

APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY TOMMY BERRY

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mr P. Losh; Mr J. Nicholson**
Representatives: **Appellant - Mr P. O'Sullivan**
Racing NSW - Mr W. Birch, Deputy Chairman of Stewards
Date of Hearing: **17 February 2021**
Date of Reasons and Orders: **17 February 2021**

REASONS FOR DECISION

1. This Appeal is by licensed Jockey Tommy Berry, against the penalty imposed as a result of a finding of careless riding pursuant to AR 131(a) of The Australian Rules of Racing. The breach resulted from the appellant's ride on the horse La Grisa in Race 4 run at Warwick Farm racecourse over 2,200 metres on 10 February 2021.
2. The particulars of the charges are as follows:

"...you did ride your mount in a careless manner at a point approaching the 300 metres by permitting your mount La Grisa to shift out when not sufficiently clear of Space Is Deep, resulting in that mare being taken out on to Itasca, which had to be checked from the heels of Space is Deep. Poulton Le Sands, which was following to the outside of Itasca, also had to be steadied as a consequence."
3. At the inquiry after the race, the appellant pleaded guilty to the charge. His carelessness was assessed as low grade. The consequences were assessed as "checked and or lost rightful running". This resulted in a base penalty under the Careless Riding Penalty Template (**Template**) of a 5 meeting suspension.
4. Applying a 10% discount given an upcoming feature race and a further 10% discount for a guilty plea, the penalty was reduced to 4 meetings.
5. The appellant has appealed to the Panel in relation to penalty only. At the appeal hearing, the Stewards were represented by W. Birch. Mr Berry was represented by Mr P. O'Sullivan. Film of the race was admitted into evidence, as well as the appeal book containing transcript of the race enquiry.
6. The main thrust of Mr O'Sullivan's submissions to the Panel were that Mr Berry was a victim of circumstance in that he had looked over his shoulder before shifting out, did not see James

McDonald on Space Is Deep and only commenced his mover three seconds later, during which time Mr McDonald on Space is Deep had made his move and quickly established his run to Mr Berry's outside.

7. Mr O'Sullivan also submitted that the consequences of Mr Berry's shift did not cause Reece Jones on Itasca to check his mount but rather it resulted in Mr Jones being hampered and or crowded. Mr O'Sullivan also submitted that the carelessness grading would more appropriately result in a reprimand, which would in effect result in a suspension of 2 meetings as a result of rides not accepted by Mr Berry.
8. Mr O'Sullivan also referred to the existence of exceptional circumstances and implored the Panel to exercise its discretion to not be bound by the Template.
9. What the Panel really must consider here is whether any further discount should be imposed on the appellant based on the submissions made and the evidence produced. Safety is paramount in such cases and while the Panel acknowledges Mr Berry's attempt to avoid danger, it was still his responsibility to ensure that he could safely shift out.
10. Ultimately, in this case, we agree with the grading of low carelessness. The Panel is not bound by the Template, but we consider that absent exceptional circumstances, we should apply it and would apply the Template in the same way as the Stewards. The appeal is therefore dismissed.
11. The Panel's orders are as follows:
 1. Appeal dismissed.
 2. The penalty of a 4 meeting suspension is confirmed. Such suspension commences on Wednesday, 17 February 2021 and expires on Sunday, 21 February 2021, on which day the appellant may ride.
 3. Appeal deposit forfeited.
