



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 0066-18
Applicant's Name:	Damian Browne
PART 2: Decision History	
Original Decision:	Breach of Rule 135(b) of the Australian Rules of Racing
Original Decision Makers:	J Williamson, M Knibbs, C Albrecht,
Date of Original Decision:	27 June 2018
Internal Review Decision:	Original decision of charge and penalty confirmed - Two (2) month suspension
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	25 July 2018
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Damian Browne, rider of FIGHTING TEO in Race 6 at the Sunshine Coast Turf Club on 1 June 2018, was found guilty of a charge under Australian Rule of Racing 135(b).</p> <p>Australian Rule of Racing 135(b) states:</p> <p><i>"The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field."</i></p> <p>At the adjourned stewards' inquiry concluded on 27 June 2018, the Applicant was found guilty of a charge pursuant to Australian Rule of Racing 135(b) with the specifics of the charge being as follows:</p> <ol style="list-style-type: none">1. For a distance approaching the 500 metre mark, when having been afforded clear running behind DREAM CAPTAIN and TOLAI MERI, the Applicant failed to ride with sufficient purpose and vigour to attempt to improve his position when it was both permissible and reasonable at this stage of the race to do so;2. Furthermore, when following TOLAI MERI when leaving the 500 metre mark until approaching the 100 metre mark, the Applicant failed to ride with any purpose and vigour to improve his position when this action was permissible and, given the Applicant's proximity to the finish of the event, reasonable in the circumstances; and3. Additionally, it was, in the opinion of the stewards, unreasonable for the Applicant to ride without purpose and vigour when afforded clear running over the final stages of the race when clearly permissible in the circumstances.	



Stewards determined that these failures to fulfil reasonable actions, which were clearly permissible to the Applicant, resulted in FIGHTING TEO not being afforded the opportunity to win or finish in the best possible position.

Stewards subsequently suspended the Applicant's licence for a period of two (2) months to commence at midnight on 1 July 2018 and to expire at midnight on 1 September 2018.

The Applicant sought a review of charge and penalty on the basis the Applicant believes he is not guilty of the charge.

The Applicant submitted the following in support of his Application:

"I am not guilty of the charge of AR135b from 1 June 2018 at the Sunshine Coast races in Race 6 when I rode FIGHTING TEO and on 27 June 2018 I have been given a 2-month suspension.

Once we jumped from the barriers, FIGHTING TEO had hit himself in the barriers on his right side and my right foot was also banged up in the barriers and from then on, I basically had no control of the horse for the first 400 to 500 metres of the race and I did everything in my power to keep him from running off the track and it took me all of this time (First 500 metres of the race) to get the horse over towards the rail. My instructions were to go forward on the horse, but after the barrier incident and the horse's actions in not being manageable to navigate, that plan of how to ride him was impossible to follow.

During the first half of the race I was very mindful that the way the horse was racing, that I was just basically trying to get around the course safely and not suffer an injury to the horse, myself and my fellow riders in the race. In hindsight, I believe the only error I made in this race was not to pull up the horse, but at the same time, FIGHTING TEO was racing very fiercely and I wasn't able to pull him up and my main focus was basically surviving the ride.

The stewards have interpreted that I am not pressuring the horse to perform his best, but that is not the case, it is purely because the horse felt awkward in his action and I was concerned about my safety, my fellow rider's safety and the horses' safety and therefore I wasn't able to put the horse under severe hard riding and pressure.

Once the race the race was completed and I returned to scale, I reported to trainer Kevin Kemp that the horse felt awful and I was really concerned the safety side of the race and Trainer Kemp advised me that every rider and jockey who rides this horse says exactly the same thing. In many of previous stewards reports in previous race, FIGHTING TEO is made mention of beginning awkwardly, being awkward in his action etc. Trainer Kemp was happy with my explanation of the ride and understands how the race panned out that way. I also reported exactly the same thing to the stewards/clerk of scales upon returning to scale.

