

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-120	
Name	Darren Evans	
Panel	Mr K J O'Brien AM (Chairperson) Mr E Wilkinson (Panel Member) Mr K Waller (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rules of Racing 131(a) <i>A rider must not, in the opinion of the Stewards engage in careless, reckless, improper, incompetent or foul riding</i>	
Penalty Notice number	PN-010782	
Appearances & Representation	Applicant	Mr G Hutchinson Solicitor (Clutch Legal)
	Respondent	Queensland Racing Integrity Commission Mr W Kelly
Hearing Date	13 November 2024	
Decision Date	13 November 2024	
Decision <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(c) of the Racing Integrity Act 2016 the Racing decision is set aside and a decision of not guilty is substituted	
Case References	<i>Briginshaw v Briginshaw & Anor</i> 1938 60 CLR 336	

Reasons for Decision

- [1] The Applicant in this matter is licensed jockey Darren Evans.
- [2] On 24 August 2024, the Applicant rode the horse Terrona in race one at a meeting conducted by the Aramac Racing Club in the Western Queensland Township of Aramac.
- [3] Approaching the 500-meter mark of that race, another runner, Home Creek, ridden by jockey Tim Brummell, fell, dislodging Jockey Brummell in the process.
- [4] Two other riders, jockeys Robert Faehr and Anna Bakos-Schrapel, were also dislodged from their mounts following the incident. Stewards announced an intention to inquire into the circumstances which resulted in the fall of Home Creek “at a time and place yet to be fixed to allow evidence to be taken from all runners involved”¹
- [5] At that time, Stewards also announced their intention to investigate the circumstances in which Home Creek had suffered a bleeding attack from both nostrils during the running of the race and subsequently found to be deceased in a yard in close proximity to the racecourse sometime later.
- [6] The inquiry into the fall was conducted on 1 November 2024 and the only witnesses called were the Applicant and Jockey Brummell. At the conclusion of the evidence, which included viewing of the available race footage, the Applicant was charged with, and found guilty of, an offence of careless riding contrary to Australian Rule of Racing 131(a).
- [7] The particulars of the charge against him were as follows:
- (That) Approaching the 500m jockey D Evans permitted his mount to shift in when insufficiently clear of HOME CREEK resulting in that runner being tightened onto the rail, becoming unbalanced, blundering and falling. Trailing runners, IMPENDING RAIN, MISHANI OUTLAW, WAN D'AMOUR, COOL MAN SHOW and KIPSAMO were checked noticeably and R Fraehr and A Bakos-Schrapel were dislodged from their respective mounts*
- [8] Although the Applicant had pleaded not guilty to the charge, he was found guilty and by way of penalty, received a license suspension of the 34 days, operative from 10 November 2024 until 13 December 2024.
- [9] Pursuant to 252AB of the *Racing Integrity Act 2016*, the Applicant now seeks a review of that determination of guilt and, in the alternative, seeks a review of the severity of the suspension imposed on him.
- [10] In relation to the finding of guilt, the Applicant contends that he did not breach the Rule of Racing, and his grounds for Review can be summarised as follows²:
- [11] It is submitted on behalf of the Applicant that he did not breach the Rule because:
- He did not permit his mount to shift in, as alleged by Stewards', or at all;
 - His mount did not make contact with jockey Brummell's mount;
 - The Applicant was not the cause of the fall suffered by jockey Brummell's mount.

¹ Index of documents – Document #2 Stewards' Race Day Report

² Appendix A to the Applicant's review application lodged 5 November 2024

Stewards' Inquiry

- [12] At the Stewards' Hearing evidence was taken from only two witnesses, the Applicant and Jockey Brummell. Jockey Brummell gave the following account³:

Just in regards to approaching that 500-metre mark, I was travelling slightly back from inside Jockey Evans. My mount was relatively level with the heel of his boot, the nose of my mount. Up until that point, we travelled quite comfortably to that point and as we reached that area, Jockey Evans' horse has moved in on me, which in turn forced my little mare to check and go up the fence and she's come down and that was the end of it for me, sort of thing...

