



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 0085-17
Applicant's Name:	L Cain
PART 2: Decision History	
Original Decision:	Breach of Rule 149(2) of the Australian Harness Racing Rules
Original Decision Makers:	K Daly, N Finnigan, I Brown, R McCrae
Date of Original Decision:	20 October 2017
Internal Review Decision:	Original decision on charge and penalty confirmed - four (4) week suspension
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	2 November 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Leonard Cain, driver of JANUARY in Race 6 at Albion Park Paceway on 20 October 2017, was found guilty of a charge under Australian Harness Racing Rule 149(2).</p> <p>Australian Harness Racing Rule 149(2) states:</p> <p><i>"A person shall not drive in a manner which in the opinion of the Stewards is unacceptable."</i></p> <p>At the stewards' inquiry on 20 October 2017, the stewards questioned the Applicant over his handling of JANUARY between the 450m and the 250m. Of concern to the stewards was the apparent failure of the Applicant in attempting to improve his position from a one out trailing position passing the 400m. The Applicant stated his instructions from trainer Mr Shane Graham were that, bearing in mind JANUARY was first up from a short spell, to drive the gelding with cover for the majority of the event before producing it for one short sprint over the concluding stages. The Applicant submitted he was able to obtain a favourable run in the race behind BET IM SPECIAL and was content to follow that runner into the race. The Applicant further submitted that leaving the 400m he was unable to force SUGARMAMA (M Dux), which had improved to his outside, wider on the track so as to improve his position due to the racing manners of JANUARY at that point which he stated was inclined to lay in.</p> <p>After considering all of the evidence, including JANUARY's previous racing form, the stewards found the Applicant guilty of a charge under Rule 149(2) in that his actions in failing to make any attempt to improve his position by shifting wider, when the opportunity existed, between the 450m and 250m, was, in the stewards' opinion, unacceptable.</p> <p>The stewards suspended the Applicant's licence for a period of four weeks to commence at midnight on 25 October 2017 and to expire at midnight on 22 November 2017.</p>	



The Applicant sought a review of charge and penalty on the basis of the following submissions:

1. JANUARY has limited ability and has only ever been driven as a sit/sprint horse.
2. It was raised by Mr Ian Brown, stipendiary steward, that on 14 July 2017 the Applicant had followed up three wide with cover from the 900m mark then went four wide at the 400m mark and JANUARY did not run on, finishing 20.5m from the winner.
3. Mr Brown's observations support the Applicant's case as it clearly shows that JANUARY needs to have cover for as long as possible before being called on for a short sharp sprint up the straight.
4. JANUARY was first up from a spell on 20 October 2017 without having trialed and was not considered a good chance in the betting. The Applicant submits that no matter how much work a horse has had at home, or in trials, there is nothing like racing to get a horse properly race fit and JANUARY had experienced an interrupted preparation due to the recent wet weather.
5. The Applicant was following the favourite, a strong contender, which was racing head and head with the leader and was taking JANUARY into the race, so the Applicant was giving JANUARY every chance as the Applicant fully expected those two horses to clear out and run away from the rest of the field given their higher level of ability.
6. In the following race on 20 October 2017, driver Peter McMullen on WATTLEBANK FLYER was in exactly the same position that the Applicant was in only one race earlier, however the horse in front of him was giving ground and taking him back through the field, yet he wasn't questioned about this at all.
7. On 21 October 2017, driver Shane Graham on DUKE JUJON did exactly what the stewards had questioned the Applicant on (pushed out at the 400m mark) and promptly went backwards, proving that location was still a long way from home and that not every horse can maintain their run when pulled out too early for their level of ability.
8. Also on 21 October 2017, driver Isobel Ross on MAX RICHTER was faced with the same situation the Applicant experienced on JANUARY, except that, similar to Pete McMullen's situation, the horse in front of Miss Ross was under heavy pressure from the 500m and taking MAX RICHTER back through the field. In that instance, Miss Ross' horse flashed home and ran third. Miss Ross was questioned on this, yet no further action was taken.
9. In JANUARY's last run in Race 7 at Albion Park on 27 October 2017, she had an identical position in running and was eased wide at the 200m as was the same scenario as the previous week. JANUARY made up a similar amount of ground in both races and there was every opportunity to ease her wide earlier in a slower last quarter but felt she was not traveling well enough to do this and she would have finished further back in the field if she was wide for longer. Therefore, if the Applicant had have eased JANUARY wide earlier in a quicker last quarter it would have been detrimental to her chances and of no advantage at all.
10. On the day in question, JANUARY was hanging in rounding the turn, which was the point where stewards expected the Applicant to pull out and were concerned that the Applicant hadn't done so.



11. It was in JANUARY's best interests to be driven the way the Applicant did on the day and if the Applicant had pulled her out when stewards expected him to, JANUARY would not have made ground, she would have simply been made to cover more ground while hanging in and would not have made ground at all.
12. The horse that progressed on the Applicant's outside was SUGARMAMA and as the Applicant fully expected that horse to give ground, the Applicant believed that he would get the opportunity to push out and run on.
13. This is proven in the head-on race footage, as it is evident that the Applicant pushes SUGARMAMA out at the point when the Applicant needed to, however this was interrupted as a result of Mr Neilson's horse, BET IM SPECIAL, running out in the run to the finish.
14. In a race situation, a driver has a split second to make a decision. The Applicant made the decision that he believed gave JANUARY the best possible chance to obtain the best possible result for all concerned.
15. The Applicant did drive JANUARY to her strengths as a sit/sprinter, which is her racing pattern, and this achieved the best possible outcome. If the Applicant had pulled out any sooner as the stewards expected, it would have been detrimental to JANUARY's run and she would not have finished as close as she did, or in the position she did (fourth).
16. The Applicant fails to see how it could possibly benefit a weak sit/sprint horse to have to track wider rounding the turn, when the sprint was really on in a very fast last quarter, which would have only caused JANUARY to work much harder in the run to the line.