Therefore, I request the Internal Reviewer finds me not guilty of the charge and exonerates me of the charge and penalty."

The outcome sought by the Applicant was that the charge be dismissed.

PART 4: Reasons for Internal Review Decision

The Applicant, rider of FIGHTING TEO, was subjected to a stewards' inquiry following his ride on that horse in Race 6 at the Sunshine Coast Turf Club on 1 June 2018.



The stewards, in summary, allege for a distance approaching the 500 metre mark, having been afforded clear running behind DREAM CAPTAIN and TOLAI MERI, the Applicant failed to ride with sufficient purpose and vigour to attempt to improve his position when it was permissible and reasonable at this stage of the race. Furthermore, when following TOLAI MERI leaving the 500 metre mark until approaching the 100 metre mark, the Applicant failed to ride with any purpose and vigour to improve his position when this action was permissible and, given the proximity to the finish of the event, reasonable in the circumstances.

Subsequent to receiving initial evidence from the Applicant and Mr Kevin Kemp, trainer of FIGHTING TEO, the inquiry was adjourned to a date to be fixed. The stewards' inquiry resumed and concluded on 27 June 2018.

The inquiry heard that prior to the commencement of the race, Mr Kemp, in consultation with the Applicant, advised stewards of a change in riding tactics in that the horse would be ridden in a forward position from the outside barrier.

The betting on the subject race demonstrated FIGHTING TEO started favorite at \$3.00 and was beaten 9.2 lengths by the winner RED COLOUR. The betting activity demonstrated approximately \$67,110.00 in lay bets were wagered on FIGHTING TEO to lose the race with Betfair.

During the initial stewards' inquiry conducted on 1 June 2018, Mr Martin Knibbs, Senior Stipendiary Steward of the Queensland Racing Integrity Commission, provided his observations of the race stating *"I watched Race 6 from the stewards' tower at the 800 metres, which gave me a head-on view of the back straight. I initially thought the horse, which began from the outside draw, midway down the back straight appeared to me - I was expecting jockey Browne to ease the horse out (inaudible) in the middle of the track on his own obviously trying to find a spot from the wide draw and taking his time to come across, but for the length of time he did I thought there may have been something amiss with the horse. As I said, I was expecting the horse to be eased out of the race. Eventually jockey Browne got to a rearward position, and I think the best he got was 3 wide. He didn't seem to be - from around the side say from the 800 to around about the 500 I didn't see jockey Browne try to make any effort to improve, and that caused my concentration pretty much to be solely focused on Fighting Teo up the straight. From my view side-on going up the home straight it looked like the horse worked home moderately or fairly, but not with the usual vigour that you would see from jockey D Browne."*¹

Mr Chris Albrecht, Stipendiary Steward of the Queensland Racing Integrity Commission, provided his observations of the race stating *"During the running of Race 6 I was stationed at the tower at the 400 metres near the home turn. From that tower the field came around the home turn and probably near the 500 metres my attention was drawn to jockey Browne. It did shift out wider on the track at that stage. I felt that he was travelling fairly and he was going to apply pressure to his mount and improve into the race. That didn't appear to happen at that stage. As we all know, jockey Browne is a very patient rider. He is not the most vigorous rider at the best of times, but then once entering the home straight I was then looking for that effort to see him place pressure on his mount. That didn't appear to occur. So, as Mr Knibbs said, my attention was drawn then to Mr Browne for the remainder of the straight. It was probably down until the last 100 metres where I did see Mr Browne apply some pressure on his mount at that stage. Those were my concerns."*²

