

Registrar
Racing Appeals and Disciplinary
Board



Racing Victoria Limited
www.racingvictoria.net.au

Racing Victoria Centre
400 Epsom Road
Flemington Victoria 3031
Tel: (+61 3) 9258 4260
Fax: (+61 3) 9258 4707

Appeal Result

Distribution : Chief Executive
Group Integrity Services
Group Racing and Group Racing Development
VJA
TVN
Office of Racing
S. Carvosso – Racing NSW
Racing Press

FROM : Registrar – Racing Appeals and Disciplinary Board

DATE : 2 February 2009

SUBJECT : APPEAL HEARING RESULT: PICNIC RIDER – SHANE MCGOVERN

At Balnarring on Monday 26th January 2009, picnic rider Shane McGovern was found guilty of a charge of careless riding on his mount *Rusty Mater* in Race 1 the *Lisa Dalgleish Birthday Maiden Handicap* (1600m).

The careless riding being that near the 1400m he permitted his mount to shift in when not sufficiently clear of *The Jolly Swagman*, thereby taking that gelding in onto *Avian Prince* and *Diaddison*, which resulted in *Diaddison* having to be checked, *Avian Prince* severely hampered and *The Jolly Swagman* having to be severely checked. Shane McGovern's licence to ride in races was suspended for a period to commence midnight 26th January 2009 and to expire midnight 8th February 2009 – a period of 3 picnic meetings.

A Notice of Appeal against **the decision and severity of the penalty** was lodged on Wednesday 28th January 2009.

A stay of proceedings was granted effective until midnight Sunday 1st February 2009.

DECISION: Appeal allowed.

Georgie Curtis

Registrar
Racing Appeals & Disciplinary Board

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR M. MURPHY
MR G. WARD**

EXTRACT OF PROCEEDINGS

DECISION

**IN THE MATTER OF THE LISA DALGLEISH
BIRTHDAY HANDICAP OVER 1600 METRES**

JOCKEY: SHANE McGOVERN

MELBOURNE

MONDAY, 2 FEBRUARY 2009

MRS J. McSWAIN appeared on behalf of the Stewards

MR D. O'KEEFFE appeared on behalf of the Appellant

CHAIRMAN: During the course of this appeal, the respective cases by the stewards and the defence have been well revealed and I do not intend to repeat what is already obvious. What this case comes down to is the question of whether the Board is satisfied on the balance of probabilities that Mr McGovern was guilty of careless riding.

As indicated, the Board receives very little looking at the film which is not the fault of the stewards, since it was the only film available on the day. It was a side-on view and really does not help the Board much at all. What the case comes down to in the end is what the Board makes of the evidence of Mr Douglas and the evidence of Mr Kirkpatrick.

Mr Kirkpatrick was in a position, probably the best position of a rider, to indicate or reveal what was going on up ahead of him. He said he was three or four lengths back and he was obviously three off the fence, right behind Mr Douglas's mount and in an excellent position to see what Mr McGovern was doing in relation to his mount. Mr Douglas's evidence is clear that Mr McGovern's horse was perhaps hanging a little, but not to any great extent, and that he could have pulled his horse off or ridden forward without much difficulty, thereby avoiding the interference. Mr McGovern's case is of course that his horse was hanging badly and he called Mr Kirkpatrick in support of that position. Mr Kirkpatrick did support Mr McGovern's statement that his horse was hanging very badly and that he was trying to hold his horse out, but to no avail, and that Mr Douglas kicked his horse up at or about that time.

The Board is left in a position where it has to make a decision as to whether it prefers the evidence of one rider against the other. Mrs McSwain elected not to cross-examine Mr Kirkpatrick and therefore his statement was not challenged, nor was his credibility challenged. Since his credibility was not challenged, nor his statement was challenged, the Board is left in the situation where it cannot make up its mind one way or the other as to whether it accepts the evidence of Mr Douglas or Mr Kirkpatrick. That being the case, the burden of proof, whilst being on the stewards, has not been satisfied, in that the required standard is for the Board to be satisfied that it is more probable than not that Mr McGovern was responsible in a careless way. The Board, because of the evidence tendered before it, is not in a position to come to that view and therefore the appeal must be allowed.

I would say this: that the Board is disturbed about a situation which has arisen in some of these picnic races. Had there been a catastrophic fall which could easily have occurred here and riders terribly injured, winding up as paraplegic or brain damaged, and this case had gone on, that would have left the Board in a terrible situation of having to decide whether there was carelessness or not if the same sort of evidence had been presented and there had been catastrophic falls. The racing public would have been entitled to ask the question: what is going on? It seems to the Board that if you are going to have racing at these picnic meetings that safety is still a paramount consideration and whether it is a picnic race or a race at Flemington, the stewards' tower should have been manned at the very least and head-on views or rear views from films should have been provided to the Board. Had that been done, the issue may have

turned out differently. It was not done, and so the Board is left in this impossible position.

It is unfair to the Board and I think unfair to the stewards and something ought to be done about it, because if it happens one day and there is a catastrophe, then a lot of people are going to be left with red faces.

END OF EXTRACT