

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-61	
Name	Anthony Allen	
Panel	Mr Kerry O'Brien (Chairperson)	
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>	
Penalty Notice number	PN-009057	
Appearances & Representation	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission Clayton Warren
Hearing Date	1 November 2023	
Decision Date	1 November 2023	
Decision <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(b) the Racing decision is varied to a Reprimand.	

Reasons for Decision

- [1] The Applicant in this matter is licenced Jockey Anthony Allen.
- [2] On the 21 October 2023, Mr Allen was found guilty by Stewards of a breach of Australian Rule of Racing AR127(1) and fined an amount of \$200.00.
- [3] Pursuant to section 252AB(1) of the *Racing Integrity Act 2016* he now seeks a review of those determinations. Given the amount of the fine imposed the application falls within the ambit of section 252AD(2) of the Act, and it's therefor one which can be decided by the Chairperson sitting alone.
- [4] AR127(1) provides that a jockey or apprentice jockey must not fail or refuse to fulfil a race riding engagement. The particulars of the charge against the Applicant alleged that on the 21 October 2023, he was in breach of that rule by failing to fulfil a riding engagement on the horse Xtrasweet in Race 5 at Toowoomba "due to being dually engaged."
- [5] It is not in dispute that the Applicant had in fact been booked to ride Xtrasweet, trained by Ben Aherns, and Pharaonic, trained by Mark Currie, in the same race.
- [6] The Applicant, however, maintains that on the Thursday prior to the meeting, the 19th of October 2023, he had "taken all the right avenues" to have himself removed from the ride on Xtrasweet, "with Stewards, the trainer and (his) manager."
- [7] His Application for Review includes the following:
- "my manager had called Ben Aherns to have myself removed off his runner which he voiced was no worries at all, as I was riding for one of my main supporters in Toowoomba so he would go ahead and remove my name and find another rider. This was explained to the Stewards on the night, but they fined me and I don't believe I should have been fined when this was sorted Thursday and was out of my managers and my hands."*
- [8] The Applicant is a licensed jockey with the Queensland Racing Integrity Commission and as a licensed person he agrees to be bound to comply with the prescribed rules in accordance with AR3.
- [9] A person breaches the rules if the person is required to do something under a rule but does not do it, and such a breach exposes a person to a penalty in accordance with AR5(1)(b).
- [10] The charge against the Applicant arose after he failed to fulfil his engagement on Xtrasweet in Race 5 Toowoomba, on the 21st of October 2023 as a result of him having been dually registered and engaged to ride Pharaonic in that same race.
- [11] As it transpired, there being no other suitable riders available, an apprentice jockey was required as a substitute rider for Xtrasweet.
- [12] The Applicant's manager secured an engagement for the Applicant to ride Xtrasweet, trained by Ben Ahrens, in Race 5 at Toowoomba Turf Club on 21 October 2023. The declaration of acceptance was made prior to the time and date on the day advertised, being 9:00am Thursday, 19 October 2023.
- [13] The Applicant's manager also secured an engagement for the Applicant to ride Pharaonic trained by Mark Currie, in Race 5 at Toowoomba Turf Club on 21 October 2023. The declaration of acceptance was made prior to the time and date on the day advertised, being 9:00am Thursday, 19 October 2023; however was made after the declaration of acceptance to ride Xtrasweet.
- [14] The required time for Jockey declarations was 12:00pm on Thursday the 19th of October 2023. It appears that the Stewards were aware at that time that the Applicant was in fact dually accepted for

that race and contact was made with the Applicant's manager who advised that the Applicant "was on the Currie horse, and that (the other trainer) was getting a rider for his now". That was advised at 1:26pm, that is, after the time for declaration of jockeys.

- [15] An Applicant's manager acted as his agent. AR2 defines a rider's agent to mean "a person licensed by a PRA who by contract or other arrangement, assists the jockey or the master of an apprentice in relation to the organisation and/or obtaining riding engagements."
- [16] The Applicant was required to honour the engagements made by his manager.
- [17] The Applicant states, effectively, that it was his belief that his manager taken steps, to remove him from his riding engagement on the horse Xtrasweet. He contends essentially that the breach of the rule was no more than a misunderstanding.
- [18] It is not clear on the material precisely when Trainer Ahrens was advised of the Applicant's dual engagement. Critically however, he did not become aware until after jockey declarations at midday on the Thursday. Though apparently aware on the Saturday morning he was then having difficulty, given the late notice, in obtaining an alternative rider.
- [19] In these circumstances the Applicant in my view is guilty of the offence charged.
- [20] In relation to penalty, however, there are some further considerations.
- [21] The starting point, according to the penalty guidelines for a breach of this rule, is a fine of \$200.00. Although that provides the relevant starting point, each case must be assessed according to its own circumstances.
- [22] The penalty guidelines identify the purposes of the imposition of penalty as including the maintenance of standards of integrity in the industry and the need to provide general deterrence to the industry by ensuring that the penalty imposed is sufficiently serious to discourage other participants from breaching the rule. Specific deterrence is also a relevant factor in an appropriate case.
- [23] The penalty guidelines expressly provide that imposing a penalty involves a balance between the severity of the offence, the need for deterrence and any mitigating factors. The consideration may include factors such as:
- The circumstances of the offence and any facts or details about the offence.
 - The degree of culpability – the degree of personal or moral blameworthiness of the person accused of the breach.
 - Disciplinary record of the offender.
 - The status of the race.
 - Frequency of participation.
 - Early plea of guilty.
- [24] The meeting in the case was a Saturday TAB meeting with prize money of \$24,500 for the race in question.
- [25] Obviously, the perspective of the betting public is a factor of relevance here. The public expectation is based upon information available, that being that the Applicant as an experienced jockey was engaged to ride the horse Xtrasweet. As a result of being dually engaged the Applicant was unable to fulfil that engagement and the services of an apprentice jockey were there by required.

- [26] To that extent, issues of the integrity of the industry and the maintenance of the standards within the industry are of importance.
- [27] There are however important considerations involving the circumstances of the offence in this case and the degree of the Applicant's culpability that do not appear to have been properly considered by the Stewards' Inquiry.
- [28] The Applicant was clearly of the view that the matter had been resolved by his manager. Being aware of potential confusion, on the Friday he had in fact contacted his manager and been assured by the manager that everything was in order and that he was to ride the Currie horse on the Saturday. This was not a case involving any deliberate breach of, or wilful disregard for the Rule. The Applicant had endeavoured to clarify the situation with his manager and the consequence that ultimately ensued was not entirely of his own making.
- [29] The Applicant has no prior offending of this sort and his record in this regard is good.
- [30] Each case calls to be assessed according to its own circumstances, I am satisfied here that the degree of culpability for Mr Allen very much at the lower end of the scale.
- [31] Therefore, I am of the view that the penalty imposed on him was excessive in the circumstances, in my view, the proper order here is that pursuant to section 252AH(1)(b) of the Act, is that the racing decision should be varies and in lieu of a penalty of \$200.00 fine a reprimand should be imposed.