¹ Transcript of Stewards' Inquiry dated 1 June 2018, page 2 and 3

² Transcript of Stewards' Inquiry dated 1 June 2018, page 3



The Applicant, in evidence, stated *“Well, obviously pre-race we were intending to go forward, but the horse began very awkwardly, bumping my right foot on the side of the barrier very heavily. I tried to give him a bit of a dig up just after that, but it became apparent that after beginning tardily I was going to be trapped 4, 5, 6 wide if I continued on. So I elected to try and come back and come in a little bit and find a spot. At that stage my horse was running away from other horses, as I described to Mr Kemp on returning to scale that he was wanting to hang out, and then he was racing quite ungenerously. He had his head down really low and pulling. I was trying to get him to come back and come in but he was fighting me and trying to get away from the other horses, so it took me some time just to get him back into a 3-wide position where I was following Larry Cassidy, which I was happy to be doing so. At that stage I thought his horse was one of the horses to beat, but around the top (near 600m) after the horse was hanging early in the race - I was aware if I started making a run around them, you know, with the horse hanging prior to that that I was probably just going to run right off the track, so I was trying to come inside Tolai Meri (jockey Larry Cassidy’s mount) - but even then the horse is such a big horse and an awkward going horse he didn’t feel that good in his action at that stage. He was giving me quite a torrid ride. So I’m trying to just improve as closely to the fence as I can at that stage and coming back, and even when I did give him a slap after straightening he still had his head so low he really felt awkward in his action. I was reluctant to really drive him because, like say, he didn’t feel that good in his action.”* The chairman of the inquiry questioned *“So you agree that you didn’t ride with your normal vigour in the straight?”* to which the Applicant replied *“No, exactly, yes. And I think that was entirely up the straight.”* The chairman further added *“The horse was making ground though”* to which the Applicant replied *“He was making ground, and I did continue to push, but I never pulled the stick on the horse.”*³

The chairman questioned *“Had it stopped hanging by the time you got the 600?”* to which the Applicant replied *“He was still lying. I wouldn’t say he was hanging at that stage, but he was still just laying on that rein wanting to go that way and I was sort of more trying to just help him around at that stage. I did report on returning to scale that the horse did hang and gave me a torrid ride.”* The chairman questioned *“You weren’t held up at all from the 600 metres by other runners?”* to which the Applicant replied *“No. By then I was just trying to get him to balance and get closer back to the fence obviously with the rail being out as far as it was. I was trying to get him - to keep him balanced. I felt if I went for him too much he may just - like I say, with such a big, strong horse and extravagant that he might just lose his action.”* The chairman questioned *“In the straight you don’t say that the horse was hanging, but was awkward in its action?”* to which the Applicant replied *“He didn’t hang up the straight.”* The chairman further questioned *“But awkward in its action is why you say you don’t place full pressure on the horse? Or apply the whip?”* to which the Applicant replied *“Yes.”* The chairman then questioned *“Did you understand that the horse was well in the market? Did you have knowledge of that?”* to which the Applicant replied *“I don’t really take a lot of notice of the betting. Well, I mean, I have come to realise that most horses I ride are in the market here whether they have got 5 duck eggs beside their names. I really don’t take a lot of notice of the betting. I try and give every horse every possible chance regardless of where they are in the betting.”*⁴

The Applicant added *“I possibly could have ridden him a little bit more vigorously up the straight I think, but in the first half of the race he had given me such a torrid ride - as I said, and he banged my head - my foot. My foot. (inaudible)”*

³ Transcript of Stewards’ Inquiry dated 1 June 2018, page 4 and 5

⁴ Transcript of Stewards’ Inquiry dated 1 June 2018, page 5 and 6



If I take my boot off now I'm sure there is blood there. I was in a bit of pain so - you know, probably my mind wasn't a hundred percent focused on driving horse at that time." The chairman questioned "So was it more your foot the concern or the horse?" to which the Applicant replied "Well, a little bit of both. Like my foot was hurting but also, as I say - as I stated before, the horse's action was given me something to query. And I noticed in previous races looking back in the stewards reports he has had a tendency to do a few things wrong."⁵

