

APPEAL PANEL OF RACING NSW

APPEAL OF LICENCED JOCKEY NASH RAWILLER

PANEL: MR R BEASLEY SC, PRESIDING MEMBER; MR C TUCK; MR L VELLIS

APPEARANCES:

RACING NSW MR M VAN GESTEL, CHAIRMAN OF STEWARDS

APPELLANT MR PAUL O'SULLIVAN

DATE OF HEARING: 6 DECEMBER 2019

DATE OF REASONS: 6 DECEMBER 2019

REASONS FOR DECISION

1. Licenced Jockey Nash Rawiller (the appellant) rode the horse Moss Trip in the Gp 3 Iron Jack Festival Stakes at Rosehill Gardens on Saturday, 30 November 2019.
2. Following the race, the Stewards conducted an inquiry into the appellant's ride. He was ultimately charged with a breach of AR 131 (a), the careless riding rule. The particulars of the charge were that the appellant:

...as the rider of Moss Trip...leaving the 1000 metres...shifted in when insufficiently clear of Deanne Panya's mount, Testashadow, and at the same time ...commence[d] to restrain [his] mount, resulting in Testashadow being checked to avoid the heels of [his] mount at that point.
3. The appellant pleaded not guilty, but after viewing film and taking evidence, the Stewards found him to be in breach of the rule. His carelessness was graded as medium, with the

consequence of Testashadow suffering a check. Applying the Careless Riding Penalty Template (Template), he was suspended from riding for 6 meetings.

4. The appellant has today appealed to the Panel, challenging the finding of breach of the rule, and the severity of penalty imposed. He was represented by Mr Paul O'Sullivan, solicitor. Racing NSW was represented by Mr M Van Gestel, the Chairman of Stewards.
5. During the appeal, the Panel was shown film of the race on multiple occasions from different angles. The appellant also gave sworn evidence.
6. The submissions made by Mr Van Gestel in support of the finding of carelessness and the penalty imposed can be summarised as follows:
 - (a) The appellant's horse was no more than 1.5 lengths clear of Testashadow when it crossed that horse.
 - (b) From the time of commencing to cross, the appellant was restraining his horse. He had his heels down, and had pressure on the horse's reins.
 - (c) As a result of crossing inside of the 2 length conventional margin of safety, while also restraining his horse, and then restraining further once in front of Testashadow, that horse was checked.
7. Mr O'Sullivan's submissions can be summarised this way:
 - (a) As a primary submission, the margin between Moss Trip and Testashadow at the point of the cross was so close to 2 lengths it should be considered that margin.
 - (b) Even if 1.5 lengths, at the point of Moss Trip crossing Testashadow, the later horse was not checked or inconvenienced by that manoeuvre in any way.
 - (c) Only after the cross had been safely completed did the appellant restrain his horse. This did cause Jockey Panya on Testashadow to have to check her horse to a degree, as it is a horse that races keenly and ungenerously, as demonstrated from film shown of an earlier point in the race.
 - (d) Having viewed the film, the Panel could not be comfortably satisfied that it should reject the appellant's evidence that he did not restrain his horse until after it had safely crossed in front of Testashadow. There was a discernible difference, it was submitted, between the appellant's riding manner prior to and during crossing Testashadow, and the manner he stood in the saddle to restrain Moss Trip after it had crossed Testashadow.

8. The Panel has considered all the evidence and submissions. One aspect of the evidence at the Stewards inquiry is significant in our view. It is this exchange:

CHAIRMAN: If we run it on, thereafter is this the point, from that point where you're steadying your mount as you were shifting towards the rail? *Testashadow* gets awfully close to your heels at the same time you're coming across. You've gone from being in a position where you've got three to your inside, where you start to cross. My view of that video is that you're not sufficiently clear and at the same time you're steadying just here and you put Deanne in an extremely awkward position and ultimately she has got to check her mount to stop striking your heels.

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N RAWILLER: Yeah.

CHAIRMAN: How do you respond to that?

N RAWILLER: Look, I think it's a fair assessment, but still - I feel I haven't broken the rules, but I've crossed her clear.

9. The appellant goes on to assert he was 2 lengths clear of *Testashadow*, but we do not think this is borne out by the film. We see the film in much the same way as Mr Van Gestel has. In our view:

- (a) The appellant was exercising a degree of restraint on his mount when he commenced to cross *Testashadow*. Whether this should be described as "steadying" his mount or "restraining" it is probably semantics. He was doing more than just not riding it out. There was a degree of restraint.
- (b) While margins cannot be sensibly assessed down to the last centimetre, we consider that *Moss Trip* was 1.5 lengths clear of *Testashadow* when it crossed in front of that horse.
- (c) The combination of some degree of restraint, and that margin, created a situation where safety was compromised, and *Testashadow* had to be checked. In part it had to be checked because the appellant restrained his mount further once he had crossed *Testashadow*.

10. We therefor agree that a degree of carelessness is made out, and the appeal against finding of breach of the rule must be dismissed, and the finding of breach confirmed. Where we differ slightly to the Stewards is that we would grade the carelessness here as low (the upper end of low), rather than medium. The margin was probably somewhere between 1.5 to 1.75 lengths. The appellant had several looks to see if it was safe for him to cross. He was more vigorous in

restraining his mount after it had crossed Testashadow. For those reasons, we consider the carelessness should be graded as low.

11. As we assess carelessness as low, the appeal against severity of penalty must be allowed. Low grade carelessness with a check results in a 5-meeting base suspension. With the mitigating factor for the appellant's riding record, that reduces to 4-meetings.

12. The Panel these 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 6-meeting suspension, the appellants licence to ride is suspended for 4-meetings. Such suspension commences on Sunday 8 December 2019, and ends on Saturday 14 December 2019, on which day the appellant may ride.
5. Half of the appeal deposit to be refunded.