

## DECISION

*Racing Integrity Act 2016, sections 252AH, 252BM*

<b>Review application number</b>	RAP-73	
<b>Name</b>	Leslie Tilley	
<b>Panel</b>	Mr Kerry O'Brien AM (Chairperson) Mr Ken Waller (Panel Member) Ms Skye Bogenhuber (Panel Member)	
<b>Code</b>	Thoroughbreds	
<b>Rule</b>	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>	
<b>Penalty Notice number</b>	PN-009385	
<b>Appearances &amp; Representation</b>	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission Deborah Silvester
<b>Hearing Date</b>	10 January 2023	
<b>Decision Date</b>	10 January 2023	
<b>Decision</b> <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(b) the Racing decision is varied in relation to Penalty Notice PN-009385 by ordering that the 13 day suspension in relation to that offence is to commence on 14 January 2024 and end on 26 January 2024, both days inclusive. The Racing decision in relation to Penalty Notice PN-009384 is unaffected.	
<b>Case References</b>	<i>Australia Building and Construction Commission v Patterson</i> 2022 96 ALJR 426 <i>R v Mill</i> 1988 166 CLR 59 <i>R v Matauaina</i> 2020 QCA 274 <i>Queensland All Codes Racing Industry Board v Vernon</i> 2017 QCATA 47	

## Reasons for Decision

- [1] The Applicant in this matter is licensed jockey Leslie Tilley.
- [2] At the Toowoomba race meeting on the 1 of January 2024, following enquiries conducted by Stewards, Mr Tilley pleaded guilty to two offences of careless riding contrary to Australian Rule of Racing 131(a). The charges arose from incidents which occurred in races one and two on the Toowoomba race program for that day.
- [3] In respect of each charge, the Applicant received a license suspension of 13 days. The first period of suspension was ordered to commence on 10 January 2024 and to end on the 22 January 2024, both dates inclusive. The second suspension was ordered to be served immediately following the conclusion of the first. In other words, it was ordered to be served cumulatively upon the completion of first suspension. The Applicant, in effect, therefore received a licence suspension 26 days.
- [4] Pursuant to Section 252AB (1) of the *Racing Integrity Act 2016*, the Applicant now makes application to this Panel for a review of that decision on the ground that the penalties imposed were excessive. He argues that as the offences occurred on the same day, the penalties should be served concurrently, rather than cumulatively.
- [5] The particulars of the charges against the Applicant were as follows:
- Charge one
- Approaching the 800-metre mark, (he) did allow his mount to shift in when insufficiently clear of Exclusive Drop, which was obliged to restrain and shift in to avoid heels, in turn severely tightening the running of Belegato (NZ) which was taken inwards onto Ten Trinity Square, which was obliged to check and lost its rightful running.*
- Charge two
- Leaving the 1000 metre, (he) allowed his mount to shift in when insufficiently clear of Red Hot Love, which was taken in onto Unleash, which was severely tightened and buffeted between runners as well as then being tightened onto Ashmolean, which was restrained and made heavy contact with the running rail and lost ground.*
- [6] These particulars accurately set out these circumstances of the offences as revealed by the race footage and by a consideration of the evidence taken by the Stewards. By his pleas of guilty, the Applicant must be taken to have accepted the facts as they are disclosed in those particulars.
- [7] The Panel observes at this stage that it considers the incident in race two to be the more serious of the two. It involved placing a greater number of horses and jockeys at risk, and clearly involved far greater tightening than did the incident in race one.
- [8] The starting point for consideration of this Application involves reference to Australian Rule of Racing 283(4), which provides:
- “Unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension imposed under subrules (1) to (3) is to be served cumulatively to any other suspension or disqualification.”*
- [9] This provision clearly recognises that a cumulative penalty, though it may represent the starting point, does not follow as a matter of course in a case where multiple suspensions or disqualifications are involved. The Rule envisages that it is open to the person or body imposing a subsequent

disqualification or suspension to do so such that it will operate other than cumulatively upon the earlier suspension or disqualification.

