



APPEAL DECISION

BEN MELHAM

and

RACING VICTORIA STEWARDS

Date of Hearing: 4 September 2017

Heard By: Judge Bowman (Chair)

Appearances: Corie Waller appeared on behalf of the stewards.
Paul O'Sullivan of Bale Boshev Lawyers appeared on behalf of Mr Melham.

At Sandown Hillside on Wednesday 30 August 2017, jockey Ben Melham pleaded guilty to a charge of careless riding on his mount *Miss Vixen* in Race 1 the *Moorookyle Park Handicap* (1000m).

The carelessness being that that near the 100m he permitted his mount to shift in, whilst riding it along, when insufficiently clear of *Pageantry* resulting in *Pageantry* having to be checked.

Mr Melham's licence to ride in races was suspended for a period to commence at midnight on Saturday, 2 September 2017 and to expire at midnight on Saturday, 9 September 2017 - a total of 7 race meetings (2 metro, 5 provincial).

In assessing penalty, Stewards took into account his guilty plea and good record and that the carelessness was in the low range

A Notice of Appeal against conviction and penalty was lodged on Thursday, 31 August 2017. A stay of proceedings was not requested.

At the hearing, an application for leave to amend Mr Melham's plea to 'not guilty' was accepted by the Board.

DECISION: Appeal dismissed. Penalty to remain standing.

Georgie Gavin
Registrar - Racing Appeals & Disciplinary Board

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

BEN MELHAM

and

RACING VICTORIA STEWARDS

RACING VICTORIA CENTRE, FLEMINGTON

MONDAY, 4 SEPTEMBER 2017

MR P. O'SULLIVAN (instructed by Bale Boshov Lawyers) appeared on behalf of Mr B. Melham

MR C. WALLER appeared on behalf of the RVL Stewards

CHAIRMAN: Mr Ben Melham, you have pleaded not guilty to a charge of careless riding, in that in race 1 over 1000 metres at Sandown Hillside on 30 August last, you permitted your mount, Miss Vixen, to shift in near the 100-metre mark when insufficiently clear of Pageantry, ridden by Craig Williams. The ultimate winner, Blondie, ridden by Ethan Brown, was also involved. The Stewards imposed a penalty of suspension of seven meetings. However, when that penalty was imposed, you were pleading guilty to the charge. You are now appealing against both the conviction and the penalty.

I have viewed the video material and had my attention directed to the various extracts from the transcript. I would make the following observations: there is no doubt that you had what you described as a horrific ride. Your mount suffered some interference from Ethan Brown's mount near the 600-metre mark and again you had to change course when Brown's mount shifted out near the 200-metre mark. Mr O'Sullivan on your behalf directed some attention to the allegedly greater interference caused by Ethan Brown when compared with the incident involving yourself and Craig Williams at the 100-metre mark. It was also pointed out by you that Brown received a severe reprimand as compared to your penalty.

You were certainly unlucky in the run. I would agree that there should be parity whenever possible when penalising jockeys for offences. However, the bottom line is that what went on with Ethan Brown has only indirect relevance to what occurred at the 100-metre mark. The failure to obtain

the run outside Brown at the 200-metre mark caused you to change tack and move towards the running rail.

However, the necessity to change course does not mean that you can then cause interference to another horse a hundred metres later. I accept that your horse was difficult to ride. The head-on video shows that you moved at least two to three horses to your left and you continued to ride your horse. Craig Williams did not move off his line. You crossed him well short of two lengths clear of him, whilst still riding out your horse, and you caused interference to his mount.

Whatever may have been said in the stewards' room and before the film was shown, there seems to me to be no doubt but that Williams had to take hold of his mount. It may be there was an outward movement by Ben Thompson on So Far Sokool which had been racing on the rails. That seems to me to have been marginally after you crossed in front of Williams.

The bottom line is this: Williams did not move off his line. You moved off yours and crossed him when not sufficiently clear. You had not stopped riding your mount when you caused interference to him, causing him to take hold of his horse. All the ingredients of careless riding seem to me to have been present and I find the charge proven. The appeal against conviction is dismissed.

On the question of penalty, I have listened to the submissions of the parties. I agree, and I have said this several times, that the ranges which the Stewards use for suspensions for careless riding are a useful tool in attempting parity so that jockeys have some idea of what to expect, but they do not bind the Board, even if they are frequently mentioned.

The present case has a complicating factor. At the original hearing, the Chairman of Stewards first indicated that the penalty to be imposed was eight meetings; see transcript 5. He was then asked by you if, with a guilty plea, there would be a deduction. The Chairman of Stewards said that there would be, although not originally specifying how much. So there was further discussion, what could be described as plea bargaining. The end result was that you pleaded guilty and the period of suspension was reduced to seven meetings. This still meant that you would miss the Saturday meeting, but the fact is that you accepted it; see transcript 9. Some time later, you changed your mind and you indicated that you would plead not guilty. This was well after the original decision, the plea of guilty and the penalty reduction.

You have opted to contest the matter fully. Certainly you have a good record and the interference was at the low end. However, you have forfeited your right to any discount for a plea of guilty, and basically at all levels of court hearings, a plea of guilty is something that is taken into account. In my view, taking into account all the factors mentioned and addressed to me, the interference caused warrants a suspension of seven meetings.

There is no further reduction for a plea of guilty and, as stated, a seven-meeting suspension seems to me to be a fair and proper penalty. The appeal is dismissed.
