

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-75	
Name	Marnu Potgieter	
Panel	Mr Kerry O'Brien AM (Chairperson) Mr Edwin Wilkinson (Panel Member) Mr John McCoy OAM (Panel Member)	
Code	Thoroughbreds	
Rule	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>	
Penalty Notice number	PN-009369	
Appearances & Representation	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission Geoff Goold
Hearing Date	9 January 2024	
Decision Date	9 January 2024	
Decision	Pursuant to 252AH(1)(a) the Racing decision is Confirmed. <i>(delivered ex tempore)</i>	

Reasons for Decision

- [1] The Applicant in this matter is apprentice Jockey Marnu Potgieter. On the 30 December 2023, following the running of race 10 at Doomben, the Applicant was found guilty by Stewards of an offence of careless riding contrary to Australian Rules of Racing 131(a).
- [2] By way of penalty, and following his plea of guilty to the charge, the Applicant received a licence suspension of 11 days, commencing at midnight on the 6 January 2024 and ending at midnight on the 17 January 2024.
- [3] The particulars of the charge levelled against the Applicant were as follows:
- "As the rider DR WHY NOT, apprentice M Potgieter failed to make sufficient effort to prevent his mount from shifting in approaching the 800m resulting in SELF INDULGENT being carried in and causing SIR WARWICK to be checked from that runners' heels. VIMINELE which was trailing was also checked as a result."*
- [4] At the Stewards' Inquiry senior Jockey Michael Rodd, who had ridden the winning horse in race 10, Hatchet, appeared in a supporting capacity for the Applicant who is a mature age (31 years old) apprentice. The Applicant was obviously content to have Jockey Rodd's assistance.
- [5] Although Jockey Rodd had participated in the race, at no stage had his riding attracted the adverse attention of the Stewards who heard evidence from Jockey Williams (Self Indulgent), Jockey Dolan (Sir Warwick), and the Applicant. At the conclusion of the evidence the Applicant entered a plea of guilty to the charge and the penalty referred to above was imposed.
- [6] The Applicant now contends that he is not guilty of the offence of careless riding.
- [7] The grounds of his Application for Review are several.
- [8] Firstly, he contends that he "did not have fair representation" by Jockey Rodd as he, Jockey Rodd, "also had an influence on the tightening of Jockey Dolan's horse". Rodd, he maintains, told him that he should plead guilty.
- [9] The Applicant further submits that there were other contributing factors to the race and its incidents.
- [10] Notably, Jockey Williams on Self Indulgent had "pushed in", causing apprentice Wheeler on Viminele to check his mount and then push himself in a position to put pressure on inside runners.
- [11] The position of Jockey Rodd's horse, the Applicant suggests, could also have been a contributing factor to the tightening experienced by Jockey Dolan's mount.
- [12] Although accepting that he moved in with other runners, the Applicant maintains that he did not apply pressure to Self Indulgent and at no stage made contact with that horse.
- [13] In his Application, the Applicant elaborates on his grounds for review as follows:
- "Jockey Williams rapidly came from behind and outside of my heels to directly inside me, and in doing so he has trimmed up B Wheeler whose mount overreacted.*
- In my opinion, Mr Willams is the key contributor to the interference of the horse inside him, but there was allot going on in this race.*
- I moved over with the rest of the field and raced a bit closer to the rest of the runners but it only became tight between runners as a result of Mr Williams pushing in there, if he's not there there's no pressure to Dolan.*

B Loy caused the interference to B Wheeler's mount by dictating him onwards and Wheeler has looked to his inside to allow his mount to come across the heels of the runners to his immediate front and as he's looked to his inside Dolan has come back and lost his balance, his mount making Wheelers response savage and immediate.

I think Dolans mount is laying in and away from Craig Williams mount who has been driven up and into that run to my inside".

