

# APPEAL PANEL OF RACING NEW SOUTH WALES

## IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY MR TOMMY BERRY

Heard at Racing NSW Offices

Appeal Panel: **Mr L Gyles SC – Convenor; Mr J Murphy; Ms J Foley**  
Representatives: **Racing NSW – Mr S Railton, Chairman of Stewards**  
**Appellant - Mr T. Crisafi, Chief Executive officer – NSW**  
**Jockeys Associations.**

Date of Hearing: **18 November 2024**

Date of Reasons  
and Orders: **22 November 2024**

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### REASONS FOR DECISION

1. This is an Appeal by Tommy Berry in relation to a sanction imposed by the stewards on 5 November 2024 arising from his ride on Gringotts in the Big Dance which was run at Randwick on Tuesday 5 November 2024. Gringotts won the race. Mr Berry was charged with careless riding and was suspended for two weeks, in addition to which a fine was imposed of \$10,000. It is only against the imposition of the fine which Mr Berry appeals. He pleaded guilty to the charge and has accepted the two week suspension.
2. The matter was heard on 18 November 2024 and the panel at the conclusion of the hearing announced its decision and these are the reasons in support of it.
3. The evidence in the Appeal comprised the Notice of Appeal and the Steward's Report, together with footage of the race. Mr Berry attended the hearing in person and spoke on his own behalf, as well as being represented by Mr Crisafi.

### Submissions

4. In support of the imposition of a fine, and of the quantum of \$10,000 being appropriate, Mr Railton essentially relied upon three matters. First, he emphasised the high level of interference and carelessness in the incident itself. He submitted that where there is that level of carelessness in races of significance that the stewards believe that the use of fines was a helpful, and additional, deterrent to encourage jockeys to ride safety and not put horses and other jockeys unnecessarily at risk in such races. He also pointed to

the very substantial prize money that is available in these significant races and submitted that the level of remuneration available to jockeys if they win such races could provide an additional incentive for jockeys to favour the interests of winning the race over their responsibility for the safety of others. He pointed out that Mr Berry's winning fee for the Big Dance was in excess of \$75,000. His submission was that a fine of \$10,000 was relatively reasonable in comparison to that.

5. Mr Crisafi made a number of points in support of a submission that the penalty was excessive and that no fine should have been imposed upon Mr Berry as a consequence of the ride. He first sought to draw a comparison between the fine imposed upon Mr Berry with a careless riding charge against Tyler Schiller in the Golden Eagle, where the jockey received a suspension of two weeks, but no fine was imposed. Mr Crisafi pointed out that both jockeys missed a million dollar race whilst they were suspended, being the Hunter. He submitted that consistency was important and that the imposition of the fine on Mr Berry was not consistent with the way in which Mr Shiller had been treated.
6. In support of his submission as to the importance of consistency in the imposition of penalties, Mr Crisafi relied upon paragraph 18 in the reasons in the matter of the Appeal of *Blake Shinn* (4 May 2018), in which it is said that the Panel has on many occasions referred to the importance of consistency and further that the careless riding template is a most valuable tool to achieve that consistency.
7. Mr Crisafi relies upon that to submit that the careless riding template is a manner of calculating penalty which is generally accepted and provides an objective basis for penalties which are imposed and hence establishes a consistency of approach. He submits that whilst the template does allow for a fine to be given, it does not provide any guidance as to when a fine should be imposed and how it should be calculated, and therefore that the imposition of a fine will necessarily give rise to inconsistencies. He submits that the use of suspensions as a deterrent in "big races" has been very successful and pointed out that there are relatively few careless riding charges in group races and that is because the system is working and the jockeys ride responsibly and with due regard for safety in such races. He quite fairly submits that the template, and the approach contained in it, was the result of considerable work and analysis done by both the stewards and the Jockeys Association and relies upon the judgment of the panel in the matter of *James McDonald* (13 March 2023).
8. Ultimately Mr Crisafi submits that whilst AR283 gives the stewards the power to supplement a suspension with a fine, it lacks the necessary guidelines as to when this should be used: for example whether only in group races or for races worth over 1 million

dollars; whether it is only for jockeys who win the race, whether it can be imposed for Country Cups or a general Saturday race. He says that this uncertainty counts against the imposition of fines both generally and in respect of the present appeal.

9. Mr Crisafi also points to Mr Berry's good record, and we note that he has received four suspensions in the past 12 months despite having ridden in over 350 races. He also submits that by missing the two weeks there is an effect a monetary penalty placed upon Mr Berry because he will have foregone income which he estimates would be worth something in the order of \$25,000.
10. Mr Railton first points to differences in the Shiller penalty which mean that it is not inconsistent by Mr Berry receiving an additional sanction on top of the suspension. He says that Mr Shiller's level of carelessness was only medium whilst Mr Berry's was high, and second that Mr Shiller missed seven meetings including two Saturdays while Mr Berry only missed one Saturday. Mr Shiller's mount in the Golden Eagle in addition finished fourth and his remuneration from the race was \$25,000 which was approximately one-third of what Mr Berry received for his ride in the Big Dance.
11. Mr Rialton also relies upon three cases before the appeals panel. The first is that of *Clipperton* in which the jockey was fined \$2,000 by the stewards in addition to an 8 meeting suspension. The stewards had imposed the fine as further deterrence, especially in circumstances where the careless ride resulted in a win or place. The panel in that case did, for other reasons, reduce the fine to \$1,000 but we note that this was something in the order of 20% of the remuneration that the jockey had received for his ride in that race.
12. Mr Rialton also relies upon the appeal of *Zahra* (18 April 2019) in which the jockey was given a 25 meeting suspension and in addition was fined \$3,800. There was no challenge to the imposition of the fine in that case. We note that a fine was also imposed in the matter of *Shinn* (4 May 2018) although the suspension in that case on appeal was reduced. Finally, and most significantly, Mr Rialton also relies upon the case of *Callow* (3 May 2017). In that case, which involved a very high level of carelessness, the stewards imposed a fine in addition to a suspension of 12 meetings of \$15,000. The Panel reduced the fine to \$7,500 and in support of the reasonableness of that figure relied upon the high degree of carelessness and

