

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-108	
Name	Layne Dwyer	
Panel	Mr K J O'Brien AM (Chairperson) Ms L Hicks (Panel Member) Mr J McCoy (Panel Member)	
Code	Harness	
Rule	Australian Harness Racing AHR 163(1)(a)(iii) <i>A driver shall not cause any interference</i>	
Penalty Notice number	PN-010421	
Appearances & Representation	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission N Torpey instructed by E Ballard
Hearing Date	29 August 2024	
Decision Date	29 August 2024	
Decision	Pursuant to 252AH(1)(a) the Racing decision is Confirmed <i>(delivered ex tempore)</i>	
Case References	<i>Matthew McGillivray v Queensland Racing Integrity Commission</i> [2019] QCAT 298 <i>Nikita Beriman v Queensland Racing Integrity Commission</i> RAP-10 12 May 2023	

Reasons for Decision

- [1] The Applicant in this matter is licenced harness racing driver Mr Layne Dwyer. On the 21st of August 2024 a Steward's Inquiry was conducted into the running of race one on the Redcliffe Harness Racing programme. Following that inquiry, the Applicant was found guilty of an offence against Australian Harness Racing Rule 163(1)(a)(iii) and received by way of penalty a 10-day suspension of licence commencing on 31 August 2024 and ending on 9 September 2024.
- [2] Pursuant to Section 252 AB of the *Racing Integrity Act 2016*, the Applicant now seeks a review of that decision on the ground that the penalty imposed was excessive.
- [3] AHR 163(1)(a)(iii) provides that a driver shall not cause or contribute to any interference and AHR 163(5) provides that a driver who, in the opinion of the Stewards, fails to comply with any provision of AHR 163 is guilty of an offence.
- [4] The specific charge level against the applicant was in these terms:
- That the applicant did cause interference when shifting Majic Moment NZ out near the 500m resulting in driver, Nathan Rothwell (Mighty George) almost being unseated.*
- [5] At the stewards hearing, the Applicant had initially pleaded not guilty to the charge but subsequently changed that plea to one of guilty. He now contends that the penalty of a 10-day licence suspension imposed by Stewards is excessive in the circumstances and that a fine or reprimand would have been the more appropriate penalty.
- [6] His Application for review sets out the following grounds:
- The penalty is manifestly excessive having regard to the facts and circumstances, particularly in that it:*
- A. Fails to have any or any proper regard for the level of offending;*
- B. Fails to have any or any proper regard for the effect of the movement of the other horses and drivers and positioning on the track at the time of the subject incident;*
- C. Fails to have any or any proper regard for the experience, expertise, record and personal circumstances of the licensee*
- [7] To succeed in this Application, it is not necessary for the Applicant to demonstrate any appealable error on the part of the Stewards. This Panel must form its own view of the matter and should do so by considering afresh the material which was before the Stewards, as well as any further or additional material that may be placed before this Panel for the purposes of this Application.
- [8] This Panel has considered all of the material which was before the Stewards, including the race footage which we have viewed on numerous occasions, and the oral evidence which was given at the inquiry.
- [9] The evidence included the observations of a very experienced Steward Mr Torpey, who was situated in the tower almost adjacent to the incident. He gave the following account¹:

this incident happened basically almost adjacent to my tower, the position of the horses just leading up to the incident, Mr Rothwell was in a three wide trailing position behind Mr Vetiver's' horse, Im Boo. At that stage, Mr Dwyer was to his inside at the one wide position behind [Darian]. I felt that at that stage of the race, Mr Dwyer's elected to move his horse wider on the track. I felt that

¹ Transcript of Steward's inquiry lines 10-19

in the act of moving Majic Movement coming out, it's made contact with Mr Rothwell, almost unseating Mr Rothwell in the sulky, as a result. I felt that it was the movement from Majic Moment wide on the track was the contributing incident to the incident.

[10] The Applicant's account of events is set out as follows²:

Mr Rothwell's horse appeared to be under pressure down the back straight and my horse was travelling well and I've started to push out, wheel to wheel, and that's when the – yeah, I was pushing out wheel to wheel at the time and then might have contacted his horse's hind leg

[11] Later the Applicant said this³:

I've started pushing out, we're wheel to wheel, his horse was under pressure and it's just unlucky that his gig stay's literally run up the back of my wheel making it look 10 times worse than it actually was because at that point in time, my wheel's just in front of his and I was pushing out.

[12] As indicated above the Applicant initially pleaded not guilty to the charge, but subsequently changed his plea to one of guilty. The Stewards in determining penalty took into account his plea of guilty and what was described as his "good record" in imposing a penalty of 10 days suspension of licence⁴.

[13] The Queensland Harness Racing Penalty Guidelines provide as a starting point for this offence, a licence suspension of 14 days in circumstances, as here, the interference occurs at a point after the first turn. The primary purpose of imposing penalty under the rules of racing is to maintain public confidence in racing and to ensure the integrity of those involved in racing and indeed in betting. As such, penalties imposed ought to adequately deter participants in the industry and to send a message of general deterrence from engaging in similar offending.

[14] Member Allen observed in the matter of *McGillivray v Queensland Racing Integrity Commission*⁵:

The penalties are imposed as a deterrent to riders in an attempt to ensure the safety of riders by bringing disciplinary proceedings for this type of offence.

[15] Although the penalty guidelines provide a starting point of 14 days suspension of licence for this offence, the guidelines make it clear such starting points are guides only and each case must be assessed according to its own merits.

