APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR JAMES INNES

Appeal Panel:	**Mr R. Beasley SC (Principal Member); Mr J. Murphy; Ms S. Skeggs**
Appearances:	**Racing NSW: Mr Tom Moxon, Deputy Chairman of Stewards for Racing NSW** **Appellant: Mr W. Pasterfield, Solicitor**
Date of Hearing and Orders:	11 April 2023
Date of Reasons:	17 April 2023
Rule involved:	AR129(2) – Failing to take all reasonable and permissible measures throughout a race to ensure horse given full opportunity to win

REASONS FOR DECISION

Mr R Beasley SC, for the Panel

Introduction

1. On 8 February 2023, licensed jockey Mr James Innes (the Appellant) pleaded guilty to a breach of AR129(2) for failing to take all reasonable and permissible measures on the thoroughbred horse *Grebeni* to ensure that horse was given full opportunity to win or obtain the best possible place in race 3 conducted at the Gosford Racecourse on 22 December 2022.

2. The particulars of the charge were as follows:

    1. After initially trailing Celestial Fury from the 1600m to the 1200m, he did commence to restrain Grebeni near the 1200m until approximately the 1000m, allowing Tekapo to cross his mount and obtain a position trailing Celestial Fury when it was both reasonable and permissible for him to hold his position to the inside of Tekapo and remain trailing Celestial Fury.

    2. That between approximately the 325m and the 250m, he failed to ride with sufficient purpose or vigour in an endeavour to improve into a

run that developed between Tekapo and About the Moon, when it was reasonable and permissible for him to do so.

3. As a result of his failure to ride Grebeni in a manner as detailed in particulars 1 and 2, Grebeni was not given full opportunity to win or obtain the best possible place in the field.

3. The Stewards determined that the appropriate penalty was a 6-week suspension of the Appellant's licence to ride in races, which was reduced to a 4-week suspension given his guilty plea and good record.

4. The Appellant has appealed to the Panel in relation to both the finding of breach of the rule, and the severity of the penalty imposed upon him. Given that he pleaded guilty at the Stewards' Inquiry, it was necessary for the Appellant to obtain a grant of leave to change his plea to not guilty. The change was prompted on the basis of receiving legal advice. Ultimately, the Stewards did not oppose the change in plea, and so such leave was granted at the commencement of the appeal hearing. At that hearing, the Appellant was represented by Mr Wayne Pasterfield, his solicitor. The Stewards were represented by Mr Tom Moxon, the Deputy Chairman of Stewards for Racing NSW. An Appeal Book containing transcript of the Stewards' Inquiry was tendered, as was film of the race from multiple angles, and the racing record of *Grebeni*. The Appellant also gave oral evidence before the Panel.

Admissions of Appellant

5. In both his evidence to the Stewards and to the Panel, the Appellant was frank in his assessment of his ride. He described it as a "stuff up": T7 L283. He at all times had a "lapful" of horse, and he "should have won": T6 L275.

6. Further, as to Particular 1 above, the Appellant was frank that this was where he lost the race. He described his error as allowing *Celestial Fury*, who was leading, to get too far in front of him between the 1200m and the 1000m. What happened, which he did not anticipate, was Tyler Schiller, who was riding *Tekapo* (which was on the outside of the Appellant's mount at about the 1200m) dropped to the fence in front of him and behind *Celestial Fury*. Ultimately, this caused the Appellant's mount to get boxed in and shuffled back in the field. This was where the Appellant felt he lost the race.

7. As to his decision not to hold his position to the inside of *Tekapo* and remain trailing *Celestial Fury*, the Appellant's evidence was that he made a judgment call. He said his horse was racing keenly and pulling to some degree. He felt that if he, rather than restraining his mount, urged it on a bit, he ran the risk of firing the horse up, thereby spending all of the horse's energy prior to the home straight. He said he was trying to get his horse to relax, with a view to the horse ultimately competing in longer races, possibly even a derby.

Submissions

Appellant

8. As to Particular 2, the Appellant admitted that he did not ride with full vigour from the 325m mark to the 250m mark, but said this was a deliberate decision because that part of the race was where the horses were rounding the tight turn into the Gosford straight. Once he had his horse straightened and balanced at the top of the straight, the Appellant's evidence was that he did ride with full vigour but was unable to catch the winner or second and third place horses. Mr Pasterfield submitted that balancing the horse up at the top of the straight rather than riding with full vigour around the turn was a perfectly reasonable decision for the Appellant to make and could not be a breach of the rule.

