

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR BLAKE SHINN

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr M Daniels; Mrs J Avellano**

Date of hearing: **28 September 2017**

Date of decision: **28 September 2017**

Appearances **Appellant – Mr P O’Sullivan, Solicitor**
Racing New South Wales – Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION

Mr R Beasley SC, Principal Member

Introduction

1. The appellant rode the racehorse ‘Pariah’ in the De Bortoli Wines Golden Rose Stakes, which was a 1400 m Group 1 race conducted at the Rosehill Racecourse on Saturday 23 September 2017 (“the race”).
2. Following the race, the Stewards conducted an inquiry into alleged interference caused by the appellant approaching the 1000m mark. He was charged with a breach of AR 137 (a), which is in the following terms:

AR 137 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 as follows:

“...that near the 1000 metre mark you permitted your mount Pariah to shift in when not clear of Chauffeur, resulting in that runner being taken in onto Shogun Sun, ridden by Christian Reith, resulting in Shogun Sun being checked and striking the running rail.”

4. The appellant pleaded not guilty to the charge. After hearing submissions, the Stewards found the charge proven, and imposed a penalty of a ten-meeting suspension – such penalty commencing on Monday 2 October 2017, and ending on Friday 20 October 2017.
5. The penalty was arrived at by the application of the Penalty Guidelines for Careless Riding. The carelessness involved in the appellant’s ride was found to be ‘Medium’, and the level of interference was graded as 2 – ‘checked and or lost rightful running’. This would ordinarily result in a seven-meeting suspension. However, a thirty-three percent premium was applied for the appellant’s record, and a further premium of twenty-five percent as the breach of the Rule occurred in a feature race. A fifteen percent discount was then applied given that the period of suspension included a number of race meetings with group 1 races. The total premium of forty-three percent took a seven-meeting penalty to the ten-meeting penalty imposed.
6. In this appeal, the appellant maintains his plea of not guilty, and also appeals against the severity of penalty imposed.

Evidence and submissions

7. The appellant was represented with leave of the Panel by his solicitor Mr P O’Sullivan. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards. Both parties relied on the transcript from the Stewards’ Inquiry, and the film of the race (exhibits A and B on the appeal). Mr Shinn also gave oral evidence, and Mr O’Sullivan called retired jockey Kevin Moses to give expert evidence on Mr Shinn’s behalf.
8. Prior to the commencement of the evidence, Mr O’Sullivan made a short opening address where he made one important concession, and outlined what he considered to

be the main issue in relation to the Panel's determination. He conceded that at the point where Mr Shinn crossed in front of the horse Chauffeur (ridden by Brendan Avdulla), Mr Shinn's horse was not two lengths clear of Chauffeur. He accepted, from many previous decisions of Courts and racing tribunals, that at least a convention is in place that a jockey should not cross the path of another horse unless two lengths clear. This is however not a formal "rule" of racing, nor does breach of the convention establish on its own a charge of careless riding.

9. What Mr O'Sullivan submitted was the real issue to be determined was whether Mr Shinn's conduct in crossing in front of Chauffeur when less than two lengths clear caused any interference to that horse, and whether it in turn caused Shogun Sun to suffer interference, and strike the running rail. Mr O'Sullivan submitted that Mr Shinn's actions in the race had no impact at all on Chauffeur, and that this horse shifted in entirely as a result of the actions of its rider, Mr Avdulla. As such, Mr Shinn's ride caused no adverse consequences to any other runner, and the finding of guilt should be set aside. He submitted that this line of defence was entirely consistent with the evidence that Mr Shinn gave at the Stewards' Inquiry at T6 L 267-280.
10. Although it is necessary to refer briefly to the oral evidence given and some aspects of the film, I agree with Mr O'Sullivan's submission concerning the central issue for the Panel to decide. It is quite clear from the film that the horse Shogun Sun hits the running rail and is checked. It is also clear that Mr Shinn on his mount crosses in front of the horse Chauffeur when not two lengths clear of that horse. Chauffeur appears to at least cause some of the interference to Shogun Sun. The key issue though to be resolved was whether that interference was the result of Mr Shinn's actions.
11. The primary point Mr Shinn sought to make in his evidence was that while he did cross in front of Chauffeur when less than two lengths clear of that horse, this had no effect on Chauffeur, or the actions of its rider Mr Avdulla. Mr Shinn said that his ride had no effect at all on Chauffeur. To the extent that Chauffeur interfered with Shogun Sun, Mr Shinn was of the view that Mr Avdulla was entirely responsible for this. In Mr O'Sullivan's words, Mr Avdulla was the "architect" of the interference caused to Shogun Sun, not Mr Shinn. Mr Shinn's evidence was also that at the time any

interference was caused to Shogun Sun by Chauffeur, he had well and truly crossed and cleared Chauffeur.