[16] Considerations relevant to penalty include the circumstances of the offence itself, including any mitigating or contributing factors, the degree of culpability, the issue of any early plea of guilty, the frequency of the offender's participation in racing, the offender's disciplinary record and the race status. The Applicant in this case is a young man but he has held a driver's licence now for more than two years and is presently licenced as a grade A driver.

[17] As the Respondent submits, so far as culpability is concerned, the offence the subject of this review does not discriminate between the level of experience which necessarily exists between drivers. The rule is designed to prevent drivers causing interference with other pacers and irrespective of a driver's status places a responsibility on all drivers to drive their horses in a manner which avoids causing another pacer to be interfered with.

² Transcript of Steward's inquiry lines 28-32

³ Transcript of Steward's inquiry lines 72-76

⁴ Transcript of Steward's inquiry lines 105-110

⁵ *Matthew McGillivray v Queensland Racing Integrity Commission* [2019] QCAT 298 at [21]

- [18] The applicant as an A grade driver is expected and required to drive to high standards. Level of experience may of course properly be taken into account in determining penalty depending always upon the circumstances of the case.
- [19] The Stewards referred to what was described as the Applicant's "good record" and this Panel also has regard to that record, to which further reference will be made shortly. His plea of guilty was also a factor which weighed in his favour, and which entitles him to some discount.
- [20] The circumstances of the offence are relevant, as is the degree of culpability involved. It was argued for the Applicant that the Stewards had not properly considered how and why this incident occurred. It is submitted for the applicant that at the relevant time his sulky and Mr Rothwell's sulky were travelling effectively wheel to wheel. The Applicant had made a movement which was not aggressive, but which was subtle and in accordance with his entitlement. It was an aggressive, inward movement from Mr Rothwell which resulted in his wheel being located behind the Applicant and this abrupt movement in effect put pressure on the Applicant and lead to the incident.
- [21] This Panel has reviewed carefully the footage of this race and we've considered also the submissions made on behalf of the Respondent by Mr Torpey. This Panel does not accept that the two sulkies were wheel to wheel at the relevant time. It is the view of this Panel that approaching the 400 metres metre point, in an attempt to move wider, the Applicant commenced to move out, endeavouring clearly to improve his position. In doing so, he caused the interference to Mr Rothwell.
- [22] This occurred on a corner and the Panel does not accept that there was any abrupt or aggressive inward movement by Mr Rothwell. We are satisfied that the Applicant did cause the interference that was alleged and that it was in the Panel's view, severe interference.
- [23] A reference was made to the evidence given by Mr Rothwell at the Steward's hearing, that he felt as though, at the time, they were wheel to wheel⁶. Suffice to say that in the Panel's view, that account such as it was from Mr Rothwell is not consistent with the video footage we have viewed.
- [24] Reference was also made to an incident which apparently occurred later in the race. It is again enough to say that each incident must be assessed and judged according to its own circumstances and its own merits, and we do not find any later events in the race to be of assistance in determining the issue that is presently before us.
- [25] In summary, so far as the circumstances of the offence are concerned, we can find no conduct on the part of the driver, Mr Rothwell of Mighty George, which can be said properly to have contributed to the incident. In the Panel's view the race footage clearly shows the Applicant caused the interference with the horse Mighty George. The responsibility was on him to ensure as a driver shifting ground that he was sufficiently clear beforehand to avoid causing the interference.
- [26] Considerations of sentencing parity is a matter of relevance and penalty imposed for other similar offending is a relevant consideration. Reference has been made to the Applicant's disciplinary history. He is a young man, and it is to be noted that this is the first occasion on which he has been convicted of this particular offence. We do note however, that he has, as has been pointed out for the Respondent, three offences this year for careless driving, an offence which, like the present, also appears in part nine of the Harness Racing Rules. We also note that he received a suspension of four weeks on 22 June of this year for driving in a manner which was unacceptable to Stewards. It is not suggested that that

⁶ Transcript of Steward's inquiry line 22

involved issues such as the present, but that four-week suspension did not expire until the 29th of July, which was only a short time before his most recent offensive of careless riding on 2 August 2024.

- [27] The schedule of prior offences⁷ for Rule 163(1) (a) indicates that a penalty outcome of a 10-day suspension of licence is not uncommon for a breach of this Rule. It cannot be said that a 10-day suspension is not comparable with other with penalties in other similar cases.
- [28] As far as the personal circumstances of the applicant are concerned, reference was made to the fact that he has some important rides booked in the relatively near future during the period of suspension. This Panel has said on another occasion in the matter of Beriman⁸, although there are many factors to be considered in determining penalty and a wide range of matters that need to be taken into account, the mere fact that a suspension may have the consequence that a jockey may miss the opportunity to ride in a particular race or at a particular race meeting should not of itself, or as a matter of course, constitute a ground for mitigating a penalty otherwise objectively appropriate and merited by the breaching conduct. The Panel in that case was, of course, speaking of the Thoroughbred code, but the principle applies with equal weight to the Harness racing code.
- [29] Weighing up all of these matters and acknowledging the Applicant's plea of guilty and his record generally it is important in the Panel's view that the penalty imposed as a consequence of causing interference in a race must be weighed against the broader integrity of the industry, including the safety of horse and driver, to ensure licenced participants in the wagering public can compete on a level playing field. As noted above, the protection of the integrity of the harness racing industry and the need to deter other similar offending behaviour in the future are important considerations in a matter such as this.
- [30] It is the Panel's view that the penalty imposed in this case was appropriate in all the circumstances. Therefore, pursuant to section 252AH of the *Racing Integrity Act 2016* the Racing Decision subject of this appeal is confirmed.

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⁷ Index of documents #13

⁸ *Nikita Beriman v Queensland Racing Integrity Commission* RAP-10 12 May 2023