



**Racing
Victoria**

Racing Appeals and Disciplinary Board
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APPEAL DECISION

DALE SMITH and RACING VICTORIA STEWARDS

Date of Hearing: 15 March 2018

Heard By: Judge Bowman (Chair)

Appearances: Brent Scarlett appeared on behalf of the Stewards
Matthew Hyland of the VJA appeared on behalf of Dale Smith

At Pakenham on 8 March 2018, jockey Dale Smith was found guilty of a charge of improper riding on his mount *Second Marriage* in Race 1 the Racing.com 3YO Fillies Maiden Plate (1000m).

The particulars of the charge being that *“near the 300 metres he turned his mounts head out and directed the filly out from behind the heels of Totally Kaptivated where there was no run thereby bumping Solo Flight for some distance in an effort to force a run. Consequently, Solo Flight was severely hampered, became badly unbalanced before Second Marriage made contact with Totally Kaptivated, which was also bumped and became badly unbalanced.”*

Dale Smith had his licence to ride in races suspended for a period to commence at 11 March 2018 and to expire on 3 April 2018 – a total of 25 race meetings (8 of metro and 17 provincial meetings).

A Notice of Appeal against **the decision and severity of the penalty** imposed was lodged on 9 March 2018. A stay of proceedings was not requested.

DECISION: Appeal against decision dismissed
Appeal against penalty allowed and varied to a suspension of 22 meetings

**Registrar
Racing Appeals & Disciplinary Board**

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

DALE SMITH

and

RACING VICTORIA STEWARDS

RACING VICTORIA CENTRE, FLEMINGTON

THURSDAY, 15 MARCH 2018

MR D. SMITH appeared on his own behalf, assisted by MR M. HYLAND

MR B. SCARLETT appeared on behalf of the RVL Stewards

CHAIRMAN: Mr Dale Smith, you have been charged with improper riding in breach of AR 137(a), in that in race 1 over 1000 metres at Pakenham on 8 March last, near the 300-metre mark you directed your mount, Second Marriage, out from behind Totally Kaptivated, ridden by Patrick Moloney, when there was no run. It is alleged that as a result, you bumped Solo Flight, ridden by Ryan Maloney, for some distance in an effort to force a run. Solo Flight was severely hampered and became unbalanced. Second Marriage also bumped Totally Kaptivated which also became unbalanced. In other words, it is alleged that you used your mount to force a run where none existed and caused the resultant interference.

The charge was found proven by the Stewards and you were suspended for 25 meetings. You are appealing against both the decision and the severity of the penalty. I have been able to view the video material several times. There is very noticeable interference, firstly to Ryan Maloney's mount, but then ultimately and to a lesser degree to Patrick Moloney's which was weakening.

I agree with what was put by Mr Hyland, assisting you, that Patrick Moloney had effectively dropped back into the space you had left on the rails as his mount weakened. You had been trapped behind him on the rails. You were going better than his mount and probably a little better than Ryan Maloney on your outside.

However, the bottom line is that you used your mount in an attempt to get off the rails and force Ryan Maloney off his proper line. In my opinion, this was not just a misjudgment of the available space or general carelessness as to where horses were in your immediate vicinity. This was a deliberate move to use your horse to push Ryan Maloney off his line and three wide so you could get out from behind a weakening horse. In my opinion, that constitutes improper riding. You cannot use your horse effectively as a battering ram to push another horse off a line he is entitled to hold.

Perhaps the incident went on for longer than it might have, which was *effectively 70 to 75 metres, because Ryan Maloney did not yield. He was entitled to do that, and in the meantime, Patrick Moloney's mount had weakened to your inside, so you could not go back to the rails. However, that is not really to the point. The essence of the improper riding was at the outset of your move. It was quite deliberate and intentional conduct designed to push Ryan Maloney off his line.

I will refer to some observations in an earlier case that I made concerning the ride of Damien Oliver on Happy Clapper in the 2017 Cox Plate and he was also charged with improper riding. Firstly, the standard of proof is that laid down in the well-known case of *Briginshaw v Briginshaw*. I must be and am comfortably satisfied that the charge has been proved, taking into account, amongst other matters, the gravity of the charge and the consequences which flow from the conviction. Secondly, improper riding involves an involvement of deliberate or conscious conduct which creates a danger or potential for

danger and I am satisfied that that occurred in the present case. Thirdly, in Oliver's case, I referred to the following which was said by Judge Lewis and the members in the improper riding case of Chad Schofield, namely:

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

Obviously I agree with all those propositions and am satisfied with the required standard set in Briginshaw. Bearing all of the above in mind, I am comfortably satisfied that the charge has been made out and the appeal against the decision is dismissed.

On penalty, these things are always difficult and I do not want to be seen to be tinkering with them but I am prepared to reduce the penalty to 22 meetings. The penalty imposed upon Damien Oliver for the Cox Plate, and indeed his reckless riding one, on each occasion from memory he received 20 meetings, and I appreciate the races he was going to miss out on, and the races he did miss out on would have been substantial, but then again, he is a leader in the industry, as is Hugh Bowman obviously. To some extent, there is an obligation on them to be role models for others that are not at the very top of the ladder the way they are. It is a difficult decision, but I am prepared to vary the penalty down to 22 meetings.
