

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR BLAKE SHINN

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr J Nicholson; Mrs L Olsen**

Date of hearing: **28 July 2017**

Date of decision: **28 July 2017**

Appearances **Appellant – Mr P O’Sullivan, solicitor**
Racing New South Wales – Mr P Dingwall, Deputy Chairman of Stewards

REASONS FOR DECISION

The Panel

Introduction

1. The appellant is a licenced jockey who rode the racehorse ‘Invincible Knight’ (“the horse”) in the Theraces Handicap, which was a 1500 m race conducted at the Randwick Racecourse on Thursday 20 July 2017 (“the Race”).
2. The horse, which was a 7 to 1 shot in the race, finished in second place. Following the race, the Stewards conducted an inquiry into alleged interference caused by the appellant approaching the 200m. He was ultimately 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:

“... the careless riding being that approaching the 200 metres in Race 9, run at the Randwick Racecourse on July 22, you permitted your mount *Invincible Knight* to shift in when insufficiently clear of Kathy O’Hara’s mount *Lay Down the Law*, and as a result of that that horse was crowded and lost its rightful running.”

4. The appellant pleaded guilty to the charge. After hearing submissions as to penalty, the Stewards imposed a penalty of a seven meeting suspension – such penalty commencing on 26 July and ending on 6 August. 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 ‘Low’, and the level of interference was graded as 2 – ‘checked and or lost rightful running’. These gradings would ordinarily result in a 6 meeting suspension. The penalty was increased to 7 meetings after a 33% loading was applied for the appellant’s record, followed by a 10% discount for his plea of guilty.
5. The appellant’s appeal to the Panel today is in relation to the severity of penalty imposed.

Evidence and submissions

6. On this appeal, Mr P O’Sullivan appeared with leave for the appellant. The Stewards were represented by Mr P Dingwall, the Deputy Chairman of Stewards. The appeal book, which included the transcript of the Steward’s Inquiry, was marked as exhibit A, and the film of the race as exhibit B. Mr Shinn also gave some brief evidence.
7. There was no real controversy over what occurred in the race. At the Steward’s Inquiry, Mr Shinn almost immediately admitted guilt. He agreed his horse shifted in “marginally”, and although unaware of it at the time, caused interference to Lay Down the Law ridden by Ms K O’Hara. The interference, which resulted in Lay Down the Law being checked at the 200m and losing its rightful running, occurred at a time when Mr Shinn was “gathering [his] reins”: T 2 L 57. It was right at the point

where he said he was “getting my hold”: T 2 L 90, and trying to get hold of his whip: T 2 L 63.

8. During the course of his evidence to the Panel today, Mr Shinn put a greater emphasis on his horse shifting in and causing the interference when he “fumbled” his reigns. He said his ride was “sloppy” in this regard.
9. Mr Dingwell’s submissions were understandably brief. He unsurprisingly encouraged the Panel to follow the Penalty Guidelines.
10. Mr O’Sullivan submitted, correctly, that the Panel is not bound by the Guidelines. He further submitted that their strict application would result in a penalty that did not properly reflect the extremely low carelessness of the appellant. The interference was caused by clumsiness, not a deliberate act or decision. As such, Mr O’Sullivan submitted that the breach of the rule here was at the very lowest end of seriousness and carelessness. Giving consideration to the guideline, but factoring in this low level of carelessness would properly result, Mr O’Sullivan submitted, in a suspension of four meetings. Mr O’Sullivan also submitted that too great a premium for Mr Shinn’s record, and perhaps not sufficient discount for his immediate plea, were factored in. Bearing all the relevant matters in mind, the appropriate penalty here was still four meetings.

Resolution

11. As all parties agree, the Panel is not bound by the Penalty Guidelines. We do take the view however that they are relevant to our determination. We understand they have been prepared by the Stewards with input from the Jockeys Association. They have no doubt been prepared to serve many purposes. One is fairness. Another would be to ensure that penalties promote and protect the interests and integrity of the racing industry. Another would be to assist in achieving consistency in sentencing.
12. We take the view that while we are not bound by the penalty guidelines, there needs to be a strong and compelling reason not to follow them. To ignore them or vary them too quickly could lead to inconsistency in the application of penalties for breaches of AR 137(a), which should be avoided.

13. We agree with Mr O’Sullivan that the appellant’s carelessness here is towards the low end. However, in relation to all rides that are in breach of the rule, there will be variance in the level of carelessness of rides that fall with in the general description of ‘low’, or ‘medium’, or ‘high’. To impose a penalty in this case of a four meeting suspension would be really to go very close to ignoring the guideline entirely.

14. While we accept that the carelessness of Mr Shinn in this appeal is low, we are not convinced that the guideline should not be applied. We are comfortably satisfied that it should be. We also see no reason to depart from the application of a 10% discount for early plea, and a 33% premium to reflect the multiple breaches of AR 137(a) in the appellant’s relevant record. Accordingly, we would dismiss the appeal.

Orders

15. The Panel makes the following orders:

1. Appeal against severity of Penalty dismissed.
2. Penalty of a 7 meeting suspension confirmed. Such penalty commenced on 26 July 2017, and ends on 6 August 2017, on which day the appellant is free to ride.
3. Appeal deposit forfeited.