

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-123	
Name	Robert Thorburn	
Panel	Mr K J O'Brien AM (Chairperson) Ms L Hicks (Panel Member) Ms J Overell (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-010894 PN-010895	
Appearances & Representation	Applicant	Self-represented
	Respondent	Ms A Turner Queensland Racing Integrity Commission
Hearing Date	29 November 2024	
Decision Date	29 November 2024	
Decision	Pursuant to 252AH(1)(a) the Racing decision is Confirmed <i>(delivered ex tempore)</i>	
Case References	<i>Australian Building and Construction Commission v Pattinson</i> 2022 96 ALJR 426 <i>Lesley Tilley v Queensland Racing Integrity Commission</i> , RAP-73 10 January 2024	

Reasons for Decision

- [1] The Applicant in this matter is Apprentice Jockey Robert Thornton. On the 23rd of November 2024, at a race meeting conducted by the Toowoomba Turf Club, the Applicant pleaded guilty before Stewards to two offences of careless riding contrary to Australian Rule of Racing 131(a).
- [2] In respect of the first of those offences, committed during the running of race one on the programme, the Applicant received by way of penalty a licence suspension of 13 days, commencing on 24 November 2024 and concluding at midnight on 6 December 2024.
- [3] In respect of the second offence, committed during the running of race two, he received a licence suspension of eight days, operative from 2 December 2024 until midnight on 9 December 2024.
- [4] Five days of the second penalty were therefore ordered to be served concurrently with the first penalty, with the remaining three days having a cumulative effect. The result was a total suspension period of 16 days.
- [5] The Applicant now seeks a review of those orders on the ground that the penalty is excessive. He contends that the two penalties should be served entirely concurrently, achieving a total outcome of 13 days suspension ending at midnight on 6 December 2024.
- [6] The charges to which the Applicant pleaded guilty were as follows:

1. ...in that leaving the 100m he did direct his mount out abruptly when insufficiently clear of QUEEN OF STREETS which was obliged to check, shifted out and bumped heavily with BOONAH FLASHER which became severely unbalanced having to be steadied.¹

2. ...from a point approaching the 50m he did direct his mount out from behind the heels of KWAMI when there was insufficient room to do so and consequently bumped with PINK THUNDER forcing that runner wider causing it to become tightened, buffeted and obliged to steady passing the winning post.²

- [7] These particulars accurately set out the circumstances of the offences as they are revealed by the race footage and the evidence given before the Stewards' Hearing. By his pleas of guilty, the Applicant is taken to have accepted the facts as they disclosed in those particulars.
- [8] In determining penalty, the Stewards applied the Careless Riding Template, which appears as Annexure A to the Thoroughbred Racing Penalty Guidelines.
- [9] In respect of the first matter, they assessed the degree of carelessness to be in the high range with second level consequences of 'causing checking or loss of rightful running.' This attracted a starting point of 16 days suspension of licence. The Applicant's riding record of three suspensions and more than 300 rides in the preceding 12 months did not entitle him to any deduction on that account. However, his plea of guilty and his status as an apprentice rider each attracted a one-day reduction, and a further day was deducted to allow for the "general circumstances" of the race. The result was the period of 13 days licence suspension.

¹ Penalty Notice – PN-010894

² Penalty Notice – PN-010895

- [10] In relation to the incident arising from race two, the level of carelessness, again by application of the Template was assessed as being within the medium range, with level one consequences of ‘a hampering or crowding’ of other runners. The penalty starting point was therefore a 10-day licence suspension reduced by two days to reflect the plea of guilty and the Applicant's status as an apprentice jockey.
- [11] As noted, the order was structured such that three days of that penalty would be served cumulatively upon the 13-day penalty imposed for the transgression in race one.

Discussion

- [12] AR 283 deals with the range of penalties that may be may properly be imposed for any breach of the rules of racing. AR 283(4) provides as follows:

Unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension imposed under sub rules (1)(2)(3) is to be served cumulatively to any other suspension or disqualification.

