APPEAL NO 890

RACING PENALTIES APPEAL TRIBUNAL

DETERMINATION

APPELLANT:	**MS CHLOE AZZOPARDI**
RESPONDENT:	**RWWA STEWARDS OF THOROUGHBRED RACING**
PANEL:	**MR ROBERT NASH (CHAIRPERSON)**
DATE OF HEARING:	**21 OCTOBER 2025**
DETERMINATION:	**15 DECEMBER 2025**

IN THE MATTER OF an appeal by CLOE AZZOPARDI against a decision made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing to impose a suspension of 28 days for breach of Rule 129(2) of the Rules of Thoroughbred Racing

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Mr M Stirling of Counsel for the Appellant.

Mr SD Waddington of Counsel for the Respondent, Stewards.

Introduction

The Appellant is a jockey registered with RWWA.

The Appellant filed a notice of appeal dated 29 August 2025 (**Notice of Appeal**) against the decision of the Stewards suspending her from riding for 28 days, which suspension was due to expire at midnight on 25 September 2025. On 4 September 2025, I stayed the operation of the suspension until this appeal had been heard and determined.

The Appellant rode the horse, FLURO NEURO, in the Swan Draught Belmont Newmarket in Pinjarra over 1200 m on Saturday 9 August 2025 (**Race**).

There were no detected anomalies in the betting market for the Race.

At the inquiry immediately following the Race and which was continued on 21 August 2025, the Stewards determined to charge the Appellant with a breach of Rule 129(2) of the *Rules of Thoroughbred Racing* (**Rules**).

Rule 129(2) provides:

'A rider must take all reasonable and permissible measures throughout the race to ensure that the horse is given full opportunity to win or to obtain the best possible place in the field.'

Rule 129(4) provides:

'*If in the opinion of the Stewards this rule has been breached:*

(a) any person who was a party to the breach may also be penalised; and
(b) the horse concerned may be disqualified.

The Stewards alleged that the Appellant failed to take all reasonable and permissible measures throughout the Race to ensure that the horse was given full opportunity to win or obtain the best possible placing. It was specifically alleged that from the home turn (400m mark) until the 200m mark the Appellant had failed to apply a sufficient level of vigour through that section of the Race.

The Appellant pleaded NOT GUILTY to the charge.

The Stewards inquiry commenced following the race on 9 August 2025, was adjourned for further evidence to 21 August 2025, and after the Appellant was charged, was adjourned again at the Appellant's request until 28 August 2025 so that she could present further evidence. After hearing and reviewing all evidence, the Stewards found the Appellant guilty of the charge and imposed a penalty of 4 weeks (28 days) riding suspension on her.

The Stewards in fixing the penalty noted that the Appellant had made an error of judgment rather than act with any deliberate or sinister intent. It was also noted she was a senior rider and had maintained a clean record over a considerable period.

APPEAL

By her Appeal, the Appellant contends that the Stewards have erred finding her guilty of a breach of AR 129(2), more specifically in finding that she did not ride the horse in a manner so as to give the horse the best possible place that the horse could achieve in the Race.

By her appeal notice, the Appellant's single ground of appeal read as follows:

> *I believe that I am not guilty of the charge AR 129 because I believe that I rode my horse in a manner that ensured it finished in the best possible place in the field it could.*

Rule 129(2)

It is well established that mere errors of judgment on the part of a jockey will not result in a breach of Rule 129(2) unless those errors are of a nature or seriousness, having regard to all of the surrounding circumstances, as to be culpable errors: *Appeal of Munce Racing Appeal Tribunal of NSW, 5 June 2003 (Decision of TEF Hughes QC); Appeal of Kathy O'Hara, Racing Appeal Tribunal of NSW, 25 March 2021; Appeal of Bowman Racing Appeal Tribunal of NSW, 24 September 2020.*

Whilst it is critical to the integrity of horse racing that riders give their mounts full opportunity to win or obtain the best place possible in any given race, riders like all other sportsmen and sportswomen, will from time to time make errors or mistakes.