Mr Kemp, in evidence, stated "My major thing was as soon as Damien came back he was worried about the horse's action. He did mention his foot, but he wasn't saying anything - that that was - but he did worry - he was worried about its action. He gets his head right down. I could see him over there at the 600 - but Damien said - and I don't - as far as Damien not coming out and pulling the whip up the straight and all that sort of thing, I wouldn't blame him. He said he felt bad in his action. Well, that's enough to do more than what's - he hadn't - he's done as much as I'd expect on him if he felt bad in his action. That's all I can say."⁶

Subsequent to viewing the race footage, the chairman questioned "Mr Browne, whilst the film is running there, obviously you say you were following jockey Cassidy. That's him and the light blue colours forward of you there - Tolai Meri. When he gets the opportunity to improve - and even probably prior to that - he starts riding vigorously. What reason do you say you don't ride with him - don't try to improve with him" to which the Applicant replied "I'm on one rein. I'm on one rein at this stage. I'm still just trying to help him around the corner. If I went for him I felt that I was just going to go straight to the middle of the track." The chairman further questioned "So you say he is still hanging after the 600 metres?" to which the Applicant replied "It's only in the home straight that he didn't hang. The whole time he's trying to get out and go around - try and get out. It was just like a big block. I couldn't - there was nothing - no movement with him. He wasn't responding to my hands at all." The chairman then questioned "So the only time you say you could place pressure on the horse when the horse wasn't hanging is once you straighten up?" to which the Applicant replied "Yes. Once Larry had come out and I made the decision to go back inside him - you see Larry comes out here in the second."⁷

The Applicant acknowledged he could have been more vigorous stating "As I said before, I could have probably looked to be doing a little more. The fact is I am still pushing. It's not like I was swinging to him. I was pushing. I mean you have seen me riding enough now to know that I'm not a big, extravagant pusher. But, as I said before, I probably could have looked to do a little more. As I also stated before he didn't feel that good in his action. I was reluctant to really just drive him as well. Like I'm pushing there." The chairman questioned "You say you are not normally a vigorous rider, but I would certainly say you show more vigour than that in many races" to which the Applicant replied "Exactly. On horses I felt were okay. I would certainly be pushing harder (inaudible). When the horse felt like - didn't feel right, well." The chairman further questioned "It looks very poor. It looks very poor. You are sitting 3 wide a long way away from the leaders. You do very little in the straight and the horse still finds the line relatively well under very little encouragement" to which the Applicant replied "I agree with that, but having - and we've got the privilege of being able to see the back straight and the side on. Like he has given me a torrid - you would have to agree he has given me a torrid ride throughout."⁸

⁵ Transcript of Stewards' Inquiry dated 1 June 2018, page 6 and 7

⁶ Transcript of Stewards' Inquiry dated 1 June 2018, page 7 and 8

⁷ Transcript of Stewards' Inquiry dated 1 June 2018, page 8 and 9

⁸ Transcript of Stewards' Inquiry dated 1 June 2018, page 10



The Applicant added *"I mean, as I said before it shows in previous stewards' notes that I'm not - I'm probably the third jockey in a row that has been worried about the horse's action in the straight. It's not like - and having never ridden the horse before, you know, I had some reason to be concerned with his action, and therefore I'm more - as concerned not only for the horse's welfare but my own."*⁹

