

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-95	
Name	McKenzie Apel	
Panel	Mr K J O'Brien AM (Chairperson) Mr E Wilkinson (Panel Member) Ms L Hicks (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-009994	
Appearances & Representation	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission Shane Larkins
Hearing Date	11 June 2024	
Decision Date	11 June 2024	
Decision	Pursuant to 252AH(1)(a) the Racing Decision is Confirmed <i>(delivered ex tempore)</i>	
Case References	<i>Briginshaw v Briginshaw & Anor</i> 1938 60 CLR 336 <i>Andrew Mallyon v Queensland Racing Integrity Commission</i> RAP-62 6 November 2023	

Reasons for Decision

- [1] The Applicant in this matter is Apprentice Jockey Ms McKenzie Apel. On 4 June 2024 Ms Apel was found guilty by Stewards of an offence of careless riding contrary to Rule 131(a) of the Australian Rules of Racing.
- [2] The charge against the Applicant related to her ride on the horse Knowitall Jack in race 5 at Thangool on 13th April 2024.
- [3] The particulars of the charge were that she had allowed her mount to shift in near the 900-meter mark, causing the rider of Sethlans (Jockey Tasha Chambers) to check and lose her rightful run.
- [4] The Applicant had pleaded not guilty to the charge.
- [5] Following the finding of guilt, the penalty imposed was one of nine days suspension of licence, operative from midnight on 6 June 2024 until midnight on 15 June 2024.
- [6] The delay between the running of the race and the Steward's determination was occasioned by the illness of a jockey and certain other matters, not relevant to the resolution of this matter, which prevented the inquiry taking place on the day of the race, as would ordinarily be the case.
- [7] Pursuant to section 252AB of the *Racing Integrity Act 2016* the Applicant applies to this Panel seeking a review of the Steward's finding. She maintains that she was not guilty of careless riding as alleged. Specifically,¹ she contends that at all material times she had her mount's head turned outwards and that, as a result, she had taken "all possible measures and (had) not allowed (her) mount to shift in".
- [8] At the Steward's hearing evidence was taken from the rider of Sethlans (Jockey Chambers) as well as the rider of another horse involved in the race, Lanova, ridden by Jockey Warwick Satherley. Evidence was also taken from the Applicant who had the assistance of senior rider, Mr Ashley Butler.
- [9] Steward Shane Larkins described having viewed the race from the elevated Steward's tower located approximately at the 900-meter mark. Mr Larkins had "an unobstructed" direct, head-on view as the horses raced down the back straight and approached the 900-meter turn. He said²:

It's my observation as the horses left the 1,000-metre mark that Mr Satherley on Lanova was positioned on the rails behind the speed. To his outside was Ms Chambers on Sethlans, and I felt Ms Chambers was probably a half to three quarters of a length back from Mr Satherley and racing three wide at that point on the outside of those runners was Knowitall Jack, ridden by Ms Apel.

I felt Knowitall Jack had an advantage over Sethlans at that point as well as they raced towards me. As they raced towards the 900-metre turn, I felt Knowitall Jack had shifted in and encroached onto the racing room of Sethlans, resulting in that runner being tightened. It appears to me Ms Chambers took a hold at that stage and lost a small amount of ground. Soon after, I observed Knowitall Jack's head turn outwards in what appeared to be an effort

¹ Application lodged 5th June 2024

² Steward's hearing transcript, lines 22-37

from Ms Apel to relieve the pressure. However, I felt that the initial tightening did result in Sethlans losing some ground at that point.

[10] Jockey Satherley described relevant events as follows³:

Probably approaching the 800 metres, I'm basically trailing last on the fence, so I had Chris McIver directly in front of me, Morgan Butler is outside him, McKenzie Apel probably at least four wide outside, travelling three or four wide. Tasha Chambers outside me. Tasha has improved to go through that gap. There was movement from the outside horse which caused Tasha's horse to come on to Morgan Butler⁴. That's caused a domino effect. Basically, there was enough room for Tasha to improve, so there was a decent gap there. Basically - well, I was going to have a crack myself, but Tasha actually had the line to go through that gap. So, there was movement from the outside horse, but you've got to take in mind you're coming around this corner as well.

