

## **APPEAL PANEL OF RACING NEW SOUTH WALES**

### **APPEAL OF MR GRAHAM BROWN**

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

Appearances: **Racing New South Wales: Mr T Moxon, Stipendiary Steward  
Appellant: Mr W O'Brien, Solicitor**

Date of Hearing: **17 August 2021**

Date of Reasons: **18 August 2021**

### **REASONS FOR DECISION**

#### **Principal Member, for the Panel**

1. On Monday 14 June 2021, the horse “Admit It”, trained by the appellant, finished first past the post in Race 2 run at the Warwick Farm Racecourse that day. Admit It finished half a length in front of the second horse, and started at \$5.50. It was allocated 59kgs, and was ridden by apprentice rider Mr R Jones, who claims 3 kgs. He weighed out at 56 kgs, but weighted in at 54.6kgs. As a result of this, a fortunately rare thing occurred – the horse was disqualified from the race for running with incorrect weight.
2. After an inquiry by Stewards, the appellant was charged with, and pleaded guilty to, a breach of AR209(2)(b) for his role as a “person at fault in relation to the failure” of the horse to carry the correct weight. The Stewards imposed a penalty of a fine in the sum of \$5000. The appellant has appealed to the Panel against the severity of the penalty imposed. With leave, he was represented by Mr W O'Brien, solicitor. The Stewards were represented by Mr T Moxon, who was the Steward who chaired the panel of Stewards who inquired into the matter.
3. There is no dispute that the breach of the rule here was inadvertent. No dishonesty or misconduct was involved. Rather, the appellant’s conduct was careless, with a lead bag being missed from the riding gear. Mr O'Brien however accepted that the breach was objectively serious, at least in the sense that there were some very unfortunate flow on

consequences from the incident – owners probably missed out on over \$20,000 in prizemoney, and many punters who backed the horse were deprived of winnings. The only caveat to this is that, had the horse carried the extra 1.6kgs it should have, there is uncertainty as to whether he still would have won the race (given the half a length margin). Regardless, money was lost by owners and punters. This is never a good look for racing.

4. While the facts are not in dispute, there is one point of difference between the parties, which is the issue that the Panel must decide – is a fine in the sum of \$5000 appropriate in the Panel’s view for this breach of the rule?
5. In determining what penalty to impose, the Panel does not approach the matter as though it is necessary for the appellant to satisfy it that the fine imposed by the Stewards is manifestly excessive. This is not a criminal appeal. In any event, the penalty imposed is at a level of obviousness not manifestly excessive, nor can it properly be described as inappropriate. It is however a fine in an amount more than the Panel considers should be imposed, for the following reasons.
6. First, we have been referred to two precedent penalties for similar offending, which resulted in licensed trainers being fined \$1500 (the matters of O’Rourke and Kavanagh). While these were country races, with less money, (and in the case of Kavanagh a disqualification from second place not first), the Panel does not see a great deal of difference between these matters and the offending under the Rules here.
7. Secondly, while the principal purpose of imposing penalties under the Rules remains the protection of the image and integrity of racing, some consideration must be given to matters subjective to an appellant. Mr Brown is 78 years of age, has been a licensed trainer for 51 years, and has an unblemished record. That must count for something in considering penalty.
8. While we consider the Steward’s view on penalty to be both reasonable and rational, in all the circumstances the Panel is of the view that a fine of \$2,500 should be imposed rather than \$5,000.

9. The Panel therefore makes these orders:

- (1) Appeal against severity of penalty allowed.
- (2) In lieu of a fine in the sum of \$5,000, the appellant is fined the sum of \$2,500.
- (3) Appeal deposit to be refunded.