

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF BLAKE SHINN

Appeal Panel: **Mr T Hale SC – Convenor**
Mr K Langby
Mr J Nicholson

Appearances: **Racing NSW: Mr M Van Gestel, Chairman of Stewards**
Appellant: Mr P O’Sullivan, Solicitor

Date of Hearing: **4 May 2018**

Date of Reasons **4 May 2018**

REASONS FOR DECISION

Convenor: Mr T Hale SC (Mr K Langby and Mr J Nicholson concurring)

Introduction

1. The Appellant, Blake Shinn, is a licensed jockey.
2. On ANZAC day, Wednesday 25 April 2018, he rode the horse *I Like It Easy* in Race 3 at Royal Randwick Racecourse. The race was over a distance of 1200m. *I Like It Easy* started at \$6.50 and finished 5th.
3. Later that day, there was a Stewards’ Inquiry into the running of the horse and the Appellant was charged with, and pleaded not guilty to, a charge of careless riding in breach of AR137(a). The Stewards, however, found him guilty and suspended him from riding for six-meetings, being a period commencing on Saturday 5 May 2018 and ending on Sunday 13 May 2018, on which day he was permitted to resume riding. At the Appellant’s request, the dates of the six meeting suspension were changed so that the suspension commenced on

Sunday 29 April and was to end on Thursday 10 May 2018.

4. The Appellant has appealed to this Panel on the decision of the Stewards, both on conviction and penalty presumed to section 42 of the *Thoroughbred Racing Act 1996*. The appeal is by way of a new hearing.

5. At the hearing of this appeal, Mr Van Gestel appeared on behalf of the Stewards and Mr O'Sullivan, solicitor, appeared on behalf of the Appellant.

6. The particulars of the charge are:

AR137(a) that any rider may be penalised if in the opinion of the Stewards he is guilty of careless, reckless, improper, incompetent or foul riding.

The careless riding being that at the Australian Turf Club meeting conducted at Randwick on 25 April 2018 that in Race 3 – Unconquered Plate 1200m , as the rider of *I Like It Easy*, as you restrained your mount to endeavoured to find cover leaving the 800m, you did permit that filly to shift in when not clear of *Colombina* resulting in *Colombina* being checked to avoid the heels of *I Like It Easy* shifting in and also resulting in then *Mandalong One Up*, ridden by Robert Thompson, also having to be checked.

7. At the hearing before us, the Appellant maintained his plea of not guilty as well as his appeal against the severity of the penalty. He has already served part of his suspension.

8. We received into evidence the material that was before the Stewards, which became Exhibit A. Film of the race, taken from various angles, was also received in evidence and became Exhibit B. We also heard evidence from the Appellant, Mr Shinn. The submissions of the parties were principally directed to what could be seen in the film and from which we were invited to make conclusions.

9. As the charge makes clear, the matter in issue in this appeal is what occurred at about the 800m mark. The Appellant started in the outside barrier and at about the 800m mark, when he was four wide, he came inside. It was at that point that it was contended he gave insufficient clearance to the horse *Colombina*, ridden

by Brenton Avdulla.

10. The Stewards' case may be summarized as follows;
 - a. The Appellant was four wide when he first looked to come across. At that point, he had sufficient clearance to cross in front of *Colombina*, Brenton Avdulla's mount, with safety.
 - b. As he crossed, the Appellant restrained his mount. This had the consequence that the distance between the horses closed. The Appellant crossed in front of *Colombina* when there was a clearance of only one and a half lengths or even less. This caused *Colombina* to check and to move inside where it interfered with Robert Thompson's mount, *Mandalong One Up*.
 - c. The carelessness was said to be that the Appellant crossed or continued to cross in front of *Colombina* when there was insufficient clearance, and particularly in circumstances when the Appellant's mount was travelling slower and in front of *Colombina*. As such, it was submitted that the crossing in front of *Colombina* was likely to cause *Colombina* to be checked.