Subsequent to viewing the race footage, Mr Kemp stated *"I don't get Damien Browne's ability riders to ride my horses. They are usually the next grade or 2 or 3 down, and when someone like Damien comes in and says he is concerned about the horse's action, well, I can't wait to get the vet to have a look at him tomorrow, to tell you the honest truth. I'm hoping there is nothing wrong with the horse but there could be."* The chairman questioned *"On the points that Mr Browne has brought up in relation to other riders, have you been privy to any inquiries in relation to the horse?"* to which Mr Kemp replied *"Yes, sir, yes. Another jockey, Matty McGillivray, rode him last start and when he came back in he said to the strapper - and I think Matty is a fairly fit little fellow, even though he has a bit of time off now and again, but he is fairly - really fit, and he just said, "I'm absolutely buggered. That's one of the hardest rides I've ever had", and I didn't - I was - then he said something about the horse. I don't think you said about its action but he said it was just so terrible - so hard to ride. Meaning it could have been his action or maybe or whatever. He won up here one day on a really heavy track in about a 3-horse race or a 4-horse race. Then the jockey was Mr Orman. Then he rode it at its next start, and if you watch the video of the race, he looked terrible coming up the straight. I thought he had broke down or he choked down or he done - or he bled, or some bloody thing, you know. But when we got him home we couldn't find anything wrong with him either."*¹⁰

The inquiry heard a post-race veterinary examination of FIGHTING TEO conducted by Dr Alistair Murdoch, Veterinarian of the Queensland Racing Integrity Commission, failed to find any abnormalities with the horse.¹¹

During the resumed stewards' inquiry conducted on 27 June 2018, several documents were tendered as exhibits which, in part, included all steward's reports particular to FIGHTING TEO's previous race starts and form history and a veterinary examination report for FIGHTING TEO on the day succeeding the subject race. FIGHTING TEO's form history demonstrates eight (8) starts for two (2) wins and \$20,200.00 in prizemoney.¹² The steward's reports particular to FIGHTING TEO demonstrate on three (3) occasions the horse began awkward from the barrier.¹³ The veterinary examination report for FIGHTING TEO conducted by Dr Glen Laws on the day succeeding the subject race failed to reveal any abnormalities. The veterinary report stated *"FIGHTING TEO was examined today, 2 June, 2018 at Keven Kemps Stable's Toowoomba. No abnormalities were detected on clinical examination or lameness detected at a walk and trot. In my opinion, the horse is suitable to race in the near future."*¹⁴

The chairman questioned *"Is there anything else on the steward's reports that you wish to point out?"* to which the Applicant replied *"Probably the one in particular that does stand out is the one where Jimmy Orman rode the horse,*

⁹ Transcript of Stewards' Inquiry dated 1 June 2018, page 11

¹⁰ Transcript of Stewards' Inquiry dated 1 June 2018, page 11 and 12

¹¹ Transcript of Stewards' Inquiry dated 1 June 2018, page 5

¹² Exhibit 5

¹³ Exhibit 2

¹⁴ Exhibit 3



and that was at the Sunshine Coast. 29 October, where Jimmy Orman has reported that the horse was very awkward in its action, and particularly over the final 500 metres and raced very greenly.”¹⁵

The race footage of the aforementioned race was reviewed during the inquiry. The stewards' report stated “*J. Orman reported that his mount (FIGHTING TEO) was awkward in its action, particularly over the final 500m, and raced very greenly. Trainer K. Kemp advised stewards that he would have the horse inspected by his veterinary surgeon and report to stewards anything that comes to light which may have affected the horse’s performance.*” The reviewer finds the race footage demonstrates FIGHTING TEO jumped from an outside barrier and was ridden forward and took up a position trailing the leader. The reviewer concurs with Jockey Orman’s post race comments, in particular that the horse raced green in the straight. The reviewer acknowledges this was FIGHTING TEO’s third race start. The reviewer finds that despite the horse racing greenly and awkward as noted in the aforementioned stewards’ report, Jockey Orman was able to continue to ride the horse with sufficient purpose and vigor at all relevant times that left no room for query.

The race footage of FIGHTING TEO’s race start at Toowoomba on 21 April 2018 was reviewed during the inquiry. The stewards’ report stated “*Began awkwardly and lost ground. Raced ungenerously whilst being restrained in the early stages.*” The race footage demonstrates FIGHTING TEO jumped awkwardly from the barrier and threw its head in the air on several occasions when being restrained in the early and middle stages of the race. Near the 600 metre mark, FIGHTING TEO’s rider, Mr Nicholas Keal, commenced to improve his position around the field and rode the horse at all relevant times with sufficient purpose and vigor in a manner that left no room for query. The reviewer accepts FIGHTING TEO displayed a slight tendency to lay in during the straight.

