

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-118	
Name	Nathan Day	
Panel	Mr K J O'Brien AM (Chairperson) Ms D Condon (Deputy Chairperson) Ms L Hicks (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rules of Racing 127(1) <i>A jockey or apprentice jockey must not fail or refuse to fulfil a race riding engagement</i> Australian Rules of Racing 111(2) <i>A rider must as soon as practicable report to the Stewards any injury, sickness, abnormality or condition that may affect (or may have affected) that rider's performance</i>	
Penalty Notice number	PN-010778 PN-010779	
Appearances & Representation	Applicant Respondent	Self-represented Queensland Racing Integrity Commission D Griffiths instructed by E Ballard
Hearing Date	7 November 2024	
Decision Date	7 November 2024	
Decision <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(c) in respect of each Charge, the Racing decision is set aside and a decision of not guilty is substituted	
Case References		

Reasons for Decision

- [1] The Applicant for this matter is licenced Jockey Mr Nathan day.
- [2] On 30 October 2024, following an inquiry conducted by Stewards, the Applicant was found guilty of two offences against the Australian Rules of Racing. The charges arose from a bush meeting held at the small Northern Queensland township of Ewan on 20 and 21 September 2024.
- [3] The charges alleged breaches of AR 127(1), failing to fulfil a riding engagement,¹ and AR 111(2), failing to report as soon as practicable to the Stewards an injury, sickness, abnormality, or condition that may affect his performance²
- [4] For the first of those offences, the Applicant was fined a total of \$600.00, and for the second offence he was fined a further \$400.00, the result being a total fine of \$1000.00.
- [5] The Applicant now contends before this Panel that he is not guilty of both charges. The arguments which he advances are set out in a statement which he has lodged as part of his formal application. Given the nature and circumstances of this case It is appropriate that we should here set out that statement in full³:

I am appealing as I did not breach any of the rules that I have been charged with.

I am a heavyweight rider and travelled 5 hours to the 2-day Ewan racing carnival. On Friday 20th of September 2024, the heat at Ewan was around 34 degrees and at the days end I was not well after riding all day and losing weight. I rode a winner for Mr Rowe who gave evidence at the resumed inquiry on 30/10/2024 who stated to the stewards that 'Grubby is not well' (I have a nickname of Grubby). When I arrived on course for this meeting, I handed my phone to the stewards as required but as there is no coverage out at Ewan at the end of the day, I left my phone with the stewards overnight because it simply didn't work at all out there. I also left all my race gear at the Ewan Turf Club as most or all jockeys did rather than carting it back to the caravan.

On the Saturday morning, I knew I still had some weight to lose, and I was seen by many participants in sweat gear running to lose the last bit of weight to fulfill my engagements. After this, I was quite fatigued and dizzy similar to how I normally feel all my career as a heavyweight rider but that normally lasts for a short period of time and then I can complete my mounts for the day.

The first race on Saturday 21/09/2024 was at 1-50pm and my partner (Jockey Jenna Edwards) was riding later in the day, I believe Race 4 and she asked me to drive her to the stewards room as she had an inkling that her mount in Race 4 may be scratched and if this was the case, Jenna would not have to lose weight to make her last ride in Race 5. At 12-40pm I took her down to the steward's room in my car and waited outside by the vehicle waiting for Jenna to check the scratching's and then take her back to the caravan where we were staying which is approximately 250 metres from the steward's room. When Jenna was taking so long and as I had not entered the jockeys/steward's area I saw Mr Rowe who was walking nearby to ask Jenna to hurry up, he apologized that he couldn't because he needed to attend to his horses.

¹ Penalty Notice PN-010778

² Penalty Notice PN-010779

³ Annexure to application for review filed on 01/11/2024

In the initial evidence at the first steward's inquiry, the stewards mentioned that they did not see me enter the room but at the resumed inquiries, they stated they did notice me. When Jenna returned to the vehicle, I took her back to the caravan where there is a mini fuel station, and I basically collapsed from dehydration, and we were assisted by an elderly lady who we didn't know and identified herself as Mary. Mary and Jenna got me into the caravan, and I started to cool down and I asked Jenna to return to the races and advise the stewards that I was unwell and unable to fulfill my riding commitments which she did. Mary stayed with me for a brief period and once I was a bit better, she left, and I took myself to the shower block in board shorts and went in and let the cold water run on me and sat on the floor of the shower block with the door open in case I passed out again. The stewards returned to look for me and did not locate me in the caravan and therefore stated I was unlocatable, but I was a mere 10 metres away in the shower block attempting to cool down.

