8 February 2021

**DECISION**

**RACING VICTORIA**

**and**

**ZAC SPAIN**

**Date of hearing:** 27 January 2021

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

**Appearances:** Mr Brent Scarlett appeared on behalf of the Stewards.

Mr Matthew Hyland represented Mr Zac Spain.

Mr Zac Spain appeared.

**Charge:** Australian Rule of Racing (“AR”) 129(2) states:

A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.

**Particulars of charge:** 1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.

2. On Thursday 19 November 2020, you rode Island Empress in race 3, the Butchers on George Fillies and Mares Maiden Plate, at Moe (the race).

3. From approximately the 500 metres, you failed to maintain a position trailing the eventual winner To The Barricades when it was reasonable and permissible to do so, and instead shifted Island Empress back to the inside fence near the 400 metres where there was not clear running.

4. From approximately the 250 metres, you failed to shift Island Empress out in an attempt to obtain clear running when it was reasonable and permissible to do so, and as such Island Empress was held up for the entirety of the home straight.

5. As a result of your conduct in the race, as outlined in particulars 3 and/or 4, you did not ensure that you gave Island Empress full opportunity to win or to obtain the best possible place in the field.

**Plea:** Not guilty

**DECISION**

Mr Zac Spain, you have pleaded “not guilty” to a breach of Australian Rule of Racing (“AR”) 129(2). The charge involves Race 3 at Moe on 19 November 2020. The race was over 1214 metres. You were riding “Island Empress”. Other horses directly involved in what occurred were “To The Barricades”, ridden by Mr Michael Dee and “Yesmeena”, ridden by Mr Teodore Nugent. The part of the race of particular interest is from approximately the 500 metre mark to the 250 metre mark or a little closer to the finishing post. The straight at Moe is comparatively short, being approximately 250 metres long.

The essence of AR 129(2), which involves a serious offence that comes directly to this Tribunal, is that a jockey must take all reasonable and permissible measures to ensure that the horse is given full opportunity to win or obtain the best possible place in the field.

Other matters that should be stated at the outset are that there is no assertion by the Stewards that matters of integrity are involved. Further, the instructions given to you by the trainer of Island Empress, Mr Mitch Freedman, included that he had walked the track. He thought that the going was better close to the inside rail. If the horse did not begin well, essentially, he wanted you to ride for luck close to the rail and hope to get a run.

We have viewed the video material many, many times. Your horse, which drew the second outside gate, was not the best to begin. It certainly did not “fly the gates”, which was Mr Freedman’s plan B. You were at the rear of the field, last. Mr Nugent was directly ahead of you and Mr Dee was to your outside. Mr Dee commenced a forward move at about the 500 metre mark. You moved to the outside of Mr Nugent. His horse had hit the inside running rail shortly before this. As you moved to his outside, Mr Nugent’s horse moved quite sharply off the rails and almost bumped your horse, coming approximately under its neck.

We accept that your horse came off the bit. Mr Nugent moved behind Mr Dee. You were left approximately two lengths behind Mr Nugent and a horse or two off the rails. The field swung for home. You were mindful of your instructions. Rather than pulling out further to the outside, you rode for luck close to the rails. A run opened briefly between two horses immediately ahead of you and closed again before you could take it. Even if it had remained open, it is very doubtful it could have taken you very far, as there was a group of horses nearer to the rails.

Mr Dee’s horse went on to win. Mr Nugent’s horse ultimately went very wide and ran third. You said to the Stewards that you could have pulled out from last and followed Mr Dee and Mr Nugent from your position of a couple of lengths last and with a short straight. You were mindful of your instructions and opted to go on for a run closer to the rails. The run did not eventuate, and you were held up in the straight and finished last.

We accept that you had a choice to make. We have heard expert evidence from a retired jockey, Mr Stephen Baster. He had viewed the video material. He was of the opinion that, after the interference and the horse coming off the bit, and keeping in mind the short straight, he would have done exactly what you did, namely, try to get a run close to the rails. This would have coincided with your instructions. Of course, you are a senior jockey and the ultimate decisions in the running of the race is yours.

It should be said that both the Stewards and Mr Matthew Hyland, on your behalf, have made detailed and helpful submissions. We take into account the totality of the evidence put before us, including your evidence, and, as stated, we have viewed the video material many times.

Our conclusion is that we cannot be comfortably satisfied that the charge has been made out. Your horse received very noticeable interference at a crucial stage of the race. You then made a decision and opted to comply with your instructions and ride for luck nearer the rails. Unfortunately, it did not work out. However, we cannot be satisfied that what occurred constituted the serious offence which is a breach of AR 129(2). The charge is dismissed.

Kathleen Scully  
Assistant Registrar, Victorian Racing Tribunal