APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR REGAN BAYLISS

Appeal Panel:	**Mr R. Beasley SC (Principal Member); Mr J.T. Murphy; Ms S. Skeggs**
Appearances:	**Mr T. Horne, Solicitor for the Appellant**
	Mr S.G. Railton, Chairman of Stewards for Racing New South Wales
Date of Hearing and Orders:	**5 May 2023**
Date of Reasons:	**2 June 2023**
Rules involved:	**AR 129(2) – Rider must take all reasonable and permissible measures to win or obtain best possible place in field**

REASONS FOR DECISION OF THE PANEL

Introduction

1. On 24 April 2023, licensed Jockey Mr Regan Bayliss (**the Appellant**) was charged with a breach of AR 129(2) in relation to his ride on *Pride of Jenni* in Race 6, the JRA Plate, run over 2000 metres at Randwick on 15 April 2023.

2. AR 129(2) is in the following terms:

> **AR 129 Running and Handling**
> (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. The relevant particulars of the charge brought against the Appellant were as follows:

> 2. Prior to the race he was provided with instructions from managing part-owner Mr T. Ottobre on how he was to ride the mare. This was by the provision of a WhatsApp message via the mobile phone of a stable representative.
>
> 3. After establishing a lead of some four lengths by the 1600 metres, in accordance with his instructions, from that point until the 800

metres he did then allow Pride of Jenni to establish a considerable margin while setting an extremely fast pace when it was open to him to have steadied the mare to a greater degree throughout that section of the race to set a more sustainable tempo when it was both reasonable and permissible for him to have done so.

4. As a result of this failure to ride Pride of Jenni in the manner detailed in particular 3, Pride of Jenni was not given full opportunity to win or obtain the best possible placing in the field.

4. The Appellant pleaded not guilty, but was found to have breached the rule by the Stewards. His licence to ride in races was suspended for 19 days.

5. The Appellant appealed to the Panel in relation to both the finding of breach, and the severity of the penalty imposed. He was represented by Mr T. Horne, solicitor. The Stewards were represented by Mr S.G. Railton, the Chairman of Stewards. An Appeal Book containing the transcript of the Stewards' Inquiry and its Exhibits was admitted into evidence. Film of the race taken from multiple angles was tendered, and shown to the Panel. The Appellant also gave oral evidence before the Panel, and called former jockey, Mr Corey Brown, to give evidence of an expert nature.

Findings of Fact

6. The following relevant findings of fact are not controversial:

(a) The Appellant is only 26 years of age, but has about 10 years' experience as a rider. He has had success at the Group 1 level, and overseas.

(b) Pride of Jenni started at $9.50 and ultimately finished 8th in the race, beaten 8.27 lengths.

(c) There were no integrity issues in the race from a betting perspective.

(d) About 10 minutes prior to the race, the Appellant was shown a mobile phone message from the horse's part-owner, Mr Ottobre, which relevantly contained these riding instructions:

3. *Slap her out of the gates and get 4-5 lenths [sic] in front of them, ride her like Lasquetti's Spirit, put a lenth [sic] on them every 200m, don't worry she can take it.*

4. *Ramp her up at the 800 and go for home, find the good going.*

5. *She has the sprint of a turtle but the power of Sunline, she doesn't know how to give up and will not stop.*

6. *You will need to put a big margin on the field and they won't catch her:* (Ex 1 (in part))

(e) It would seem that having read the instructions, the Appellant was told by the horse's co-trainer, Mr Eustace, that he should: "Do it. Don't be a pussy about it".

(f) The film of the race showed that by the 1600 metre mark, Pride of Jenni had opened up about a 4 lengths lead on the second horse. By the 800-metre mark that margin had increased to about 14 lengths.

(g) The reference to the horse *Lasquetti Spirit* is a reference to that filly's front running win in the 2016 Victoria Oaks. She led by a significant margin in that race, and won at long odds.

(h) The track on the day of the race was rated as a "Heavy 8", but was upgraded to a "Soft 7" following the JRA Plate.

(i) Pride of Jenni ran an exceptionally fast first 1200 metres: 1 minute 12.36 seconds. That was essentially the same time as another 1200 metre race that day, and almost as fast as another at the same distance: Ex 4 and 6. Harrison Smithers Betting Analyst provided evidence to the Stewards that Pride of Jenni ran about 28-30 lengths above Benchmark: Ex 3. Evidence received from Daniel O'Sullivan indicated that Pride of Jenni travelled faster than any other horse to the 600-metre mark over a 2000 metre race at Randwick since mid-2016: Ex 3. The evidence was that her speed to the 600-metre mark was 33.5 lengths faster than the track and distance standard.