*"the need for deterrence, particularly in a group one race with substantial prize money. Not only is it important to deter the appellant from repeating his breach, it is important that the penalty deters other who might be tempted to fall short of the standards expected of jockeys in races where large prize money is involved."*

13. In reply, Mr Crisafi said that the Panel should find that Mr Berry was not riding to win the race at all costs, and that his level of carelessness was less than in the *Zahra* and *Callow* cases. He pointed out that the interference that occurred early in the race which is very different to interference which occurs in the last 50-100 metres of a race which can impact the result. He otherwise pointed to the conduct not being typical of Mr Berry and emphasising that it was a mistake and not consistent with his safe record as a jockey for over 15 years.

### **Determination**

14. First, there is no doubt that the stewards have power under the Rules of Racing to impose a fine in addition to suspending a jockey for careless riding. Whilst the power may have been used sparingly, the authorities sighted by Mr Rialton establish that deterrence is a key objective of the imposition of penalties, and that fines are an appropriate way in some circumstances for jockeys to be deterred from taking unnecessary risks in races and by that failing to properly discharge their duty of care to other jockeys.
15. We accept and endorse the reasoning of the panel in *Callow* where reference is made to a particular need for deterrence in group one races with substantial prize money. The reality is that, in this day and age, there are many races which are worth in excess of \$1 million, including races that are worth many times more than that. The money a jockey can make in these races is very substantial, by any measure.
16. These races are also the showcase of the industry and many eyes are watching, whether live at the track or in the media. Very substantial amounts of money are invested in the horses, and in the betting markets. It is hence very important in such races that jockeys do not exhibit high levels of carelessness with a possibility of injuries or with the result of the race being affected. As a matter of general principle, we don't see why in an appropriate case the stewards should not be able to impose a fine in addition to a suspension if they believe that it is appropriate way of deterring such conduct.
17. In the present case the degree of carelessness was high. There is no contest about that. Whilst Mr Berry has a good record and we accept that the risk of a suspension does deter jockeys from riding carelessly, the risk of being fined and therefore not receiving the whole of the money that might be available if a jockey was to win a race is an additional and, in our view, reasonable deterrent in these very valuable races. This approach would be consistent with the reasoning of the panel in *Callow*.
18. There is no doubt that consistency is an objective of the Panel, and of the approach to sanctions, but all cases need to be considered on their merits. The imposition of a fine

in this case does not set a precedent for all races, it is rather an application of a principle already established in this jurisdiction that fines can be imposed in addition to a suspension in the significant races for very large prizemoney where the level of carelessness is high. We would expect the stewards to exercise the right sparingly, and only in such cases where it is considered necessary.

19. We note that the Careless Riding Template does factor in and apply a premium where the offence has occurred in a *Feature race*. That recognises the concept that the more important races can be dealt with differently and the jockeys can be held to a higher level of responsibility. The fact that this race was a *feature race* has already been taken into account into the setting of Mr Berry's suspension. However, to meet an argument that it might be said Mr Berry is being penalised twice for the same offence, we accept the submission of the Stewards that there are a relatively small number of big races, with very substantial prize money, where an additional responsibility arises. That would not be the case in all "Feature Races". That term is not defined in the Rules of Racing but, as we would read it, would generally include any *Listed* race or certainly any *Group* race.
20. We do not understand the Stewards to be advocating for the use of monetary fines in all of these "*feature*" races in addition to the suspensions which may be imposed, but rather they say that there is a small sub-set of such races where this may be justified, for the reasons identified above principally being the level of prizemoney which is available.
21. Whilst recognising and accepting the right of the Stewards to impose such additional sanctions in races like the Big Dance, or for example the Everest or the Golden Eagle, in Mr Berry's case and particularly having regard to his early guilty plea and his contrition, his courtesy and co-operation with the stewards and his general safe riding record, we consider that a fine of \$7,000 would be sufficient, which would we note also be something in the order of 10% of the fee that he received for riding in the race. That is not intended to provide a tariff going forward because there will be circumstances, whether because of the particularly high level of carelessness, or the time at which the careless riding occurred, or because the careless riding may have impacted the result of the race and or where the jockey was riding to win at the exclusion of all other risks, that a substantially greater fine would be justified. Those matters are not present in Mr Berry's case.
22. We therefore partially allow the appeal and reduce the fine to \$7,000 and, in the circumstances, we release half of the appeal deposit.'

The orders of the Panel are as follows:

- a. Appeal against severity of penalty upheld;
- b. Penalty of a fine in the amount of \$10,000 set aside;
- c. In lieu of that penalty, a fine in the sum of \$7,000 is imposed;
- d. Appeal deposit partially refunded.