12. Mr Shinn did however make what I believe is one important concession in his evidence. He initially took the view that he was about a length and a half clear of Chauffeur when he crossed that horse. When taken to the film at 03.401 by Mr Van Gestel however, he conceded he was perhaps only a length and a quarter in front. However, when taken to when he was “crossing” the horse (at 03.221) and then to the film at 03.318, he conceded he was perhaps only a length clear of Chauffeur when he crossed that horse.
13. With no disrespect to the great experience of Mr Moses as a jockey, I did not find that his evidence added much. He did however indicate that he felt that the horse Chauffeur did not give any indication that it was being interfered with or inconvenienced by Mr Shinn’s actions on his horse.
14. The main thrust of Mr O’Sullivan’s submissions at the conclusion of the evidence was that Mr Avdulla chose to take an inside run on Chauffeur, and was not in any way forced to by Mr Shinn’s actions. He supported this submission by asking the Panel to note that:
 - (a) there was no physical contact between Pariah and Chauffeur;
 - (b) Chauffeur showed no obvious signs of being inconvenienced or checked (like throwing his head around, for example);
 - (c) the inconvenience suffered by Shogun Sun took place well after Mr Shinn had crossed Chauffeur.
15. For all these reasons, Mr O’Sullivan submitted that the Panel could not be comfortably satisfied that any action by Mr Shinn had caused interference to the other horses.
16. Mr Van Gestel was economical in his submissions. He argued that it was very clear from looking at the film that Mr Shinn on Pariah had crossed in front of Chauffeur when only about a length clear of that horse. He said that this “took the line” of

Chauffeur, and forced that horse to take a run further to the inside, where it subsequently caused the interference to Shogun Sun. The fact that Chauffeur did not throw his head around was because it was forced into taking an inside line to that of Pariah – which in turn caused the interference.

Resolution

17. Having viewed the film on many angles and on numerous occasions, I accept the submissions of Mr Van Gestel in relation to Mr Shinn's ride. In my view, Mr Shinn on Pariah was barely a length clear of Chauffeur when he commenced to cross in front of that horse. This in my view almost immediately caused Chauffeur to shift in. To my eye, Mr Shinn shifts in on Pariah when not sufficiently clear of Chauffeur, and this act then (but not before) causes Chauffeur to shift in to take clear running on a more inside line. By shifting in, Chauffeur in turn caused some interference to Shogun Sun, and that horse was clearly checked and hit the rail.
18. Based on my observations of the film of the race, I am comfortably satisfied that the interference caused to Shogun Sun was the result of Mr Shinn's actions on Pariah – in particular, in crossing in front of Chauffeur when too close to that horse, and causing him to shift in.
19. For these reasons, I would dismiss the appeal, and uphold the finding of guilt. I would have heard submissions concerning penalty on the issue of whether Mr Avdulla contributed to the interference to Shogun Sun (and hence whether the penalty imposed on Mr Shinn should be reduced to reflect any such interference), but that matter is irrelevant given that the other two members of the Panel consider the appeal on guilt should be allowed.

Mr M Daniels and Mrs J Avellano

1. Like the Principal member, we have had the advantage of viewing film of the race on numerous occasions. Although not decisive of our final decision, we note that we have gained a slightly different impression of the relevant part of the race from watching footage from the Tower 3 (side on) camera, than from the Tower 4 camera. The impression from the Tower 4 camera is that Mr Shinn crosses in front of Chauffeur when more than a length clear of that horse.

2. However, we accept that when Mr Shinn commenced to cross in front of Chauffeur, he was not two lengths clear of that horse. It is also clear to us that the horse Shogun Sun suffers interference, and that this horse hit the running rail.
3. Where we differ from the Stewards' view, and that of the Principal Member, is that we are not comfortably satisfied that Mr Shinn's actions were the cause of Chauffeur shifting in. In our view, although he crossed in front of Chauffeur when not two lengths clear of that horse, this action by Mr Shinn had no impact on Chauffeur. Rather, in our view, Chauffeur shifted in due to the actions of its rider Mr Avdulla, and not as a consequence of Mr Shinn's actions on Pariah. Chauffeur in our view showed no signs of being interfered with or inconvenienced by Pariah. Rather, Chauffeur was deliberately ridden closer to the rail at the relevant part of the race.
4. We are of the view then that any interference caused by Chauffeur to Shogun Sun was the result of the ride by Mr Avdulla, not Mr Shinn. For that reason, we are of the view that the appeal must be allowed, and the finding of guilt and the penalty set aside.

By majority (Mr Daniels and Mrs Avellano; Mr Beasley SC disagreeing) the Panel orders:

1. Appeal against finding of guilt upheld.
2. Finding of guilt for breach of AR 137(a) set aside.
3. Penalty of a ten-meeting suspension set aside.
4. Appeal deposit forfeited.