(j) The Stewards opened their Inquiry on race day, and took some evidence from the Appellant and Mr Eustace. On 17 April 2023, Mr Ottobre sent an email to the Integrity Manager of Racing NSW: Ex 1. Mr Ottobre was clearly unhappy with the Appellant's ride, although not all aspects of his concerns were accurate (he said the horse led by 28 lengths at the 800m - rather than about 14 lengths - but subsequently corrected this). He sent another email regarding his concerns to the Stewards on 21 April 2023 (Ex 2), clarifying matters about the Appellant's ride further. He was concerned about the extent of lead established by the Appellant.

(k) On 24 April 2023, the Stewards resumed their Inquiry, and took further evidence from Mr Ottobre (who had now refined his concerns to focus on sectional times), and the Appellant.

Other Evidence

7. The Appellant's evidence was that he felt "bamboozled" by the late instructions given to him: T8 L348. He felt that he rode to instructions. He considered it would have been counter-productive to attempt to restrain Pride of Jenni prior to the 800-metre mark as he did not wish to disrupt her rhythm. He described the horse as a "bold going mare" (T 26 L732), and as a "free running sort of mare": T33 L1020. He described himself as a "good judge of pace" (T7 L316), and that he "know[s] how to judge a horse in front": T26 L730. He interpreted his instructions a being "to go out and lead by a massive margin and to increase it to the 800m": T7 L319. He was not precisely aware of how far he was in front at the 800m, but he knew he was "bowling along…at a solid tempo" (T 27 L738), that he "was going definitely at a strong pace" (T33 L 1014), and that he was "out by a big margin": T33 L1052. He knew "we were running those slip [sic] sectionals": T 34 L1058.

8. Mr Brown gave corroborative evidence to the Appellant's concerning the desirability on a horse like Pride of Jenni to maintain her tempo and rhythm. The horse had run well two starts back in the Coolmore Stakes run over 1500 metres at Rosehill when allowed to lead.

AR129(2)

9. The leading appeal reasons concerning this rule remain those of Mr T E F Hughes QC (the then Principal Member) in the *Appeal of Munce* (5 June 2003). Mr Hughes said that a rider should not be found to be in breach of the rule unless a Panel 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 There are no doubt many matters that would fall within the description of relevant circumstances"*. These include:

(a) the seniority and experience of the rider charged;

(b) the competitive pressure they were under in the race; and

(c) whether they had to make a sudden decision between alternative courses of action.

10. These factors are inclusive, not exclusive. Further, the Panel in *Munce* noted that the rule is not designed to find jockeys in breach of it "who make errors of judgment unless those errors are culpable by reference" to the various circumstances relevant to the race and conduct. As was said in the *Appeal of Bowman* (24 September 2020), Mr Hughes was adopting a construction of the rule that was not literal. Any error by a rider as a matter of logic – even a minor one – might mean that the rider has not taken "all reasonable and permissible measures" to ensure a horse is given full opportunity to win or obtain the best possible placing. Not every error, however, is caught by the rule. A determination as to whether conduct of a rider breaches the rule requires the application of judgment, common sense, and a reasonable consideration of all the factors that are relevant to a particular error in deciding whether that error is a culpable one. While it is crucial to the sport that jockeys ride in a manner that does give full opportunity to their mount to win or obtain the best place possible in a race, it is important that the Panel apply common sense judgment in making a determination about whether the rule has been breached. Errors by jockeys, as with all sportspeople, are inevitable. Not all of these errors will constitute a breach of AR129(2). The error has to be a bad one.

Submissions

11. Mr Railton acknowledged that there were no integrity issues involved here. The complaint by the Stewards was in relation to riding error, not improper conduct. Mr Railton acknowledged the important role that the instructions given to the Appellant played, and that they may have been the catalyst for the breach of the rule. However, he said that an experienced jockey like the appellant should have known that Pride of Jenni was travelling at a speed where it was impossible for the horse to finish the race off. It was one thing for the horse to lead by four lengths at the 1600 metre mark, but from that point the horse maintained a speed that meant it was impossible for the horse to finish the race off, and be competitive in the straight. It should have been obvious to the Appellant that the speed was unsustainable. Some attempt, it was submitted, should have been made to restrain or steady the horse to a degree, to see if her tempo could be slowed, such as to give her some chance of finishing the race off.

