



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 0022-19
Applicant's Name:	Dale Smith

PART 2: Decision History

Original Decision:	Breach of Rule 131(a) of the Australian Rules of Racing
Original Decision Makers:	N Boyle, C Albrecht, R Hitchener, R Hanson
Date of Original Decision:	13 March 2019
Internal Review Decision:	Original decision of charge and penalty confirmed – nine (9) day suspension
Internal Adjudicator:	Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	4 April 2019

PART 3: Summary of Internal Review Application

The Applicant, Mr Dale Smith, rider of FOXY AFFAIR in Race 3 at Doomben on 13 March 2019, was found guilty of a charge of careless riding pursuant to Australian Rule of Racing 131(a).

Australian Rule of Racing 131(a) states:

“A rider must not, in the opinion of the Stewards: (a) engage in careless, reckless, improper, incompetent or foul riding”

At the Stewards' inquiry conducted on 13 March 2019, the Applicant was found guilty of a charge of careless riding pursuant to Australian Rule of Racing 131(a) in that he permitted his mount to shift in near the 500m tightening the running of FORT MYER, which had to be checked, became unbalanced and lost ground.

Stewards subsequently suspended the Applicant's license for 9 days to commence at midnight on 20 March 2019 and to expire at midnight on 29 March 2019.

The Applicant sought a review of the charge and penalty and submitted the following in support of his Application:

“My horse was racing one off the fence as I went around the outside of Fort Meyer. The available video footage clearly shows me one off fence racing tight with the horse on my inside. My line didn't alter, as is shown on the footage.

Jockey Mark Du Plessis has provided a statement of what happened in his opinion. I am disappointed that Du Plessis was not called into the initial inquiry when it was very clear that the video footage provided was not conclusive.

The outcome sought by the Applicant is that *“the charge against me be revoked, as the inconvenience to Fort Myer was caused by itself initially shifting out slightly and bumping my horse, turning my horse slightly then into him”.*



PART 4: Reasons for Internal Review Decision

Stewards opened an inquiry into the alleged aforementioned incident that occurred near the 500 metre mark of the race.

The reviewer is advised due to a recording malfunction with the audio of inquiry there was no evidence recorded and hence no transcript provided as part of the review. The reviewer subsequently provided the Stewards and Applicant with the opportunity to provide any further submissions particular to the evidence provided during the stewards inquiry.

Mr Neil Boyle, Senior Stipendiary Steward of the Queensland Racing Integrity Commission and Chairman of the inquiry provided submissions dated 27 March 2019 stating *"I was the Chairman of the meeting. Stewards took evidence from riders Dale Smith and Matthew Palmer. Fort Myer (M Palmer) obtained the lead at the 1300m. After passing the 900m Foxy Affair (D Smith) shifted out from a trailing position in the one wide line to improve three wide to obtain the position outside the leader approaching the 700m. Once obtaining that position Foxy Affair raced in a loose one wide position for a short distance until approaching the 550m when Foxy Affair was allowed by its rider to shift in and raced tight with Fort Myer which was racing to its inside. Approaching the 500m Foxy Affair made contact with Fort Myer which was tightened, became unbalanced, brushed the running rail and eventually had to be checked by its rider and lost ground. In evidence Jockey Dale Smith explained that he did have Fort Myer tight to his inside and added that this is his normal manner in which he rides. Jockey Smith added that he made no effort to come away from Fort Myer as he was of the belief that there was sufficient room for him to continue riding in the line chosen. Jockey Palmer explained that after being headed by Foxy Affair passing the 550m he was tightened for room by that runner which continually shifted in and eventually made contact with him, causing his mount to become unbalanced, tightened for room and having to be checked and lose his rightful position. Stewards gave consideration to the evidence tendered by the riders involved and the race footage. After doing so Stewards issued a charge to jockey Dale Smith under AR131(a) – careless riding. Specifics of the charge being that approaching the 500m you permitted your mount to shift in when insufficiently clear tightening the running of Fort Myer which had to be checked, became unbalanced and lost ground. Jockey Dale Smith pleaded not guilty to the charge. Stewards however were satisfied that the charge could be sustained and found jockey Smith guilty of the charge".¹*