The other race mentioned by the Applicant was FIGHTING TEO’s start at Ipswich on 11 May 2018 when ridden by Mr Matthew McGillivray. The stewards’ report stated “*Began awkwardly. Laid in under pressure in home straight placing its rider at some disadvantage.*” The race footage demonstrates the horse jumped awkwardly and positioned at the rear of the field in the early and middle stages of the race. Near the 600 metre mark, Mr McGillivray commenced to improve his position around the field and rode the horse at all relevant times with sufficient purpose and vigor in a manner that left no room for query. The reviewer accepts FIGHTING TEO did lay in during the straight.

The chairman questioned “*The 600. Would you say you were impeded in improving or are you a little bit away from the horses in front?*” to which the Applicant replied “*The horse is on one rein. But it's the whole of getting up to that point is the main thing in this race. As I stated before, like its from what happened in the barrier. The horse could have injured himself when he jumped down. The way he went down the back straight he could have injured - been injured. As I stated before he has had himself that hard on the side of the barrier - both him and me - that it has taken him the whole back straight to get him over to the field. By the time I get to the 600 I'm thinking about safety rather than trying to worry about getting - improving into the race. You know, you've got a look at where my mindset would be by the time we have got to that point in the race. It's about my safety then. If I've made any mistake it's probably that I didn't pull the horse up completely because of the thoughts that were in my mind.*” The chairman further questioned “*But there wasn't anything wrong with it. We had two vets look at the horse, and the horse raced a week later and won*” to which the Applicant replied “*I agree. But having never ridden the horse before and not knowing its previous history, I'm going on what I feel. When you hit the side of the barriers like that, the horse doesn't feel right*

¹⁵ Transcript of Stewards’ Inquiry dated 27 June 2018, page 21 and 22



and I'm thinking about the horse - about safety. I'm not thinking about trying to push and shove and win the race at this stage, I'm more thinking about the horse's welfare and my own welfare and the welfare of other riders." The chairman then questioned "You have got to - you're entitled to put the horse under some test, aren't you?" to which the Applicant replied "Well, I'm just trying to say - well, where would you be mentally - thinking of something, and this is how I was mentally thinking at this time - what was going through my mind - and it was the best summation I could come up with to try and explain it. At that time I'm thinking should I be putting pressure on this horse, should I be pulling him up?" The chairman further questioned "This isn't the evidence you put forward on the day in relation to how badly you now say the horse was" to which the Applicant replied "Well, I disagree with that. I said on the day I wasn't happy. I mean, I come back straight after the race. It's not like something I've made up when I thought I was in trouble. I come back straight after the race. I said to Mr Kemp, I said to the Clerk of the Scales that I didn't feel happy with this horse's action. If I don't feel happy with the horse's action, I shouldn't have to be trying to put pressure on it. I should be - been allowed to be about to be worried about my own safety." The chairman then questioned "I suppose you put it to us that you made a mistake in not pulling the horse up. Why didn't you pull the horse up? If you were so significantly concerned about it?" to which the Applicant replied "It would have taken me about half a lap to pull him up anyway because he was so hard - hard on the bit." The chairman added "Well, if he was travelling so strong, why - doesn't that indicate that the horse isn't..." to which the Applicant replied "Horses with a broken leg can pull harder than ones without one."¹⁶