11. The submissions of Mr O'Sullivan, on behalf of the Appellant Mr Shinn, may be summarised as follows:
 - a. Before crossing, the Appellant looked across and saw that there was sufficient clearance to cross in front of *Colombina*. This seems to be common ground.
 - b. In crossing, the Appellant did not restrain his mount. Rather, as the appellant said in evidence, he let the horse "be comfortable" and allowed the two front running horses to go forward.
 - c. Mr O'Sullivan relied upon the evidence of the Appellant that he felt he had sufficient clearance in front of *Colombina*, and that he always felt he was clear. The Appellant relies upon the evidence of Mr Avdulla before the Stewards that Mr Avdulla himself thought the Appellant had sufficient clearance.
 - d. Mr O'Sullivan also points to the evidence that the actions of *Colombina* shifting in were not the result of the Appellant's mount, rather, that they

were due to Mr Avdulla's mount, of which he said, 'my horse was awkward'.

- e. In the circumstances, Mr O'Sullivan submits that there was no carelessness because, before coming across, the Appellant had looked and had seen there was sufficient clearance. This is not in dispute. In coming across, the Appellant was unaware circumstances had changed and that lack of awareness was not due to any carelessness on his part. The fact that the Appellant crossed in front of *Colombina* with less than two lengths' clearance was not of itself sufficient to establish a lack of care.
12. I and the other members of the Panel consider the Stewards have established that on the evidence the Appellant is guilty of careless riding. However, it is a very low level of carelessness. In coming to that decision, both I and Mr Nicholson wish to record that we were greatly assisted by the experience of Mr Langby.
 13. In our view, in coming across at the speed that the Appellant did, the Appellant should have been aware of the possibility that the gap between his mount and *Colombina* might narrow. He should have checked to ensure that there was sufficient clearance as he crossed in front of *Colombina*. He did not do so. Notwithstanding the force of the submissions of Mr O'Sullivan, in substance we accept the submissions on behalf of the Stewards. However, the matters advanced by Mr O'Sullivan have persuaded us that what has been established is a very low level of carelessness.

(The parties then addressed on penalty)

DECISION ON PENALTY

14. In dismissing the appeal on conviction, I expressed on behalf of the Panel the view that in this case there was a very low level of carelessness. The evidence barely established breach of AR137(a).

15. We are conscious of the importance of consistency in the imposition of penalties. The Panel has on many occasions referred to the importance of consistency. This Panel has on many occasions referred to the fact that the careless riding penalty template is a most valuable tool to achieve consistency.
16. In this case, the level of carelessness is the lowest of the low grade of carelessness in the template. In the circumstances, we do not consider that a starting point of six meetings' suspension is appropriate or warranted.
17. We note that the Appellant has, at his choice, already served a suspension of three meetings and in practical terms will serve a fourth meeting of suspension, due to the fact that he has not accepted rides for tomorrow, including an engagement at a Group 1 race in Adelaide. As such, a suspension of four meetings has already been served, but, as Mr Van Gestel points out, this was at the option of the Appellant Mr Shinn and, of course, there was always the possibility that his appeal on conviction might have succeeded.
18. In the circumstances, we consider that the appropriate penalty is both a suspension and a fine. We consider that the appropriate suspension is a suspension of four meetings, commencing on 29 April 2018 and ending on Sunday 6 May 2018, on which day the Appellant may ride. That will mean, of course, that the three meetings suspension already served will count towards that.
19. We also consider that under AR196(1) the suspension should be supplemented with a fine of \$2,000.

The Panel's orders are:

1. The appeal against conviction is dismissed.
2. The appeal on severity is allowed and in lieu of the penalty there is a period of suspension, commencing on 29 April 2018 and ending on Sunday 6 May 2018, on which day the Appellant may ride, together with a fine of \$2,000.
3. As to the appeal deposit, 50% should be refunded.