We were travelling nicely and as I said, I was about level with the boot. My mare was travelling quite comfortably there and so was Jockey Evans. We came from a wide alley prior to that, and we tracked across together in a nice gentle manner. It was quite free flowing and - yeah, just the sudden movement across just put me into the rail and I could actually see the inside of the fence at one point and that's when my little mares come down.

- [13] The Applicant disputed any claim by Jockey Brummell that he had shifted in. He said⁴:

We've jumped as one and I've gone forward on my mare, and I was probably about - by the time I got to Timmy, I was about one and a half horses off the fence. Then next minute I heard this bang which was her hitting - the inside horse hitting the rail. After that, I didn't know what was happening. Prior to that, Robbie Faehr was telling us that Timmy's horse was a bit wobbly short time after the jump...

Yeah, so after I heard the rail, I glanced back and thought, where's Timmy? That's all I knew until we pulled up and until someone said he fell.

- [14] Subsequently, after considering the race footage, the Applicant said⁵:

By the time he was falling - she started to fall about my rump. If I was that close, I would have - my horse would have moved a little bit from getting hit from another horse. She never missed a stride. As you can see in that slow motion replay, there was no movement from my horse at all. She was running straight. So, if he's come down because of me, it would have been because we touched. I can't see my horse ever touching it.

- [15] The only available race footage was a lateral view which gave no indication of what transpired at the critical time. Notwithstanding that, the Stewards accepted the account given by Jockey Brummell.

- [16] The Stewards finding of guilt was based entirely on two findings: firstly, that Jockey Brummell had called prior to him contacting the inside rail, and secondly because in their view, the replay "depicts an incident that is entirely consistent with Mr. Brummell's version of events"⁶.

³ Transcript of Stewards' Hearing lines 33-47

⁴ Transcript lines 51-61

⁵ Transcript lines 135-141

⁶ Transcript lines 372-374

Discussion

[17] Before this Panel, the Applicant has produced evidence from two other riders in the race, Jockey Kelsey Lenton and Jockey Robert Faehr. The Respondent has filed an affidavit under the hand of Jockey Brummell and also an affidavit by Jockey Matthew Gray, the rider of Cool Man Show. Jockey Brummell in his affidavit essentially confirms the evidence which he had given at the Stewards hearing. He deposes⁷:

Approaching the 500-meter mark of the race, my horse was on the inside rail and Mr. Evans was two off the rail. We were both the leading horses in the race at that point in time. Mr. Evans' mount shifted in abruptly, which put my mount onto the running rail, which turned the mare onto an angle and when trying to come back off the fence, she was left with no running room. My horse then fell.

As my horse hit the rail, she threw her head up trying to get out of the gap and her head was over the fence. I could see the inside of the running rail at one point. I relaxed my grip on the reins and as I did that, Home Creek fell heavily to the ground.

[18] Jockey Robert Faehr's evidence includes the following⁸:

I recall that I was first out the gates, and my horse drifted back.

There were a few horses going forward and Darren (Evans) was caught a bit deep going forward. Darren never dropped within three off the fence but still drove forward as did Timmy (Brummell) who was on the fence.

I would have been a few lengths behind Darren and Timmy, but I could see what was ahead of me.

I remember clearly Timmy's horse put in a funny stride, what I would call a "knuckle stride". I didn't think much of it but recall right after seeing that, Timmy's horse hit the rail and went down.

I recall at this point; Darren was a horse and a half to two horses width off Timmy.

I did not see any contact between Darren and Timmy's horses, and I didn't see Darren shift in at all. From what I observed, Darren never got close enough to Timmy.

When Timmy's horse went down, as I was behind him, I ended up going over the top and my horse knuckled, my saddle went under its stomach, and I fell off after the line.

