

APPEAL PANEL OF RACING NSW

APPEALS OF LICENCED JOCKEY NASH RAWILLER

PANEL: MR R BEASLEY SC, PRINCIPAL MEMBER; MS J FOLEY; MR J MURPHY

APPEARANCES:

RACING NSW MR M VAN GESTEL, CHAIRMAN OF STEWARDS

APPELLANT MR W PASTERFIELD

DATE OF HEARING: 14 August 2020

DATE OF REASONS: 17 August 2020 (orders made 14/8/20)

REASONS FOR DECISION

Mr R Beasley SC

Introduction

1. Licensed Jockey Nash Rawiller (the appellant) was charged with breaches of the Australian Rules of Racing following the running of races 5 and 7 at the race meeting conducted at Rosehill Gardens on Saturday 25 July 2020.
2. Following race 5, the appellant was charged with a breach of AR 132(7)(a)(ii) (Charge 1), relating to excessive use of the whip. Following race 7, he was charged with a breach of AR 131 (a), the careless riding rule (Charge 2).
3. The appellant pleaded guilty to both charges. For Charge 1, he was penalised by the Stewards by a suspension of 1 week, which commenced on 9 August, and which was

to expire on 16 August. For Charge 2, his licence to ride was suspended for 7 meetings, with such suspension to commence on 16 August, and expire on 1 September 2020. The appellant appeals against the severity of penalty imposed on him in relation to each charge. He also appealed in relation to the finding of breach of the careless riding rule. On appeal, he was represented by Mr W Pasterfield. The Stewards were represented by the Chairman of Stewards, Mr M Van Gestel.

Charge 1

4. AR 132(7)(a)(ii) is in the following terms:

AR 132 Limits on the use of a whip by a rider

.....

(7) Subject to the other requirements in this rule:

(a) prior to the 100 metre mark in a race, official trial or jump-out:

(i) the whip must not be used in consecutive strides;

(ii) the whip must not be used on more than 5 occasions except where there have only been minor infractions and the totality of the whip use over the whole race is less than permitted under subrules (7)(a) and (b) and also having regard to the circumstances of the race, including distance and context of the race (such as a staying race or a rider endeavouring to encourage the rider's horse to improve);

(iii) the rider may at the rider's discretion use the whip with a slapping motion down the shoulder, with the whip hand remaining on the reins;

(b) in the final 100 metres of a race, official trial or jump-out, a rider may use the whip at the rider's discretion.

5. In Australia, legislation should be drafted by Parliament in a manner that allows our laws to be readily understood by all who read them – not just members of parliament or lawyers. The Rules of Racing should also be drafted in a manner so that they can be readily understood by all, including the participants in the industry. Whether AR 132(7)(a)(ii) contains all the clarity of expression it could, is a matter that could be debated, but won't be here. It need only be said that the appellant accepted he was in breach of the rule for his ride on the horse Desert Path, which won Race 5.

6. The appellant was alleged to have used the whip on Desert Path on 9 occasions prior to the 100m. On appeal he accepted this. However, Mr Pasterfield made these submissions in support of a reduced penalty:
 - (a) He correctly submitted that matters that (if all established) are an exception to a breach of AR132(7)(a)(ii) are matters that can go to mitigation.
 - (b) Relevant to these matters were:
 - (i) The race was conducted on a heavy track, and Desert Path had performed poorly on such ground in the past.
 - (ii) The race was a 2400m event.
 - (c) The “Rider Penalty Guidelines” provide a guideline penalty of a “suspension of up to 1 week” for a sixth offence involving 4 to 5 additional strikes with the whip beyond the limit, whereas the appellant had been penalised at the very top end of this guideline.
 - (d) The first strike with the whip here was more of a “tap”.
7. For the Stewards, Mr Van Gestel described the appellant as a serial offender under this rule. He said that the fact that the appellant’s horse won the race was an aggravating factor. People following the sport who bet on horses ridden by jockeys whose riders obey the rule are often aggrieved when their horse is beaten by a horse ridden by a rider who breaches this rule. He also said that there are matters of horse welfare (which led to the introduction of the rule) that the Panel should consider when determining a penalty.
8. The rule would be easier to interpret if the matters of exemption were removed. If it is thought appropriate to limit use of the whip because of welfare or “image” concerns, then a set limit would make enforcement and compliance more straightforward, and remove any issues as to what is meant by “minor infractions”, “the circumstances of the race”, or “context”. Having said that, the Panel notes the submissions made about the state of the track, and that it was a distance event. Whether, from a welfare point of view, it is more appropriate to strike a horse in a long race than a sprint is something the Panel is perhaps not qualified to determine unassisted by expert evidence, nor specifically asked to. What we agree on however are these two matters:

- (a) The “Rider Penalty Guidelines” seem a sensible and useful attempt to bring about consistency in penalties for breaches of this rule.
- (b) A suspension was warranted here, albeit slightly less than one week.

9. Ultimately, I took the view that a 2-meeting suspension was the appropriate penalty. The other two Panel members considered a 3-meeting Penalty was appropriate. The orders made then were:

- 1. Appeal against severity of penalty allowed.
- 2. Penalty of a 1-week suspension set aside.
- 3. In lieu of that penalty, (by majority) a penalty of a 3-weeks suspension is imposed. The suspension of the appellant’s licence commenced on 9 August, and expired on 14 August (on which day a separate suspension for careless riding commenced)
- 4. Appeal deposit to be refunded.