

# APPEAL PANEL OF RACING NEW SOUTH WALES

## APPEAL OF AARON BULLOCK

Appeal Panel: **Mr R. Beasley SC – Presiding Member; Ms J. Foley;  
Mr J. Nicholson**

Appearances: **Racing NSW: Mr Marc Van Gestel, Chairman of  
Stewards  
Appellant: Mr P. O’Sullivan, Solicitor**

Date of Hearing: **18 November 2019**

Date of Reasons **19 November 2019 (oral reasons and orders made 18  
November 2019)**

## REASONS FOR DECISION

### Introduction

1. On Saturday 9 November 2019, Licensed Jockey Aaron Bullock (**the Appellant**) rode the horse Art Attack in race 5, the Country Classic, over 2000m at Rosehill Gardens Racecourse.
2. Following the race, the Stewards conducted an inquiry into the Appellant’s ride. He was ultimately charged with a breach of AR131(a), which is the careless riding rule. That rule, and the particulars of the alleged breach were as follows:

*A rider must not, in the opinion of the Stewards:*

- (a) *engage in careless, reckless, improper, incompetent or foul riding.*

*We specify careless riding, the careless riding being at the Australian Turf Club meeting at Rosehill Gardens on Saturday 9 November, that in race 5, the Country Classic, as the rider of Art Attack, between the 400m and the 250m you endeavoured to force a run between Hilltop Hood and Magic Over The Bay when there was not sufficient room to do so, which resulted in Art Attack being placed too close to the heels of Hilltop Hood and at high risk of striking the heels of that runner before eventually having to steady when disappointed for that run at the 250m.*

3. The Appellant pleaded not guilty, but was subsequently found to be in breach of the rule by the Stewards.
4. Unusually, the Careless Riding Penalty Template (**Penalty Template**) was not applied by the Stewards in assessing penalty. This may have been because, if the Appellant's ride was careless, one interpretation of the film was that any carelessness had created no adverse consequences for either the Appellant's horse, or any other horse. Under the Penalty Template, careless rides only attract a penalty if there is a consequence from that carelessness, such as a check or a hamper, etc.
5. The Stewards instead penalised the Appellant by taking into account:
  - (a) what they considered to be the high level of carelessness shown by him;
  - (b) the danger they considered his careless riding posed to riders and horses; and
  - (c) his riding record.
6. Ultimately, the Stewards determined that a 5-meeting suspension was appropriate.
7. The Appellant has appealed to the Panel in relation to both the finding of breach of the careless riding rule, and the severity of the penalty imposed upon him.

8. At the hearing of the appeal, the Appellant was represented by his solicitor, Mr Paul O’Sullivan. Racing NSW was represented by Mr Marc Van Gestel, the Chairman of the Stewards.
9. Tendered at the hearing was the Appeal Book, which included a transcript of the Stewards Inquiry (Exhibit A), and film of the race taken at multiple angles (Exhibit B). The Appellant also gave oral evidence.

### **Submissions of the Parties**

#### *Appellant*

10. Before turning to submissions as to whether any carelessness was involved in the Appellant’s ride, Mr O’Sullivan submitted that the ride caused no consequence to either the Appellant’s horse or any other horse in the race. In those circumstances, he was critical of the Stewards in both finding the Appellant guilty of a breach of the careless riding rule, and suspending him for 5 meetings. He noted, correctly, that without any consequences, if the Penalty Template was applied, no penalty could be imposed on the Appellant.
11. In relation to whether the Appellant’s ride was careless, Mr O’Sullivan – supported by the Appellant’s evidence – submitted it was not. Specifically, he made these submissions in relation to the particulars alleged against the Appellant:
  - (a) No carelessness was involved in the Appellant’s attempt to seek a run between Hilltop Hood and Magic Over The Bay at about the 400m mark. There was a gap of at least a quarter of a horse, and Hilltop Hood was sufficiently in front of Art Attack for it to be reasonable for the Appellant to seek to exploit that gap (such that it was) by applying some pressure to Magic Over The Bay.
  - (b) The Appellant’s ride was thereafter reasonable in continuing to seek a run between the two other horses. Unfortunately, what happened was that Magic

Over The Bay shifted in slightly, whereas Hilltop Hood, which was in front of Art Attack, began drifting out.

- (c) From just after the 400m mark to about the 280m mark, the Appellant took the view that Hilltop Hood was likely to be straightened in its run, and he would therefore be able to take a run between Hilltop Hood and Magic Over The Bay. The Appellant's evidence was that he called out to the rider of Hilltop Hood on several occasions for him to straighten his mount, to no avail.
- (d) It was only perhaps in the last 30m (from about the 280m to the 250m mark) that the Appellant conceded that he attempted to find a gap between these two horses for perhaps slightly longer than he should. This is in effect what he said to Stewards during the inquiry:

*Q. What do you say about the persistence?*

*A. As I stated in my first evidence, I definitely went for a bit longer than I should have. There's no two ways about that, but it was only because, I would've stopped earlier, like I stated, but the gap opened and then it closed and then it opened again and it just probably give me a false reading that it was going to come, but it never come: T4.153-160*

- (e) The Appellant at no stage placed either himself or any other rider in danger. There was no real risk of the Appellant's mount clipping the heels of Hilltop Hood, as it was always slightly to the outside of that horse.

### ***Mr Van Gestel's Submissions***

- 12. Mr Van Gestel's submission was that the Appellant's ride was in the high range of carelessness. He submitted that there was insufficient room between Hilltop Hood and Magic Over The Bay for Art Attack to have a run between those horses at about the 400m mark. Thereafter, the Appellant tried to force a run for 150m in circumstances where there was no run to be had between those horses. That conduct

created a high degree of risk, as it meant that Art Attack was racing between one and a half to only one length behind Hilltop Hood for most of that 150m, creating the real potential for the clipping of heels, and potentially a fall.