At the inquiry the following week after the race meeting, I provided a medical certificate to the stewards but as the Doctor did not see me on the day it was dated from the Monday after the race meeting as the Doctor advised they cannot backdate a medical certificate. I had no ability to see a doctor on the day as I was 500 kilometres from any medical practitioner I know.

At the resumed inquiry on 30/10/2024 I was charged with AR 127 Failing to fulfil a riding engagement (1) A jockey or apprentice jockey must not fail or refuse to fulfil a race riding engagement. As I fell ill, I cannot see how I should be charged with this offence. The penalty precedence used was D Ganderton who received a \$150 for this offence and in this case the stewards deemed it to be a \$200 fine multiplied by 3 (Total of \$600) as I was booked for 3 rides on the day.

Also I was charged with AR 111 Physical fitness to ride (2) A rider must as soon as practicable report to the Stewards any injury, sickness, abnormality or condition that may affect (or may have affected) that rider's performance. I believe I am also innocent of this charge, the minute I felt dizzy and started to feel a bit better, I sent Jenna Edwards directly back to the racetrack to advise the stewards that I wasn't well and to advise that I was unable to fulfill my commitments, and I have been issued with a \$400 fine for this.

I would like to point out the rules of racing AR 128 Rider to be present in jockeys' room at race meetings (1) A rider who has a riding engagement at a race meeting must be in the jockeys' room at least 45 minutes before the advertised starting time for the first race that the rider has a riding engagement in. As we were camped some 250 metres from the stewards it was roughly 1 minute in a car. At the resumed inquiry on 30/10/2024, Steward Mr Nosworthy reported that he did see me at 12-50pm and at this point in time, I had not yet presented to the scales area and I wasn't required to be there until 1.05pm which gave me ample time to drive Jenna back, have another sit down before presenting to the races by 1-05pm.

- [6] It does seem clear that when the Stewards commenced their inquiry, they had in mind a suspected breach of AR 128. That rule requires a rider be in the jockey's room at least 45 minutes before the advertised starting time for the first race in which the rider has a riding engagement. It requires further that the rider should remain in the jockey's room, until permitted to leave by the Stewards. The first race in which the Applicant had a riding engagement was listed for 1:50 PM, requiring therefore that he

be in the jockeys room by 1:05 PM. The Applicant had been seen by a Steward, at least in the area of the room, at around 1:00 PM and the assumption seems to have been made that he was there at that time to comply with the obligation imposed by AR 128.

- [7] On that day, Stewards were conducting breathalyser testing of all jockeys and their obvious, and perhaps understandable suspicion, when the Applicant did not weigh out for his first race as required, was that the Applicant had become aware of that occurring and had departed the track without permission in order to avoid being tested.
- [8] The Stewards Race Day report records that “after initially arriving in the jockey's room, (the Applicant) left the course without Steward’s permission, and without any providing reasoning failing to fulfil his riding engagements”⁴.
- [9] The Stewards’ hearing commenced on 2nd of October 2024. The Stewards being obviously of the view that they were considering a breach of AR 128. At that hearing, however, the Applicant provided a version of events which differed markedly from that which was suspected by the Stewards as being the case.
- [10] The Applicant made, and did so with a degree of force and conviction, the following points:
- He had no knowledge whatever of the breathalyser testing taking place on that day.
 - His partner, Jockey Edwards, had asked him to take her from their van to the nearby course to enable her to make inquiries about her own rides. This he did at about 12:40 PM
 - At Ewan, there was no Internet or mobile phone connection. He had in fact left his mobile phone with the Stewards on the day prior
 - His intention was to take Miss Edwards back to their van and then make his own way back to the track to present himself for race day. He had ample time to do this in compliance with the rules, given the proximity of his mobile accommodation to the course.
 - As a heavy rider. He had been wasting, as he often did, and was feeling “dizzy and fatigued” but “thought he would be ok”. This was not an uncommon experience for him as a heavy rider, but he usually “comes good”.
 - As he stood near his car outside the Stewards room waiting for Miss Edwards to confirm the situation with her mount, he spoke with trainer Mr Trevor Rowe.
 - As they drove back to the van, he “started to get dizzy and crook” in the car. Prior to that he believed he would be right to ride.
 - On arrival back at the van he “passed out” and required assistance in getting out of the car
 - He had no phone or other means of contacting the Stewards, and asked Ms Edwards to inform them that he would not be able to ride that day. There is no doubt Ms Edwards complied with his request and Stewards were informed.
 - As he began to “feel a little better” he went to the nearby shower block, leaving the door open in case he again passed out.

