

RACING APPEAL PANEL OF NSW

APPEAL OF RACHEL KING

PANEL: Mr R Beasley SC, Principal Member; Mr J Fletcher; Mr C Clare

Appearances: Racing NSW: Mr Polglase, Stipendiary Steward

Ms King: Mr Pasterfield, Solicitor

Hearing Date: 6 March 2017

Date of Decision: 6 March 2017

REASONS FOR DECISION

1. On 10 December 2016 the Appellant, Ms Rachel King (an apprentice jockey), rode the racehorse Stand Alert in the Summer Racing Maiden Handicap at Kembla Grange Racecourse ('the race'). Stand Alert placed second in the race.
2. Following the race, the Stewards commenced an inquiry into Ms King's ride. After hearing evidence and viewing race film, the Stewards charged Ms King with careless riding under AR 137(a), which is in the following terms:

*'Any rider may be penalised if, in the opinion of the Stewards,
(a) He is guilty of careless, reckless, improper, incompetent or foul riding.'*

3. The particulars of the charge were that as follows:

'...the careless riding being that in Race 7 today you, as the rider of Stand Alert, allowed your mount to shift in near the 1100m when not clear of

Comics ridden by Jeff Penza, resulting in that gelding losing its rightful running and being steadied.'

4. Ms King pleaded guilty to the charge. She was subsequently penalised with a suspension of five meetings. Ms King has appealed to the Panel against the severity of the penalty imposed.
5. Before dealing with the appeal, it should be noted that the penalty imposed on Ms King was as a consequence of the Stewards using the Penalty Guidelines that have been created for Careless Riding. The grade of carelessness assessed here was 'grade 2 – medium'. As the carelessness resulted in another horse being checked, the Guidelines provide for a seven-meeting suspension. After reductions were imposed for an early plea (10%) and for experience (15% as Ms King is an apprentice), the penalty was reduced from seven to five meetings.
6. Some observations can immediately be made about the Penalty Guidelines. First, they do not bind the Panel. The Panel is free to reach its own view on a penalty to be imposed, and need not follow the Guidelines.
7. Secondly, however, the Panel nevertheless considers that regard should be had to the Guidelines as part of its own assessment. They are a relevant and useful tool, no doubt prepared after careful consideration, and one of the important aims they seek to achieve is consistency in sentencing.
8. No oral evidence was called in this appeal. The appeal book – containing the relevant transcript from the inquiry, and other exhibits, was marked Exhibit A on the appeal. Film of the race, which the Panel was shown, was marked as Exhibit B.
9. In support of the penalty imposed by the Stewards, Mr Polglase drew the Panel's attention to the following matters:

- (a) The rider of Comics in the race, Mr Jeff Penza, gave evidence at the Inquiry that he had a run on the inside, and had to steady his horse. He said he lost his running – see T 1 and 2.
- (b) The appellant conceded after viewing the film that she had crossed over in front of Comics at about the 1100m mark when only about a length clear of that horse. She should have been 2 lengths clear for safety.
- (c) The actions of the appellant were dangerous. This was not a slight miscalculation, but a manoeuvre that put the horse Comics dangerously close to the heels of the appellant's horse.
- (d) As a consequence, the ride should be assessed at a medium level of carelessness, and having caused a check or to have taken Comics rightful running.

10. Mr Pasterfield, for the appellant, asked the Panel to note the following matters from the evidence:

- (a) Jeff Penza did not ride Comics in a vigorous way. This was conceded by the Stewards: T 5 L 230.
- (b) The shifting in of the appellant did occur when only about a length and a half clear of Comics, but had nil or negligible impact on how that horse was ridden.
- (c) Ms Markwell, the trainer of the horse the appellant rode, made accurate observations about the fact that Jeff Penza did not have to restrain his mount as a result of the appellant's actions, and always was in the position he wanted to be. No checking was involved. Any interference was very minor – see generally T 3 to 6.

11. Mr Pasterfield's ultimate submission was that a low level of carelessness was involved, with no impact on the horse Comics. In his view a reprimand was the appropriate penalty here. He also drew the Panel's attention to the appellant's relatively good record.
12. We have taken account of all submissions made by Mr Polglase and Mr Pasterfield. Our observations of the film have led us to concluded that the appellant on Stand Alert crossed in front of Comics when only about a length clear of that horse. It did cause a slight checking of that horse and took its running.
13. As stated above, the Penalty Guideline is not binding, but is a useful tool, and assists greatly in consistency of sentencing. The Panel would not lightly disregard it. It is a close-run thing, but in this case we are not comfortably satisfied the ride was of a medium level of carelessness. We are however comfortably satisfied a low level of carelessness was involved, and that the horse Comics was checked to some degree.
14. In our view application of the Guideline is appropriate in this case. Low carelessness with a check results in a six-meeting suspension. Factoring in a plea, and the apprentice discount, a four-meeting penalty is appropriate.
15. The Panels orders are as follows:
 - (a) Appeal against penalty allowed.
 - (b) In lieu of a five (5) meeting penalty, a penalty of a four (4) meeting suspension is imposed, such Penalty to commence on 9 March 2017 and to expire on 16 March 2017, on which day the Appellant may ride.
 - (c) Appeal deposit to be refunded.