

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF COREY BROWN

Appeal Panel: **Mr R Beasley SC – Principal Member**
Mr K Langby
Mrs J Foley

Appearances: **Racing NSW: Mr M Van Gestel, Chairman of Stewards**
Appellant: Mr D O’Dowd, Barrister

Date of Hearing: **16 March 2018**

Date of Reasons **Oral: 16 March 2018; Written 9 April 2018**

Outcome: **Appeal against penalty dismissed**

REASONS FOR DECISION

Introduction

1. Following the running of the Schweppes Wenona Girl Quality (Gp 3) run over 1200M at Randwick on 10 March 2018, the appellant, licenced jockey Corey Brown, pleaded guilty to a breach of AR 145 of the Australian Rules of Racing. This rule empowers the Stewards to penalise a jockey who carries more than half a kilogram more than the imposed or declared weight for a runner.
2. Mr Brown rode the horse Miss Que in the race, which finished second. He returned to scale 1 kilogram over that horses allotted weight. The margin between 2nd and 1st was a shorthed. The difference in prize money was \$56,000 between 1st and 2nd.
3. After considering Mr Brown’s plea, the Stewards imposed a penalty of a ten day suspension. He has appealed to this Panel against the severity of the penalty imposed. He was represented on appeal by Mr David O’Dowd of Counsel, and

the Stewards were represented by the Chairman of Stewards, Mr Marc Van Gestel.

4. It did not seem to be in contest that offending under this rule is a serious breach of the Rules of Racing, and impacts adversely on the image of racing, and the level confidence the public has in it: this is clear from prior decisions dealing with this rule such as the appeals of *Pearson* and *Thorn*. The impact on Racing is said to be greater when this kind of offending occurs on feature race days such as the Randwick meeting involved here.
5. Mr Van Gestel told the Panel that the Stewards over several years have set their own precedents for what is an appropriate penalty for a breach of AR 145 in circumstance similar to the appeal here. Mr Van Gestel tendered a document in support of this outlining various penalties imposed for prior breaches of AR 145 (including where a horse has run second or missed another placing by a small margin). He submitted that the ten day suspension imposed on Mr Brown was entirely consistent with those prior penalties, and that no other penalty would properly reflect the objects of the Rules, and the Penalty provisions, to uphold and protect the image, integrity and interests of Racing.
6. Mr O'Dowd, in making his submission that the Penalty imposed should be reduced, made reference to the following matters that he said justified such an outcome:
 - (a) Mr Brown's unchallenged evidence at the Stewards' Inquiry that (in his view) the extra kilo of weight made no difference to the outcome of the Race. Mr Brown said that *Sugar Bella* had his horse covered 50 metres out.
 - (b) Mr Brown weighed out at 54.4 Kilograms - a legal weigh. He returned to scale at 55 Kilograms. A weight of 54.9 kilos would not have resulted in a charge. Mr Brown said that at one stage the scales in fact read 54.9 kilograms, before settling finally on 55.
 - (c) Mr Brown was dehydrated following the Group 1 Race 7, and had half cup of water, having already weighted in for Race 8 prior to Race 7.

(d) Mr Brown has rides in several rich Group 1 Races on Saturday 24 March Golden Slipper Day. A 10-day suspension is simply too severe for the offending involved here, and hence is not a just outcome.

(e) Mr O'Dowd relied on the Panel's recent decision in the *Appeal of Shinn* (26 February 2018) to suggest an appropriate penalty here should be a reduced suspension, and a fine.

7. Mr Van Gestel highlighted the differences with the Shinn case (different Rule, Friday night meeting, momentary lapse of judgement), but also submitted that it would be a poor precedent to substitute part of the suspension imposed here with a fine. In his submission, it could give the impression that a Jockey or other licenced person can "buy" their way out of a suspension.
8. Consistency in sentencing is vital to the approach taken by both the Stewards when they penalise a licenced person for a breach of the Rules, and for the Panel on appeal. The Panel must reach its own view about an appropriate penalty for breach of the Rules. At times the Panel's view might differ from the view of the Stewards, sometimes marginally, sometimes significantly. The Panel does consider it at least relevant however that prior penalties for similar offending to the appellants have invariably attracted a penalty from the Stewards that is in the form of a suspension only, rather than a fine or combination of suspension and fine. Further, such suspension has usually been for a period of 10 days or more when a second-place horse is involved in a close race.
9. The panel has considered whether a penalty that involves the appellant being suspended on 24 March is too severe bearing in mind that this is the Golden Slipper meeting. We have ultimately reached the position that we are comfortably satisfied that it is not.
10. The offending here is not deliberate. No horse or rider was endangered by the appellant's actions, and the Panel notes the difficulties and burdens faced by Jockeys to ride at low weights. However, a Jockey returning to scale a kilo overweight having run second by a very narrow margin in a prominent Race is a

matter that reflects negatively on the image of Racing, even though that was obviously not the appellant's intent.

11. The appellant feels that the extra kilo did not cost his horse the race, but that is highly unlikely to be the view of many members of the racing public. We also note that the offending took place on a feature race day, and that there is a real and rational prospect that the extra weight cost the appellant's horse first place, and its connections considerable prizemoney, and other benefits of winning. The penalty imposed must take all of this into account, and we are comfortably satisfied that a 10-day suspension is appropriate.

The Panels orders are:

1. Appeal against penalty dismissed.
2. Penalty of a 10-day suspension confirmed, such penalty to commence on 19 March 2018 and to expire on 29 March 2018, on which day the appellant may resume riding.
3. Appeal deposit forfeited.