

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

<b>Review application number</b>	RAP-110	
<b>Name</b>	Robert Thorburn	
<b>Panel</b>	Mr K J O'Brien AM (Chairperson) Ms J Overell (Panel Member) Mr E Wilkinson (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-010482	
<b>Appearances &amp; Representation</b>	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission B Wright
<b>Hearing Date</b>	10 September 2024	
<b>Decision Date</b>	10 September 2024	
<b>Decision</b>	Pursuant to 252AH(1)(a) the Racing decision is Confirmed <i>(delivered ex tempore)</i>	
<b>Case References</b>		

## Reasons for Decision

[1] The Applicant in this matter is licensed Apprentice Jockey Robert Thorburn. On 3 September 2024, Mr Thorburn was the rider of Beitsoo in Race four on the Lockyer Valley Turf Club (Gatton) thoroughbred racing program. After the completion of the race, a Steward's Inquiry found Mr Thorburn guilty of an offence of careless riding contrary to Australian Rule of Racing 131(a).

[2] Mr. Thorburn now makes Application to this Panel pursuant to Section 252AB of the *Racing Integrity Act 2016* for a review of that decision as it relates to both the determination of guilt and the penalty imposed.

[3] The particulars of the charge against the Applicant were in these terms:

*Apprentice R. Thorburn was found guilty to a charge of careless riding under AR131(a) in that he permitted his mount to shift in near the 700m when insufficiently clear of JAIN, which was tightened and taken in onto UNO MOON, which was tightened for room, obliging App J. Busuttin to take hold of her mount.*

[4] In his Application for Review the Applicant provides the following details:

*I believe that I am not guilty in regards (sic) to the suspension on the basis of:*

*1) Julie Bussitin lost her rightful running upon leaving the machine as seen in 1a, where Ty Wheeler could've if wanted to, gone to the rail and had been clear of Julie Bussitin before the first corner.*

*2) I provided to the best of my ability clear room for one horse running, as that is all I had seen with looking multiple times before the corner*

*3) My horse had an inclination to want to look for the rail, and furthermore lay in around the corner, shifting in half a length*

*4) After hearing a call, I provided immediate release of pressure, as can be seen in 1b as my horse did in fact lay in, as seen by my elbow pointing out leftwards*

*All in all, I stand by my opinion that Julie had lost her rightful running, and in a panic on the \$1.50 favourite has dug it up and put herself in a compromising position. The cameras do not show such, but I do believe she lost her running.*

The two photographs referred to by Mr Thornton in his Application were exhibited to that document and are before the Panel for today's hearing.

[5] At the Steward's hearing evidence was given by an experienced Steward, Mr Daly as to his observations of the subject incident, his account was as follows<sup>1</sup>:

*I was head-on 650 tower going in clear, head-on view of an incident that took place leaving the 700 metres or approaching the 700 metres. I thought Julie Busuttin and*

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<sup>1</sup> Transcript of Steward's Hearing lines 54-66

*Uno Moon slightly slowed in, she pressured her horse to maintain the position on the fence to her meeting it outside Apprentice Wheeler on Jain, who was also pressuring his mount. He was probably a length forward of Ms Busuttin leading up to the incident and further out on the track, Beitsoo, Rob Thorburn going forward. I felt at the point of the incident that Beitsoo, Mr Thorburn's mount, attempted to shift in closer to the rail, and as a result of that shift I felt that Apprentice Wheeler's horse Jain was taken in, and as a result of that shift in, Ms Busuttin has had to take hold of her mount and relieve her position as a result of the shift from Beitsoo to the outside of Apprentice Wheeler.*

- [6] The observations of Mr. Daley were consistent with the accounts given by Apprentice Jockey Wheeler, the rider of Jain,<sup>2</sup> and Apprentice Jockey Julie Busuttin, the rider of Uno Moon<sup>3</sup>
- [7] Also present at the inquiry was Mr Robbie Fradd. Mr Fradd is the Apprentice Jockey coach and was present because the Inquiry involved three apprentice riders. Mr Fradd considered that that Apprentice Jockey Bussitin was entitled to maintain her run on the inside<sup>4</sup>.
- [8] The account given by the Applicant, which he maintains before this Panel, is probably best summarised in the following passage from his evidence at the inquiry<sup>5</sup>:

*I thought that Ms Busuttin's mount was going to be more prominent in the race, so I took multiple looks across towards my inside and I noticed that she wasn't there. I didn't at the time understand that her horse was digging up, as well it was, after it's already missed the kick. I did – was steadily coming across – I will make note that my mount was inclined to sort of come in for the corner as it was receiving pressure towards my outside from Ms Cartwright and because there was (sic) no immediate horses towards my inside, it was actually looking to the rail. But I came across very steadily, trying to allow the time, as it's an 800-metre race, for horses towards my inside to come up, as I am aware that we go hammer and tongs and dig-dig-dig. It was probably before the corner, I had one quick look and at the time I believed that I was clear of Mr Wheeler and his mount, and I came across steadily. I did hear, just as I started coming across in the corner, that he gave me a yell and that's when I was trying to provide pressure on my mount. Take one quick look back and I tried to immediately relieve pressure. Also make note that I looked towards my outside to make sure that I didn't inconvenience any other runners...I wasn't aware that Ms Busuttin's mount was improving at such a rapid pace.*

- [9] As can be seen, the Applicant said he was not aware that Ms Busuttin's horse was improving at such a rapid pace and did not anticipate there being two horses to his inside. He considered that he provided enough room for one horse to his inside and Apprentice Jockey Bussitin had

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<sup>2</sup> Transcript lines 38-43

<sup>3</sup> Transcript lines 16-33

<sup>4</sup> Transcript lines 471-473

<sup>5</sup> Transcript lines 71-92

failed to call to advise him of her presence on Uno Moon. His account is that he crossed steadily and that he was sufficiently clear of jockey Wheeler's mount to do so.

