

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR NASH RAWILLER

Appeal Panel: **Mr R. Beasley SC, Principal Member; Mr J. Murphy; Mr J. Nicholson**

Appearances: **Appellant: Mr Darren Kane, Solicitor**
Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards

Date of Hearing and orders: **23 March 2022**

Date of Reasons: **29 March 2022**

Rule involved: **AR131(a) – Careless Riding Rule**

REASONS FOR DECISION

Mr R Beasley SC, Principal Member

Introduction

1. Following the riding of the Golden Slipper at Rosehill Gardens Racecourse on Saturday 19 March 2022, Licensed Jockey Mr Nash Rawiller (**the Appellant**) was charged with a breach of AR 131(a), the careless riding rule. The particulars of the breach were as follows:

“...the careless riding being at the Rosehill Gardens race meeting on Saturday 19 March 2022 that in race 8, the Longines Golden Slipper, at approximately the 800 metres you did allow your mount Sweet Ride to shift in when insufficiently clear of Queen of the Ball, ridden by Rachel King, resulting in Queen of the Ball having to be steadied and losing its rightful running at that point.”

2. The Appellant pleaded not guilty to the breach of the rule. Following evidence from the Appellant and Ms King, and having examined film of the race, the Stewards found the Appellant guilty. They assessed the level of his carelessness as “low”, and the consequences of that carelessness to be that Ms King’s horse, Queen of the Ball, lost her rightful running and was steadied.

3. Applying the careless riding penalty template, the Stewards suspended the Appellant's licence to ride in races for 6 meetings, commencing on 23 March 2022 and expiring on 30 March 2022.
4. The Appellant has appealed to the Panel against both the Stewards finding of breach of the careless riding rule, and the severity of the penalty imposed. He was represented by Mr Darren Kane, solicitor. The Stewards were represented by Mr M. Van Gestel, the Chairman of Stewards for Racing NSW. No oral evidence was called on the appeal. An Appeal Book, containing transcript of the Stewards' Inquiry, was tendered as Exhibit A, and film of the race from various angles as Exhibit B.

Submissions

5. Mr Van Gestel submitted that the Appellant's ride was a clear and obvious breach of the careless riding rule. This was because he crossed in front of Ms King's horse when only at most one and one-quarter length's clear of that horse. There is of course no rule under the Australian Rules of Racing requiring a two-length margin before a rider crosses in front of another rider's mount. It has long been established, however, that for safety – which is of paramount concern in racing – there is a requirement of a two-length clearance, and any less will frequently result in a finding of careless riding. This Panel has long adopted that rule of thumb.
6. Mr Van Gestel also submitted that the film clearly demonstrates what the consequences of the Appellant's carelessness were. He said Ms King had to steady her mount at the 800m, and lost about three-quarters of a length. He described the Appellant's actions as involving him seeking a “cheap run to the first turn without burning too much petrol”, but without having proper regard to there being a safe margin between his mount and Ms King's mount when he crossed in front of her.
7. Mr Kane unsurprisingly submitted that the Appellant's ride involved no carelessness. However, it is fair to say that Mr Kane placed more emphasis on the alleged consequences of the Appellant's ride. Mr Kane submitted that the film did not prove that Ms King's horse had suffered any adverse consequence as a result of his client's actions – he submitted that she did not lose her rightful running, was not checked, and nor was she even hampered.

Resolution

8. The Panel has not reached a unanimous decision on all aspects of the appeal. However, we are of the unanimous view that the Appellant's ride was in breach of the careless riding rule. We hold this view as the film clearly shows that the Appellant's horse crossed in front of Ms King's horse at about the 800m when only, at most, one and one-quarter length's clear as submitted by Mr Van Gestel. This creates a danger. It creates a risk of serious consequences. That there was carelessness involved in his ride was, in our view, more or less admitted by the Appellant during the Stewards' Inquiry when he told them:

"I felt I'd done enough work early to try to establish a lead and couldn't keep pressing. So I probably got to the point where I started to try and let him go. And because of that, it may have just affected my clearance of Rachel slightly..." (T2.69-.73) (emphasis added).

9. Where the Panel is not in agreement is as to the consequences of the Appellant's actions. Mr Nicholson agrees with the Stewards that Ms King's mount did have to be steadied for stride. He agreed, however, that the carelessness should be graded as "low".
10. Mr Murphy and I are in agreement that the level of carelessness should be graded as "low", but we are not comfortably satisfied that Ms King's horse lost its rightful running or had to be checked in any substantial way. We partly base this on Ms King's evidence at the Stewards' Inquiry, which relevantly was as follows:

"Out there I felt like Nash was sort of going away from me. It felt – I did have to – I was coming back on my horse anyway because it would otherwise get going too fast." (T1.40-.42)

And:

"I think mine was quite awkward and, like, you can see when I had its head turned, the only reason I had its head – I had its head turned, but its body was sort of coming out a bit, like they can do when you turn their heads, their body drifts out that touch, which has probably put me sort of that extra quarter of a horse away from the rail. Which I think has made it – like I said, out there I didn't actually – like I never had to sort of check my mount or steady my mount. I was already coming back to where I was comfortable." (T9.413-.418)

11. Mr Murphy and I do not place undue weight on Ms King's evidence to the Stewards at their Inquiry. Whilst giving truthful evidence, it is not impossible that she sought to put Mr Rawiller's actions into a light which would not see him suspended or found in breach of the rule. However, we do believe we should take Ms King's evidence into account. Partly based on that evidence, but also based on our viewing of the film on multiple occasions, we are not comfortably satisfied that Ms King's horse lost its rightful running or was checked to any significant degree.

Orders

12. Applying the careless riding penalty template, where no adverse consequence is established from a careless ride, ordinarily no penalty is to be imposed. Mr Murphy and I, however, are of the view that in circumstances where even a low level of carelessness is established in such a prominent and significant race, and in the entirety of the circumstances unique to this appeal, the Appellant should still be issued with a reprimand. Mr Kane did not seek to challenge this view, and so a reprimand will be imposed. The Panel's orders (by majority) are therefore as follows:

- (1) (Unanimous finding) Appeal against the finding of breach of AR131(a) dismissed.
- (2) Finding of breach of AR131(a) confirmed.
- (3) (By majority) Appeal against penalty allowed. In lieu of a 6-meeting suspension, the Appellant is reprimanded, but is free to ride.
- (4) Half of the appeal deposit to be refunded.