



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0020-19
Applicant's Name:	Michael Murphy
PART 2: Decision History	
Original Decision:	Breach of Rule 131(a) of the Australian Rules of Racing
Original Decision Makers:	J Williamson, K Daly, B, Connell, G Goold
Date of Original Decision:	10 March 2019
Internal Review Decision:	Original decision of charge and penalty confirmed –
Internal Review Decision-Maker:	Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	29 March 2019
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Michael Murphy, rider of FLAUNT in Race 4 at the Sunshine Coast Turf Club on 10 March 2019, was found guilty of a charge of reckless riding pursuant to Australian Rule of Racing 131(a).</p> <p>Australian Rule of Racing 131(a) states:</p> <p><i>"A rider must not, in the opinion of the Stewards: (a) engage in careless, reckless, improper, incompetent or foul riding"</i></p> <p>At the Stewards' inquiry conducted on 10 March 2019, the Applicant was found guilty of a charge of reckless riding pursuant to a Australian Rule of Racing 131(a) in that he directed his mount FLAUNT out at an acute angle, resulting in it shifting out abruptly and over a sustained distance under strong riding, causing interference to both DRAGON INTHE NOTH and MISS FLAWLESS.</p> <p>Stewards subsequently suspended the Applicant's license for four (4) weeks to commence at midnight on 17 March 2019 and to expire at midnight on 14 Apr 2019.</p> <p>The Applicant sought a review of the charge and penalty and submitted the following in support of his Application:</p> <p><i>"I wish to apply for an internal review to have the decision changed from Reckless riding to careless riding and the penalty reduced to a fair penalty of 14 days.</i></p> <p><i>Firstly, with the change in rule from 137a to 131a which now includes Careless, reckless and Improper riding within the same rule was not explained very well to me and I don't think I was fairly treated as even the senior jockey who</i></p>	



supported me throughout the hearing encouraged me to plead guilty to the charge, thinking that I was to be charged with Careless riding. To sustain a charge of Reckless Riding, there needs to be INTENT on my behalf and the stewards erred in not establishing that there was any intent on my behalf to be Reckless and not considering all the facts of the case.

Secondly, I am only guilty of careless riding due to the fact that when the incident happened, I only planned to come out one horse which was directly in front of me but the horse, I rode who was having its first start in a race overreacted badly and continued to run out which caused the interference. It is plain to see on the film that I was not prepared for the action the horse took and I became slightly unbalanced when the horse continued on its outward motion which resulted in the interference being caused.

I request that the Internal reviewer overturn the decision of Reckless Riding and reduce the penalty to a charge of Careless riding with a penalty of what I believe is a fair penalty of 13 to 14 days.”

The outcome sought by the Applicant is that the charge be amended to a Careless riding charge and that the penalty be reduced.

PART 4: Reasons for Internal Review Decision

Stewards opened an inquiry into the alleged aforementioned incident that occurred near the 200 metre mark of the race.

Mr James Williamson, Senior stipendiary steward of the Queensland Racing Integrity Commission and Chairman of the inquiry provided an observation of the incident stating “--from my observations, as the field approached the 200 metres I became aware that jockey - apprentice Murphy appeared to be shifting to obtain clear running and angled out quite hard, and in shifting out to obtain that clear running was at an angle still moving out. I felt then you started to apply the whip, and this caused his mount to come into heavy contact with Dragon Inthe North, which turned that horse out, which caused it to make heavy contact with Miss Flawless. It affected both riders. I felt that Mr Nakao and Mr Gallagher both had to take hold at that stage and both horses lost momentum and lost ground at that stage”.¹

Mr Kym Daly, Stipendiary steward of the Queensland Racing Integrity Commission provided a further observation of the incident stating “-- I was on the home turn and had a back-on view of an incident which took place near the 200 metres. Michael Murphy was probably 3 horses off the fence travelling well. It appeared that approaching the 200 he has applied pressure to the nearside rein. He shifted out very abruptly, probably coming out, from my observation, maybe 4 horses. As a result of that shift to come out he has made heavy contact with Clayton Gallagher, on Mr Ross's horse, Dragon In The North, bumping that horse severely. To the outside of Clayton Gallagher was apprentice Nakao, on Mr Wanless's horse, and she has been bumped in turn as result of that shift from apprentice Murphy”.²

Miss Miki Nakao rider of MISS FLAWLESS which was racing to the outside of DRAGON INTHE NORTH in evidence stated “At that point my horse was making up ground or really well, and then I saw – yeah, I actually saw Michael Murphy's horse bumped Clinton Gallagher's horse really sharp, and it made the result of bumping Clinton Gallagher's horse into me. I have to stop riding and make my horse's momentum again, but it's not going to go any better than what I was going before I got bumped.” The Chairman of inquiry questioned “How much wider did it take you off your line, do you estimate?” to which Miss Nakao replied “I think – at least I got bumped one or two horses”.³

¹ Transcript of Stewards inquiry dated 10 March 2019 page 2 and 3.

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³ Transcript of Stewards inquiry dated 10 March 2019 page 3.



