

APPEAL PANEL OF RACING NSW

APPEAL OF LICENCED JOCKEY SERGE LYSNYY

PANEL: MR R BEASLEY SC, PRESIDING MEMBER; MR C TUCK; MRS J FOLEY

APPEARANCES:

RACING NSW MR M VAN GESTEL, CHAIRMAN OF STEWARDS

APPELLANT MR T CRISAFI, CEO NSW JOCKEY'S ASSOCIATION

1. On 2 November 2019, licenced jockey Serge Lisnyy rode the horse Shimmering Light at race 3 at the Newcastle Racecourse.
2. Following the race, the Stewards conducted an Inquiry into Ms Lisnyy's ride ("the Inquiry"). After viewing film and taking evidence, he was charged with a breach of AR 131(a) of the Australian Rules of Racing, the careless riding rule. The particulars of the alleged breach were that Mr Lysnyy:

"...as the rider of Shimmering Light, did near the 300m permit your mount, which was inclined to hang in, to shift in when insufficiently clear of Cash is the Deal, which had to be eased to avoid your mounts heels".
3. After hearing further evidence, and submissions, the Stewards found Mr Lisnyy to be in breach of the rule. His carelessness was assessed as medium grade. The consequence was said to be "hampered, crowded". Applying the careless riding penalty template, Mr Lysnyy was suspended for four meetings. Mr Lysnyy has appealed against that finding of breach of rule, and the penalty imposed.
4. On the appeal today, Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards, and Mr Wade Birch, the Deputy Chairman. Mr Lysnyy, who gave evidence, was represented by Mr Tony Crisafi, the CEO of the NSW Jockey's Association. The appeal bundle containing the transcript from the Inquiry, and film of the race, was tendered (Ex A and B respectively).
5. The issues the Panel has had to decide are these:
 - (a) Was the appellant careless?
 - (b) If careless, what grade of carelessness should the ride be assessed at?
 - (c) What were the consequences of any carelessness?
6. Mr Crisafi submitted that a range of factors were in play here. The horse Cash is the Deal itself shifted out, while the appellant's mount shifted in. The appellant's mount went past Cash is the Deal very quickly. That horse was barely steadied.

7. Mr Van Gestel and Mr Birch submitted that the ride was significantly careless. They say it is clear from the film that despite the appellant's horse shifting in, he struck the horse twice with the whip, and cut across Cash is the Deal when only about a length clear. His obligation at the time was to straighten his mount, not ride with full vigour while using the whip in the left hand.
8. The Panel agrees with the Stewards' assessment. The appellant should have stopped riding at the time he struck his mount with the whip. He crossed Cash is the Deal when only a length clear. As the rider of Cash is the Deal (Andrew Gibbons) said, the appellant "went abruptly across my line": T1 L 47. This was careless, and dangerous. To a degree, only luck prevented a greater consequence. We agree that the ride was careless as particularised, and that it should be graded as medium carelessness.
9. The rider of Cash is the Deals also told the Stewards that his mount was not checked by the appellant's conduct: T 2 L 89. He said he had to steady his mount for a stride: T 1 L 48.
10. Steady is not a term used in the penalty guideline. The terms used are "hampered" and "crowded" for the lowest consequence. In our view, "steadied" is caught within these terms, and should be considered to have similar meaning to "hampered". A horse that has to be steadied can be considered to be hampered in its run.
11. A strict application of the penalty guideline results in a four-meeting suspension. The Panel has said many times it will rarely depart from the guidelines, despite not being bound by them. This is a rare case where we do depart from the guidelines. We do so because we consider that the consequence of the appellant's actions was so minor that Andrew Gibbons only had to steady his mount by the barest amount. As such, the appellant's carelessness went very close to having "no consequence". For that reason only, we consider the penalty to be too severe. We would impose a penalty of a two-meeting suspension, not a four-meeting suspension.
12. Our decision should not be seen to detract from our agreement with the Stewards concerning the carelessness of the appellant's ride. Safety is a paramount concern in racing, and the appellant fell short of the duty of care he owes to fellow riders, horses, and to the industry in the manner he rode.

Orders:

1. Appeal against finding of breach of AR 131(a) dismissed.
2. Finding of breach of AR 131(a) confirmed.

3. Appeal against severity of penalty allowed.

4. In lieu of a four (4) meeting suspension, a two (2) meeting suspension is imposed. That suspension commences on 13 November, and expires on Saturday 16 November 2019, on which day the appellant may ride.

5. Half of appeal deposit to be refunded.