a position behind Monkery, or to its inside or outside.
11. As to particular 2, in Mr Birch’s opinion, there was simply insufficient vigour shown by the appellant. She was up in the saddle, and not driving her horse forward when she should have and could have. He contrasted this lack of vigour with the riding style of other jockeys in the race, but also with the appellant’s ride in the race before, where in the straight Mr Birch said the appellant adopted a lower and far more vigorous riding style. This, he said, is what he expected from the appellant in the straight when riding Cosmo Star.

12. As to particular 3, Mr Birch, as well as identifying lack of vigour, said there was clearly a gap of 1 and 3/4 horses between Zardabba and Keep Me Posted that the appellant clearly should have taken advantage of, rather than moving to the inside as she did.

13. Mr Donnelly pointed to these matters in his defence of the appellant.

(a) As to the first particular, Mr Donnelly asked the Panel to take into account that Cosmo Star is far from a talented horse. He took the panel to previous races, to demonstrate that the horse performs badly if not ridden quietly early in races. The horse simply cannot be ridden forward, and hence no error was involved in the manner the appellant rode the horse from the 700m to the 400m. He pointed to the trainer's evidence on 10 July that the horse runs best "ridden cold": T7 L230. He said in any event the horse was appropriately niggled along. Mr Birch conceded that the horse was at least niggled.

(b) As to the second particular, Mr Donnelly raised the issue that the horse was probably doing its best regardless of how the appellant was riding. The horse finished strongly, and gave a similar "rating" performance to other starts, but finished as close to the winner as it ever has at this track.

(c) As to the third particular, Mr Donnelly submitted that Keep Me Posted clearly was drifting in, and so the appellant's decision to not take any gap between that horse and Zardabba also involved no error. She otherwise rode to the inside to ensure safety.

14. Mr Van Gestel, as well as making submissions consistent with Mr Birch's evidence, pointed to some aspects of the transcript from the Stewards inquiry. From T1 L 35 on 29 June, he pointed to a concession made by the appellant that she could have been closer in the middle stages of the race. A similar concession was made at T2 L70-85, and T6 L280. In the same transcript, T3 L 129, the appellant explained her failure to take the gap between the horses relevant to particular 3 was down to riding without confidence.

15. In relation to the transcript matters, Mr Donnelly asked the Panel to take into account that those matters of evidence were immediately after the race, the appellant was not represented, and had been frustrated by her ride from a previous race.
16. The panel is conscious of the warning given by Mr Hughes QC in *Munce* that not every error of a jockey is a culpable error under AR 129(2). A range of factors must be considered, and not all human error by jockeys should attract liability under this rule. Further, we note the burden of proof is on the Stewards, and we must apply the *Briginshaw* standard, and be comfortably satisfied of breach.
17. In this case however we do think the vigour shown by the appellant was not sufficient and hence a breach of the rule is established. As to particular 1, we accept the horse might be at its best ridden quietly early, but the horse was allowed to bowl along beyond the point where it had become reasonable for the appellant to bring it more positively into the race in order to give it its best opportunity to win or place. As to particular 2, we are also comfortably satisfied that the appellant failed to show sufficient vigour when she could have and should have. She showed far more vigour in the previous race, riding lower, and being more aggressive with her riding style. We are also comfortably satisfied that particular 3 has been made out. Not only was a continued lack of vigour shown, there was a clear gap available. Had that gap been taken, and sufficient vigour shown, the horse would have finished closer, perhaps 4th or 5th. In any event, it was denied the opportunity of finishing in the highest placing it could.
18. None of our findings are findings of any kind of dishonesty, or improper riding. This is simply a culpably bad ride, and no doubt in part can be explained by the drop in confidence the appellant frankly conceded to the Stewards, which itself is perhaps explained by a bad fall suffered by her at Christmas last year.

19. In the circumstances, the appeal as to breach of the rule must be dismissed.
20. The appellant was penalised with a 6-week suspension, reduced to 5 as she is an apprentice.
21. We take the view that, absent consideration that the appellant is an apprentice, a 4-week suspension was appropriate, noting this is her first breach of the rule. We would reduce that to 3 weeks given the appellant is still an apprentice.
22. Orders:
1. Appeal against finding of breach of AR 129(2) dismissed.
 2. Finding of breach of AR 129(2) confirmed.
 3. Appeal against severity of penalty allowed.
 4. In lieu of a 5-week suspension, the appellant's licence is suspended for 3 weeks.
Such penalty commences on 27 September 2019, and expires on 18 October 2019, on which day the appellant may ride.
 5. Half of the appeal deposit to be refunded.