

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-84	
Name	Anthony Allen	
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-009607	
Appearances & Representation	Applicant	Mr. Jim Murdoch KC
	Respondent	Queensland Racing Integrity Commission Mr. Wayne Kelly
Hearing Date	7 March 2024	
Decision Date	7 March 202	
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 of careless riding is substituted	
Case References	<i>Briginshaw v Briginshaw & Anor</i> 1938 60 CLR 336	

Reasons for Decision

- [1] On 17th of February 2024, during the running of Race two at the Toowoomba Turf Club Racing program, an incident occurred which resulted in Apprentice Jockey Savannah McCann being dislodged from her mount Gotebo.
- [2] On the 28 February 2024, following a Stewards Inquiry into the incident, the present Applicant, licenced Jockey Anthon Allen, was charged with an offence of careless riding contrary to Australian Rule of Racing 131(a). The Applicant pleaded not guilty to that charge but was found guilty by the Stewards and by way of penalty he received a licence disqualification of 21 days.
- [3] Pursuant to section 252AB of the *Racing Integrity Act 2016* the Applicant now seeks a review of that racing decision as it relates both to the finding of guilt and to the penalty imposed. He argues that he did not breach the Rule of Racing and that the penalty is, in any event excessive.
- [4] The particulars of the charge levelled against the Applicant are set out in the Penalty Information Notice as follows;

“As the rider of Prince Nicconi in Race 2 the Joe Wagner Group Benchmark 60 Handicap over 1000m on 17 February, 2024, at Toowoomba did when approaching the 700m permit your mount to shift in when insufficiently clear of Master Gee (Jockey Les Tilley) causing that runner to be further restrained and shifted out away from heels and in doing so shifted into the line of running of Gotebo (Apprentice Savannah McCann) which clipped heels, blundered and dislodged its rider.”

- [5] In his Application for Review the Applicant sets out the following details.

“I attended a Zoom meeting regarding the fall of S McCann at Toowoomba on 17/02/2024 which I was happy to as I felt I had no case to answer & was happy to recount the details. I have since been found guilty of causing the fall and been given a 21-day penalty. The fall was no fault of myself as when I pressed forward to take up the lead there was sufficient room to safely cross, prior to my mount crossing Les Tilley’s mount he was restraining his mount to take a sit as he was looking for a leader. After I cross Les Tilley, he commences to ride his mount along and pushes off the fence and shifts out as he said his mount didn’t take the corner too well.

This action puts S McCann in a vulnerable position as she had her mount outside of Tilley’s mount and was originally to his outside and found herself in amongst 3 horses with little room as she is now directly behind Tilley’s mount when he came off the fence which resulted in her coming to grief. The penalty of 21 day is excessive.”

- [6] The Applicant has clearly raised at least two issues of factual importance in this matter. Firstly, was he guilty of careless riding by permitting his mount to cross into the line of Jockey Tilley’s mount Master Gee when he was insufficiently clear to do so. If so, did that carelessness cause the difficulties experienced by Apprentice McCann on her mount Gotebo.

Stewards Hearing

- [7] At the Steward’s hearing evidence was firstly given of the observations of a Steward, Mr Tim Childs, who had been stationed at the stand at the 800-metre mark, Mr Childs gave his account of the incident as follows.

“I was stationed on the stand at 800 metres, so this gave me a rear view of the incident because I believe Apprentice McCann was dislodged, I would say, about the 700 or thereabouts. At the 800

metres, we had Master Gee ridden by Jockey Tilley. He was in front on the fence. Directly behind him was Gotebo, ridden by Apprentice McCann. Now, to Apprentice McCann's outside was Voulait, ridden by Jockey Savva.

As the field approached the 750 metres, Voulait rolled out into a three wide position, which created a run between Voulait and Master Gee, at which time Apprentice McCann on Gotebo has shifted out from behind Master Gee to take up a position to the outside of Master Gee's heels. As the field approached the 700 metres, Jockey Allen, the rider of Prince Nicconi, which was racing to the outside of Master Gee, improved forward at that stage and crossed Master Gee, at which time, from my observation, Jockey Tilley appeared to ease his mount and shift out. This resulted in Gotebo striking the heels of Master Gee and dislodging Apprentice McCann. Further, from where I was situated at the 800 metres, I can't say whether, when Anthony Allen has crossed Jockey Tilley, was he clear to do so. Also, I can't say whether Jockey Tilley shifted out on his own accord when being crossed."¹

Although Apprentice McCain was present at the Inquiry, it was apparent, and perhaps unsurprising, that she had very little memory of the relevant event and such account as she could give of that precise incident was one based on reconstruction derived from a viewing of the race footage.

