



APPEAL DECISION

HUGH BOWMAN and RACING VICTORIA STEWARDS

Date of Hearing: 13 November 2018

Heard By: Judge Bowman (Chair)
Brian Forrest
Prof Raymond Harbridge

Appearances: Stephen Schmidhofer assisted by Robert Cram appeared on behalf of the Stewards.
Paul O'Sullivan appeared on behalf of Hugh Bowman.

At Flemington on Tuesday 6 November 2018, rider Hugh Bowman pleaded guilty to three charges on his mount *Marmelo* (GB) in Race 7 the Lexus Melbourne Cup (3200m).

Charge 1 - Mr Bowman pleaded guilty to a charge of careless riding under the provisions of AR137(a), the carelessness being that near the 500m he permitted his mount to shift in when not clear of *Chestnut Coat* (JPN) resulting in that horse being checked when tightened for room. Mr Bowman had his licence to ride in races suspended for a period of twelve race meetings. In assessing penalty Stewards took into account his guilty plea and good record and that the carelessness was in the mid-range.

Charge 2 - Mr Bowman pleaded guilty to a charge under the provisions of AR137A(5)(a)(ii) for using his whip twelve times prior to the 100m, which is seven times more than permitted. Mr Bowman had his licence to ride in races for a period of eight race meetings. In assessing penalty Stewards took into account his gross breach of the rule in a Group 1 event.

Charge 3 - Mr Bowman pleaded guilty to a charge under the provisions of AR145 for returning to scale more than a half kilogram over his declared riding weight. Mr Bowman has his licence to ride in races suspended for a period of twenty-one race meetings.

The Stewards deemed that all three suspensions be served cumulatively, however, to avoid making the term of suspension manifestly excessive, Mr Bowman's licence to ride in races was suspended for a period to commence at midnight on 8 November 2018 and to expire at midnight on 8 December 2018, a total of 35 race meetings (one calendar month).

A stay of proceedings was not requested.

DECISION: **Charge 1:** Appeal upheld and varied to 10 race meetings.
Charge 2: Appeal upheld, and a fine of \$10,000 imposed.
Charge 3: Appeal upheld and varied to 13 race meetings.

Penalties for all charges to be served cumulatively. Mr Bowman is suspended for 23 race meetings and fined \$10,000.

Payment terms 28 days.

Grace Gugliandolo
Registrar
Racing Appeals and Disciplinary Board

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman
MR B. FORREST, Deputy Chairman
PROF R. HARBRIDGE

EXTRACT OF PROCEEDINGS

DECISION

HUGH BOWMAN

and

RACING VICTORIA STEWARDS

RACING VICTORIA CENTRE, FLEMINGTON

TUESDAY, 13 NOVEMBER 2018

MR P. O'SULLIVAN appeared on behalf of Mr H. Bowman

MR S. SCHMIDHOFER, with MR R. CRAM appeared on behalf of
the RVL Stewards

CHAIRMAN: Mr Hugh Bowman, you have pleaded guilty to three charges which, in the interest of brevity, we will describe as the careless riding charge, the excessive use of the whip charge and the weighing in overweight charge. All three charges arise out of your ride on Marmelo which ran second in the 2018 Melbourne Cup. We will deal with the charges one at a time.

For the careless riding, you receiving a penalty of a suspension for 12 race meetings. We have viewed the video. Whilst we acknowledge that the classification of careless riding in the low, medium and high range is not contained in the rules, it is a very useful way for the Stewards to consider penalty.

Without descending into a detailed analysis of where these ranges start and end, we would put the level of carelessness in the medium range. The interference was caused to Chestnut Coat at approximately the 500-metre mark and did hamper it to a noticeable extent. The jockey was forced to take hold and stand up in the irons. We note your frank admission that you thought you were clear of Chestnut Coat and did not realise that Best Solution had pushed up on the rails, the end result being that Chestnut Coat effectively was sandwiched.

We think that the penalty, a 12-meeting suspension, may have been prima facie appropriate, but as pointed out by Mr O'Sullivan, there is no indication in the transcript of any acknowledgment or discount for your earliest possible plea of guilty. We believe that there should be a deduction for that and it should be

one of two meetings. Apart from that, the general impact of your careless riding places it as warranting it at about that level of suspension of 10 meetings. Accordingly, the appeal in relation to careless riding is upheld and the penalty reduced to a 10-meeting suspension.

Next, we turn to the charge of excessive use of the whip. We say at the outset that we are highly conscious of the pressures on the industry in relation to animal welfare and we say that there should always be the strongest of focuses upon that issue. However, as we have indicated, we are also always very aware of the need for parity and consistency in applying penalties. Jockeys should know that there is consistency in approach and know at least roughly what to expect if they offend. We are not convinced that parity and consistency have been demonstrated in the imposition of the penalty in relation to whip use in the present case. There is no rule concerning the imposition of greater penalties if the whip is used five or more times prior to the 100-metre mark. You admit you used it seven times more than permitted, whilst also pointing out that the last 100 metres, when any number of strikes are permitted, you struck your mount only three times. We also point out the following: in the very same race, the Cup, Regan Bayliss used the whip five times more than permitted before the 100-metre mark. The almost automatic suspension pattern was not activated and he was fined \$1500. Indeed, Kerrin McEvoy, who rode the winner, used the whip four times more than the limit and was fined \$3000. On Oaks Day, in the Oaks, another Group 1 race, Michelle Payne used the whip four times more than the limit prior to the 100-metre mark and was fined \$800.

It is also apparent from the case of Regan Bayliss and from what we were told in submissions about it that the use of the whip overall, including in the last 100 metres, is taken into account. You used the whip sparingly in the last 100 metres with only three strikes.

We repeat that we are very conscious of the welfare of horses but there should be consistency and parity in penalties. Bearing in mind all of the above and the penalties in the other cases we have mentioned, we are of the view that a very substantial financial penalty should be imposed. We fix it at \$10,000. The appeal is upheld and a fine of \$10,000 is imposed. Such a fine is particularly warranted, bearing in mind the attendant publicity that the Cup attracts worldwide.

We turn now to your weighing in one kilogram overweight. You may have been unlucky in one sense, in that had you weighed in at 900 grams over the allotted weight, you would have escaped any penalty. However, weight forms the very basis of the handicapping system. An error of one kilogram has the potential to make a substantial difference. Why you were over is not entirely clear to you. You weighed out without your silks, and given the long gap between races, you had a small amount of water and tea.

For weighing in one kilogram over, a period of suspension is inevitable.

Mr O'Sullivan on your behalf effectively conceded as much. We appreciate that this occurred in our most important race and one which is the centre of

worldwide attention. Nevertheless, we again emphasise the importance of parity and consistency. Also, again, there seems to have been no apparent reduction for your plea of guilty.

In the circumstances, we uphold the appeal and we impose a penalty of 13 meetings. We are of the view that the penalties of suspension should be served cumulatively. These are totally different offences, albeit that they occurred in the same race. In short, the appeal is upheld, as are the other two appeals. The total penalty for all offences is a period of suspension of 23 meetings and a fine of \$10,000. There will be a stay of 28 days in relation to payment of the fine.
