**RACING APPEAL PANEL OF NEW SOUTH WALES**

**APPEAL OF SAM CLIPPERTON**

Panel: Mr R Beasley SC, Presiding Member; Ms J Madsen; Mr K Langby

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

For the Appellants: Mr P O'Sullivan, Solicitor.

**REASONS FOR DECSION**

1. On 17 August 2019, Sam Clipperton rode the horse Irish Songs in the Everest Carnival Handicap over 1100m at the Royal Randwick Racecourse. Irish Songs finished in a dead heat for 4th in the race, starting at 14/1.

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 4 September 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. Five particulars of breach of the rule where alleged. In summary it was alleged that:

(i) After entering the home straight, the appellant positioned Irish Songs behind Pandemic, causing Irish Songs to lose ground, in circumstances where it was reasonable and permissible to improve Irish Songs on the inside

(ii) Between the 350m and 250m the appellant failed to ride Irish Songs with sufficient vigour to move it forward into a more competitive position.

(iii) That between the 250m and 100m the appellant failed to ride Irish Songs with sufficient vigour when there was a run between All Cylinders and Making Whoopee and Irish Songs could have improved into that run.

(iv) Near the 100m, the appellant shifted Irish Songs to the outside of Making Whoopee when there was a clear run between that horse and All Cylinders which it was reasonable to take when riding with full vigour.

(v) Irish Songs was not given full opportunity to win or obtain the best possible place in the race as a result of the matters alleged in the previous four particulars.

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. He was penalised with a suspension of his licence of one month.

5. Mr Clipperton has appealed both finding of breach of the rule, and the severity of penalty imposed upon him. He was represented at the appeal today by Mr P O'Sullivan solicitor. 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. The Exhibits from the Stewards' Inquiry retained their numbers from that inquiry. Film of the race was admitted as Exhibit B. Forming part of that Exhibit was film of the appellant riding Irish Songs at a race at Randwick on 20 July 2019. Oral evidence was given by Mr W Birch, a stipendiary steward, and by the appellant.

7. Before discussing the evidence, something should be said about the rule. The leading appeal about how to analyse and apply this rule remains the Appeal of Munce (5 June 2013), 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 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 decision made by the appellant to follow Pandemic was a culpable error. There was sufficient room to take a run on the inside, that in the circumstances was the only reasonable option. By following Pandemic, the appellant cost Irish Songs ground. He should instead have shifted to the inside, and moved his mount forward.

11. The appellant said he followed Pandemic because he thought that horse would take him into the race. It was the favourite. He did not want to commit to the inside and get

held up by tiring horses in a fast-paced race. He thought Pandemic would take him into the race, and he would get a clear run.

12. Both Particulars 2 and 3 allege a lack of sufficient vigour by the appellant. Mr Birch in his evidence, and Mr Van Gestel in his submissions, drew these matters to the panels attention in support of these particulars:

    (a) The appellant is up in the saddle at a time when he should have been lowering his body, driving his horse forward.

    (b) The appellant's knees are apart, unlike the other jockeys whose knees are locked on to their horses and who are riding with greater vigour. The appellant, he said, was not pushing through the horse with hand and body

    (c) It was obvious that the appellant was not riding with sufficient or appropriate vigour when he could have. By contrast, Mr Birch took the Panel to film of the appellants ride on Irish Songs on 20 July, where he rode lower, knees together, and applied more vigour with his hands, and struck the horse with the whip.

13. By contrast, the appellant said his feeling was that in the 17 August race Irish Songs chased as hard as it could in the straight. He rode hands and heels with appropriate vigour to get the optimum out of his horse. Applying the whip would have been counterproductive. He said that he was at all times riding with an appropriate hands and heels motion, and that the horse could not have gone faster, a matter that he and Mr O'Sullivan submitted was backed up by the sectionals of the race: Ex 2.

14. In relation to particular 4, Mr Birch and Mr Van Gestel submitted in essence that the "quickest way home is straight". There was no need for the appellant to go to the outside of Making Whoopee. He should have taken the clear run in front of him.