⁴ Index document #3 Stewards’ Race Day report

- On the Monday, the first day in which he could secure an appointment, he saw a doctor complaining of dehydration and heat stress and delivered a medical certificate to the Stewards on that day.

- [11] This account given by the Applicant to the Stewards is neither inherently incredible nor improbable and there is no evidence to cast any doubt on the truthfulness of the account which he gave. The Inquiry was resumed on 30 of October 2024, when evidence was taken from Mr Trevor Rowe, the trainer with whom the Applicant had said he had spoken. Mr Rowe confirmed that he had spoken to the Applicant at about 12:50 PM near his car outside the Jockey's room. Mr Rowe's evidence confirmed the applicant's account of waiting for his partner, Miss Edwards at that time in order to take her back to their van.
- [12] At the resume hearing, the applicant reiterated his evidence that feeling dizzy is a common experience for jockeys required to waste. It's "part of the job" for a heavy jockey, but he believed he would be capable of riding and held that belief until his condition deteriorated on return to the van.
- [13] Although the updated Stewards' Race Day Report⁵ 2024, states that the Applicant "stated that he (had) returned to his off-course accommodation due to being unwell, where he suffered a medical episode", this is in fact misleading if not inaccurate. There is no evidence that he returned to the van for that reason. The evidence is that he did so to convey Miss Edwards back to the van.
- [14] In light of the evidence given by the Applicant, it is clear that any charge under AR 128 could not be sustained. The Applicant was, however, charged with failing to fulfil a riding engagement AR 127. The stated particulars being that there was "opportunity to advise stewards prior to when you did so on the following Monday at lunchtime, the reason that you failed to fulfil your riding engagements."
- [15] The Applicant pleaded not guilty to that charge and was fined, as we have indicated, the sum of \$600.00, that being \$200 for each of the three riding engagements that he was unable to fulfil. Aside from the fact that the charge is bad for duplicity, which is not necessarily an incurable obstacle, it is difficult to see how in the circumstances that the presentation of the medical certificate on the Monday could be considered as a particular of this charge.
- [16] The second charge was an alleged breach of AR 111(2) based on the applicant not having informed the stewards of his decision prior to driving his partner back to the van at about 12:50 PM. It is to be noted that the particulars of this charge against the Applicant allege that he drove back to his van at about 12:50 PM, a time which does not sit easily with some evidence relied upon by the Stewards that he might have been seen at about 1:00 PM in or about the jockey's room.
- [17] In any event, this panel must now form its own view of the matter. As Mr Darrell Griffiths, who was a very experienced and no doubt, careful Steward has indicated, this was an unusual case, the like of which he'd not encountered in his long experience as a leading race Steward. No doubt the fact that this incident took place at a fairly remote location was a contributing factor in that regard. The Panel acknowledges at once that the task confronting Stewards in such circumstances is a difficult one.
- [18] In forming our view, the Panel accepts we should do so on the basis of the version of events set out by the Applicant. He carries no responsibility of proof. The responsibility for proving his guilt lies throughout with the Respondent. In the circumstances of this case, as the Respondent properly

⁵ Index document #4 – Updated Steward's Race Day report 30 November 2024

acknowledges, to establish the Applicant's guilt of any particular charge it must effectively disprove his account in relation to that charge.