Darren kept on wide throughout. Before the incident I never saw him closer than one and a half horses to two horses width of Timmy.

[19] Jockey Kelsey Lenton who was the rider of the horse Kipsamo in the race described events as follows⁹:

I drew barrier 1 and Timmy (Brummell) crossed me and as he did so, I observed that the horse wobbled. It appeared to do this the whole way until it fell.

My horse was in the box seat, meaning that it was on the rail behind the leader. From that position, I could see that Timmy was on the rail, what I would describe as rail surfing.

⁷ Affidavit of Timothy Sydney Brummell affirmed 1 November 2024.

⁸ Statement of Robert Faehr 12 November 2024

⁹ Statement of Kelsey Lenton 11 November 2024

From directly behind Timmy's horse, I observed the way that it fell. Saw that he has hit the rail and that's the way it fell. Its bum seemed to flip out from underneath it. The horse wobbled pretty much the whole run; from the moment it crossed me until it fell.

I was at the meeting when Home Creek raced at Muttaborra and it was 20 lengths last. It wouldn't go at all.

After what I saw at Muttaborra, I was surprised to see it leading at Aramac a couple of weeks later and I was a bit shocked. That is why it was not a surprise to see the horse go down.

I did not see any contact between Darren and Timmy's horses. Darren stayed probably two wide the whole trip. I don't think he ever crossed to the fence at all. From where I was, obviously I had to ease when the horse fell because I was right behind it, but yeah, I don't think Darren ever crossed to the fence, even after the fall.

I did not see Darren shift in at all. He obviously crossed to get into the position that he did, but he never once crossed Timmy, nor would he have gone into Timmy's line.

[20] Finally, there was the account given by Jockey Matthew Gray, who was the rider of the horse Cool Man Show in race one at Aramac on that day. His account, relevantly, is as follows¹⁰:

Approaching the 500-meter mark of that race, Darren Evans was in the lead and two off the rail. Tim was on the fence and his mount was close inside Darren Evan's mount. I would say from memory Tim's horse head was near the leg of Darren Evans. Tim's mouth was entitled to be in the position it was in.

I was approximately two lengths behind the leading horses and ahead of me, it appeared that Tim's horse was very tight between Darren's horse and the fence. I then saw Tim's mount hit the fence and appeared to bounce back out to the left front of me. The manner of Tim's horse's fall appeared unusual to me, almost as though he tried to save himself and tripped. There were no other horses between my mount and the two horses in front of me.

[21] We have set this material out in a little detail. What is apparent is that the accounts given by Jockeys Lenton and Faehr appear to be supportive of the account given by the Applicant. The account given by Jockey Gray does not advance the case for the respondent in any real manner although it does comment upon the mannerisms of the horse Home Creek.

[22] As indicated earlier, the horse Home Creek unfortunately was found dead shortly after the race. At the Stewards' Hearing, the Stewards advised that an autopsy of the horse indicated that it had suffered a bleeding attack, although it could not be said whether the bleeding attack occurred before the fall or whether it occurred because of some injuries suffered in the fall¹¹.

[23] There is also evidence, referred to above by Jockey Lenton of the performance of the horse Home Creek in a race at Muttaborra two weeks prior to the subject incident. The Panel has had the opportunity of reviewing that footage and although there is no evidence beyond the footage and the account of jockey Lenton to which we have referred, it clearly indicates to this Panel's satisfaction that there were likely some serious issues with that Home Creek. At Muttaborra, the mare had finished 116

¹⁰ Affidavit of Matthew Gray affirmed on 12 November 2024

¹¹ Transcript of Hearing Lines 215-220

lengths last and had stopped competing at the 500-meter mark. For reasons which are not clear, the performance did not result in a Steward's embargo.