9. Mr Pasterfield submitted that if the Appellant had made an error in relation to Particular 1, it was not a culpable error in breach of the rule. He pointed to the fact that the Appellant was riding a young and inexperienced horse, having only its fourth race start. It is a big, long striding horse. He submitted that the judgment call made by the Appellant to continue to restrain his mount rather than urging it on between the 1200m and the 1000m might be seen as an error in hindsight, but was a reasonable judgment call in the circumstances at the time.

RNSW Submissions

10. Mr Moxon submitted that the film did not support the Appellant's view that the horse was racing keenly or pulling between the 1200m and the 1000m mark. The horse gave the appearance of running in a relatively relaxed manner, and he drew the Panel's attention to the extremely slow furlong run by the horses between the 1200m and the 1000m: both *Grebeni* and *Tekapo* ran a nearly 14 second furlong, which the Panel notes from its own experience is a dawdle even for a 1900m race. This is particularly so on a track that was rated a Good 4. Mr Moxon contrasted this to a much faster run furlong between the 1200m

and 1000m in a comparable race run that day. He submitted that there was no good reason for the Appellant to allow *Celestial Fury* to extend in front of him and to allow *Tekapo* to go past him instead of the Appellant holding his position trailing *Celestial Fury*. This was not a mere error of judgment. It was an error that should not have been made by an experienced jockey, who should have known that by restraining his mount in the manner he did, he ran the risk of the horse becoming boxed in, which is what occurred.

11. As to Particular 2, Mr Moxon submitted that between the 325m and the 250m mark, a run developed for the Appellant to take between the horses *Tekapo* and *About the Moon* which he made no endeavour to take. Had he urged his mount on before the 250m mark, Grebeni was likely to finish in better than fourth place, and again may well have won the race.

Resolution

Particular 2

12. All members of the Panel are in agreement that the Appellant should not be found to have breached the rule in relation to the riding conduct particularised in Particular 2. We all agree that the Appellant could have ridden *Grebeni* with more vigour between the 325m and the 250m mark. His explanation though for not doing so was that he was riding a young and inexperienced horse around a tight corner and he wanted to keep his mount fully balanced before riding with all vigour down the straight. In hindsight, this may have been an error. We are, however, not comfortably satisfied that if it was an error it should be considered the kind of significant error that is a breach of this rule. The Appellant made a judgment call that it was better to ride this horse with full vigour from the top of the straight rather than seeking to do so around the bend. The Panel does not consider that to be an unreasonable riding decision in the circumstances.

Particular 1

13. The Panel was not able to reach a unanimous view in relation to Particular 1. As to this particular, we all had close regard to what was said in *The Appeal of Hugh Bowman,* RAP, 24 September 2020, and especially to this explanation of the way AR129(2) should be interpreted:

> 6. Before discussing the evidence, something should be said about the rule. The leading appeal reasons about how to construe and apply this rule remains the *Appeal of Munce* (5 June 2003). In this appeal the

then Principal Member, Mr TEF Hughes QC, said that a rider should not be found to be in breach of the rule unless the Panel is "comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgement reasonably to be expected of a jockey in the position of the person charged". As to the relevant circumstances, Mr Hughes said they would include:

(a) the seniority and experience of the rider charged;

(b) the competitive pressure they were under in the race; and

(c) whether they had to make a sudden decision between alternative courses of action.

7. These should be considered to be inclusive factors, not exclusive. Further, the Panel in *Munce* noted that the rule is not designed to find jockeys to be in breach of the rule "who make errors of judgement unless those errors are culpable by reference" to the various circumstances relevant to the race and the conduct. In that sense Mr Hughes was adopting a construction of the rule that was not literal. Any error by a rider might as a matter of logic - even a minor one - mean that the rider has not taken "all reasonable and permissible measures" to ensure a horse is given full opportunity to win or obtain the best possible placing. But not every error is caught by the rule. It requires the application of judgment, common sense, and a reasonable consideration of all the factors that are relevant to a particular error or lapse of judgment in deciding whether that error is culpable under AR 129(2). While it is therefore crucial to the sport that riders ride in a manner that does give full opportunity to their mount to win or obtain its best place in a race, it is also important that this Panel show appropriate restraint and judgment in making determinations about whether AR 129(2) has been breached. Riders, like other sportsmen and women, are going to make errors. That is inevitable. Not all of these errors should be judged to be errors that result in a finding that the rule has been breached. The error has to be a bad one, or too many jockeys will be penalised under the rule. A suspension of a licence to ride is not a trivial penalty – it deprives a person of the ability to make their living for a period.

