Queensland Racing Appeals Panel

# DECISION

***Racing Integrity Act 2016, sections 252AH, 252BM***

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| **Review application number** | RAP-8 | |
| **Name** | Madeleine Wishart | |
| **Panel** | Mr K J O'Brien AM (Chairperson)<br>Ms D Condon (Deputy Chairperson)<br>Mr E Wilkinson (Panel Member) | |
| **Code** | Thoroughbreds | |
| **Rule** | Australian Rules of Racing 131(a)<br>*A rider must not, in the opinion of the Stewards engage in careless, reckless, improper, incompetent or foul riding* | |
| **Penalty Notice number** | PN-007781 | |
| **Appearances & Representation** | Applicant | Self represented |
| | Respondent | M Johnston - Queensland Racing Integrity Commission |
| **Hearing Date** | 12 April 2023 | |
| **Decision Date** | 12 April 2023 | |
| **Decision**<br>*(delivered ex tempore)* | Pursuant to 252AH(1)(a) the Racing Decision is Confirmed | |
| **Case References** | *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336 | |

**Reasons for Decision**

[1] The Applicant in this matter Ms Madeleine Wishart, was the rider of the horse Airstrike in Race 4 at Doomben Racecourse on Saturday 1 April 2023.

[2] At the conclusion of the race, after conducting an Inquiry, Stewards charged Ms Wishart with an offense of careless riding contrary to rule 131(a) of the Australian Rules of Racing.

[3] The Applicant was found guilty of that charge and the penalty imposed was one of ten days suspension of license, with the suspension to commence at midnight on 15 April 2023 and to end at midnight 25t April 2023.

[4] The Applicant now seeks a review of that decision pursuant to Section 252AB, of the *Racing Integrity Act 2016.*

[5] The particulars of the charge of careless riding levelled against the applicant were as follows;

> *That on Saturday the 1st of April 2023 at Doomben Racecourse, as the rider of the horse Airstrike in Race 4,* (the Applicant) *did direct her mount to shift in abruptly at an acute angle, forcing jockey Loy, the rider of Clearview Star, to take evasive action and to lose his rightful running.*

[6] The Applicant was found guilty of careless riding in the mid to high range, with low range consequences, and as noted she received a licence suspension of ten days duration.

[7] In determining this application this Panel should conduct its own review of the material and form its own determination of whether the Applicant has engaged in careless riding.

[8] The question is whether the Panel is satisfied to the requisite standard, that the applicant rode Air Strike in a careless manner on the occasion the subject of the charge. Given that the charge involves the prospect of suspension, the standard of proof required although not to the same level as that required in criminal cases, should be in accordance with the principles identified in cases such as *Briginshaw*[1] and the evidence should be both cogent and probative if a determination adverse to the Applicant is to be reached. Such a determination should not be reached lightly or on the basis of flimsy evidence.

[9] The Panel has heard the recording of the Stewards' Inquiry and seen detailed footage of the race.

[10] We also have access to the Applicant's Application for Review in which she sets out her reasons for seeking the review as well as providing a number of still images which she has presented as part of her case.

[11] The observations of the Steward are recorded as part of the inquiry hearing conducted on 1 April 2023. He describes, in effect, observing the Applicant held up for clear running at about the 200 to 250 metre mark shifting at an acute angle, thereby causing Jockey Loy on his mount Clearview Star to take evasive action and change his direction of running.

[12] Stewards are experienced in these matters and we do have regard to those observations.

[13] We will not here set out in detail all of the comments made by the Applicant, or by Jockey Loy at the Stewards' hearing.

[14] Jockey Loy to our hearing was not unsympathetic to the Applicant, a factor which may be not surprising given they follow a common occupation. He did observe that she was, "still learning her craft".

[1] *Briginshaw v Briginshaw* [1938] 60 CLR 336

[15] He said that he had lost no momentum, and he said that he did not have to check his horse. He did however say that he would not otherwise have taken the evasive action which he did, were it not for the Applicant's manoeuvre, and also that the horses would have bumped had he not shifted in.

[16] Although it is not determinative of the issue, he conceded the Applicant could have taken more care.

[17] The Applicant in her evidence before the Stewards hearing did not concede that her actions were careless. She claimed that Mr Loy's horse had "overreacted", and that a run was still available for him.

[18] She went on to say she had "never put his horse on the deck". She conceded however, that she should not have conducted the manoeuvre as quickly as she had.

[19] We have not here attempted to set out in detail the evidence given by Jockey Loy and by the Applicant before the Stewards' Inquiry. We have a merely sought to identify some of the more salient aspects.

[20] The Applicant makes the following statements in her application, these constitutes the submission upon which she effectively now relies:

> *"The race move I made is seen in every race meeting countrywide. Contact was never made with jockey Loy's horse. Loy never stopped riding, never put the stick away and never took hold. His horse overreacted when I got close to it, his horse was racing ungenerously earlier in the race at the 700m when it can be seen throwing its head in the air with no pressure from another rider. He never took evasive action, nor did I ride careless or take his running or make contact."*

[21] She went on to say that her manoeuvre was never careless. She repeated:

> *"I never crossed Jockey Loy. I never made contact. He never took hold of his horse. He simply rolled on the fence to allow both of our horses fair running, as his horse was stopping and mine was making good ground quick. This racing move is seen in every race, it is seen every race coming around the home turn when one horse is making better ground and dictates to another horse to follow both runners clear running."*

[22] She repeated her claim that jockey Loy did not stop riding and that there was no contact between the two horses. He said that he did not have to take evasive action. He rolled in one horse to the fence to allow both horses clear running, "which you see every single day".

[23] We have set out these matters in some length because we did not want to do any injustice to Ms Wishart's arguments here.

[24] The Panel has had the opportunity to review all of the material that we have mentioned, including review of the race footage from a number of angles, as well as considering the still images that have been submitted.

[25] Careless riding can occur without there being any impact or without there being any injury. The quality of the riding and the categorization of the riding is not dependent upon any such occurrence.

[26] The Panel has formed a number of views, a number of risks and a number of conclusions in relation to these events.

[27] The Applicant accepts in her submissions that Jockey Loy's horse had been racing ungenerously at the 700 metre mark. This can be seen on the video footage where Jockey Loy's mount, Clearview Star is inclined to throw its head and race greenly on its outward path for a number of strides. This happens when the pace of the race slackens.

[28] In the Panel's view, this incident has no bearing on the charge before the Stewards. From that point on, Jockey Loy has his mount Clearview Star racing tractably entering into the straight in a one wide position.

[29] At approximately the 200 to 250 metre mark in the straight, the Applicant directs her mount Airstrike acutely inwards from a four wide position to obtain clear running. In doing so, Jockey Loy anticipates his running being taken by the Applicant's mount and he takes evasive action, steering his mount in and away from the Applicant's mount. The margin between the two horses would only be an estimate of a neck, with the Applicant's mount being slightly in front. No contact is made between the two horses.

[30] Although the Applicant's mount soon after races away and to the front of Jockey Loy's mount, there is no doubt in the Panel's view that if Jockey Loy hadn't taken the action he did, the incident may well have been more serious. Jockey Loy, in the Panel's finding, was entitled to have continued his line of running in a one wide position. Instead, he ends in the position on the fence having steered away to avoid the Applicant's mount.

[31] It is the opinion and the conclusion of the Panel that the charges of careless riding on the part of the Applicant is made out. Pursuant to section 252AH(1)(a) the decision of the Panel is that the racing decision, the subject of this application, is confirmed.

[32] The ten-day suspension, the subject of that confirmation and the racing decision should commence on midnight 15 April 2023.