- [24] The Panel has had the opportunity to review the available race footage and to do so on many occasions. On viewing of that race footage, it is not possible to clarify if the Applicant shifts in causing Jockey Brummell to fall. As the footage rolls on the Applicant doesn't appear to look back to his inside which suggests he may be unaware of the fall. When entering the straight the Applicant has his mount a good one to one and a half horses off the fence. If that was the case throughout the race, there would have been sufficient racing broom for Jockey Brunnell.
- [25] From our viewing of the race footage, we are unable to conclude that the incident was caused by any inward shift from the Applicant.
- [26] The footage is not of the highest order, but there is for example, no sign of the rail buckling or moving, consistent with the account given by Jockey Brummell of being pushed up onto the rail to where he was looking at the inside of the fence. His mount was being urged along, appears to raise its head slightly, then to collapse. The Applicant's seat on his mount does alter very slightly when jockey Brummell falls, though that would be consistent with Home Creek falling outward brushing of Tennora's hind quarter.
- [27] In the Panel's view, that the lack of video footage showing any inward shift from the Applicant and the findings in relation to Home Creek having suffered a significant bleed when examined directly after the race, together with Home Creek's previous racing incident at Muttaborra, does not make the possibility of the horse haven fallen due to a bleeding attack an unreasonable one.
- [28] On the evidence, that it is an hypothesis that is not excluded. Responsibility for proof in matters such as this lies with the Respondent. The standard of proof is in accordance with the balance of probabilities as that phrase was considered by the High Court in *Briginshaw and Briginshaw*¹².
- [29] A determination of guilt can only be arrived at on evidence that is at once clear and cogent. Mr Hutchison who appears for the Applicant has referred the Panel to the following passage from the decision of the NSW Racing Appeals Panel in the matter of licence, jockey Ben Mellum¹³

There are some further matters we feel we should briefly mention. Two reasonable people viewing the film could draw different conclusions as to the reason Giga Kick shifted in, and hence reach a different view as to the cause of the ultimate interference to Private Eye. Further, the Panel is very conscious that AR131(a) is a rule of safety, which is of paramount concern. Falls (such as recent falls on feature race days) are damaging to the image of the sport. However, we still must be comfortably satisfied that breach of the rule has occurred. As much as anything else, the burden of proof on the Stewards (the standard being balance of probabilities) explains the outcome of the appeal. We were left uncertain that the actions of the Appellant were what caused Giga Kick to shift in, and for that reason the appeal must be allowed.

- [30] This Panel finds itself in much the same position as did the NSW Racing Panel in that case. The evidence given by the other riders, particularly Jockeys Faehr and Lenton, is corroborative of the Applicants account. There remains conflict between that body of evidence and Jockey Brummell's account. It is however the Respondent who carries the responsibility of proof and there is no objective

¹² *Briginshaw v Briginshaw* 1938 60 CLR 336 at 361-362

¹³ Paragraph 9 - Racing Appeals Panel NSW 5 April 2023 Beasley SC presiding member, Murphy and Lash members

evidence to dispel the doubt raised by the Applicant and the other witnesses. The video footage is of no assistance to the Respondent. Moreover, there is no doubt that this horse, unfortunately, suffered a fatal bleeding attack. The possibility that the horse suffered an attack and then fell cannot be excluded on the evidence.

[31] For the accumulation of these reasons, this Panel is not satisfied that the Applicant's guilt has been established to the requisite standard.

Accordingly, pursuant to section 252AH (1) (c) of the Act the decision of the Stewards is set aside and a determination of not guilty is substituted.

[32] Finally, this Panel feels constrained to add some further comments. It is unfortunate that no adequate video footage of the race existed in this case. It is unfortunate also that there is no evidence of any official viewing of the race from any head-on or any rear-on vantage point. It may be that consideration needs to be given to ensuring that adequate video coverage and adequate stewards supervision is provided at all centres where racing occurs. The integrity of the racing industry deserves such attention.

racingappealspanel.qld.gov.au