- [10] As the High Court recognised in *Australia Building and Construction Commission v Pattinson*<sup>1</sup>, civil penalties such as are imposed in cases of this nature are imposed primarily, if not solely, for the purpose of deterrence. They differ from criminal penalties which import notions of retribution and rehabilitation as well as deterrence.
- [11] Notwithstanding this difference, the authorities recognise that certain principles applicable in criminal sentencing can have application in civil penalty regimes. In *Pattinson* the following passage occurs in the judgment of the majority:
- [45] it may be recognized that some concepts familiar from criminal sentencing may usefully be deployed in the enforcement of the civil penalty regime. In this regard, concepts such as totality, parity and course of conduct may assist in the assessment of what may be considered reasonably necessary to deter further contraventions of the Act.*<sup>2</sup>
- [12] The principle of totality to which the Court referred requires a sentencing Judge or Tribunal to sentence the offender in a way that it's not disproportionate to the offender's actual overall culpability<sup>3</sup>. What matters is the effective total of the penalties imposed and whether their ultimate practical effect adequately represents the totality of the culpability involved in the offending<sup>4</sup>.
- [13] As provided in the Queensland Racing Integrity Commission Thoroughbred Racing Penalty Guidelines 2023, the purpose of a penalty under the rules is to maintain standards of integrity and animal care in the thoroughbred code, to provide general deterrence to the industry by ensuring that the penalty imposed on an individual is sufficiently serious to discourage other participants from breaching the rule, and to provide specific deterrence by being sufficiently serious to discourage the participant individual from engaging in similar conduct.
- [14] Imposing a penalty involves a balance between the severity of the offence and the need for deterrence, both general and specific and any mitigating factors.
- [15] The question here becomes whether the total penalty imposed on the Applicant, one of 26 days suspension, represents fairly the overall seriousness of his conduct and whether the purposes of penalty would be adequately achieved by serving the suspensions imposed other than in a cumulative manner.
- [16] The Applicant has argued that because these two suspensions were incurred on the one day, they should for that reason alone be served concurrently.
- [17] He refers, in his Application to two prior decisions of Stewards which, he maintains, support his argument. The first is a matter of Evans of the 16 November 2023, which involved two offences from the one race. The first charge, under Australian Rule of Racing 132(7)(a)(ii) related to excessive use of the whip in the first 100 metres of a race. The second charge, under Australian Rule of Racing 132(5), involved excessive use of the whip overall in that same race.
- [18] Clearly, there was a degree of factual overlapping in that matter and the charges could fairly be described as involving a single course of conduct.

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<sup>1</sup> *Australia Building and Construction Commission v Patterson* 2022 96 ALJR 426

<sup>2</sup> *Pattinson* supra at 458

<sup>3</sup> *R v Mill* 1988 166 CLR 59

<sup>4</sup> *R v Matauaina* 2020 QCAT 274

- [19] The second matter relied upon by the Applicant in his Application is a matter of J Stephens at Rockhampton on 30 June 2022, which involved an incident in the tie up stalls at Callaghan Park Racecourse. Stephens was charged with improper conduct under Australian Rule of Racing 228(b) by striking out at a trainer with a bridle. A second charge, clearly related to the first, was also one of improper conduct by reason of having swung the bridle in the vicinity of horses, causing them to become fractious. The charges are clearly related to the one incident and as with the matter of Evans, concurrent penalties were clearly appropriate.
- [20] In the course of submissions before this Panel, the Applicant has also made reference to a matter of Wiggins, heard in Rockhampton by Stewards on 4 November 2022 which involved two offences, we are told, of careless riding in the one case. Concurrent suspensions of eight days and twelve days were imposed on that occasion.
- [21] He referred also to a matter from Ipswich on 6 January 2015 involving Jockey El Issa, which involved two offences of careless riding at the one meeting, with concurrent penalties of seven days and ten days being imposed.
- [22] On the other hand, Ms Silvester who appears for the Respondent has brought to the Panel's attention several decisions where cumulative penalties have been imposed for offences against the rules committed, whether in the one race or on the one race day.
- [23] These matters include;
- Jockey L Magorrian at Gosford Race Club on 18 February 2023,
  - Jockey J Parr at the Hawkesbury Race Club on 30 April 2022,
  - Jockey B Avdulla at the Gosford Racecourse on 25 July 2022,
  - Jockey N Rawiller at Rosehill Gardens Racecourse on 27 March 2021,
  - Jockey J Collett at the Royal Randwick Racecourse on 5 October 2019,
  - Jockey R Ride at the Kilcoy Racecourse on 2 July 2019, and
  - Jockey B Appo at the Gold Coast Turf club on 21 December 2013.
- [24] Those cases all involved outcomes of cumulative penalties being imposed. It is to be noted however that none of them involved a cumulative sentence of the magnitude of that imposed on the present Applicant. The most severe of those appears to be that imposed on Jockey Rawiller whose penalty occurred in a group one race, which of itself attracted a loading, and total penalty was one of 22 days.
- [25] What these several authorities made clear is that although Australian Rules of Racing 283(4) provides the relevant starting point, the discretion as to whether penalties of disqualification or suspension for multiple offences should be imposed cumulatively or concurrently remains to be exercised according to the circumstances of the particular case.
- [26] What matters is that the totality of the penalty imposed should reflect the overall seriousness of the conduct involved and that it should be no more than that which is appropriate to achieving the purposes of imposing penalties under the rules.
- [27] It was argued by the Respondent that unless a penalty calculated according to the Careless Riding Template for each race is imposed cumulatively for offences occurring on the one day, then there is no deterrent or disincentive for a jockey to refrain from careless riding during any remaining races they participate in on that day.