[11] Jockey Chamber's account was as follows⁵:

Yeah, Knowitall Jack was racing three to four wide at some stages and there was room for me to improve my position. My horse was travelling well enough to do so. It opened up for quite a while so of course I'm going to improve my position in the race. No sooner did I do that as (sic) Ms Apel's allowed her mount to shift in - it's drifted in quite a few times. Yeah, and I lost considerable ground. I think he may have clipped heels actually at that stage.

[12] The Applicant's account was as follows⁶:

As I've approached that turn, sir, I've come out a quarter maybe to allow my horse to change strides to take that turn easier. As I've done so, Ms Chambers has pushed into a run that was never there. As a result, she's had to grab a hold for one stride maybe. She hasn't lost her position.

[13] All witnesses before the Steward's Inquiry had the opportunity to view replays of the race and Mr Ashley Butler assisting the Applicant contended that the race footage showed that the Applicant always had the head of her horse turned out and that "she had done the best she could to stay off". The situation was made to look worse, he said, because the incident occurred on the point of the turn⁷.

[14] In finding the Applicant guilty of the charge the Stewards were satisfied that there had not been any clipping of heels involving Jockey Chambers horse Sethlans. They were satisfied that the Applicant had not maintained a three wide position as she had claimed during the hearing. They were further satisfied that the Applicant had moved in on the turn, causing Jockey Chambers to check her mount. Although the head of Knowitall Jack was turned out at that critical point it was

³ Steward's hearing transcript lines 88-99

⁴ It seems clear that jockey Satherley was mistaken in his reference to some of the other riders. This should be a reference to jockey McIvor rather than jockey Morgan Butler.

⁵ Steward's hearing transcript 61-77

⁶ Steward's hearing transcript 135-139

⁷ Steward's hearing transcript lines 151-165 and 478-487

only a “miniscule head turn”, and they concluded the Applicant had made insufficient effort leading into and at the point of the turn.

- [15] The Stewards accepted that the pressure was relieved shortly after the incident and that the Applicant was then able to reestablish her three wide position.
- [16] In determining penalty, the Stewards applied the template which appears as an annexure to the Penalty Guidelines⁸.
- [17] The Stewards categorised the careless riding as falling within the low range, with the consequence being that another horse was checked and lost its rightful run.
- [18] Under the template, this attracted a starting penalty of 10-days suspension of licence, the Applicant’s record did not entitle her to any discount but neither did it attract any additional penalty. Because she was an apprentice rider however, she did receive a discount of one day with the result being a nine-day suspension.
- [19] In the hearing before this Panel, the Applicant’s case was argued by her Master, Mr Vale, who took the Panel to various passages in the transcript. Mr Vale contended on behalf of the Applicant that the available race footage is neither as clear nor as compelling as it might be at a larger racecourse or race meeting. He submitted that it is difficult to make any firm determinations in relation to such matters as distance, having regard only to that footage. He submitted also by analysis of the race footage that it has not been demonstrated that the Applicant allowed her horse to shift in or that she had in some way failed to make sufficient effort to prevent it from doing so. He submitted that she had in fact had the horse’s head turned out for the entire period, endeavouring to prevent it drifting in.
- [20] The Respondent on the other hand submits that the race footage reveals that Knowitall Jack’s head was only marginally turned out leading up to the incident and that the Applicant did not relieve the pressure until post the interference. The Respondent submits that the Applicant did not take sufficient remedial measures to prevent the interference. Rather the remedial measures taken by the Applicant occurred post incident. It is submitted by the Respondent that the race footage reveals that, post interference, Knowitall Jack’s head is sufficiently turned out and the Applicant uses a sufficiently greater degree of force to relieve the pressure. Knowitall Jack reacts to that greater pressure and responds. Such remedial action could have and should have been taken by the Applicant to prevent the earlier interference.
- [21] Further, the Respondent submits that the race footage demonstrates that the consequences of the Applicant’s carelessness were that the horse Sethlans had to be tightened, Jockey Chambers had to take hold and Sethlans lost ground.
- [22] This Panel of course must form its own view of the circumstances of the riding. We acknowledge at the outset that it is for the Respondent to prove that the Applicant is guilty of the offence of careless riding and that there is no responsibility cast upon the Applicant to prove that she was

⁸ Qld Thoroughbred Racing Penalty Guidelines 2023

not guilty of that offence. The standard of proof is according to the principles well recognised and derived from the decision of the High Court in *Briginshaw v Briginshaw*⁹.

