

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Thomson v Queensland Racing Integrity Commission* [2019] QCAT 86

PARTIES: **BONNIE LOUISE THOMSON**
(applicant)
v
QUEENSLAND RACING INTEGRITY COMMISSION
(respondent)

APPLICATION NO/S: OCR128-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 1 April 2019

HEARING DATES: On the papers

DECISION OF: Member Traves

ORDERS: **The internal review decision IR0040-18 of 15 May 2018 is confirmed.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – OTHER PROFESSIONS, TRADES AND CALLING – where jockey found to have breached Australian Rules of Racing 137(a) on internal review – where decision by consent to limit review to a review on penalty – appropriate penalty

Australian Rules of Racing, rule 137(a)
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 24
Racing Integrity Act 2016 (Qld), s 246

Dodge v Snell [2011] TASSC 19
Queensland Racing Integrity Commission v Gilroy [2016] QCATA 146

REPRESENTATION:

Applicant: Self-represented

Respondent: A Turner, Queensland Racing Integrity Commission

APPEARANCES

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

Introduction

- [1] On 19 April 2018, Ms Thomson was found guilty of a breach of Rule 137(a) of the Australian Rules of Racing in relation to her ride that day in Race 6 on One Bar None at the Townsville Turf Club.
- [2] Rule 137(a) of the Australian Rules of Racing provides, relevantly:
- Any rider may be penalised if, in the opinion of the Stewards,
- (a) he is guilty of careless, reckless, improper, incompetent or foul riding.
- [3] The stewards found Ms Thomson guilty of careless riding in that near the 750 metre mark she had permitted her horse to shift in when not sufficiently clear of Platinum Tycoon, which resulted in that horse being taken inwards onto Man Around Town, which in turn was taken inwards onto Rivariva, causing both horses to be checked. The stewards said, in arriving at a penalty:
- On a minor or low range we start from 10 to 12 days. Mid range is 13 to 17 days.
- With everything going on around with the matter, we could deem it a mid-range incident, however, as I say, what outweighs that is your usual very good riding record...and we believe that a fair and just penalty in this particular incident will be one of 7 days.¹
- [4] The stewards ultimately, therefore, treated the interference by Ms Thomson as a low range incident of careless riding and imposed a penalty of a seven day suspension.
- [5] When considering the penalty, the stewards took into account:
- (i) Ms Thomson's exemplary disciplinary history in relation to Rule 137(a);
 - (ii) the degree of carelessness;
 - (iii) the interference suffered;
 - (iv) Ms Thomson's not guilty plea; and
 - (v) the penalty precedents for breaches of Rule 137(a).
- [6] This decision to suspend Ms Thomson for seven days for a breach of Rule 137(a) was confirmed on internal review on 15 May 2018.
- [7] Ms Thomson applied for review of this internal review decision on 21 May 2018, pursuant to s 246 of the *Racing Integrity Act 2016* (Qld). The purpose of the review is to produce the correct and preferable decision, which must be arrived at by way of

¹ Queensland Racing Integrity Commission, Transcript of proceedings, 19 April 2018, 13.

a fresh hearing on the merits.² It is not necessary to establish any error in either the process or reasoning of the Commission that led to the decision and there is no presumption that the reviewable decision was correct.³

[8] Ms Thomson stated in her application for review, that she did not believe she was guilty of careless riding, that she had a ‘brilliant record’ of over twenty years of racing and should not have received a suspension. However, on 20 November 2018 the Tribunal ordered by consent that the review would proceed as a review of the decision on penalty only. Both parties provided submissions on penalty.

[9] Ms Thomson submitted as follows:

In regards to the penalty I had received from the stewards, I believe it was too much considering my exceptional riding record prior to the date. I still believe I am not guilty of the careless riding charge and believe a suspension was the rightful punishment. I would accept a reprimand [sic] for the incident.

[10] I have taken Ms Thomson to be submitting that she believes a suspension was not the right penalty and that a reprimand is more appropriate given her riding record.

[11] The Queensland Racing Integrity Commission submit that the stewards imposed a seven day suspension in circumstances where a ten day suspension would normally have been applied for a low-range breach of Rule 137(a). The Commission submit that the penalty was reduced because Ms Thomson’s exemplary disciplinary history had been taken into account. The Commission also submit that a penalty is imposed as a deterrent to riders and to ensure the safety of riders, equal opportunity to each horse and the maintenance of public confidence in the integrity of racing. Further, the Commission also note that stewards do not impose suspension periods of less than seven days and that a seven day suspension is the correct and preferable decision.

[12] Guidance on determining appropriate penalties in a racing industry context was provided by Thomas J in *Queensland Racing Integrity Commission v Gilroy*⁴, where His Honour held:

A key consideration in determining penalty is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated. There is a need to deter participants in the industry from acting in a way that is in breach of the rules, which have been formulated to achieve the purposes which include: maintenance of public confidence, ensuring the integrity of all persons involved in the industry, and safeguarding the welfare of all animals involved in racing.⁵
(footnotes omitted)

[13] It is appropriate in determining the penalty to take into account all relevant circumstances. Here, that includes the purpose of the relevant rule, the severity of the interference or other relevant conduct, the impact of the careless riding, how many horses were affected, any prior disciplinary history, co-operation with the authorities

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20.

³ *Kehl v Board of Professional Engineers of Queensland* [2010] QCATA 58, [8].

⁴ [2016] QCATA 146.

⁵ *Ibid*, [24].

and any insight demonstrated by the jockey.⁶ It is also appropriate to take into account sanctions imposed across Australia with respect to breaches of the rule.⁷

[14] The purpose of rule 137(a) has been held to be:

...to ensure the fairness of the race and that each horse has the best opportunity to win or to achieve the best possible place.⁸

[15] It is noted that careless riding is the least serious charge that can be brought under rule 137(a).

[16] In this case the description of the incident is that Ms Thomson shifted in when not sufficiently clear of Platinum Tycoon, which was taken inwards on to Man Around Town, which in turn was taken inwards onto Rivariva, causing both runners to be checked.⁹

[17] Accordingly, it appears that two horses were affected by Ms Thomson shifting in when not sufficiently clear of Platinum Tycoon. From the transcript of inquiry it appears that one horse sustained injuries which were treated by a vet. Ms Thomson's disciplinary history has been described as 'exemplary' by the Commission. The disciplinary history provided by the Commission shows that Ms Thomson has been found guilty of careless riding before, namely in April 2018 (reprimand), May 2010 (reprimand), August 2006 (reprimand), July 2004 (reprimand), May 2004 (reprimand), November 2001 (suspension), July 2001 (suspension), May 2001 (reprimand).

[18] I also take into account that the Commission would ordinarily impose a ten day suspension for a 'low range' careless riding incident, but that the penalty was reduced to seven days to take into account Ms Thomson's disciplinary history.

[19] Given the purpose of the rule, which includes to ensure the safety of jockeys and horses and that there is a serious risk of injury if the rule is not adhered to, I consider that a seven day suspension is an appropriate penalty.

[20] Accordingly, the decision of the Commission of 15 May 2018 imposing a seven day suspension for a breach of rule 137(a) is confirmed.

⁶ Ibid, [26].

⁷ Ibid, [27].

⁸ *Dodge v Snell* [2011] TASSC 19, [34].

⁹ Section 21(2) QCAT Act documents, Disciplinary History, 32.