

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR BEN MELHAM

Appeal Panel: **Mr R. Beasley SC, Presiding Member; Mr J Murphy; Mr P Losh**

Appearances: **Mr S Railton, Chairman of Stewards for Racing NSW
Mr M Stirling of Counsel, for the Appellant**

Date of Hearing: 5 April 2023

Date of Reasons: 5 April 2023

Rule involved: AR 131(a): careless riding

REASONS FOR DECISION

The Panel

Introduction

1. On Saturday 1 April 2023, following his ride on *In Secret* in the Group 1 TJ Smith Stakes run that day, licensed jockey Mr Ben Melham (**the Appellant**) was charge with a breach of AR131(a) of the Australian Rules of Racing. The particulars of the charge alleged were that the Appellant engaged in “careless” riding in that:

“...approaching the 600m you did allow your mount to shift in when not clear of Giga Kick, resulting in that horse being placed in restricted room and making contact with Shelby Sixtysix to its inside and, as a consequence, becoming unbalanced and ultimately resulting in that horse, Giga Kick, shifting in causing Shelby Sixtysix to be tightened onto the running of Private Eye, which was checked.”

2. The Appellant pleaded not guilty, but was found to have breached the rule. Using the Careless Riding Penalty Template, he was penalised with a 3-meeting suspension on the basis of a grading of “medium” carelessness, that had the consequence of a check to *Private Eye*.

3. The Appellant has appealed to the Panel against the finding of breach. He was represented by Mr M Stirling of Counsel. Mr S Railton, the Chairman of Stewards, appeared for Racing NSW. Film of the race and the transcript of the Stewards' Inquiry was tendered, with no oral evidence being called.

Submissions

4. Mr Railton submitted that approaching the 600m the Appellant was riding *In Secret* four wide, and beyond this point had an obligation to remain in a four wide lane even when the horse just in front and to the inside of his mount (*Passive Aggressive*) started to shift in. This would have allowed comfortable racing room to the horses to the inside of *In Secret*, the first of which was *Giga Kick*. Instead, the Appellant shifted his mount in. This crowded and pressured *Giga Kick* to also shift in, causing it to shift into *Shelby Sixtysix*, who also shifted in, causing the check to *Private Eye* on the fence.
5. Mr Railton also submitted, and the Panel accepts, that there was a greater obligation on the Appellant to allow comfortable racing room to the horses inside of his mount given the heavy state of the track, which can make safe footing for horses more difficult. In other words, while riders always have a duty to take care for other riders and all horses, the standard of care is even higher on wet or heavy tracks.
6. Further, while Mr Railton acknowledged that the actual check to *Private Eye* occurred perhaps at the 500m, the shift in by the Appellant at the 600m had precipitated the other named horses shifting in and then finally causing the check to *Private Eye*.
7. Mr Stirling raised three grounds of appeal, summarised as follows:
 - (a) **First**, he submitted that the Appellant had not shifted in as alleged. Rather, the Appellant had simply engaged in "tight" and "competitive" riding with Zac Purton on *Giga Kick*.
 - (b) **Secondly**, he submitted it was Zac Purton on *Giga Kick* who shifted in on *Shelby Sixtysix*, a move unrelated to the riding actions of the Appellant. He claimed Zac Purton did not like "the company" of *In Secret* to his outside, and realised he would not gain a clear run in the straight by either moving to the outside, or by staying

behind *Passive Aggressive*. He therefore decided to shift in, and cause the crowding of *Shelby Sixtysix*.

- (c) **Thirdly**, the crowding of *Private Eye* occurred 100m past the point where the Appellant was alleged to have shifted in. A series of other actions by the other riders, including Zac Purton, occurred after any shift in by the Appellant, that were unrelated to his actions. The ride of the Appellant was therefore not causative of the check to *Private Eye*.

Resolution

- 8. The Panel viewed film of the race multiple times from different angles, including overhead. We make the following findings primarily based on the film, rather than placing too much weight on the evidence of the riders to the Stewards:
 - (a) The Appellant was riding 4 wide approaching the 600m, with *Passive Aggressive* ahead and just to his inside, and *Giga Kick* just behind and also to his inside.
 - (b) From at least the 800m to the 600m, *In Secret* and *Giga Kick* raced tight. They bumped or at least brushed each other more than once. Neither horse ran entirely straight – both shifted or wobbled on occasion.
 - (c) We disagree with the first submission of Mr Stirling. Approaching the 600m *In Secret* did shift in, albeit slightly, perhaps a horse.
 - (d) Based on the film, it is possible to form the view that *Giga Kick* did shift in on *Shelby Sixtysix* because of pressure from *In Secret*, who had shifted in. However, the film in our view is marginally more consistent with the second proposition of Mr Stirling on behalf of the Appellant – that is, jockey Purton made his own decision to shift in not directly related to any shift in by the Appellant. That is, Zac Purton knew he was boxed in by *In Secret*, could not shift out and go passed it or *Passive Aggressive* in front of him, and so chose to shift in. That caused the interference to *Shelby Sixtysix*, and the ultimate check to *Private Eye*.
 - (e) We therefore consider that while *In Secret* did shift in, so did *Giga Kick*. We are not comfortably satisfied that *Giga Kick* shifted in because of any culpable or careless shift in by the Appellant. We think it more likely (just) that Zac Purton made a decision to shift in on *Giga Kick* because he considered this to be his best option for winning the race, not because he was improperly forced to by the Appellant shifting in.

9. There are some further matters we feel we should briefly mention. Two reasonable people viewing the film could draw different conclusions as to the reason *Giga Kick* shifted in, and hence reach a different view as to the cause of the ultimate interference to *Private Eye*. Further, the Panel is very conscious that AR131(a) is a rule of safety, which is of paramount concern. Falls (such as recent falls on feature race days) are damaging to the image of the sport. However, we still must be comfortably satisfied that breach of the rule has occurred. As much as anything else, the burden of proof on the Stewards (the standard being balance of probabilities) explains the outcome of the appeal. We were left uncertain that the actions of the Appellant were what caused *Giga Kick* to shift in, and for that reason the appeal must be allowed.

10. The Panel makes the following orders:
 - (a) Appeal upheld.
 - (b) Finding of breach of AR131(a) set aside.
 - (c) Penalty of a three-meeting suspension set aside
 - (d) Appeal deposit to be refunded.