The chairman questioned "Do you believe, as you say, the horse hanging - do you believe that is depicted on the film?" to which the Applicant replied "It is hard to see it completely on the film because he is such a heavy headed horse. I haven't got it - he's not a horse with his head right on the side so is not visually easy to see. But that doesn't mean a horse isn't hanging." The chairman further questioned "Do you believe the awkwardness, as you have put to us, is depicted on the film?" to which the Applicant replied "I think it is. As I say - and as I didn't notice before as I - the first time I have ridden the horse - he's obviously an awkward going horse. I didn't notice prior to the race, but had I known that it could have been completely different, but I didn't know that - I could only go on what I was feeling at that time, and what I was feeling was a horse that didn't feel right." The chairman added "The awkwardness that happens you say in this race, is it as clear as the issues that the other riders have had - i.e. Jim Orman or Mr McGillivray?" to which the Applicant replied "Well, I think it is. Whether you get it on the film not, it - but I think it is and it certainly felt that way."¹⁷

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

Subsequent to viewing the race footage, the reviewer finds the Applicant, rider of FIGHTING TEO, jumped awkwardly from the outside barrier and was ridden forward for a few strides before the Applicant restrained the horse back towards the rear of the field. The Applicant continued to remain in a rearward position until approaching the 100 metre mark, and despite FIGHTING TEO travelling well at all relevant times, the Applicant failed to make any attempt to improve his position when it was reasonable and permissible to capitalise on the opportunities that existed. The Applicant commenced to place some pressure on FIGHTING TEO in the last 100 metres of the race and the horse responded to such riding.

¹⁶ Transcript of Stewards' Inquiry dated 27 June 2018, page 29, 30 and 31

¹⁷ Transcript of Stewards' Inquiry dated 27 June 2018, page 32



The reviewer accepts FIGHTING TEO jumped awkwardly and made contact with the inside of the barrier. This is not an uncommon occurrence whereby a horse is either leaning on the side of the barriers or not standing straight when the starters releases the field and as a consequence can jump awkwardly and make contact with the side of the barriers.

The reviewer finds the Applicant's ride must be objectively assessed against many aspects of the evidence, including the quality of the ride, context of the race, race footage of the subject race and previous race starts, veterinary reports, stewards live observations of the race, wagering on the race, and the Applicant's seniority and experience. The reviewer accepts the task of administering Rule 135(b) is onerous and finds the 'degree' of error is particularly important when objectively assessing a rider's actions to be blameworthy or not in the circumstances.

This is not a situation whereby any dispute exists that the Applicant was not presented with clear opportunities to improve his position at any particular period throughout the race. The Applicant accepts there was reasonable and permissible opportunities that presented at relevant periods throughout the race to improve his position and further accepted he could have ridden with more vigour than displayed on the subject day. The chairman questioned "*You weren't held up at all from the 600 metres by other runners?*" to which the Applicant replied "*No.*" The Applicant, in evidence, stated "*As I said before, I could have probably looked to be doing a little more. The fact is I am still pushing. It's not like I was swinging to him. I was pushing. I mean you have seen me riding enough now to know that I'm not a big, extravagant pusher. But, as I said before, I probably could have looked to do a little more. As I also stated before he didn't feel that good in his action. I was reluctant to really just drive him as well.*"

The internal review findings hinge on whether the Applicant's evidence is accepted or not for his distinct lack of vigor and purpose in his riding. The Applicant's evidence in defence of the charge essentially is that FIGHTING TEO jumped awkwardly making contact with the barrier and as a consequence felt awkward in its action. The Applicant stated FIGHTING TEO commenced to hang out in the early and middle stages of the race and was on "*one rein*" and for such reasons, including the Applicant's mindset at the time, elected not to test the horse in his normal manner due to safety and welfare concerns.

The reviewer accepts the safety and welfare of all horses and riders is paramount. The reviewer accepts FIGHTING TEO underwent two (2) independent post-race veterinary inspections on the subject day and the day succeeding the race. The veterinary inspections failed to reveal any abnormality with the horse. FIGHTING TEO raced and won fourteen (14) days following the subject race.