Mr Chris Albrecht, Stipendiary Steward of the Queensland Racing Integrity Commission, provided submissions dated 27 March 2019, particular to a live observation of the incident stating *"I was positioned at the tower near the 400m for the running of Race 3, from this tower I had an observation of an incident which occurred near the 500m. Jockey Dale Smith rider of FOXY AFFAIR after improving forward from a wide position near the 800m had then obtained a positioned outside the leader FORT MYER ridden by Matt Palmer near the 600m, at which point near the 500m shifted in when not clear, tightening the running of FORT MYER resulting in FORT MYER having to be checked and losing its rightful running".²*

The Applicant was provided the submissions made by the Stewards and was invited to respond. The Applicant rider of FOXY AFFAIR provided submissions dated 2 April 2019 stating *"To whom this concerns.*

1. In the Stewards summation by Neil Boyle (who didn't see the incident) he makes comment that my horse "made contact with Fort Meyer which was tightened". How can he say this when he didn't see the incident and the video footage does not substantiate this comment. Once again this is significantly different to what was said by Steward Boyle in the inquiry.

¹ Mr Boyle email dated 27 March 2019.

² Mr Albrecht email dated 27 March 2019.



2. Jockey Palmer when questioned did not answer the question in the way it has been transcribed below. My recollection is that Palmer agreed we were racing tight and his horse re-acted to this and became unbalanced.

3. In Steward Boyles summation there is no mention of my horse making contact with Fort Meyer which was in his initial statement.

4. Statement from Steward Albrecht who actually saw the incident from the tower makes no mention of this contact that my horse apparently had with Fort Meyer. Also Steward Albrecht has not mentioned the comment he made to me in the inquiry which I felt was unprofessional and showed considerable bias to the Stewards decision. The comment was "In my opinion Dale should show more consideration to his fellow riders".³

The Applicant further submitted a statement from Mr Mark Du Plessis rider of LEFKAS ISLAND in the subject race dated 15 March 2019, which stated "From my memory of the race and after watching the race replay (not any Stewards footage), I had commenced to make a run one off the fence on the inside of Michael Cahill who had rolled off to a two wide position under pressure. Following that I ended up behind Dale Smiths mount (Foxy affair) who was travelling in the one off the fence position. It looked as though, while passing the leader of the race (matt Palmer) he rolled out into D Smith's hindquarters causing D Smiths horse to "cork screw" inwards and then awkwardly place the leader on to my mount which had a slight effect on Michael Cahill's mount. All this happened at race pace."⁴

Subsequent to viewing the race footage, the reviewer finds the Applicant rider of FOXY AFFAIR permitted his mount to shift in near the 500 metre mark when not clear of FORT MYER, thereby tightening that horse in towards the running rail and as a consequence FORT MYER became extremely unbalanced and had to be checked. The reviewer accepts Mr Du Plessis statement was an observation of his *memory* of the race and subsequent to witnessing the lateral TV version of the race replay. Mr Du Plessis was not privy to the steward's inquiry nor witnessed the stewards patrol race footage of the incident. Accordingly, the reviewer rejects Mr Du Plessis comments that Mr Matthew Palmer rider of FORT MYER rolled out into the hindquarters of FOXY AFFAIR, and finds any contact between the aforementioned two horses was due to FOXY AFFAIR shifting in and tightening the running of FORT MYER. The reviewer finds the race footage is reasonably consistent with Mr Albrecht's live observation of the incident from his vantage point, and further finds the race footage demonstrates the Applicant permitted FOXY AFFAIR to shift into a position in line with the shadow of the running rail which failed to leave sufficient galloping room for FORT MYER, and as a consequence was the sole cause of the aforementioned incident. The reviewer finds the safety of horse and rider is paramount and finds the Applicants actions were completely unnecessary in the circumstances and accordingly is completely satisfied the charge the subject of review is proven.

The stewards deemed the incident to be in the low-range. The standard penalty for a low-range offence is a ten (10) day suspension. The Applicant's disciplinary history demonstrates the last careless riding offence was in January 2019 and prior to that September 2018.

In weighing up the evidence particular to penalty, consideration was provided to the Applicant's submissions, degree of carelessness, severity of interference, not-guilty plea and disciplinary history. The reviewer, in considering the totality of the incident and taking into account the aforementioned factors, finds it can be reasonably argued that the incident falls into the mid to high range category, particularly when assessing the Applicants degree of carelessness and the

³ Applicant email dated 2 April 2019.

⁴ Mark Du Plessis statement dated 15 March 2019.



interference suffered to FORT MYER. Accordingly, the reviewer finds the penalty to be extremely considerate in the circumstances and 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.

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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