12. Further, whilst acknowledging the importance of the riding instructions from the owner, Mr Railton submitted that those instructions cannot be used as some form of unimpeachable defence to breach of AR129(2). It is not the owner that has an obligation under AR129(2), but the jockey. The Appellant had his own obligations to ensure that he did not breach the rule, despite any instructions given to him.

13. Mr Horne filed written submissions with the Panel dated 5 May 2023, all of which were considered. In essence, Mr Horne submitted that the Appellant had ridden to the instructions that were given to him. He emphasised that it was the Appellant's opinion that restraining this front running horse may have been counterproductive. It was a reasonable decision to allow the horse to maintain its rhythm between the 1600 metres and the 800 metres. Any error in judgment from the Appellant should be seen in the context of being provided with last-minute instructions requiring him to lead which, in effect, set in place what then happened throughout the race. If that was an error in the circumstances, it should not be considered a culpable error.

Resolution

14. The Panel considers the instructions given to the Appellant to be highly relevant. They encouraged him to lead, and to increase that lead from the 1600 metres. They were given to the Appellant at the last moment, which is less than ideal given the manner

that the owner wanted the horse ridden. Perhaps because of the last-minute nature of the instructions given to the Appellant, he interpreted them as requiring him to lead by a "massive margin". That is not quite what the instructions say.

15. While the Panel accepts that the Appellant is obviously a capable rider and may well be a good judge of pace, on this occasion he did make an error. Moreover, in our view he made a culpable error. We are sympathetic to the fact that the Appellant was provided with instructions that are perhaps out of the usual, and at the last moment, but we accept Mr Railton's submission that they cannot of their own amount to a defence to a breach of this rule. Mr Railton's submission that a jockey has his or her own responsibilities in relation to how they ride in a race is clearly correct, and accepted by the Panel.

16. On this occasion, the evidence concerning the speed that the horse was travelling was such that we are of the view that it must have been clear to the Appellant that he was travelling at a pace from the 1600 to the 800 metres in a 2000 metre race such that his horse would have little or no chance of finishing the race off. He must have known he was travelling at an unsustainable speed. We consider some of the evidence the Appellant gave to the Stewards referred to at [7] above is close to an acknowledgment of this.

17. Whilst we understand the Appellant's views concerning tempo and rhythm, given the pace that the horse was going at, we are of the view that it was incumbent on the Appellant to at least try to slow the horse down using some measure of restraint in order to attempt to have the horse steady, and travel at a speed whereby it could finish the race off, rather than compounding in the manner that it did. We understand that there are risks in attempting to restrain a front running horse, and there will be circumstances where it is reasonable for a rider to allow their mount to bowl along at its own tempo, but in the circumstances of this race, and at the speed the horse was travelling, some attempt needed to be made by the Appellant to restrain or steady Pride of Jenni in order to not fall foul of the rule.

18. In all the circumstances then we are comfortably satisfied that the error made by the Appellant was a culpable one, and in breach of the rule.

Penalty

19. The Panel has a broad discretion as to what penalty to impose here. While breach of this rule is objectively serious, this breach is at the low end of the scale. That is mainly because the catalyst for the breach was the riding instructions provided to the Appellant at the last moment. Further, although the Appellant seemed to be concerned that a finding of breach would reflect on his integrity, that is not the case. There is no aspect of the Appellant's breach of this rule which involves any improper conduct, or even raises the suspicion of an integrity issue. This was confirmed by Mr Railton in his submissions. What was involved was merely bad error.

20. Having taken into account all matters relating to penalty, including the purpose to uphold the image and integrity of the sport, the Panel decided to reduce the 19 day suspension to a suspension that started on Sunday 7 May 2023 and concluded at midnight on Thursday 11 May 2023. The Appellant was free to resume riding on Friday 12 May 2023.

21. The orders made by the Panel then were as follows:

    (1) Appeal against finding of breach of AR129(2) dismissed.

    (2) Finding of breach of AR129(2) confirmed.

    (3) Appeal against severity of penalty allowed.

    (4) In lieu of a suspension of the Appellant's licence to ride in races of 19 days, the Appellant's licence to ride is suspended from Sunday 7 May 2023 until Midnight Thursday, 11 May 2023. The Appellant may resume riding on 12 May 2023.

    (5) Appeal deposit forfeited.