PART 4: Reasons for Internal Review Decision

Stewards opened an inquiry into the Applicant's driving tactics on JANUARY following Race 6 at Albion Park on 20 October 2017. The Applicant was subsequently charged under Rule 149 (2), in that he failed to make any attempt to improve his position by shifting wider when an opportunity existed between the 450m and 250m.

During the steward's inquiry conducted on 20 October 2017, the Applicant explained his driving instructions were *"Just drive it sit/sprint. Just get onto the 9's back at the start and then just drive her sit/sprint."* In response to a question *"You were able to get a good run through from the second line, and by virtue of Mr Greig eventually going to the lead near the 1200-metre mark you were able to finish in the one-one. Racing down the back straight on the final occasion you remained in a one-out position on the back of Bet Im Special. Did you give any consideration to shifting out at that point"* the Applicant stated *"No. I - you know, I was following the best horse in the race that I felt. I thought it was going to give us the best - like cart into the race. Being first up I felt that it would have been, you know, detrimental to do so."*¹ The Applicant stated *"I felt that - the horse that Madi Dux was on I felt that it had gone too early for it, so I felt that rounding that corner by the time we sort of got three quarters of the corner to the top of the straight it would have been starting to give ground and that would have been the right spot to pop off, considering, as I say, she was first-up and I was on the best horse in the race's back."*²

¹ Transcript of Stewards' Inquiry dated 20 October 2017, page 2

² Transcript of Stewards' Inquiry dated 20 October 2017, page 3



The inquiry heard JANUARY was first up from a break and the Applicant was questioned *“Did that play on your mind in not shifting out near the 400m”* to which the Applicant responded *“Yes, for sure. Obviously she was going to be on the rocks. She hadn’t had a trial either. She was going into this without a trial, and rocky preparation with the last week that we have had - we have been able to get, you know, the hard work into them. What I’m saying is that I felt that it was - you know, I didn’t feel like she was probably going to be hard rock to be doing - you know, coming out of - and I felt that it was the right spot to be in.”*³

Mr Shane Graham, the trainer of JANUARY, drove CATCH THE BREEZE in the race and confirmed the driving instructions. Mr Graham stated *“As the race was run, both leader and death-seater were travelling very kindly. In my opinion, I thought they would just zip away. To be honest, like they would drop us because they did have a good trip, and I thought - well, that’s why I - and I was sitting behind the leader thinking, “Geez, I’m not going to go with them here.”* Mr Graham stated *“Just in Leonard’s defence too, like as - like we talk about like the races and I’ll say where I think he has gone wrong and that, and I have always told him here at Albion Park because you can’t - it’s hard to come out wide early in the quarter; you are better off waiting until the end, and like - it seems like - well, he couldn’t go there at the 400 on her, but I just think this is just a - it’s our race and he couldn’t have done any more. Like he’s finished fourth and that’s about as good as he could have got.”* Mr Graham added the horse has *“limited ability.”*⁴

JANUARY’s race record shows from 31 race starts the horse returned 6 wins and 10 minor placings for \$58,363.00 in prizemoney. The race times noted the first quarter in 27.6, second quarter in 31.8, third quarter in 29.6 and the last quarter in 27.6.

The reviewer finds, after considering all of the evidence and race footage, the Applicant, driver of JANUARY, started from the three wide line on the second row and positioned into the one-one trailing BET IM SPECIAL in the early stages of the race. The Applicant remained in that position throughout the race and was subsequently held up for clear running approaching and rounding the final turn when SUGARMAMA, which had been trailing that horse, improved into the three wide line placing JANUARY in a pocket. This resulted in JANUARY being held up at vital stages approaching and rounding the final turn and received an impeded run in the straight. Despite this, JANUARY hit the line without being fully tested. The reviewer finds JANUARY received a soft run in transit and a clear opportunity presented near the 400m to improve to the outside of BET IM SPECIAL and gain an uninterrupted passage to the finish. The reviewer does not accept submissions that JANUARY was hanging in or to any extent that prevented the Applicant from improving his position near the 400m. The race footage shows the horse answered the bit on all occasions throughout the race. In weighing up the evidence, including the context of the race and soft run JANUARY received in transit, the reviewer finds by not capitalising on such a run near the 400m, the Applicant’s drive was unacceptable in the circumstances and therefore is completely satisfied the charge is proven.

The Applicant’s disciplinary history notes no previous offence under this Rule. The standard penalty for a breach of this rule is a four (4) week suspension. The Applicant is an inexperienced driver having received a licence in the last twelve months.

³ Transcript of Stewards’ Inquiry dated 20 October 2017, page 4

⁴ Transcript of Stewards’ Inquiry dated 20 October 2017, page 12, 13 and 14



In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, not-guilty plea, disciplinary history and penalty precedents under the subject Rule. In considering the aforementioned factors, the reviewer is satisfied the penalty imposed is consistent with precedent penalties and therefore confirms the 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

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au