Queensland Racing Appeals Panel

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-133	
Name	Nathan Fazackerley	
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 129(2) *A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.*	
Penalty Notice number	PN-011154	
Appearances & Representation	Applicant	G Hutchison (Clutch Legal)
	Respondent	E Ballard Queensland Racing Integrity Commission
Hearing Date	20 February 2025	
Decision Date	20 February 2025	
Decision *(delivered ex tempore)*	Pursuant to 252AH(1)(b) the Racing Decision is Varied	
Case References	*Briginshaw v Briginshaw & Anor* 1938 60 CLR 336 *Meissner v The Queen* [1995] 184 CLR *Grylls v Queensland Racing Integrity Commission* 2017 QCAT49 at paragraph [19] *The matter of Jockey Damien Brown* [unreported] Qld Racing Disciplinary Board 18 March 2014 *Racing Queensland v Cassidy* 2012 QCAT 31 *Queensland Racing Integrity Commission v Whitely* [2022] QCATA *Goldsbury v Queensland Racing Integrity Commission* [2018] QCAT 309	

Appeal of Hugh Bowman, unreported, Racing Appeal Panel NSW 24 September 2020

Appeal of Kathy O'Hara, unreported, NSW Racing Appeals Panel 25 March 2021

Appeal of James McDonald – Racing Appeal Panel of NSW 3 July 2020

Racing Victoria v Kah – Victorian Racing Tribunal 3 October 2024

Radecker v Queensland Racing (2008) QRAT

In the matter of licensed jockey Chris Munce, unreported, New South Wales Racing Appeals Panel 5 June 2003

Reasons for Decision

[1] The Applicant in this matter, licenced thoroughbred jockey Nathan Fazackerley was the rider of the horse Redzoust in race four at the Dalby Northern Jockey Club meeting held on 17 January 2025. At the conclusion of the race, and following a Stewards' Inquiry, Stewards charged Jockey Fazackerley with a breach of Australian Rule of Racing 129(2), which provides that "a rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field".

[2] The race in question was a benchmark 70 handicap run over 1200 meters. The specific charge against the Applicant was in these terms[1]:-

> *...when approaching the 100m where Appr Jockey O O'Donnell the rider of MILL ROSA shifted in presented a gap between Ms O'Donnell and jockey M Wishart the rider of UPSTART LEGEND. Stewards believe that you failed to ride with sufficient vigour from that point in the race when it was reasonable and permissible to do so until the conclusion of the race.*

[3] The Applicant pleaded guilty to the charge and by way of penalty received a license suspension of three weeks operative from midnight 16 February 2025 until midnight 9 March 2025. Pursuant to Section 252 AB of the *Racing Integrity Act 2016* the Applicant now seeks a review of the Stewards' decision. He maintains that he did not breach the rule of racing and that in any event, the penalty imposed was excessive.

[4] In his application the Applicant concedes[2] that his riding involved errors of judgement but contends that such errors were not sufficient to substantiate a charge under AR129(2). He contends that there were other factors, including a poor start to the race, the position of his mount in the run and the performance of other horses, all of which contributed to the poor performance of Redzoust in the race. This aspect of the Application necessarily involves an application to set aside the plea of guilty entered at the Stewards' hearing.

[5] In relation to penalty, the Applicant contends that having regard to the circumstances of the race, including the fact that it was a country meeting, the penalty of a 21-day suspension is excessive.

[6] Before proceeding to consider the circumstances of the particular charge, it may be here appropriate to say something of the application for the change of plea. Quite properly in our view, the Respondent has not advanced any strident opposition to the application, but nevertheless it requires some consideration. The principles relating to applications of this nature were considered by the High Court of Australia in *Meissner v The Queen*[3]. Generally speaking, absent some form of duress or other such conduct, it is necessary to show that a failure to allow the application would constitute a miscarriage of justice. A miscarriage of justice will occur if it emerges that a plea of guilty it was not really attributable to a genuine consciousness of guilt.

[7] It is to be noted in this case that the Applicant was not legally represented at the Stewards' hearing. He is legally represented for the purposes of this hearing. The rule itself is not one which involves any element of intention. It is a rule the guilt of which depends upon an objective assessment of the quality of the riding involved. It involves, in other words, an interpretation of circumstances surrounding the ride, not a personal opinion of the Applicant himself.

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[1] Penalty Notice PN-011154

[2] Attachment A to application for review - 12 February 2025.

[3] *Meissner v The Queen* [1995] 184 CLR

[8] One of the concerns here, as we see it, is that when the charge was initially levelled by the Stewards it was said by the presiding Steward that "Stewards have to be satisfied that you took all reasonable and permissible steps throughout the race to ensure your mount was given a full opportunity to win". He went on to say "the Stewards are of the opinion that you failed to ride with sufficient vigour in that race." One of the difficulties, of course, is that it is not a matter for the Stewards to be satisfied that the Applicant took all reasonable and permissible steps, it is for the Stewards as the prosecuting authority to prove that he did not. The proper test invokes an objective test.