- [10] The Applicant pleaded not guilty to the charge, but in finding him guilty of the offense, the Stewards were satisfied that Ms Bussitin was entitled to her run and that the Applicant should have been aware of her presence. Similarly, they concluded that Jockey Wheeler was entitled to his run and the Applicant, going into the turn three wide, had an obligation to maintain the three wide position<sup>6</sup>.
- [11] In determining penalty, the Steward's applied the sentencing template which appears as Annexure A to the Penalty Guidelines. The level of carelessness was considered to be in the medium range, with the consequence being category one, that being hampering or crowding. This attracted as a starting point a penalty of 10 days suspension of license. The Applicant received a discount of one day because of his prior record and a further one day discount as an Apprentice rider. The result was the penalty of eight days suspension of license.
- [12] This panel has reviewed the race footage on numerous occasions and has considered carefully the Applicant's submissions and the evidence that was placed before the Stewards. We must form our own view of the circumstances in this race. We have reached certain conclusions in that regard.
- [13] Watching, firstly, the inside angle of the Steward's footage, it is apparent that the Applicant begins well from barrier four and rides his mount Beitsoo along, eventually taking up the lead. To his inside are the horses Better Than Booze, Jain, and Uno Moon. The Applicant clears Better than Booze comfortably, then running into the first turn he appears to look at the runners to his outside. Then, as they begin to swing, takes a look to his inside. A back length to his inside is Jockey Wheeler on Jain and a further three quarters of a length back on the fence is jockey Bussitin on Uno Moon.
- [14] At this point the Applicant's mount rolls in from a three wide position to eventually take up the running on the fence. This inside angle of the Steward's footage shows Jockey Wheeler being crowded and taken in onto Jockey Bussetin. Both riders take hold and are seen to race awkwardly tight for a number of strides. While this is occurring, the Applicant takes another look back to his inside, perhaps at this stage, having heard a call from either or both Jockeys Wheeler and Bussitin. From our observation there does not appear to be any pressure from runners further to the outside of the Applicant.
- [15] Watching the rear on footage, as the runners approach the first turn it is again apparent that the Applicant is in a three wide position. Back on his inside pursuing his mount along is jockey Wheeler who is seen to take a couple of looks back at Jockey Bussitin making her way up to his inside on the fence. Shortly after, Jockey Wheeler has Jockey Bussitin tight to his inside. At this point the Applicant's mount rolls in across Jockey Wheeler. Critically, it is apparent that as a consequence Jockey Wheeler has himself and Jockey Bussitin in what might be described as a

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<sup>6</sup> Transcript lines 518-524

precarious position where both have to take hold and are buffeted around for a number of strides.

- [16] Having watched and reviewed the footage on numerous occasions, the Panel considers that although Jockey Busuttin's mount begins somewhat slowly, she has been afforded time and is entitled to hold a forward position to the inside of Jockey Wheeler. Jockey Wheeler having taken a couple of looks behind is aware of her making a run to his inside. It may be that Jockey Wheeler might have eased his mount slightly at this time, but that did not occur. The Applicant, who says that he was unaware of there being two runners to his inside, clearly rolls in to a position one off the fence and then eventually takes his position on the fence.
- [17] The result in our view is that the Applicant, not being sufficiently clear and certainly not being two lengths clear, leaves insufficient room for the two riders to his inside. They have buffeted around, have to take hold of their mounts and then losing some ground. It is our view therefore that the charge of careless riding is established. We make the following observations in that regard. Jockeys are required to exercise appropriate levels of care as the Respondent has submitted. There is an obligation on Jockeys to at all times make every effort prior to any shifting of ground that they are sufficiently clear of other runners to avoid causing any interference.
- [18] This Panel is satisfied that that the Applicant's ride was in breach of the careless riding rule in preventing his mount to shift in near the 700 meters when insufficiently clear of Jain. His obligation was not to cross unless clear.
- [19] The Applicant submits that he was unaware of the presence of Uno Moon on the inside of Jain and notes that Apprentice Bussitin did not call. There is no obligation of course, on a rider to call when being tightened, though it may be as a matter of courtesy that that occurs. The obligation is on the rider changing their running line to look that it is safe to do so.
- [20] The Respondent has submitted that in a case such as this, the Applicant needs to be able to assess and reassess the constantly changing race conditions, which includes the position of other horses in the race, and to adjust their riding tactics accordingly.
- [21] We are satisfied from the race footage that the consequence of the Applicant's carelessness was that Jain was tightened and thereafter taken in upon Uno Moon who was tightened for room, obliging Apprentice Jockey Bussitin to take hold of Uno Moon.
- [22] As far as the issue of penalty is concerned, reference has been made to the way in which the Steward's here applied the sentencing template which provides guidance for penalty determination in cases of careless riding. We do not need to repeat in detail the process by which the eight days suspension of licence was arrived at in this case. We adopt the reasoning of the Stewards The starting point being 10 days suspension of licence with a two-day reduction for the Applicant's riding record and his status as an apprentice.
- [23] As a result, pursuant to section 252AH(1)(a) of the *Racing Integrity Act 2016*, the decision of this panel is to confirm the racing decision.

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