

## DECISION

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

<b>Review application number</b>	RAP-64	
<b>Name</b>	Morgan Butler	
<b>Panel</b>	Mr Kerry O'Brien (Chairperson) Mr Edwin Wilkinson (Panel Member) Mr John McCoy (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-009118	
<b>Appearances &amp; Representation</b>	Applicant	Self represented
	Respondent	Queensland Racing Integrity Commission Joshua Adams
<b>Hearing Date</b>	10 November 2023	
<b>Decision Date</b>	10 November 2023	
<b>Decision</b> <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(c) the Racing decision is Set Aside and a finding of not guilty of careless riding substituted.	
<b>Case References</b>	<i>Briginshaw v Briginshaw &amp; Anor</i> 1938 60 CLR 336 Racing Appeals Panel decision Desleigh Forster, RAP-6, 3 May 2023	

## Reasons for Decision

- [1] This is an application brought pursuant to Section 252AB(1) of the *Racing Integrity Act 2016* by licensed jockey Morgan Butler for the review of a decision of Stewards made on the 4 November 2023, finding him guilty of an offence of careless riding (Australian Rule of Racing 131(a)) and imposing a penalty of eight days suspension of licence in respect of that finding.
- [2] The Stewards findings followed an inquiry conducted into the Applicants riding of the horse Red Hot Love in race three at Dalby on the 4th of November 2023.
- [3] The particulars of the charge were as follows:
- "Jockey M. Butler was found guilty of a charge of careless riding under AR131(a), in that inside the 1000m, he permitted his mount to shift in when insufficiently clear of Licenced And Ready, who was obliged to check and placed in restricted room for several strides. Jockey M. Butler's license to ride in races was suspended for a period of 8 days, commencing midnight 11 November 2023, up to and including 19 November 2023."*
- [4] The Applicant maintained his innocence of the charge brought against him and the reasons for his application to this Panel are set out in these terms:
- "I maintained a straight line leaving the shute to join the course proper and with the rail out 3 metres while the shute was in the normal position. My horse eased as it leaves the shute and A Donald's mount is over racing as it had to come back to meet the course proper rail. The stewards have not taken into account the rail placement, the horses racing ungenerously and the fact that I maintain a straight line. I did not breach the rule of racing."*
- [5] The Stewards heard evidence both from the rider of Licensed And Ready, that being jockey Donald, as well as the Applicant. Jockey Donald in his evidence before the Stewards said, in summary, that her own horse was over racing, that the Applicant had crossed in front of her when he was about one to one and three quarter length clear, and that she had allowed the Applicant to cross.
- [6] The Applicant account was that he believed he was clear to cross and that it was only the influence of the positioning of the rail that necessitated any checking action on the part of Jockey Donald.
- [7] The Stewards, having considered the evidence, found the Applicant guilty and then proceeded to impose on him the penalty that I have mentioned. That penalty was assessed in accordance with the application of the careless riding template.
- [8] The template came into effect on the 1st of October of this year, and now forms an annexure to the Queensland Racing Integrity Commission (QRIC) Thoroughbred Racing Penalty Guidelines.
- [9] In accordance with that template, the Applicants carelessness was assessed as being low grade and having caused a check to another horse, thereby attracting a penalty of 10 days suspension of licence. His very good record, however, entitled him to a reduction of two days, hence the calculation of eight days of the suspension of license.
- [10] This Panel must make its own assessment of the circumstances of the incident.
- [11] We are informed by Mr Adams, who appears for the Respondent in today's hearing, that the rail was in its true position at the relevant location and was only at plus 2 1/2 metres from the from the 600 metres to the 300 metre mark and thereafter remained in its true position. This was the "official position" so far as the situation of the rail was concerned.

- [12] Although officially, from the shute to the course proper where the incident occurred, both rails were in the true position, this is certainly not apparent from the footage. This is a matter which has caused some concern for this Panel.
- [13] Having watched firstly the race footage, it is clear that Jockey Donald riding License And Ready from barrier 4 begins well and races for the lead. Jockey Butler, the Applicant, from Barrier 9, rides his mount along and eventually takes the lead.
- [14] To his outside is jockey Graham on Mail Out. It appears that the Applicant establishes the lead without incident and when he said steadies his mount jockey Donald's mount behind begins to over race and has to be steadied.
- [15] Watching the Stewards footage from the head on vantage the Applicant inside the 1000 metre mark looks to his inside before he takes the lead. It would appear that he feels clear to come across in front of Jockey Donald. That is confirmed by the side on view and there is no reason to doubt that he was entitled to hold that view.
- [16] At this point, it is the Panels view, the Applicants horse comes out perhaps half a horse. We accept that he does this because the inside rails of the shute do not appear to match up evenly with the inside rail of the course proper.
- [17] As the Applicant put it in his account today, "the two fences did not marry up".
- [18] Jockey Butler, the Applicant, then allows his mount to move over to the rail where jockey Donald's Mount Racing keenly has taken up the running.
- [19] Jockey Donald does have to take hold at this point, checking slightly.
- [20] The Panel cannot be satisfied that the rail positions were absolutely true. If the rails clearly were aligned, then the Panels view of this incident might be different.
- [21] We consider also that part of the difficulties that arose here occur as a result of the of Jockey Donalds mount over racing.
- [22] In an application of this sort, it is accepted that the burden of proving guilt or liability, lie with the Respondent.
- [23] The standard of proof is proof on the balance of probabilities as a explained in cases such as *Briginshaw v Briginshaw & Anor*<sup>1</sup>.
- [24] The Panel accepts also that finding adverse to the Applicant should only be arrived at on evidence that is both clear and cogent. That was the view taken by this Panel in the matter of Foster, RAP-6<sup>2</sup> and it is the view which we take when considering the evidence in this case.
- [25] Having regard to what the Panel considered to be those important contributing factors in this case, we are unable to come to the finding contended for by the Respondent.
- [26] The Panel is not satisfied to the requisite standard that the Applicant in this case has been guilty of the offence of careless riding.
- [27] Therefore, pursuant to section 252AH of the act, the decision of the Panel is set aside the racing decision and substitute for finding of not guilty of careless riding.

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<sup>1</sup> *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336

<sup>2</sup> RAP-6 Desleigh Forster 3 May 2023

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