[9] Cast in that form, the charge is not strictly accurate. In any event, it is apparent from listening to the audio recording of the hearing that there was a lengthy pause before the Applicant enters his plea of guilty.

[10] The combination of these matters leads this Panel to conclude that in this case it would not be inappropriate if the Applicant were permitted to now vary the plea previously entered. That is not to say that such an outcome will always be appropriate. It is determination reached according to the circumstances of this particular matter.

[11] AR 129(2) requires the Panel on this review to adopt an objective test in determining whether the steps taken and the decisions made by the jockey satisfy the obligations set out in the rule. The purpose of AR 129(2) is not to punish a jockey who makes an error of judgment[4].

[12] In Grylls[5], reference made to the decision of the former Queensland Racing Disciplinary Board in the matter of *Damien Browne*[6]. In *Browne* the Board observed that it is necessary to make an objective assessment of the jockey's ride given all the relevant circumstances in the particular case. The board identified a number of principles as being relevant:

1. The quality of the ride in the circumstances of the particular case that is to be judged.
2. The judgement must be based on an objective assessment of the jockey's ride in a particular case,
3. A mere error of judgment by the jockey is not a sufficient basis for an adverse finding that AR 129(2) has been breached.
4. The rider's conduct must be culpable in the sense that objectively viewed, it is found to be blameworthy.

[13] In *Racing Queensland v Cassidy*[7] the tribunal observe:

> *However, AR (129(2)) does not exist to punish a rider simply because he does not win or does not achieve a place consistent with the trainers, bookkeepers or betting public's expectations. Even a decision which appears poor with the benefit of hindsight will not offend the rule without more. What is needed to offend AR (129(2)) is the availability of a measure to improve the horse's success in the race and an unreasonable failure to take that measure. The question is whether measures such as moving Trump up on the field earlier or taking the early lead may have been available and, further whether the decision not to take those measures was unreasonable.*

[4] *Grylls v Queensland Racing Integrity Commission* 2017 QCAT 49 at paragraph [19]
[5] Supra at paragraphs [20] – [21]
[6] In the matter of Jockey Damien Brown [unreported] Qld Racing Disciplinary Board 18 March 2014
[7] *Racing Queensland v Cassidy* 2012 QCAT 31 at paragraph [7]

[14] In *Grylls*[8], reference is made to the unreported decision of the NSW Racing Appeals Panel chaired by Mr T. Hughes QC in the matter of a licensed jockey *Chris Munce*[9]. The extract from the Munce case, regularly cited in cases[10] involving this rule is as follows:

> *The task of administering the rule is not always easy. One must keep it clearly in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the Tribunal considering a charge under the rule is comfortably satisfied that the person charged was guilty of conduct that in all the relevant circumstances fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race.*

[15] In *Munce*, the relevant circumstances were said to include the seniority and experience of the rider charged, the competitive pressure the rider was experiencing in the race, and whether the rider had to make a sudden decision between alternative courses of action.

[16] It is clear that the Panel in *Munce* was not attempting to define an exhaustive list of factors of relevance which may be in fact quite numerous. In *Radecker, MS v Queensland Racing* (2008) QRAT, the former Racing Appeal Tribunal stated, in discussing the factors relevant to such a charge:

> *The relevant circumstances in such a case may be numerous; they include the seniority and experience of the person charged. They include the competitive pressure under which the person charged was riding in the particular race. They include any practical necessity for the person charged to make a sudden decision between alternative courses of action. The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria that I have described.*

[17] Reference to factors referred to in Munce was also made by the NSW Racing Appeal Panel in the appeal of Hugh Bowman[11] as follows:

> *These should be considered to be inclusive factors, not exclusive. Further, the Panel in Munce noted that the rule is not designed to find jockeys to be in breach of the rule "who make errors of judgement unless those errors are culpable by reference" to the various circumstances relevant to the race and the conduct. In that sense Mr Hughes was adopting a construction of the rule that was not literal. Any error by a rider might as a matter of logic - even a minor one - mean that the rider has not taken "all reasonable and permissible measures" to ensure a horse is given full opportunity to win or obtain the best possible placing. But not every error is caught by the rule. It requires the application of judgment, common sense, and a reasonable consideration of all the factors that are relevant to a particular error or lapse of judgment in deciding whether that error is culpable under AR 129(2). While it is therefore crucial to the sport that riders ride in a manner that does give full opportunity to their mount to win or obtain its best place in a race, it is also important that this Panel show appropriate restraint and judgment in making determinations about whether AR 129(2) has been breached. Riders, like other sportsmen and women, are going to make errors. That is inevitable. Not all of these errors should be judged to be errors that result in a finding that the rule has been breached. The error has to be a bad one,*

