RACING APPEAL PANEL OF NSW

APPEAL OF JAMES MCDONALD

Panel: Mr R Beasley SC, Principal Member; Mr J Murphy; Mr C Tuck

Appearances: For Racing NSW, Mr M Van Gestel, Chairman of Stewards

For Mr McDonald, Mr P O'Sullivan, solicitor.

Date of Hearing: 3 July 2020

Date of orders: 3 July 2020

Date of Reasons: 7 August 2020

REASONS FOR DECISION

Introduction

1. Licensed jockey James McDonald was charged with a breach of AR 129(2) of the Australian Rules of Racing (**Rules**) in relation to his ride on the horse Threeood, a mare who started favourite in Race 6 at Randwick on Saturday, 20 June 2020. AR 129(2) is in the following terms:

> *A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or obtain the best possible place in the field.*

2. The relevant particulars of the charge were as follows:

*"…you failed to take all reasonable and permissible measures on [Threeood] throughout the race to ensure Threeood was given full opportunity to win or obtain the best possible place in the field…**1.** That between approximately the 300m and 100m you rode your mount with insufficient purpose and vigour and failed to secure clear running when it was reasonable and permissible for you to do so…**2**. After shifting Threeood to the outside of Voila near the 100m to obtain clear running you rode Threeood with insufficient purpose and vigour over the final 100m when it was reasonable and permissible to do so."*

3. Following a Stewards' Inquiry held on 26 June 2020, Mr McDonald was found to be in breach of the rule. He was penalised by having his licence to ride suspended for a period of 3 weeks, commencing on 5 July 2020. He has appealed to the Panel in relation to both the finding of breach, and the severity of the Penalty imposed.

4. At the Appeal hearing, Mr McDonald was represented with leave by Mr P O'Sullivan, solicitor. Racing NSW was represented by Mr M Van Gestel, the Chairman of Stewards.

5. The evidence before the Panel on Appeal consisted of the Appeal Book (Exhibit A), and film of the Race (Exhibit B). The Panel was also shown film of Mr McDonald's rides in other races on 20 June 2020. Mr McDonald also gave oral evidence.

AR 129(2)

6. This rule was considered in the Appeal of *Munce* (5 June 2013), where the then Principal Member Mr TEF Hughes QC gave guidance as to both the interpretation of the rule, and the matters relevant to consideration when a rider is alleged to have breached it:

"*The task of administering this rule is not always easy. One must keep in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the tribunal considering a charge under the rule is comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race. The relevant circumstances in such a case may be numerous. They include the seniority and experience of the person charged. They include the competitive pressure under which a person charged was riding in the particular race. They include any practical necessity for the person charged to make a sudden decision between alternative causes of action. The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria that I have described*."

7. It is clear that AR 129(2) is an important rule in relation to the conduct of races, and central to the integrity of the sport.

Evidence and submission of the Appellant

8. Detailed written submissions were provided to the Panel by the Appellant. He also gave oral evidence concerning his ride. Mr O'Sullivan then made submissions consistent with that evidence, which are summarised below as follows:

   Particulars related to 300m to 100m

   (a) The horse was having its seventh run this preparation. The mare was "much quieter" in the stalls than in its previous run. She had probably had enough by this race. The Appellant told the Stewards he expected to be "up in the box seat", but the horse just " didn't travel", she " just plodded". He was actually concerned at one point there might be "something wrong with the mare" (a vet examination after the race revealed no abnormalities).

   (b) The mare had not responded at all to the Appellant's riding up to the 300m, particularly before and after rounding the turn, when the winner (Stella Sea Sun) raced away from her. It was clear that Threeood was not going to finish in the placings.

   (c) Despite this, the Appellant rode the horse with sufficient vigour, including by use of the whip

   Particulars from the 100m

   (d) The Appellant had to take the mare to the outside of Voila, who was tiring.

   (e) He still rode with vigour, including use of the whip, but it was pointless to "flog" the mare to the line so she could finish 7th, instead of 8th.

   (f) The appellant rode the mare no differently to other riders of horses in other races who were travelling just as poorly.

   (g) Any contrast with his ride on the mare with other races that day was because he was in a competitive position to win or place in those races. He did agree though that "she picked up okay" in the concluding stages of the race.

Stewards submissions

9. Unsurprisingly, Mr Van Gestel had a different opinion about the Appellant's ride. He said that the Appellant rode with a marked lack of vigour from the 300m to the 100m. This was in stark contrast to other rides by the appellant at the same meeting, a matter established by the film. As for the last 100m, the appellant had "switched off", and only started to ride with sufficient vigour in the last 30 or so metres of the race.

Resolution

10. As with so many riding appeals, the best evidence is the film of the race. Two things stand out to the Panel:
    (a) The appellant's ride on Threeood lacked the vigour he showed in other races in this meeting.
    (b) Whatever could be said of the Appellant's ride from the 300m to the 100m, the Appellant did switch off at the 100m. In fact, the mare gaining some ground from the placegetters in the last 100m appears to have surprised the Appellant, who started to ride with real vigour in the last 30 or so metres of the race.

11. Accordingly, the Panel is of the view that a breach of the Rule is established. However, aside from there obviously being no intent or dishonesty involved, the Panel is of the view that the Appellant's breach is well short of the more serious breaches of this rule. The appellant's ride did not cost the horse a place in the first four, and she did look at one stage as though she was going to run near last. The ride was a lapse in judgement, in circumstances where the Appellant appears to have been lulled into thinking his horse was travelling worse than she was, particularly in the last 100m, or at least that she would not pick up in the manner she did in the last 100m or so. While we would therefore uphold the finding of breach of the rule, we consider the three-week suspension imposed should be set aside, and in lieu of that penalty we impose a suspension from 5 July 2020, to 12 July 2020 (on which day the appellant may ride).

12. The Panel makes the following orders:
    1. Appeal against finding of breach of AR 129(2) dismissed.
    2. Finding of breach of AR 129(2) confirmed.
    3. Appeal in relation to penalty allowed.
    4. In lieu of a three-week suspension, the Appellant's licence to ride is suspended from 5 July 2020, until 12 July 2020 (on which day he may ride).
    5. Appeal deposit forfeited.