- [14] The Applicant has supported his arguments by attaching several still images from the race footage and he has made reference also to past races involving the horse Sir Warwick. He submits that horse has a tendency to overreact which may explain the fact that he was wearing a nose roll on this occasion.
- [15] The Applicant reiterates his claim that Williams' horse has never made contact with his mount, and that as soon as he realized that Jockey Williams was next to him, and "asked me to stay there, I moved out further".
- [16] The Respondent, in its Outline of Submissions, has addressed these arguments in some detail, providing also several still images from the race footage.
- [17] They maintain that Jockey Williams, riding Self Indulgent, was not the key contributor to the incident. Jockey Williams took the opportunity of a run presented to him and safely shifted from the outside of the Applicant's mount Dr Why Not, who was in a three wide position on the Applicant's inside.
- [18] The opportunity and space that Jockey Williams moved into safely without interference, was presented to him by the Applicant not shifting into the space earlier. It only became tight between the runners when the Applicant shifted inside, seemingly unaware that Self Indulgent had moved into the space so that he was no longer riding in a three wide position.
- [19] The Respondent submits the onus is on a jockey shifting ground to ensure that it is clear. The Applicants shift placed pressure on the inside runners causing Jockey Dolan on Sir Warwick to have to check after becoming squeezed out.
- [20] Jockey Rodd, as the early lead rider on the rail did not shift at any time during and had no responsibility to alleviate the pressure caused from the outside by the Applicant. The Respondent submits that the evidence established that the Applicant is guilty of the offence of careless riding.
- [21] Before the Stewards, evidence was taken from Jockeys Williams and Dolan, and the Applicant was also afforded the opportunity to comment on the race and the race footage.
- [22] Before the Stewards, Jockey Dolan describes how, coming off the point of the bend, he was receiving tightening from his outside, placing him in a restricted racing space by pressure from those outside runners. He did not need to check but did have to relieve pressure on the inside horses by taking hold. He could not have held his position without having done so.
- [23] Jockey Williams described pressing forward on the inside of the Applicant with sufficient room to do so. He had an established run before his line was dictated to by the Applicant.
- [24] The Applicant, in his evidence, recalled receiving a call from Jockey Williams to stay where he was - effectively, to maintain his line. This he endeavoured to do, and he does not believe that he encroached on the inside horses.

- [25] As indicated, the Applicant pleaded guilty to the charge and was found guilty by the Stewards. The penalty imposed on him was in accordance with the template which is now applied with offences of this nature.
- [26] Before this Panel, the Applicant has reiterated the argument set out in his Application for Review. He has referred the Panel in his carefully prepared argument to aspects of the race footage as well as the film images which are before the Panel.
- [27] This Panel, of course, is required their own view of the circumstances of the race.
- [28] The rear view, firstly, of the race footage, establishes the following sequence: Rainbow Connection, ridden by Jockey Loy, begins awkwardly from barrier 14. He is initially at the rear of the field and makes his way inside of Sailor's Secret (Jockey Graham) and Self Indulgent (Jockey Williams). Rainbow Connection is racing ungenerously and being restrained approaching the 1000 metre mark. Shortly after Jockey Williams, to Jockey Loy's outside, rides forward, angling inwards where he ends up to the inside of the Applicant and his mount Dr Why Not. In doing so, it appeared on the rear view footage that Jockey Wheeler on Viminele checked off the heels of Self Indulgence.
- [29] Approaching the 1000 metre mark Jockey Dolan on Sir Warwick crosses to a loose two wide position. At this point, the Applicant from a four wide position eases out slightly where approaching, the 900 metre mark, Jockey Williams then pushes up on his inside. Shortly after at approximately the 800 metre mark on the point of the turn Jockey Williams crosses in front of Jockey Dolan when insufficiently clear, causing Jockey Dolan to check his mount, Jockey Wheeler from behind, then checks off the heels of Jockey Dooling.
- [30] The question then is the reason for Jockey Williams manoeuvre towards Jockey Dolan's mount. The Panel is satisfied that the reason for that manoeuvre was that he was dictated to by the Applicant.
- [31] The Panel has found the head on footage to be of greater benefit. It shows Jockey Dolan on Sir Warwick from barrier 7, begins awkwardly stepping out slightly, he then rides his mount along. When approaching the 1000 metre mark, crosses to a loose two wide position behind the leading quartet.
- [32] Approaching the 900 metre mark, the Applicant on Dr Why Not has established a four wide position near the lead. Shortly after, when approaching the 800 metre mark, the Applicant shifts out slightly, when on the point of the corner. Jockey Williams from behind, switches across his heels to then race up inside of him.
- [33] At the 750 metre mark it appears that Jockey Williams crosses in front of Jockey Dolan when insufficiently clear, causing him to check his mount. Jockey Wheeler's mount behind appears to be racing ungenerously and then checks off the heels of Jockey Dolan.
- [34] The Panel's view is that this was brought about when the Applicant's mount, being approximately a neck in front of Jockey Williams rolls into a loose three wide position, dictating Jockey Williams in and across Jockey Dolan's line where he has to check.
- [35] At this point, the camera angle shows Jockey Loy in a three wide position behind the Applicant, this leaves room for only two horses to the inside of the Applicant.
- [36] The Panel is satisfied that Jockey Williams actions when he comes from outside and behind the Applicant to end up on his inside has resulted in the Applicant being unaware of Jockey Dolan back to the inside of Jockey Williams heels.