13. As to the application of the Penalty Template, Mr Van Gestel's submission was that in "99%" of cases it will be applied by Stewards. However, the template will be inapplicable in some rare cases. This was such a case. The Appellant's ride was very careless, and created a real risk to riders and horses. It therefore warranted a penalty even though – only through good luck – there was no consequence of any significance as a result of the carelessness.

### **Panel Resolution**

14. The Panel agrees with Mr Van Gestel's assessment of the Appellant's ride. It was careless for the reasons particularised. We do not consider that there was a realistic run available for Art Attack between Hilltop Hood and Magic Over The Bay at about the 400m mark where the Appellant attempted to force a run between those horses. That itself created a danger to riders and horses. Of greater significance, we consider the Appellant was careless in attempting to continue to force a run between Hilltop Hood and Magic Over The Bay for almost the next 150m of the race, where there was no run to be had. That created a dangerous situation. We are comfortably satisfied that the film of the race clearly demonstrates that Art Attack and Hilltop Hood could well have clipped heels as a result of the persistence of the Appellant in attempting to take a run that simply was not there.
15. We note the Appellant's explanation that at the 400m, he genuinely thought he could fairly and safely shift Magic Over The Bay, and obtain a run. This was an error of judgment, but demonstrated a low level of carelessness. However, persisting with an attempt to obtain such a run for 150m involved greater carelessness and risk, and we assess this to be at the high end of medium grade carelessness. We also accept, however, the submission of Mr O'Sullivan that this carelessness created little or no consequence for either the Appellant's horse or any other horse.
16. The Penalty Template only provides guidance for the penalising of riders in circumstances where careless riding has caused a particular adverse consequence. In

our view, it does not follow that a rider cannot be found to be in breach of the careless riding rule, or penalised, because their actions have caused no particular consequence.

17. Such a finding would be against the text of the rule. It says simply that “...*a rider must not engage in .... careless riding*”. It does not require any particular consequence to occur for there to be a breach of the rule.
18. Further, the Penalty Template is a guideline, and the Panel is not bound by it. In the vast majority of careless riding cases, the template is applied. If the Appellant’s conduct in this particular race caused a particular consequence – for example, “severe check” – we would have expected the Stewards to apply the template. It is likely that the Panel would also apply the Penalty Template in those circumstances.
19. However, as a matter of principle, there is no reason why a rider cannot be penalised for careless riding just because – through good fortune – their carelessness has not resulted in any particular consequences. This is particularly so where the carelessness has led to horses and riders being exposed to a risk of injury above the ordinary and obvious risks associated with racing.
20. This does not create any kind of inconsistency. The Penalty Template has been drafted to assist with consistency of penalising by providing three grades of carelessness, to be applied to various possible consequences. It does not follow that the Template covers every situation of careless riding. Sometimes there may be races during which a jockey rides with a high degree of carelessness. The consequence of that carelessness may be that riders and horses are exposed to a high degree of risk, but there is no other consequence. The fact of no consequence such as “checked”, “hampered”, “lost rightful running”, “severely checked” etc. does not mean that the careless riding rule has not been breached, nor does it mean that some form of penalty is not appropriate. It simply means that any penalty will not be imposed by use of the Penalty Template.
21. We also consider this view to be consistent with the primary object of the rules, which is the protection of the image and integrity of the sport. A rule such as

AR131(a) also has the aim of demonstrating that safety is a paramount concern in racing.

22. In summary then, we are comfortably satisfied that the Appellant's ride was careless, and that consequently he was rightly found to have been in breach of the careless riding rule. We also consider it was open to Stewards to suspend the Appellant's licence in the manner that they did.

### **Penalty**

23. In relation to penalty, Mr O'Sullivan's first submission was that as the Panel found the Appellant's carelessness to be of a medium grade, as a matter of logic, it was difficult to understand how the Appellant's ride could attract a more severe penalty than a medium degree of carelessness with the consequences of "hampered, crowded" under the Penalty Template (4 meetings), in circumstances where the Panel assessed the consequences as being effectively nil.
24. There is force in that submission, although in some cases it will always be appropriate to consider the level of risk that a careless ride exposed horses and riders too. However, in this appeal, we accept Mr O'Sullivan's submission, and would impose a base penalty of a 4-meeting suspension.
25. Mr O'Sullivan also submitted that the Panel should take into account the Appellant's good racing record, and apply a discount. It was accepted that the Appellant has a relatively good record, has had perhaps 400 rides in the last 12 months, is the leading rider in Australia in terms of the number of wins, and has had only two suspensions for careless riding in the last 12 months. Under the Penalty Template, this would attract a discount of 20%.
26. The Panel accepts that we should factor in the Appellant's relatively good record, and – using the Template as a guide as to what should be an appropriate discount or premium for a rider's record - apply a 20% discount to the 4-meeting suspension, which means, rounding down, the penalty to be imposed is a 3-meeting suspension.
27. The orders we make are as follows:

- (1) Appeal against finding of breach of AR131(a) dismissed.
- (2) Finding of breach of AR131(a) confirmed.
- (3) Appeal against the severity of penalty allowed.
- (4) In lieu of a 5-meeting suspension, the Appellant's licence to ride is suspended for 3-meetings. That suspension commences at midnight 19 November 2019, and expires at midnight Friday 22 November 2019, following which the Appellant may ride.
- (5) Half of the appeal deposit to be refunded.