- [28] The Panel considers this argument to be misconceived. That may be the outcome if the rule mandated concurrent penalties in such situations. However, the starting point under the rule is a cumulative outcome. Contrary to the Respondent's argument, the prospect of such an outcome should of itself provide a positive disincentive to further offending. Secondly, if the argument is taken to its logical conclusion, then a cumulative sentence must always be imposed in such situations.
- [29] Such an outcome is not only contrary to the express provisions of the rule, but it is contrary to the principle of totality which has application to the imposition of penalty under the Rules of Racing.
- [30] The relevance of the issue of totality was recognized in *Queensland All Codes Racing Industry Board v Vernon*<sup>5</sup>. In that case the Respondent was a licensed harness racing driver trainer. Over a period of about two months, he had placed twelve bets on horses to win in races in which he himself participated. Five of those bets were on rival horses to win. He pleaded guilty to the twelve charges and for the bets involving rival horses he received cumulative penalties of six months disqualification. a total of 30 months.
- [31] On appeal, the Racing Disciplinary Board decided that the penalties should be served concurrently rather than cumulatively. On further appeal to the Queensland Civil and Administrative Tribunal it was argued that the board had failed to properly consider Australian Harness Rule AHR257, the harness racing equivalent of Australian Rule of Racing 283(4). Justice DG Thomas sitting as QCAT President, determined that the Board had considered the totality principle and that in the circumstances sentences concurrently imposed were appropriate.
- [32] There are, of course differences between that case and the present, but the importance lies in the fact that, even though they were separate offences committed over separate days that were identical in nature, the totality principle was a relevant consideration in determining that a non-cumulative outcome was appropriate.
- [33] The Stewards in this matter seem to have been of the erroneous view that they had no choice under the rule but to impose a cumulative sentence. Reference was made to the fact that these were two incidents in two separate races, and further, that if a cumulative penalty was not imposed, then that would provide an incentive for further offending with impunity in subsequent races.
- [34] This Panel must form its own view of the events and the appropriate penalty.
- [35] There are several factors of relevance. The Panel accepts as the starting point that, in accordance with the Careless Riding Template that has been developed to determine penalty calculations for careless riding, the grading of the charges as being in the mid-range is appropriate. We take the view that as far as race one is concerned, the grading properly falls towards the lower end of the mid-range.
- [36] As indicated earlier we accept that the more serious incident is the degree of careless involved in race two.
- [37] It is to be observed that the two incidents occurred within a relatively short time of each other, being races one and two on the program. They were separate races, and we accept also that the Applicant was effectively put on notice before the commencement of race two that his riding in race one was the subject of scrutiny.
- [38] The observations of Steward Childs from the 800-meter mark in race one already been presented at the Inquiry into the running of that race and the Applicant was aware of that prior to race two.

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<sup>5</sup> *Queensland All Codes Racing Industry Board v Vernon* 2017 QCATA 47

- [39] We accept that in accordance with the template, the calculation of 13 days as an appropriate penalty for each case considered individually, is consistent with the application of the template. The question, then, is whether the totality of the penalty, 26 days was appropriate here having regard to the principles to which I have already referred.
- [40] Rule Australian Rule of Racing 283(4) clearly provides a wide discretion as to how the penalties may be imposed and how the purposes of imposing penalties in accordance with the guidelines are to be achieved.
- [41] It is the Panels view that the total penalty of 26 days is disproportionate to the totality of the conduct involved and greater than that necessary to achieve the purposes of penalty as set out in the guidelines.
- [42] In the Panels view when considering the two incidents, it is appropriate that there should be some cumulative element involved, we consider that a total penalty of 17 days suspension would be appropriate in all the circumstances. That involves clearly some additional suspension being imposed on that which had been imposed for race one.
- [43] The result is then that pursuant to section 252AH1(b) of the *Racing Integrity Act 2016*, the decision of this Panel is to vary the racing decision in relation to Penalty Notice PN 009385 by ordering that the 13 days suspension in relation to that offence should start on the 14 January 2024 and end on 26 January 2024 inclusive, with a resume date of 27 January 2024. The orders of the Stewards are otherwise unaffected.