- [37] In saying this, the consequence of the Applicants mount having a neck advantage on Jockey Williams and rolling in, that crucial point has resulted in Jockey Williams mount crossing into the line of Jockey Dolan, where he has had to check his mount, Jockey Wheeler then checks off the heels of Jockey Dolan.
- [38] This race has been described as an untidy event. The different circumstances of Jockey Dolan's mount, Sir Warwick racing with an awkward head high carriage, Jockey Wheeler's mount Viminele racing ungenerously, the actions of Jockey Williams shifting in and to the inside of the Applicant, and in turn the Applicants mount rolling in to a loose three wide position which is evident on the Stewards footage which unfortunately resulted in two runners being checked, those runners being Sir Warwick and Viminele.
- [39] There is clear onus to exercise due care. The Panel acknowledges that horses do shift, however, it is the obligation of jockeys to at all times, make every effort to ensure that they do not interfere with the rightful running of other competitors in the race. Amongst other things this must mean that jockeys should be aware of all horses that are around them.
- [40] The onus is on the Applicant having shifted in from a four wide position to three wide which created room for only two runners to his inside. This results in Jockey Dolan having to check his mount and lose his rightful running.
- [41] It follows from these reasons that this Panel is satisfied that the charge of careless riding is established.
- [42] In answer to the claim that the Applicant was denied fair representation by the Stewards hearing there are several observations that need to be made.
- [43] Firstly, although the Applicant is an Apprentice Rider, he is a mature man, 31 years of age with more than three years' experience and some 3000 rides. On the material before us, has held a Metropolitan Apprentice licence since 2021.
- [44] The Panel is informed that as a general rule, support is offered to Apprentices in Stewards Inquiries based on age and because they are in the usual case, inexperienced and/or juveniles. Although the Applicant did not fulfill those usual criteria, he was nevertheless afforded the opportunity of a support person.
- [45] Usually that experience is provided by the Apprentice's Master, who is on track or is otherwise available. Mr Smith, the Applicant's Master, was not available on this occasion and efforts were then made by Stewards to locate a Senior Rider to support the Applicant.
- [46] The Inquiry occurred late in the day following race 10, the last race on the programme. Senior Jockey Rodd, who is a vastly experienced jockey, was not considered any stage by Stewards to be a contributor to the incident and his ride was at no stage called into question.
- [47] Furthermore, the Applicant's Master, a very experienced trainer, has frankly and very fairly agreed that Jockey Rodd's ride was not a contributing factor to the incident. The Panel is also satisfied as to that matter.
- [48] Any suggestion that the Applicant might have been somewhere overborne by the situation is not born out by an objective consideration of the material. He had an opportunity which he accepted to provide his account of the race and to comment on the race footage.
- [49] Any questions of the Applicant by the stewards were relatively gentle in nature and contained no indication of badgering or intimidation.

- [50] Jockey Rodd's riding of the horse Hatchet was not the subject of scrutiny, nor should it have been in the Panel's view.
- [51] As indicated earlier, the Applicant was content that Jockey Rodd should appear on this occasion. He had on other occasions, had the assistance of a senior jockey at such enquiries.
- [52] The record of the hearing disclosed that the Applicant asked if he could speak to Jockey Rodd before he entered his plea. He was allowed time to do so and there is nothing to indicate that his plea was other than voluntarily entered.
- [53] In the view of this Panel, the plea here was not tainted by any procedural unfairness.
- [54] In any event, regardless of the plea, this Panel, which must form its own view of the events, remain satisfied that the charge is proven to the requisite standard.
- [55] It is perhaps worthy of further mention that in making submissions by way of mitigation of penalty on behalf of the Applicant, and making them at the Applicants request, Jockey Rodd submitted that although that the interference to Dolan's mount was severe the Applicant was an inexperienced rider, and not many riders would have the foresight to identify the opportunity for the run that was taken by Jockey Williams. It was a case of the inexperienced Applicant being taken by surprise.
- [56] These comments by Jockey Rodd accord with the Panel's assessment of the incident.
- [57] The result then is that pursuant to section 252AH(1)(a) of *Racing Integrity Act 2016* the racing decision the subject of this application is confirmed.
- [58] The Applicant was granted a short stay of the execution of his suspension.
- [59] In the past, this Panel has observed that the mere fact that a suspension may have the consequence of a Jockey missing a meeting or a particular ride is not of itself a ground for mitigating a penalty that is otherwise objectively appropriate. That, of course, is not to say that the Panel does not retain a discretion in that regard.
- [60] In the circumstances of this case where there has already been an order for a stay, and where the application for a further stay of one day only is supported by the Respondent, the Panel is prepared to order that this suspension should commence on the 11 January 2024 and end on 21 January 2024 inclusive, with a resume date of 22 January 2024.
- [61] So that order is made in the circumstances of this particular case and should not be seen as general precedent applicable to all matters.