

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-12	
Name	Leslie Ross	
Panel	Mr. Kerry O'Brien AM (Chairperson) Mr John McCoy OAM (Panel Member) Mr Edwin Wilkinson (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rule of Racing AR 100(1)(a) A trainer of the trainer's authorised representative must notify the Stewards of any instruction or arrangement to the effect that a horse is to be ridden in a manner different to how the horse was ridden at its most recent start or starts.	
Penalty Notice number	PIN8005	
Appearances & Counsel Representation	Applicant	Mr J Murdoch KC
	Respondent	Mr P Zimmerman Ms A Rettke
Hearing Date	19 May 2023	
Decision Date	19 May 2023	
Decision	Pursuant to section 252AH(1)(c) the racing Decision is set aside and a decision of not guilty is substituted.	

Reasons for Decision

- [1] The applicant in this matter is Mr Leslie Ross.
- [2] Mr Ross is a licensed trainer of thoroughbreds. On the 5th of May 2023 following the running of the horse Mishani Spartan, in race four at Eagle Farm Mr Ross, as the trainer of that horse, was found guilty of an offence against Rule 101(1)(a) of the Australian Rules of Racing and fined the amount of \$400.00.
- [3] Mr Ross, who had pleaded not guilty to the charge, now seeks a review of the determination of guilt, as well as a review of the penalty imposed in the event that his primary application is unsuccessful.
- [4] AR100(1)(a) provides as follows;
- (1) A trainer or the trainer's authorised representative;
 - (a) must notify the Stewards of any instruction or arrangement to the effect that a horse is to be ridden in a manner different to how the horse was ridden at its most recent start or starts.
 - (b) must make the notification referred to in subrule (1)(a) as soon as practicable and not later than 30 minutes prior to the race.
 - (2) Upon receipt of the notification, referred to in subrule (1), the stewards may publish or communicate it as they think fit.
- [5] The details of the charge against the applicant are sent out in the stewards report is as follows:
- Stewards inquired into the tactics adopted, in that the gelding was ridden in the lead which is in contrast to the horses established racing pattern. After taking evidence from B Thornton and trainer L Ross, it was established that prior to the event it was the intention of B Thornton to ride the gelding in the forward half of the field however it was not his intention to lead. After considering the evidence provided, stewards found Mr Ross guilty of a charge under AR 100(1)(a) in that as the trainer he failed to notify stewards of a change in tactics to its most recent start, when it had raced in a rearward position. Mr Ross was fined the sum of \$400.00.
- [6] The applicant's reason for seeking a review of this decision is set out in his application as follows:
- There was no definite arrangement to ride the horse in the lead or close to the lead. The jockey and trainer were unable to predict that the race would be run at slow pace with the result that the horse found its way to the lead in its normal racing pattern. Had the race been run at true pace (compare the quicker time for the lower class maiden race over the same distance on that date) the horse would have been back in the field. There was no need on the trainer to notify under AR100(1)(a)
- [7] Mr. Murdoch KC who appears for the applicant has conducted a useful analysis of the race. Based upon the material before the panel we are content to adopt that analysis, the salient features of which are these;
- The official speed map used by the stewards had the horse travelling midfield.

- Mishani Spartan led at the 800 metre mark and at the 400 metre mark. Its winning margin was 0.69 lengths. The whole field finished within 5.78 lengths covering them all.
- The time for the winner Mishani Spartan was notably slow, namely: its time was 1.52.50 seconds, with the last 600 metres run in 34.46 seconds. By way of contrast, the time for the winner of an 1800 metre Maiden Plate over the exact same 1800 metre distance in the following race was 1.50.53 seconds with the last 600 in 36.46 seconds.
- Comparison of the times leads to the following conclusions:
 - (a) The Benchmark 72 was more slowly run in the early stages than the Maiden Plate;
 - (b) The Benchmark 72 was more quickly run in the last 600 metre than the Maiden Plate.
- Nevertheless, the overall time for the Benchmark 72 was still 1.97 seconds slower than that run by the lesser class horses in the Maiden.
- Using the rule of thumb that a conservative guide to race speed is that thoroughbreds run 200 metres in 12 seconds, the 1.97 second time difference equates, in distance, to approximately 33 metres.
- It was noted at the Stewards' Inquiry that blinkers had been added to the horse's gear for this race. It is widely accepted in racing that the addition of blinkers is an initiative to sharpen up a horse's racing pattern – particularly in the early part of the race. Addition of blinkers is officially notified by the trainer in advance of race day and is publicised so that Stewards and the betting public are aware of the change and can factor it in to their assessment of likely race performance.

