

RACING NEW SOUTH WALES

APPEAL PANEL

Thursday, 15 September 2016

MR R BEASLEY SC — PRINCIPAL MEMBER  
MR C CLARE  
MR K LANGBY

10

---

IN THE MATTER OF THE APPEAL OF  
BOBBY EL'ISSA

---

REASONS FOR DECISION

---

20 **PRINCIPAL MEMBER:**

1. The Appellant, licensed jockey Mr Bobby El-Issa, was the rider of the horse Argentina in the Naomi Cocksedge 40th Birthday 3YO Maiden Handicap run at Kembla Grange Racecourse on Saturday, 20 August 2016. Argentina won the race by a short head margin.
2. Following the race the Stewards charged Rider El-Issa under AR 137A(5)(a)(ii), which is in the following terms:

30

*(5) Subject to the other requirements of this rule:*

*(a) In a race, official trial or jump-out prior to the 100 metre mark;*

*...*

*(ii) The whip shall not be used on more than 5 occasions.*

The particulars of the charge against Mr El-Issa were that:

40

*“As the rider of the eventual winner Argentina in Race 4, the 3YO Maiden Handicap 1200 metres, run at the Illawarra Turf Club meeting held on Saturday, 20 August 2016 did use the whip on 11 occasions prior to the 100 metre mark, that is, six more than permitted under the rule.”*

3. As stated, Mr El-Issa was charged with using the whip on Argentina on 11 occasions prior to the 100 metre mark. He pleaded guilty to this charge and his licence to ride was suspended for a period commencing on 28 August 2016 and expiring on 7 September 2016. He now appeals to the Panel against the severity of this penalty. It can be noted that also on 20 August 2016 Mr El-Issa was charged under AR 137A(5)(a)(i) in that he used the whip on Argentina on ten consecutive occasions prior to the 100 metre mark. This rule prohibits the use of the whip in consecutive strides prior to the 100 metre mark. Mr El-Issa also pleaded guilty to this charge and was reprimanded.

10

4. Since lodging his appeal on 22 August 2016, the suspension of Mr El-Issa's licence to ride has been stayed.

5. This is not Mr El-Issa's first offence for a breach of this rule. Part of Exhibit A on this appeal is Mr El-Issa's relevant riding record for the last 12 months. It shows two relevant prior offences on 22 May 2016 at Muswellbrook and 7 July 2016 at Hawkesbury.

20

6. Racing NSW has prepared guidelines for the penalties it considers should be imposed on riders for breach of the whip rules. These in no way bind the Panel. The Panel nevertheless considers that regard should be had to them as part of its own assessment, and that they are a relevant and useful tool when considering matters such as consistency in sentencing.

7. If the Panel were to apply guidelines for a third offence involving six or more strikes with the whip above what the rules permit, as here, the penalty to be imposed on Mr El-Issa is one of a suspension of up to two weeks. As stated, however, the Panel is not bound by the guidelines, nor will it slavishly unthinkingly following them.

30

8. Mr El-Issa today does not suggest he should not be penalised. Rather his submission is that a ten day penalty is too severe. He suggests a four to five day suspension. In support of this contention Mr El-Issa has asked the Panel to take on board the following matters:

- (1) He has had a serious illness and was out of racing for over 12 months.
- (2) He has only relatively recently come back to riding.
- (3) On the day in question he was riding for three big trainers and was out to impress them.
- (4) He is still getting accustomed to the whip rule.
- (5) Argentina is a difficult horse to ride.
- (6) The breach by him was not deliberate, but he got carried away because of his desperation to win.
- 10 (7) He nursed the horse until the 160 metre mark.
- (8) The whole thing happened very quickly. Kembla Grange is a long straight and the breach of the rule was more misjudgement than deliberate.
- (9) A ten meeting suspension will cause him financial hardship and he has financial obligations.

9. The Panel has had regard to all these submissions.

10. In response, Mr Dingwall for Racing NSW relied on the record of Mr El-Issa, penalty guidelines and a prior decision of a differently constituted panel in the matter of Brodie Loy. In that case the horse was struck 12 times and the penalty imposed was a three week suspension. Mr Dingwall also took the Panel to Mr El-Issa's admission that he rode too desperately and had no excuse.

11. As stated, the guidelines are not binding on the Panel. It is very important, however, that there be consistency in sentencing. While the Panel has considered Mr El-Issa's submissions and is sympathetic to them, they do not warrant the Panel taking a different view as to penalty from the Stewards in this matter. Mr El-Issa's breach here of this rule is his third in recent times and he was six strikes over the rules. The rider of the second horse, in a close finish, complied with rules. Under the guidelines the guideline penalty would be a suspension of up to two weeks. The Stewards imposed a ten day penalty. The Panel's own view is that a ten day suspension is appropriate.

12. The orders of the Panel are:

- (1) Appeal against severity of penalty dismissed.
- (2) Penalty of a ten suspension confirmed.
- (3) Suspension to commence on Friday, 16 September and to conclude on 26 September 2016.

----