5 February 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR DAMIEN THORNTON & DWAYNE DUNN**

**Date of hearing:** 31 January 2020

**Panel:** Judge Graeme Hicks (Deputy Chairperson), Mr Des Gleeson and Mr Robert Abrahams.

**Appearances:** Mr Robert Cram instructed by Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Matthew Hyland appeared on behalf of Mr Thornton and Mr Dunn.

**Charge:** Australian Rule (AR)131(a) states a rider must not, in the opinion of the Stewards: (a) engage in careless, reckless, improper, incompetent or foul riding;

**Particulars of charges:** Dwayne Dunn (Holster) pleaded guilty to a charge of careless riding under the provision of AR131(a). The careless riding being that near the 200 metres he failed to make sufficient effort to straighten his mount when shifting out and not clear of ‘Prosecutor’ resulting in that colt being steadied to avoid the heels of Holster. Dwayne Dunn had his licence to ride in races suspended for a total of eight meetings.

 Damien Thornton (Confusion) pleaded guilty to a charge of careless riding under the provision of AR131(a). The careless riding being that near the 100 metres he permitted his mount to shift in when insufficiently clear of Our Crown Jewels (NZ), which had to be steadied when tightened for room by Confusion and Brunot. Damien Thornton had his licence to ride in races suspended for a total of eight meetings.

**Plea:** Guilty

**DECISION**

The parties have agreed to have both Mr Dwayne Dunn’s appeal and Mr Damien Thornton’s appeal heard together.

The issue before this Tribunal is what is the effect of the stewards determination made on 27 January 2020 with respect to each jockey?

The circumstances before this Tribunal are unique in the experience of this Tribunal, which includes Mr Des Gleeson, retired chief stipendiary steward.

The circumstances before us can be briefly stated as follows.

On 27 January 2020 at Sandown, jockey Dwayne Dunn was suspended for eight meetings for careless riding on his mount Holster in Race 2. At the same meeting, jockey Damien Thornton was suspended for eight meetings for careless driving on his mount Confusion in Race 5.

In arriving at an appropriate penalty in respect of each jockey, the stewards stated that they had taken into account that the careless riding was in the lower range, that both jockeys had good records and that both jockeys had pleaded guilty.

The determination of the stewards on 27 January 2020 with respect to each jockey was that they be suspended for eight meetings. There was no mention in the determination that their licences would be suspended for six provincial meetings and two metropolitan meetings.

As a matter of practice, a jockey has nine days grace from the date of the decision to determine on what date the suspension starts.

After the determination of the stewards, both Mr Thornton and Mr Dunn independently chose to start their suspension from midnight on 1 February 2020.

An issue has arisen with respect to the stewards determination due to the fact that, after the determination, the Werribee meeting which was to be held on 31 January 2020 was cancelled and transferred to 3 February 2020, this being after the date when jockeys elected to start their suspension.

The jockeys argue that the words of the determination are clear in that each jockey’s licence to ride is suspended for eight meetings. After the determination, each jockey elected to start their eight meetings suspension from midnight on 1 February 2020 and that the Werribee meeting transferred to 3 February 2020 must be taken into account in calculating the eight meetings suspension. To do otherwise would mean that there would be an increase from the eight meetings suspension to nine meetings.

The stewards argue that, in making an appropriate determination as to how the suspension in respect of each jockey should be, the stewards took into account the fact that, as at 27 January 2020, both jockeys would miss two metropolitan meetings and six provincial meetings. However, if the Werribee meeting transferred to 3 February 2020 is taken into account, both jockeys would now be able to ride at the Caulfield metropolitan meeting to be held on 7 February 2020.

In our opinion, the determination of the stewards on 27 January 2020 is clear that each jockey was suspended for eight meetings. After the stewards determination was made, each jockey elected to start their eight meeting suspension from midnight on 1 February 2020. The Werribee meeting now to be held on 3 February 2020 must be taken into account in determining the period of suspension. To do otherwise would increase the period of suspension from 8 to 9 meetings.

The decision of the Tribunal is that both Mr Dwayne Dunn and Mr Damien Thornton are able to ride after midnight on 7 February 2020 and accordingly are able to ride in the Caulfield metropolitan meeting to be held on 8 February 2020.

The Tribunal recommended to the parties that they jointly come up with a rule which clarifies the issue that occurred before us. Both parties indicated they would endeavour to do so.

Mark Howard
Registrar, Victorian Racing Tribunal