[8] When questioned by the stewards, the applicant stated that he had given no instructions to the rider, the very experienced jockey in Boris Thornton, as to how the race was to be ridden. That, he said, was the standard practice when experienced riders were engaged on horses from his stable.

[9] There is no reason to doubt his account in that regard. The applicant explained to the stewards that he had used his phone to record a brief conversation with the jockey before legging the rider onto the horse about 10 or 15 minutes before start time. The purpose of that interview was to send it to the owner.

[10] In that short recorded conversation, played for the stewards, he asked jockey Thornton what he intended doing in the race. Jockey Thornton indicated that he intended being two, three or four pairs back. It should be noted that this was a nine horse race.

[11] The applicant reiterated his account to the stewards that it was a slow run race, slower than a maiden run over the same distance on the same day.

[12] He had no clue he said that the horse was going to lead and it was given no instruction that it should do so. This was confirmed by jockey Thornton, who said he had not anticipated leading.

[13] At its previous start at the Sunshine Coast, when the horse finished eight of eight, stewards reported that Mishani Spartan had been slowly away. It is not surprising that jockey Thornton might endeavour to remedy that apparent problem.

[14] Thornton was aware of that issue, there were other features that influence the running of Mishani Spartan on that day, the slow pace of the race and the use of blinkers are two such factors. Another

is the evidence of jockey Thornton, starting from barrier five, that he was in danger of being caught three wide on the turn, causing him to go forward before the turn. From the 1800 metre start at Eagle Farm it is only approximately 100 metres to the first turn.

- [15] Doubtless he saw and was aware of the speed of the inside runners, as is apparent from the race footage that the panel has examined. The clear evidence of jockey Thornton is that he neither intended nor expected to be leading. Had that been his intention, he said, he would, ensured that stewards were notified.
- [16] When the horse did lead in that unexpected fashion, the experienced jockey simply took advantage of the unexpectedly slow pace. He described it as a 'split second call'.
- [17] Mr Murdoch KC has argued that AR rule AR100(1)(a) could be read in conjunction with AR100(1)(b) and the argument is that unless the instruction or agreement referred to in the rule is given or agreed upon one half hour or more before the race, there is no obligation to advise the stewards.
- [18] For myself, I'm not prepared to adopt that interpretation.
- [19] AR100(1)(b) does not refer to the arrangement being made within any particular timeframe but refers to the giving of the notification. It simply provides the timeframe for compliance with AR100(1)(a). The offence is constituted by any non-compliance with AR100(1)(a).
- [20] I do note, however, that the rule requires notification in circumstances where a horse **is** to be ridden in a manner different from how the horse was written in its past or recent last start or starts.
- [21] Mr. Zimmerman who appears for the respondent has indicated that stewards have interpreted the rule requiring notification if a horse **may** be written in a different manner. Clearly, that is not what the rule requires, and if that is the expectation, the rule may need some attention.
- [22] In any event, in the panel's view, there is a more fundamental problem which confronts the respondent in this case, that being the absence in the panels view of any instruction given by the applicant to ride the horse differently, or any arrangement to which the applicant was a party to do so.
- [23] The panel has identified those factors which contributed to the horse leading in this case. Having regard to those matters, and to the Mishani Spartan's performance in other races to which reference has been made during the course of the hearing, this panel is not satisfied to the requisite standard that this horse was ridden in any manner different to previous starts.
- [24] Through no fault of the applicant, this application is technically out of time, therefore leave to proceed is necessary. That is not opposed.
- [25] Pursuant to section 252AB(3) of the Racing Integrity Act 2016 the application is accepted.
- [26] Pursuant to section 252AH(1)(c) of that Act the decision of the panel is that the racing decision is set aside and a decision of not guilty is substituted.