15. The appellant said he did not take that run because Making Whoopee has shifted in, and he thought it may continue to do so. He lost no ground by going to that horses outside, and did not have to stop riding. Mr O'Sullivan submitted it was immaterial that the run did not in fact close up. The decision made at the time by the appellant to shift slightly out was reasonable.

16. Before dealing with our reasons on each particular, one matter should be noted.

17. As Mr O'Sullivan submitted, particular 3 could have been more carefully drafted. It talks of a run being "available directly in front of Irish Songs". In truth, the horses particularised, All Cylinders, and Making Whoopee, were at least 4 lengths in front of Irish Songs. It is also alleged that with sufficient vigour, Irish Songs could have "improved into that run". There is a dispute as to whether there was a run to improve into. Although we think it could have been more clearly drafted, we are of the view that particular 3 is still sufficiently clear, and has not caused any unfairness in the way it has been drafted or the proceedings conducted. Rather than reading it overly strictly, in a riding offence like this we believe it is appropriate to apply common sense. The particular is perfectly understandable as being one alleging breach of the rule by the appellant not riding with sufficient vigour when there was a gap between the horses mentioned ahead of Irish Songs, and Irish Songs could have moved up towards that run without impediment.

18. Finally, the Panel recognises that the burden of proof in relation to establishing breach of the rule is on the Stewards. The Panel must be comfortably satisfied it has been breached, bearing in mind the seriousness of the rule, and the Briginshaw standard.

19. The Panel is not satisfied that the appellant should be found to be in breach of AR 129(2) on the basis of the allegations in particular 1. We largely hold this view because we accept the appellant's evidence as to what he saw were the positives of

tracking Pandemic, and the potential negatives of taking an inside run. If error was made, it was not a culpable one.

20. We take the same view in relation to particular 4. We consider the appellant's actions were not unreasonable. He noticed Making Whoopee shifted in slightly. He had to make a split-second decision. He chose to take a run to the outside of Making Whoopee. As things transpired, the quickest route home may have been straight, but taking the outside run cannot be seen as culpable error.

21. We take a different view on particulars 2 and 3. We have noted the appellant's evidence that he thought he rode with sufficient vigour, and that he thought his horse was chasing as hard as it could, and would not have run faster with different riding. We note his evidence about riding style concerning his knees. We have also heeded Mr O'Sullivan's warning that we should not elevate any observable differences between the appellant's ride on 20 July, and his ride on 17 August. Those races involved different tracks, different ground, and different opposition.

22. However, we are comfortably satisfied that between the 350m mark and the 100m mark of the race on 17 August the appellant did not ride Irish Songs with sufficient vigour. There is an apparent difference in his riding on 20 July and 17 August, the former being marked with more vigour, lower body, and a generally far more assertive approach. This is not a finding of dishonesty, or improper riding, it is just that we are comfortably satisfied that it was always open for the appellant in the 17 August race to ride Irish Songs with more vigour which would have been sufficient vigour. He may have felt the horse was going as well as it could have, but we do not accept that he could have known that – simply because until right near the end of the race he did not ride with sufficient vigour to test out whether the horse could have finished in a more forward positon. There is some evidentiary support that the appellant knew that at least for part of the race between the 350m to 100m he was not riding with full vigour, even if he thought it was sufficient vigour: his evidence at T2 L55-65 concerning not wanting to be "pressing the button", and at T7 L 340 of "not

wanting to fully commit" on the horse indicate an appreciation after the race that he had ridden the horse at least more quietly than he could have for some time in the straight. Although not necessary to find, we are comfortably satisfied that ridden with sufficient vigour, Irish Songs would have threatened to run third.

23. We therefore find breach of the rule on the basis of particulars 2 and 3 which are made out.

24. As to penalty, in all the circumstances we take the view that a 3-week suspension is appropriate, rather than 4-weeks.

25. We make the following 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 4-week suspension, the appellant is penalised with a 3-week suspension. Such penalty begins on 28 September 2019, and expires on 19 October 2019, on which day the appellant may ride.
5. Appeal deposit forfeited.