



APPEAL DECISION

DAMIEN OLIVER and RACING VICTORIA STEWARDS

Date of Hearing: 30 October 2017

Heard By: Judge Bowman (Chair), Darren McGee, Jeremy Rosenthal.

Appearances: Terry Bailey appeared on behalf of the stewards.
Paul O'Sullivan of Bale Boshev Lawyers appeared on behalf of
Mr Oliver.

At Moonee Valley on Saturday 28 October 2017, Damien Oliver was found guilty of a charge of improper riding on his mount *Happy Clapper* in Race 9 the *Ladbroke's Cox Plate* (Group 1, 2040m).

The improper riding being that improper riding being that passing the 100m on the first occasion, he rode his mount in and made heavy contact with *Royal Symphony* and then continued to apply unnecessary pressure making contact with *Royal Symphony* on a number of occasions, forcing that colt in a number of horses off its rightful running to a point near the winning post on the first occasion.

Mr Oliver had his licence to ride in races suspended for a period to commence at midnight on Sunday, 29 October 2017 and to expire at the conclusion of the day meeting on Thursday, 16 November 2017 – a total of 20 race meetings (5 metro, 15 provincial).

In assessing penalty Stewards took into account the seriousness of the charge however made allowances for the feature meetings he will miss.

A Notice of Appeal against the decision and severity of the penalty was lodged on Sunday, 29 October 2017. A stay of proceedings was not requested.

DECISION: Appeal against decision dismissed.
Mr Oliver withdrew the appeal against penalty.

The original penalty of 20 meetings stands, having commenced at midnight on Sunday, 29 October 2017 and expiring at the conclusion of the day meeting on Thursday, 16 November 2017.

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE J. BOWMAN, Chairman
MR D. McGEE
MR J. ROSENTHAL**

EXTRACT OF PROCEEDINGS

DECISION

DAMIEN OLIVER

and

RACING VICTORIA STEWARDS

RACING VICTORIA CENTRE, FLEMINGTON

MONDAY, 30 OCTOBER 2017

MR P. O'SULLIVAN (instructed by Bale Boshev Lawyers)
appeared on behalf of Mr D. Oliver

MR T. BAILEY appeared on behalf of the RVL Stewards

CHAIRMAN: Mr Damien Oliver, you have pleaded not guilty to a charge of improper riding, in that in race 9, the Ladbrokes Cox Plate over 2040 metres at Moonee Valley on Saturday, 28 October last, passing the 100-metre mark on the first occasion, you rode your mount, Happy Clapper, in and made heavy contact with Royal Symphony, ridden by Dean Yendall. It is alleged that you then continued to apply unnecessary pressure, making contact with Royal Symphony on a number of occasions, forcing that colt in from its position a number of horses off the fence, off its rightful running, this occurring to a point near the winning post on the first occasion. The Stewards found the charge of improper riding proven and suspended your licence for 20 meetings.

The standard of proof is that laid down in the well-known case of *Briginshaw v Briginshaw*. We must be comfortably satisfied that the charge has been proved, taking into account inter alia the gravity of the charge and the consequences which flow from the conviction.

In the improper riding case of Chad Schofield heard by the Board on 26 September 2014, the Board comprised Judge Lewis as chairman and Mr Forrest and Mr Bornstein, the two deputy chairmen. It was accepted by the Board that improper riding involves an element of deliberate or conscious conduct which creates a danger or potential for danger. It was also said in Schofield's case and it is apparent that safety of horse and rider is paramount in the rules. I will quote something else that was said by that Board in Schofield's case:

Riders have an obligation to observe the rules of safety which include not to interfere with the right of another horse to its running.

We have observed all the video material which is comprehensive. It is quite apparent that from the outside gate after the jump, you moved towards the rails. What Yendall wanted to do was sit right behind Winx, about three horses off the rails. He did not want to go close to the rails. There was no horse on his immediate inside.

You simply rode your horse on an angle into his, bumping him initially quite severely in a bid to move him towards the rails; you could then take his running. When he did not shift, one bump and leaning in became two, and then three, with constant inward leaning pressure. A fourth bump was mentioned and demonstrated by Mr Bailey on behalf of the Stewards but that may have been a short distance past the winning post, so we do not take that into account.

In any event, Dean Yendall did not want to surrender his rightful running. You used your considerably larger horse to try to bump and push Royal Symphony off its line. We are satisfied that this was quite intentional and deliberate conduct. We also totally reject the proposition that what occurred posed no risk or potential danger to Royal Symphony and Dean Yendall. A considerably larger horse was being used to buffet and pressurise a considerably smaller horse in order to take its running. The risk of horse and rider becoming unbalanced or Royal Symphony stumbling or shying was manifest. That it did not occur does not mean that the attempt to bully Yendall and Royal

Symphony off their line did not pose a risk or potential danger to them. In addition, there was a potential risk to Humidor, which was back on the rails.

In any event, the appeal against conviction is dismissed. The original penalty of suspension of 20 meetings stands.