[8] Jockey Tilley's account is set out in his evidence as follows:

"I wasn't really aware that there was a fall until later on in the race, but leading up to that I've crossed them quite easily and I've went to bring my mount back, put him on the bridle. Directly to the outside of me, Anthony Allen's horse was over-racing with its mouth wide open. It was giving him some type of grief and I elected to let it stride forward and to take a sitting behind it, which he did so about the 750, between the 800 and 750. He's rolled forward and crossed and I think he's crossed pretty easy. I didn't pop out straight away, I let him cross and I just sat probably half off the rail to give myself two options at that time. I wasn't racing tight beforehand as it was, I was racing loosely, I believe, going around that 800 to the 600 corner.

...

I've elected to allow Anthony to stride forward as his horse was giving him some grief with its mouth wide open and over-racing, he's just strided forward and I've just stayed where I was for a bit. It wasn't until probably the 450 or 600 where I popped off one off and straight up to the outside of him."²

[9] Jockey Tilly feels that the Applicant was 2 lengths clear when he crossed and said that the only reason he had moved out was to improve his position – "to make his run"³.

[10] Tilley said that the Applicant had "crossed me cleanly", "a length and three quarters easy going forward".⁴

[11] Relevantly Tilley's evidence also includes the following exchange:

¹Stewards Inquiry Transcript 28 February 2024, lines 60-80

²Stewards Inquiry Transcript 28 February 2024, lines 120-137

³Stewards Inquiry Transcript 28 February 2024, lines 162-164

⁴Stewards Inquiry Transcript 28 February 2024, lines 346-350

“Facilitator: That point there where it looks like looking at the top left screen from the 800 shot where Jockey Allen's come directly in front of you, you may have grabbed up a bit more forcefully and that's when your horse has put his head in the air.

Les Tilley: Like I stated, when he's crossed me, my horse has got keen and that's when I have to come back a little bit, bring him back to it. That's when the horse's head went up, yes, when I put more pressure on.”⁵

- [12] It is apparent from his evidence that Jockey Tilley does not accept that particular action of his horse raising its head on that occasion was attributed to any concern for the heels of the Applicants horse.
- [13] The Applicant's account in summary, is that he had been rolling forward thinking that he would sit a neck in front of Tilley's horse⁶
- [14] When Tilley then started “easing up” quickly, he took this as an indication of Tilley's intention “to sit behind me”.⁷ The Applicant said “*He was easing, yes, he's still easing and then he changes course. I believe me going away past him and him easing up was him letting me take the lead quite easily. I didn't have an issue with him.*”⁸
- [15] The Applicant remained adamant in his belief, that he was clear when he crossed and that he was moving away from Tilley's mount at that point.⁹
- [16] He said in response to a question from the Chief Steward, Mr Warren, “*I'm going forward with the momentum of my horse Bubba Tilley's dropping anchors, I'm cleared to cross him when I do.*”¹⁰
- [17] He was asked if he felt that he had eased at all when he crossed, or as he had been crossing, and he replied “*No. you can actually see that the momentum of my horse in the replay of how much I let it stride*”¹¹. He was pressed as to whether he was no more than a length and a quarter clear at the relevant time. He said that it was Tilley's decision, as he put it, to “anchor up” and allow him to take a leading position. The Applicant maintained throughout that he was sufficiently clear at the relevant time.
- [18] Also present at the Steward's Inquiry was Mr Lindsay Hatch, who is the master of Apprentice McCann. Based on the viewing of the race, Mr Hatch expressed the opinion that Jockey Tilley had clearly made a decision to give the Applicant the lead and that the Applicant had gone across without interfering with anyone.¹²
- [19] Mr Hatch did not accept that there was anything necessarily careless or dangerous when horses cross with less than two lengths clearance, particularly, in his view, if momentum favours the leading horse, as he considered to be apparent in this case.
- [20] We have not here set out to outline all of the evidence that was given before the Stewards. Rather we have sought to summarise that evidence as it relates to the issues we must consider. This Panel of course has before it all of the material that was before the Stewards hearing as well as the audio recording and the associated transcript of the of that hearing.