Mr Clayton Gallagher rider of DRAGON INTHE NORTH which was racing several horses wider to the outside of FLAUNT in evidence stated *“Approaching that turn my horse wasn't much help to the incident. It was tending to want to hang out trying to get away from the field. As Michael's horse did shift out – it was coming pretty sharp. My horse – I didn't have any – it wasn't so much pressure or didn't bump me or anything like that. My horse just took fright and also wanted to drag itself out as well. I don't believe – I didn't stop riding him out. I just sort of tried to straighten my horse to stop it from hanging out further than what it was”*.⁴

The Applicant rider of FLAUNT which was racing several horses to the inside of DRAGON INTHE NORTH in evidence stated *“I was just – approaching about the 350, 300 metre mark, I was just in a bit of a sticky situation where my horse was travelling nicely and I was in a bit of a pocket. I had nowhere to go. My intentions were to skip on – skip to the outside of Mr Nothdurft's heels. In doing so my mount, being a first starter, she's probably just overreacted a touch and it hasn't helped inside (outside) runners at all when she's ----- Yes. She probably didn't help the outside runners. Just – just her overreacting, you know, and – yes.”* The Chairman of inquiry questioned *“So do you say you were taking hold beforehand or -----”* to which the Applicant replied *“As soon as I got to the outside of Mr Nothdurft's heels I continued to ride my mount out unaware that I was still shifting – shifting outwards”*.⁵

The Applicant's complete internal review submissions are outlined in Part 3 of this decision.

The Applicant in part submitted part *“Firstly, with the change in rule from 137a to 131a which now includes Careless, reckless and Improper riding within the same rule was not explained very well to me and I don't think I was fairly treated as even the senior jockey who supported me throughout the hearing encouraged me to plead guilty to the charge, thinking that I was to be charged with Careless riding. To sustain a charge of Reckless Riding, there needs to be INTENT on my behalf and the stewards erred in not establishing that there was any intent on my behalf to be Reckless and not considering all the facts of the case”*.⁶

For clarity the previous Australian Rule of Racing 137(a) which dealt with (careless, reckless, improper, incompetent or foul riding) was replaced with Australian Rule of Racing 131(a) as at 1 March 2019.

The wording of the current Australian Rule of Racing 131(a) particular to part (a) is consistent with the previous version of Australian Rule of Racing 137(a) in that the aforementioned riding offences are grouped under part (a) of the rule stating:

(a) He is guilty of careless, reckless, improper, incompetent or foul riding.

The reviewer rejects the Applicants submissions the amended wording of the aforementioned rule was not properly explained during the steward's inquiry. The reviewer finds the stewards clearly articulated the amendments to the wording and numbering of the current Australian Rules of Racing and particularly specified during the inquiry that the aforementioned charge the subject of review was pursuant to 'reckless riding' and not careless riding.

Recklessness under Australian law does not require intention to produce a result. A person is reckless if they engage in conduct knowing that it will likely produce a particular result and the person disregards the possibility of the risks flowing from such an action. A person who engages in reckless behavior is less blameworthy than someone one who engages in conduct intending to produce a result.⁷

⁴ Transcript of Stewards inquiry dated 10 March 2019 page 3 and 4.

⁵ Transcript of Stewards inquiry dated 10 March 2019 page 4 and 5.

⁶ Internal Review applicant dated 12 March 2019.

⁷ Zaburoni v The Queen (2016) 256 CLR 482; He Kaw Teh v The Queen (1985) 157 CLR 523.



Subsequent to viewing the race footage, the reviewer finds, the Applicant, rider of FLAUNT which was momentarily held for clear running approaching the 200 metre mark, subsequently directed his mount out on an acute angle (to obtain clear running) when not clear of DRAGON INTHE NORTH, thereby tightening that horse out onto MISS FLAWLESS, resulting in DRAGON INTHE NORTH and MISS FLAWLESS being severely hampered and forced wider on the track. The reviewer finds the race footage demonstrates subsequent to FLAUNT being held up for clear running, the Applicant looked to his outside before turning his horses head out and directed his mount out several horses when riding forward, intermittently with the whip in an attempt to obtain clear running. The reviewer rejects the Applicants submissions that FLAUNT “*overreacted badly and continued to run out—*” The reviewer finds FLAUNT raced tractable throughout the race and answered the bit at all relevant times, particularly when directed out by the Applicant near the 200 metre mark. The reviewer acknowledges horses may generally react when directed out on such and acute angle, and finds no evidence where the Applicant attempted to straighten his mount in an attempt to protect his fellow riders and avoid causing interference.

The reviewer finds it can be reasonably argued the Applicants actions fall into the more serious offence of ‘improper riding’ (which requires intent) considering the Applicant in evidence stated “*I was just in a bit of a sticky situation where my horse was travelling nicely and I was in a bit of a pocket. I had nowhere to go*”.⁸ The reviewer finds the Applicants intentions were clear and despite being held up, shifted out into clear running at the expense of the aforementioned horses. The onus is on the rider shifting ground, in this instance the Applicant, to ensure he is sufficiently clear of other horses beforehand (particularly when shifting ground on such an acute angle) to avoid causing interference. The reviewer accepts the safety of horse and rider is paramount and finds it was extremely fortunate that the interference to the affected horses and riders (although noteworthy) was not more severe in the circumstances.

In weighing up the totality of evidence and taking into account the aforementioned factors the reviewer is satisfied the Applicants actions as a minimum constitutes an offence of reckless riding and accordingly finds the charge proven.

The stewards deemed the Applicants actions to be reckless riding pursuant to Australian Rule of Racing 131(a). The standard penalty for reckless riding is in the vicinity of 4 weeks suspension. The Applicant’s disciplinary history is clear of any prior reckless riding offence.

In weighing up the evidence particular to penalty, consideration was provided to the Applicant’s submissions, degree of recklessness, severity of interference, guilty plea, precedent penalties and disciplinary history. The Applicant received a three (3) day reduction in penalty for his guilty plea and recent respectable disciplinary history. The reviewer finds the penalty is consistent with prior penalty precedents and taking into account the ‘high degree’ of recklessness by the Applicant is not satisfied a further reduction in penalty is proven and accordingly confirms the original decision on charge and penalty.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

⁸ Transcript of Stewards inquiry dated 10 March 2019 page 4 and 5.



For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

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