- [13] This provision clearly recognises that in cases where multiple suspensions or disqualifications are imposed, although the starting point is one involving cumulative penalties, such an outcome should not follow as a matter of course. The rule envisages that it is open to the person or body imposing a subsequent disqualification or suspension to do so in a way that will operate other than cumulatively upon the earlier suspension or disqualification. It is a matter of discretion to be exercised in accordance with proper principle.
- [14] The operation of the rule of was considered by this panel in *Tilley v Queensland Racing Integrity Queensland*³. The Panel there reaffirmed that civil penalties such as are imposed in cases of this nature are imposed primarily, if not solely, for the purposes of deterrence⁴. Such penalties differ from criminal penalties, which import notions of retribution and rehabilitation as well as deterrence.
- [15] Notwithstanding this however, there are certain principles applicable in criminal sentencing, which can have application in civil penalty regimes. One such concept is that of totality⁵.
- [16] As this Panel said in the matter of *Tilley*:⁶

[12] The principle of totality to which the (High) Court referred (in Pattinson) 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. 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

[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

³ *Lesley Tilley v Queensland Racing Integrity Commission*, RAP-73 10 January 2024

⁴ *Australian Building and Construction Commission v Pattinson* 2022 96 ALJR 426

⁵ *Pattinson* supra at [458]

⁶ *Tilley* supra [12] to [15]

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.

- [17] The Applicant in this case argues that because his penalties occurred on the one day, they should therefore be served totally concurrently. He refers to two previous decisions to support his argument, the first being that of Jockey M Rodd in at the Sunshine Coast on 4 August 2024. Jockey Rodd was found guilty of two offences of careless riding committed, respectively, in races two and eight.
- [18] For the first of those offences, he received a penalty of eight days suspension of licence and for the second a penalty of 12 days suspension. The second penalty was ordered to be served concurrently with the first.
- [19] The other matter upon which the Applicant relies is that of Jockey Nathan Day, who had two offences of careless riding recorded at the Cairns Turf Club meeting on 22 January 2024. He received penalties of seven days and eight days suspension of licence, ordered to be served concurrently.
- [20] The precise circumstances of those offences and indeed of the particular offenders, is unknown, but in reality, those cases simply represent examples of the application of the totality principle. In each case, although the penalties had the same starting date, the penalty for the first offense was actually extended by the penalty imposed for the second. In other words, there was a cumulative element involved.
- [21] In principle, although the circumstances of the offending may be different, those outcomes are no different from the outcome suffered by this particular Applicant. Technically it would have been open to the Stewards if they considered that a cumulative penalty was appropriate in all the circumstances to have imposed a suspension of three days cumulative upon the 13 days for the first offence.
- [22] The penalty of eight days suspension for the second incident was no doubt imposed to reflect the objectively appropriate penalty under the Template and there can be no criticism of the Stewards for having adopted that course. Indeed, it may well be the preferred course given that a recorded penalty of “three days suspension”, even if imposed cumulatively, may not convey the true seriousness of the incident. The ultimate purpose in circumstances such as these is to ensure that the penalty imposed represents fairly the overall seriousness of conduct involved and there no requirement that the penalties imposed should necessarily have the same commencement date⁷.
- [23] Although AR 283(4) provides the relevant starting point, the discretion as to where the penalties of disqualification or suspension for multiple offences should be imposed cumulatively (whether partially or totally) or concurrently remains to be exercised according to the circumstances of the particular case. What matters is that the totality of the penalty imposed should reflect the overall seriousness of

⁷ Tilley supra provides an example of a case in which a cumulative penalty outcome was achieved through the use of separate commencement dates.

the conduct involved and should be no more than that which is appropriate to achieving the purposes of imposing penalties under the Rules.

- [24] This Panel must form its own view here of the appropriate penalty. The Panel accepts the assessment of the Stewards as to the appropriate level of carelessness involved and as to the head penalty appropriate in each case, those being 13 days and eight days suspension respectively.
- [25] It is relevant in the Panel's view that these two incidents occur within a relatively short time of each other, that is, they occurred in consecutive races. There was a difference in grading, but they remain in each case serious examples of careless riding. It is to be observed also that the Inquiry in relation to the incident in race one commenced after that race, and it is clear the Applicant was on notice in respect of his riding prior to the second offence occurring. There is a similarity in the conduct involved in each of the offences, and, although the consequences may have been different, they involve repeated carelessness of a serious nature.
- [26] In the Panel's view, it is appropriate that there should be a cumulative element involved. We consider that a total penalty of 16 days suspension would be appropriate in all the circumstances. This clearly involves some additional suspension being imposed on that which had already been imposed for race one. We consider that the approach taken by the Stewards was appropriate in the circumstances,
- [27] Accordingly, pursuant to section 252AH(1)(a) of the *Racing Integrity Act 2016* the decision of this Panel is that the racing decision the subject of this application should be confirmed.

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