⁵ Stewards Inquiry Transcript 28 February 2024, lines 388-394

⁶ Stewards Inquiry Transcript 28 February 2024, lines 462

⁷ Stewards Inquiry Transcript 28 February 2024, lines 534-539

⁸ Stewards Inquiry Transcript 28 February 2024, lines 554-556

⁹ Stewards Inquiry Transcript 28 February 2024, lines 588-589

¹⁰ Stewards Inquiry Transcript 28 February 2024, lines 641-642

¹¹ Stewards Inquiry Transcript 28 February 2024, lines 643-646

¹² Stewards Inquiry Transcript 28 February 2024, lines 761-766

- [21] We have also had the opportunity to view the race footage and to hear oral evidence in relation to it from both the Applicant and Mr Warren.
- [22] Ultimately it is for this Panel to form its own view of the event of the incident. It is accepted that the responsibility of proof in these matters lies throughout upon the Respondent as the prosecuting authority, and the standard of that proof should be according to the balance of probabilities as that term has been explained by the High Court in *Briginshaw v Briginshaw*¹³.
- [23] Much is made by the Respondent, as indeed it seems to have been at the Steward's hearing, of the so-called two length rule. This so-called rule seems to have been accepted as a general standard, but nowhere does it appear expressly in the Rules of Racing.
- [24] It is no doubt a sound rule of a good sense and its breach may often be indicative of careless riding, but there are occasions on any race day when runners cross without incident when less than two lengths clear. It is a guideline, but it does not follow that an infringement of the two-length rule must necessarily amount to careless riding. As Mr Murdoch KC for the applicant has put it, "it is not to be used as a sledgehammer".
- [25] The particulars of the charge here centre on an allegation that the Applicant was not sufficiently clear at the relevant time and that his action in crossing constitutes careless riding. That is something which must be judged according to an assessment of the circumstances of the particular race. That the crossing distance may have been less than two lengths is a factor of relevance, but one to be considered along with all other prevailing circumstances in determining the quality of the riding in question.
- [26] The footage of the race included a number of camera angles. We have had the opportunity to examine those closely and is appropriate to make mention of them.
- [27] Race footage number 7 shows that approximately at the 750-metre mark Apprentice McCann has come away from the fence to a one-off position, a length back and to the outside of Jockey Tilley's heels. At the 700-metre mark, Jockey Tilley is restraining his mount after letting Jockey Allen cross to the lead. Directly after this point, the video clearly shows Jockey Tilley take a quick look to his outside and allow his mount to roll out to a good half horse off the fence and within two strides or so Apprentice McCann catches one of his heels, blunders and is dislodged. Jockey Tilley realises there's been an incident behind him, perhaps because he felt something to his mount's hind-quarter and takes a further look. This has happened on the point of the corner just before the horses straighten slightly approaching the swing into the home straight. At this point, Jockey Allen is clearly in front on the fence and does not appear to have contributed to the outward shift of Jockey Tilley. It would appear Apprentice McCann is placed in Jockey Tilley's blind spot, and he was most likely unaware that she was there. He would have been more likely focused on the horse Devil's Rite to the outside of Apprentice McCann.
- [28] Race footage 8 shows the rear on view where Apprentice McCann, when approaching the 750-metre mark, comes away from the fence where she has been following Jockey Tilley and establishes herself a length back to the outside of his heels, one off the fence. It is clear that shortly after Jockey Tilley has a quick look to his outside and his mouth rolls out slightly to a half horse off the fence. At the same time, Apprentice McCann's mount has rolled in slightly and catches Jockey Tilley's heels, blundering and dislodging her. Jockey Allen appears to have been able to cross to the front without incident.

¹³ *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336

- [29] Race footage 4 shows an inside side on view where, approaching the 700-metre mark, Jockey Tilley has allowed Jockey Allen to cross in front of him on the fence. Directly after, Jockey Tilley rides his mount along for a few strides, then takes hold again where his mount raises its head slightly. Shortly after Apprentice McCann catches a heel and is dislodged.
- [30] This is to be said, is consistent with the account given by Jockey Tilly. From the different race footage angles to which we have referred, this Panel considers that approaching the 700-metre mark. Jockey Tilley has allowed Jockey Allen to cross him and take up the lead. It is clear that at best Jockey Allen is probably only one- and three-quarter lengths in front when crossing. With the Applicant's momentum, however, this still allows galloping room for Jockey Tilley.
- [31] Jockey Tilley, having allowed the Applicant to cross, then rides his mount along for a few strides, then has to take hold when his mount raises its head slightly. Soon after, Jockey Tilly takes an initial look to his outside, and in doing so, his mount rolls out half a horse.
- [32] Apprentice McCann has assumed a position one off the fence, a length back to the outside of Jockey Tilley's heels. This all happens on the point of the corner. With a slight shift out for Jockey Tilley's Mount and Apprentice McCann's mount rolling in slightly, this has the unfortunate consequence of Apprentice McCann's mount clipping a heel, blundering and her being dislodged.
- [33] Contrary to the view of the incident taken by the Stewards, it is this Panel's view that the Applicant had established himself directly in front of Jockey Tilley before the incident. Tilley, instead of tracking the Applicant as he might have done, has made the decision to give himself some room "to make (his) run", rolling out slightly, causing Apprentice McCann to clip heels. if Jockey Tilley hadn't elected to roll out, Apprentice McCann would not have clipped heels as she did.
- [34] The Panel also accepts that Jockey McCann had put herself in a somewhat precarious position a length back outside of Jockey Tilley's hind quarter.

Decision

- [35] In the view of this Panel, having regards the requirements of proof, the evidence is insufficient to establish the charge of careless riding on the part of the Applicant.
- [36] For these reasons it is the view of the Panel, pursuant section 252AH(1)(c) of the *Racing Integrity Act* 2016. The decision of this Panel is to set aside the racing decision and to substitute a determination of not guilty of careless riding.