The reviewer finds the race footage damning and demonstrates the Applicant failed to fully test FIGHTING TEO at any stage of the race. The reviewer finds the race footage clearly demonstrates FIGHTING TEO raced tractable and answered the bit at all relevant times during the race, most notably running onto the course proper and again approaching the first turn when directed in by the Applicant, FIGHTING TEO shifts in and answered the bit. This action is not symbolic of a horse that is hanging or "*on one rein*" as submitted by the Applicant that would prevent the Applicant from applying genuine race day pressure to the horse. The reviewer finds no evidence that FIGHTING TEO displayed an awkward action as submitted by the Applicant that would prevent the Applicant from testing the horse and riding in a manner that left no room for query.



The reviewer finds FIGHTING TEO's racing action at its previous race starts is reasonably consistent with the subject day. The reviewer finds despite any perceived issue with FIGHTING TEO's action in the aforementioned races, the relevant riders were able to ride the horse at all relevant times with sufficient purpose and vigour in a manner that left no room for query. The reviewer accepts there is a complete difference in a horse racing greenly as opposed to being lame or short in its action.

The reviewer finds the Applicant was presented with an extended period of up to 1400 metres to determine whether FIGHTING TEO's perceived awkward action was a genuine safety concern or not. The Applicant failed to either attempt to ease the horse out of the race (considering the emphasis of weight placed on such safety concerns) or ride in accordance with the requirements of Rule 135(b) in a manner that left no room for query. The reviewer finds that despite such safety concerns, the Applicant displayed more purpose in his riding over the final 100 metres of the race when the horse was clearly out of contention. The reviewer finds this is significant and more than a mere error of judgment considering the extended period of time presented to the Applicant. The reviewer finds there is no tangible evidence in support of the Applicant's defence that FIGHTING TEO felt awkward in its action or hung out. The reviewer finds the weight of evidence supports such findings, in particular the two (2) independent post-race veterinary examinations of FIGHTING TEO failed to reveal any abnormalities. The race footage of the subject race and that of FIGHTING TEO's previous race starts demonstrates no evidence that the horse was lame or awkward in its action or hung out to any extent that would prevent the Applicant from testing the horse and riding in a manner that leaves no room for query.

The reviewer acknowledges that the Australian Rules of Racing, in particular Rule 135(b), are designed to ensure the rider of every horse takes all reasonable and permissible measures throughout the race to ensure his horse is given full opportunity to win or obtain the best possible place in the field. The Rule is designed to protect and uphold the integrity of the thoroughbred racing industry. Racing is a sport that survives on wagering, and maintaining the integrity and confidence within the thoroughbred racing industry is paramount to ensure the wagering public and participants can bet with confidence and obtain a fair run for their investment.

The reviewer acknowledges the importance that each case is treated on its merits and set of circumstances. The reviewer, in carefully considering the evidence and aforementioned factors, is not satisfied the explanation provided by the Applicant for his handling of FIGHTING TEO is authentic in the circumstances. The reviewer finds the Applicant's actions blameworthy to the extent that prevented FIGHTING TEO being given full opportunity to win or obtain the best possible placing in the field and accordingly finds the charge proven.

The Applicant's disciplinary history particular to Rule 135(b) notes a prior offence in 2014. The conviction and penalty was subsequently overturned at appeal before the Racing Disciplinary Board and therefore will not be considered in determining penalty in this matter. The precedents for an offence under Rule 135(b) in Queensland have incurred penalties between a three (3) week suspension and a six (6) months suspension. In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, penalty precedents, disciplinary history, not-guilty plea and race riding experience, noting the Applicant is a leading metropolitan rider. The reviewer acknowledges the serious nature of the rule and the detrimental effect such actions have in maintaining the integrity and confidence within the thoroughbred racing industry.



In weighing up the aforementioned factors on penalty, the reviewer finds the original penalty imposed is at the lower end of penalty scale when considering the totality of evidence and seniority of the Applicant and therefore is not satisfied a further reduction in penalty is proven in the circumstances 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.

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
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