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[8] Supra at paragraph [24]

[9] In the matter of licenced jockey Chris Munce [unreported], NSW Racing Appeals Panel 5 June 2003

[10] See for example – *Queensland racing Integrity Commission v Whitely* [2022] QCATA and *Goldsbury v Queensland Racing Integrity Commission* [2018] QCAT 309

[11] *Appeal of Hugh Bowman* Racing Appeal Panel NSW 24 September 2020 at paragraph [7]

or too many jockeys will be penalised under the rule. A suspension of a licence to ride is not a trivial penalty – it deprives a person of the ability to make their living for a period.

[18] Before leaving this discussion of the Rule, it is appropriate to again note that the standard of proof in these matters is in accordance with the so-called Briginshaw standard[12]. An allegation must be made out to the reasonable satisfaction of the Tribunal and should not be "produced by inexact proofs, indefinite testimony or indirect references"

[19] The consequences of a breach of the rule may be significant for a licensed jockey, particularly when a suspension of more than a few days results. That being so, applying the Briginshaw test the standard of proof may be considered higher by reason of the seriousness of the charge. The NSW Panel in *Bowman*[13] and in the appeal of jockey *Kathy O'Hara*[14] has expressed that the standard of proof may indeed be higher than it is for a charge of careless riding.

[20] Against that background, we turn now to the circumstances of this case. The particulars of the charge levelled against the Applicant is that he failed to show sufficient vigour in his riding of his mount in the last 100 meters or so of the race in question.

[21] At the Stewards' Hearing, the Applicant was asked by one of the Stewards, Mr Childs, as to why it may have been that there was an apparent lack of aggression over the concluding 100 metres of the race. The Applicant replied[15]:

> *To be honest, the horse is travelling good. I've just made a bad judgment, and it's just put me in a position to the 100 where by the time I pushed him out, it was over. By the time, I was just more so angry with myself…*
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> *It's just - to be honest, it was just like all because in the running I've just chosen the wrong path, and then by the time I've chosen the wrong decision, it was too late, and I've tried to push him out. But by the time I've even begun to push him out, we're at the finishing line, it was just a really bad day, to be honest*

[22] That is the extent of the Applicant's explanation for the critical part of his riding on that day. The Panel has heard evidence today from Mr Corey Brown, a now retired jockey of distinguished career, who has observed the race footage and makes the following observations in relation to the race:

> A. It is obvious on the film that the horse is hanging in. The jockey has his stick in his left hand. The horse is proving very difficult to steer out and is not on a forward path.
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> B. Nathan is making an effort and is not sitting motionless. He is making an effort. Racing ungenerously like he is, if you were to let go and try and hit the horse with the whip in his left hand, in my view he would have he would have done a right-hand turn. That would have been a big safety concern given the horse was tiring and wanting to race about.
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> C. After missing the start as much as he did, the jockey did not just tack on the field, he got the horse into the actual race. In doing so, maybe the horse was taxed marginally by the

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[12] *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336 at 361-362
[13] Supra at paragraph [8]
[14] *Appeal of Kathy O'Hara* [unreported] NSW Racing Appeals Panel 25 March 2021 at paragraph [8]
[15] Transcript of Stewards' Hearing lines 201-211

end. Hence why it may have been running around. It had done extra work between the staff and the 400 metres.

[23] We note at this stage that the observation by Mr Brown as to the horse "hanging in" is not accepted by Mr Kim Daly, a Steward of considerable experience who was present on the day. The difficulty as the Panel sees it. Is that the opinions expressed by Mr. Brown do involve a degree of speculation. There is no evidence that the factors to which he referred influence the judgment of the Applicant in his ride on this occasion. They really are no more than potential factors of relevance and do not accord with our assessment of the ride.

[24] It is necessary that this Panel should make an analysis of what occurred in the running of this race. We've had the opportunity of viewing the race footage from several angles providing as they do different perspective of what is occurring.

[25] Beginning firstly with the official race footage, it is apparent that the Applicant's mount, after missing the start by three to four lengths recovers well to be running third last inside the 1000 metre mark. He travels well three back on the fence inside the 500 meter mark where on straightening the Applicant has elected to look for a run to the outside of horses in front of him. Soon after straightening Mill Rossa, ridden by Jockey O'Donnell shifts out around the heels of the leader, blocking a run for the Applicant. Mill Rossa then shifts back to the inside approaching the 150-metre mark. Slightly inside the 100-metre mark, it appears from this footage that the Applicant has a run between Mill Rossa to his inside and Upstart Legend to his outside. The Applicant does urge his mount along, although does not do so vigorously until he sits up in the final three strides.