- [23] The Panel has reviewed the race footage on numerous occasions and considered all the material, including the evidence of the Steward's inquiry and the arguments advanced on behalf of both the Applicant and the Respondent. In considering the transcript the Panel accepts that it is necessary to consider the statements made at the Steward's inquiry in proper context and that in considering the weight that is attributed to any one statement regard must be had to the whole of the witness's evidence.
- [24] We have referred earlier to the observations made earlier by Mr Larkins from his position in the tower located near the 900-meter mark. The observations of Stewards in these circumstances should not be lightly discounted. Stewards are experienced in that regard, and it is apparent from the transcript that Mr Larkins is a Steward of considerable experience.
- [25] There are two video footage angles of the race. The second of them¹⁰ shows Knowitall Jack beginning well and approaching the 1200-meter mark appears to be running fourth in a one-off position. Sethlans appears to be running directly behind Knowitall Jack at that stage. Approaching the 1000-meter mark Sethlans works its way up to a position a half-length back between Awesome Spirit on the fence and Knowitall Jack further out. Shortly after approaching the 900-meter corner Jockey Chambers on Sethlans takes hold and appears to check.
- [26] The first of the race videos¹¹ shows a predominately head on view of the race leading up to the incident and, of the two videos, provides the greater assistance to the Panel. A short distance after the start of the race at approximately the 1400-meter mark the runners make a fairly sharp swing back into the back straight. At this point the horse Poet's Day, ridden by Jockey Ashley Butler, is leading and is racing one off the fence where, approaching the 1200-meter mark Night Vision, ridden by Jockey Morgan Butler works its way around to be outside the lead. Directly behind Night Vision is the Applicant on Knowitall Jack running fourth in a three wide position. Soon after, Jockey Chambers on Sethlans who is following the Applicant switches in a horse to be racing one off the fence. Jockey Chambers then allows her mount to roll forward to a length back between Awesome Spirit on the fence and Knowitall Jack running three wide. This appears to be at about the 1000-meter mark. At this point the Applicant has her horse's head turned out somewhat, but her mount then rolls in a half horse, restricting the race room for Jockey Chambers on her inside. Jockey Chambers is then forced to take hold and then check her mount.
- [27] It is the view of this Panel based on the race footage, and a consideration of the evidence that the Applicant should have taken greater effort to ensure that she maintained a true three wide path. As this Panel has observed on another occasion¹²:

⁹ *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336

¹⁰ Index to Documents, Document No. 5

¹¹ Index to Documents, Document No. 4

¹² *Andrew Mallyon v Qld Racing Integrity Commission* RAP-62, 6 November 2023

“Jockeys are required to exercise due care. The Panel acknowledges that jockeys do shift however it is obligation of jockeys at all times to ensure their horse is under control and that they do not interfere with the rightful running of other competitors in the race”.

- [28] The Panel is comfortably satisfied to the requisite standard that the offense of careless riding is established.
- [29] So far as penalty is concerned the Panel agrees with the Steward’s determination that the degree of carelessness involved here is properly categorised as falling into the low grade, with the consequence, in terms of the template, of a checking or loss of rightful run. The template provides a starting point of 10 days of suspension of licence. There is nothing in the Applicant’s record which entitles her to any discount or additional penalty in that regard. Given her status as an apprentice rider however that 10 days should be reduced to nine days suspension of licence.
- [30] In the result, pursuant to section 252AH(1)(a) of the *Racing Integrity Act 2016* the racing decision is confirmed.

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