14. Mr Murphy would have dismissed the appeal and confirmed the finding of breach of AR129(2) in relation to the matters alleged in Particular 1 against the Appellant. His reasons for are as follows:

(a) The ride was a self-confessed bad ride – "a stuff up" – by a senior and experienced rider who considered that his riding actions had cost the horse the race.

(b) As is alleged against the Appellant, he did not take up the opportunity to move his horse forward between the 1200m and 1000m when he could have. He should have anticipated jockey Schiller on *Tekapo* dropping into the fence in front of him.

(c) The Appellant's horse was not pulling unduly or racing particularly keenly, in a very slowly run race. By not holding his position to the inside of *Tekapo* and remaining trailing *Celestial Fury*, as the Appellant should have done, he likely deprived his horse of a win.

15. Ms Skeggs was of the view that the appeal should be upheld. Her reasons can be summarised as follows:

(a) The conduct identified in Particular 1 of the charge does identify a mistake or error on the Appellant's behalf.

(b) The Appellant could not have anticipated with any degree of certainty that Tyler Schiller would move to the fence on *Tekapo*.

(c) The Appellant was riding a young and inexperienced horse on a tight track. It is a long striding horse. The Appellant was teaching the horse to settle with an eye for longer races, including possibly a derby.

(d) The horse jumped out of the barriers quickly, and more quickly than anyone, including the horse's trainers, had anticipated.

(e) Between the 1200m and the 1000m the Appellant was trying to keep the horse on the bit and to race in a settled fashion.

(f) The Appellant's mount was not overly pulling but he did have hold of the horse and if he had let it go he did run the risk of the horse switching on too fiercely, "burning all of its petrol", and depriving it of the ability to finish off the race strongly.

(g) The decision that the Appellant made between the 1200m and the 1000m can be seen to be an error in hindsight, but should not be seen as such an unreasonable error of judgment that he should be found in breach of the rule.

16. I had the advantage of hearing the contrasting views of both Mr Murphy and Ms Skeggs before reaching my own view as to Particular 1. While I consider Mr Murphy's view to be rational and sound, and entirely open on the evidence, I ultimately (just) prefer the reasoning of Ms Skeggs.

17. This rule is sometimes difficult to adjudicate, and this appeal is no exception. The Appellant agrees that he "stuffed up" and made an error in restraining his horse in the manner he did between the 1200m and the 1000m. In those circumstances it would be scarcely rational if I were to find he had not made an error. I also do not consider that his horse, at least based on the film, was pulling unduly or racing in a noticeably keen way. It is true, as Mr Pasterfield pointed out, that I have not ridden a thoroughbred horse in a race. It might be no direct substitute for it, but like the other Panel Members I have seen countless live races and videos of races, having followed this sport for decades. I have also had the benefit of examining races closely on film played at appeal hearings from multiple angles. Often when a horse is racing keenly or pulling there is obvious movement of the horse's head and mouth or other actions that make the fact that it is not running in a relaxed manner obvious. The Appellant says the horse was racing keenly or pulling. I accept he had a strong hold of the horse, but the horse was not in any way racing fiercely.

18. Where I consider this appeal is to be decided is in the judgment call made by the Appellant at the 1200m to the 1000m. His evidence was that if he urged his horse forward to keep its position behind *Celestial Fury* and *Tekapo* to its outside, he ran the risk of firing the horse up. This would have caused the horse to burn too much energy too early in this 1900m race. In hindsight, the only view that can rationally be taken is that the Appellant made an error. However, in my view the judgment call that the Appellant made between the 1200m and the 1000m needs to be seen in the context of a range of circumstances. They include the Appellant's experience as a rider, but also the relative inexperience of the horse he was riding. They include his desire to keep the horse running in as relaxed a fashion as possible. They include that he was attempting to ensure the horse ran in a relaxed fashion with an eye to the horse not only running this race out strongly, but learning to run in that fashion so that

it would also run out a derby distance in the future. They include his judgment that he felt he ran the risk of firing the horse up too soon if he pushed it forward to maintain his spot behind *Celestial Fury* between the 1200m and the 1000m. Ultimately, what he did was an error, and probably cost the horse the race. In all the circumstances, however, I am not comfortably satisfied that it should be considered the kind of serious error that is a breach of AR129(2). Given that finding, like Ms Skeggs, I would uphold the appeal.

19. The Panel's orders are (by majority):

(1) Appeal upheld.

(2) Finding of breach of AR129(2) set aside.

(3) Penalty of a suspension of the Appellant's licence to ride in races of 4 weeks set aside.

(4) Appeal deposit to be refunded.