[26] Turning to the rear footage, inside the 400-meter mark, the Applicant has elected to look for a run to the outside of the horses in front of him. He appears to be held up for most of the straight, where running into the 100-metre mark, Jockey O Donnell on Mill Rossa has moved back to the inside, creating a run between herself and Jockey Wishart on Upstart Legend further out. The Applicant appears to take that run, urging his mount along, making up some ground. This is done with approximately 80 metres to run.

[27] It is perhaps the head on footage which provides the best indication of what occurs. It is apparent in that footage that the Applicant has committed to the outside of Mill Rossa's heels, who then shifts out in front of the Applicant, blocking his run. The Applicant is held up behind runners where inside the 200-metre mark, Jockey O'Donnell shifted back to the inside, creating a run between herself and Jockey Wishart. Inside the 100m mark the Applicant then rides his mount along between those two runners, making up some ground.

[28] It is the view of this Panel that the incident referred to in the charge from the 100m mark shows that there has certainly been a run presented to the Applicant. Jockey Wishart shifts out and the Applicant takes advantage of the run riding his mount along, although not aggressively. There are numerous factors we need to consider here. They are the urgency shown by the applicant, the amount of time he had left until the end of the race, which consistent with the evidence of Mr. Daly we would consider to be something of the order of about 6 seconds, the fact that the horse was carrying 60 kilograms makes it somewhat harder to pick up and sprint quickly over such a short distance, particularly given the incident earlier in the race and the need for the Applicant to have made ground in the early stages.

[29] We are not prepared to conclude that the horse would have finished fourth in the race, but we consider that if the Applicant had shown more urgency from the 100m mark, then he would have in all probability come closer to that position.

[30] We are satisfied that the opportunity was available for the Applicant to improve his horse's position in the race, and we are satisfied that his failure to take that opportunity was unreasonable in the circumstances. It fell below, in the panel's view, the level of objective judgement reasonably to be expected of a jockey in the Applicant's position.

[31] Consistent with our earlier observations in relation to the interpretation of the rule, we are satisfied that the guilt of the Applicant is established.

[32] It is necessary, then, to turn to the issue of penalty. The penalty guidelines provide a starting point penalty of six weeks. In the panel's view, the level of culpability in this case was low, falling well short of the more serious breaches of the rule, which are not difficult to imagine. There is no suggestion of intention on the part of the Applicant, nor is nor can there be any suggestion of dishonesty on his part. It was an error, although a blameworthy one within the meaning of the rule.

[33] He has been a fully licensed rider for some four to four and half years.

[34] The charge here involves a single particular error. That is, the error of failing to ride with greater vigour. The incident occurred over a period of about six seconds, and a distance of about 80 meters. It is therefore a single incident of relatively short duration.

[35] We've been referred to a number of cases involving penalties imposed for this offence. A penalty of three weeks suspension of licence seems to have been imposed in a number of cases, although lesser penalties have also been imposed.

[36] During the course of submissions, reference was made to the case of jockey *James McDonald*[16] where the lack of vigour alleged was more protracted being over a distance of some 300 meters. In that case, a penalty of one week, it seems, was imposed.

[37] In the matter of jockey *Jamie Kah*[17] there were two incidents of riding that attracted the displeasure of the Stewards and lead to the charge, both involved failing to ride the horse with sufficient vigour during the race. A penalty of three weeks licence suspension was imposed on jockey Kah.

[38] We have been referred to a number of other cases involving penalties for this particular charge. This Applicant it is to be said has no history under this particular rule.

[39] In imposing the three-week suspension Stewards took into account the Applicant's plea of guilty, his lack of breaches under the rule and the way he had presented himself during the interview.

[40] It is this Panel's view that no real or sufficient regard was had to the particular nature of the incident. A single allegation over a relatively short distance, with no integrity issues involved.

[41] We consider therefore, that a lesser penalty would be appropriate and in all the circumstances a penalty of two weeks suspension of licence would be an appropriate outcome.

[42] Therefore, pursuant to section 252AHB of the *Racing Integrity Act 2016* the racing decision the subject of this application is varied, and a penalty of two weeks suspension of licence is imposed. We take into account that the Applicant does have riding commitments on Saturday and note that the Respondent have adopted a proper approach to that matter. In the circumstances we will order that the suspension should operate from midnight 22 February 2025 until midnight 8 March 2025.

[16] Appeal of James McDonald – Racing Appeal Panel of NSW 3 July 2020

[17] *Racing Victoria v Kah* – Victorian Racing Tribunal 3 October 2024