- [19] It should be said that the penalty notices in this matter are, to some extent at least, misleading. They imply that the Applicant left the track because he was feeling unwell. As have indicated above, this was not, in fact, the evidence. And there is a further implication in penalty notice PN-010778 that he did not notify Stewards of his illness. The Applicant's unchallenged evidence was that he did notify the Stewards of his condition through Ms Edwards as soon as possible after becoming aware of his inability to meet his riding engagements.
- [20] There is no doubt that the Applicant did not fulfil his riding engagements on that day and there is no doubt that he did not inform the Stewards prior to going back to the van of the fact that he felt some dizziness. There is however no doubt that he did inform the Stewards of his inability to ride, and that he did so as soon as possible after it became apparent to him that he was too ill to fulfil his riding obligations. He had no phone coverage at Ewan and used the only means of communication available to him, that being through his partner, Ms Edwards.
- [21] AR 127 cannot be a charge of strict liability, and it is accepted by the Respondent that if the Applicant is to be found guilty of that charge, then it would be incumbent upon the Respondent to disprove the account which the Applicant has given. In the Panel's view, the Respondent has failed to do this.
- [22] Accordingly, the Applicant should be found not guilty of any offence against AR 127.
- [23] The Respondent has placed some weight on the evidence given by steward Nosworthy, that he had "seen him (the Applicant) going in the jockey's room" somewhere around 1:00 PM. As we have noted, the Stewards seem to have accepted that the Applicant had left the course to return with Ms Edwards to their van at about 12:50. In any event, Mr Nosworthy's evidence in that regard is brief and lacking in detail. During the hearing another Steward present, Mr Warren, referred to Mr Nosworthy's observations that he had seen the applicant "outside the room"⁶. Mr Warren, who had been accompanying Mr Nosworthy conducting the breathalyser tests, said that he did not see the Applicant enter the room and he also said that he asked other jockeys who said that they did not see the Applicant in the room.
- [24] The Applicant himself denies that he went into the jockey's room and his evidence in that regard is supported by the evidence given not only by Ms Edwards but also that given by Mr Rowe. Mr Rowe is a licenced trainer and a totally independent witness. His account is supportive of the account given by the Applicant and does not sit easily with any evidence from Mr Nosworthy that he had seen the Applicant going into the jockey's room at about 1:00pm. For the Applicant to have done so is not consistent with the accepted position that his whole purpose in being there at that time was to enable his partner to ascertain the situation with her riding engagements for the day and then to return to the van.
- [25] As to the charge under AR 111(2), during the course of this hearing, we asked questions of Ms Ballard, who appears for the Respondent, and Mr Griffiths, a very experienced Steward, as to the application of this rule. The position of the Respondent seems to be that it depends to a large degree upon the assessment of the individual rider. This is a matter which may require more detailed legal submissions before a conclusive view can be expressed. However, it surely cannot be totally a subjective matter of self-assessment by the rider. Logically there should be some additional requirement of objective

⁶ Recording of Steward's hearing, interview two – timestamp 27:21

assessment by a reasonable person with assumed knowledge of the rider's "injury, sickness, abnormality or condition" as it existed at the relevant time. Should a reasonable person in the shoes of the rider have considered that any such matter may affect, or may have affected, the rider's performance? Such an approach would involve a test with both subjective and objective considerations.

- [26] The evidence here does not enable that objective assessment. The Applicant however is a very experienced rider. There is evidence that he has had more than 15,000 rides over more than 30 years and that he has written in at least three countries. He is a heavy rider, accustomed to wasting and is fully aware of the consequences of wasting. He is aware of his limitations and of his ability to recover and has said that at the time he left the Stewards' area to return to his van, he believed he would be "right to ride". It was only subsequently that his condition deteriorated. In light of this, it is the Panel's view that the Applicant should also be found not guilty of the charge under AR 111(2).
- [27] Even if it were accepted that he should have reported his condition at the time, the penalty guidelines require that the circumstances of the offence and the degree of culpability of the offender should be given proper weight. Notwithstanding the unfortunate consequences which almost inevitably follow from later riding changes, the circumstances which necessitated the changes in this case indicate a low degree of culpability on the Applicants part. Given the matters particular to this Applicant to which we have referred, no greater penalty than a reprimand would have been required in any event in the Panel's view.
- [28] In the result then, pursuant to section 252AH(1)(c) of the *Racing Integrity Act*, the decision the subject of this application with respect of these charges is set aside and determinations of not guilty are substituted.