RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF TOM SHERRY

Panel: Mr R Beasley SC, Principal Member; Ms S Skeggs; Mr C Tuck

For the Stewards: Mr M Van Gestel.

For the Appellant: Mr M Newnham, licensed trainer, and the appellant's Master.

REASONS FOR DECSION

Mr R Beasley SC, Principal Member

1. On 21 August 2020, apprentice jockey Tom Sherry was found by Stewards to have breached AR 129(2) of the Australian Rules of Racing when he rode the horse Al Snip in Race 6 at the Wyong Racecourse over 1350 m on 31 July 2020.

2. AR 129(2) is in the following terms:

   AR 129(2): A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.

3. The particulars of breach of the rule alleged that the appellant:

   (a) Failed to make an effort to restrain Al Snip and set a slower and more sustainable pace when leading by a considerable distance past the 1000m when it was reasonable and permissible to ride the horse in a more conservative manner.

(b) After passing the 600m to the 400m, when leading by a considerable distance and with the pace fast, applied pressure to Al Snip to expend more effort by commencing to ride hands and heels when it was reasonable and permissible to have ridden Al Snip in a more conservative manner.

4. The appellant pleaded not guilty to the alleged breach of the rule. Having been found in breach, the Stewards imposed a penalty of a 4-week suspension of the appellant's license to ride. He has appealed both the finding of breach of the rule, and the severity of penalty imposed upon him. He was represented at the appeal today by Mr M Newnham, a licenced trainer, and his Master. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.

5. The appeal book, containing transcript of the Stewards' Inquiry, was admitted into evidence as Exhibit A. Included in Exhibit A were documents showing the sectional speeds, including the speeds comparable to average sectionals. Film of the race was admitted as Exhibit B.

6. Before discussing the evidence, something should be said about the rule. It has been described as a rule central to the integrity of racing. The leading appeal about how to construe and apply this rule remains the *Appeal of Munce* (5 June 2003). In this appeal the then Principal Member, Mr TEF Hughes QC, said that a rider should not be found to be in breach of the rule unless the Panel is "comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgement reasonably to be expected of a jockey in the position of the person charged". As to the relevant circumstances, Mr Hughes said they would include:

(a) the seniority and experience of the rider charged;
(b) the competitive pressure they were under in the race; and
(c) whether they had to make a sudden decision between alternative courses of action.

7. These should be considered to be inclusive factors, not exclusive. Further, the Panel in *Munce* noted that the rule is not designed to find jockeys to be in breach of the rule

"who make errors of judgement unless those errors are culpable by reference" to the various circumstances relevant to the race and the conduct.

8. The film of the relevant race here shows that Al Snip had a large lead over the field by the 1000m – in the range of 8 to 10 lengths. The appellant was not riding vigorously to this point, but did not take any steps to restrain his mount. This continued until about the 500m, when the appellant began to apply hands and heels pressure to Al Snip. In the straight the horse – which started a $2.45 favourite – faded to finish 6th. The race was run on a heavy track. Analysis of the horse's prior six runs revealed no evidence of it running faster than average opening sectionals. The evidence here was that it had run a very fast sectional from the 1200 to the 1000m, and from the 1000m to the 800m (both under 11 seconds). The horse ran its final 200m in 12.86 seconds.

9. For the Stewards, in relation to the first particular, Mr Van Gestel submitted that the appellant should have realised:

   (a) his horse had opened a considerable lead by the 1000m; and

   (b) was going considerably quicker than other horses in the race to that point, and beyond.

10. Given this, Mr Van Gestel submitted that the Panel should have made some effort to restrain his mount in order to slow it. By not attempting this, he failed, Mr Van Gestel said, to give the horse every chance to win or achieve its best possible placing.

11. As to the second particular, Mr Van Gestel said that somewhere between the 600m and 400m, the appellant, rather than riding with more vigour, should have attempted to ride his horse quietly until inside the 400m. He said the horse should have been "nursed" in this section of the race. By doing what he did, he said the appellant was again in breach of the rule.

12. Mr Newnham, for the appellant, asked the Panel to consider these matters relevant to the issues raised in the *Appeal of Munce* as being matters upon which the Panel

should reach the view that the appellant's conduct was not culpable conduct under the rule:

(a) The horse was in blinkers for the first time, and bumped the horse next to it at the start. This inevitably fired the horse up.

(b) The appellant did not ride aggressively. He in fact rode consistently with other races shown to the panel when he had led and won.

(c) It is important to remember the appellant's relative inexperience. He is a 21-year-old apprentice who had been riding in Australia for only ten months, and had previously had only 80 odd rides in Ireland. Whatever error of judgement he made in the early stages of the race was minor, and could be counted in split seconds. In that regard, he asked the Panel to note that the appellant had only been instructed to ride to times since his arrival in Australia.

(d) The second particular has not been made out, as the appellant only rode with hands and heels pressure from about the 400m.

13. The Panel has considered all these matters. We have also had regard to what was said at the Stewards Inquiry, where the appellant admitted to a "mistake" and misjudgement (T3 L 135), and Mr Newnham conceded that the appellant did not do "enough to bring it back" and did not restrain the horse enough: T 3 L100-116. The Panel has not reached its determination in this appeal on the basis of that transcript evidence, but it is consistent with what we have seen on the film.

14. The appellant made a mistake. It should be emphasised that it was an honest mistake, but a culpable one none the less. While we accept that the blinkers may have played a role here, the appellant should have, but did not, make an effort to restrain the horse during the first part of the race up to and past the 1000m. That attempt to restrain was an action that should generally be expected in the circumstances from both a senior rider, and also a relatively inexperienced apprentice. We think the first particular to the charge is made out, and this alone justifies and finding that the appellant has breached the rule. To some extent, this makes the second particular irrelevant. This

horse's chances in this race were gone by the 600m. The appellant probably did nothing to assist it further from that point, but the rule had been breached before anything the appellant did on the horse from the 600m. The appeal against the finding of breach must be dismissed.

15. As to the severity of the penalty imposed on the appellant, Mr Tuck and I see nothing of sufficient substance or relevance to distinguish this appeal to the *Appeal of Rebecca Prest*, where the Panel imposed a three weeks suspension on an apprentice for breach of AR 129(2). While Ms Skeggs would have reduced the penalty to a 2-week suspension, by majority, the penalty imposed on the appellant is reduced to a 3-week suspension.

16. Orders:

    1. Appeal against finding of breach of AR 129(2) dismissed.

    2. Finding of breach of AR 129(2) confirmed.

    3. Appeal against severity of penalty allowed.

    4. In lieu of a 4-week suspension, the appellant's licence to ride is suspended (by majority) for 3-weeks. Such penalty commences on 31 August 2020, and expires on 21 September 2020, on which day the appellant may ride.

    5. Appeal deposit forfeited.