It is a question of degree whether the aspect of the ride under consideration ought to be characterised as:

(a) a mere mistake or error of judgment; or
(b) a culpable breach of the standard required by Rule 129(2).

The Stewards' Decision

The Stewards found that from the home turn until near the 200m mark, the Appellant had failed to apply a sufficient level of vigour through that section of the Race despite it being both reasonable and permissible to do so.

Although the Stewards found there was no deliberate or sinister intent on the part of the Appellant and that her breach was the result of an error of judgment, they considered it serious enough to warrant being 'deemed' a 'culpable' breach of breach of Rule 129(2).

In forming their view that the riding of the Appellant was a culpable breach of Rule 129(2), the Stewards:

(a) stated that they were applying the Briginshaw standard (*Briginshaw v Briginshaw (1968) 60 CLR 266)* having regard to the gravity of the charge and the serious consequences for the Appellant if found guilty;
(b) referred to the decision in *Miller, Appeal 423,* as a case of a similar type; the jockey in that case had shown a lack of vigour when riding his horse in the final straight to the finish;
(c) found that the ride fell below the objective standard reasonably expected of a rider of the Appellant's experience, in that it should have been apparent to her that the horse, PHANTA, being Mr Parnham's mount, was being ridden along and placed under pressure by Mr Parnham as the horses entered the straight gaining several lengths over her horse and that she continued to ride her horse adopting a 'very quiet riding style' through the same section of the Race (from the turn to the 200m mark) when positive action was required of her;
(d) there is an expectation that a horse will be ridden with due vigour in the final straight (unless the horse is clearly out of contention) so that there is no question of it having been given every opportunity to finish in the best possible place that it can;
(e) were of the view that had the Appellant applied the necessary vigour during that section of the Race, the horse (which ended up second by half a length from the winner, PHANTA) could potentially have improved its position and had been denied the opportunity of performing at its full potential; and
(f) considered the ride was culpable and blameworthy and could not be characterised as a mere error of judgment (albeit they did not find she acted deliberately in breach of the rule or with sinister intent).

Appellant's contentions

The Appellant contends that:

(a) the Tribunal should undertake an objective review the merits of the Appellant's ride and make its own determination as to whether or not the Appellant transgressed Rule 129(2) without regard to the determination of the Stewards, arguing that unlike the

older Rule 135(b) and (c) which were based on the Stewards' opinion, Rule 129(2) and (4) involve an objective assessment of the ride;

(b) the above approach is supported by the provisions of s. 11(2)(b) of the *Racing Penalties (Appeals) Act 1990* (**Act**) that require the Tribunal to act according to equity, good conscience and the substantial merits of the case;

(c) that the Appellant's lack of vigorous riding (or quiet riding) between the turn and the 200m mark, was explained on the basis that:
    a. she was trying to keep the horse 'in sync' and 'balanced',
    b. the horse was 'going through its gears',
    c. that she had ridden the horse in accordance with the trainer's instructions,
    d. the horse did not have a big finish,
    e. the Appellant did not want it to peak early, and
    f. in any case, the horse had plateaued by the time it hit the finish line;

(d) had the Appellant ridden the horse harder earlier, it may have finished in a worse final position; and

(e) pointed out that the sectional time for the horse between 400m to 200 m was quicker than the sectional time from 200m to the finish.

Nature and scope of appeal

The Appellant argued that previous decisions of this Tribunal as to the limitations on the scope of its appellate jurisdiction were unjustified, and that I should make my own objective assessment of the ride and decide the case accordingly.

There were two elements to the Appellant's submission:

(a) a contention that this Tribunal should undertake a de novo assessment of the riding in question and whether it breached Rule 129(2); and

(b) unlike the older Rule 135(b) and (c), Rule 129(2) and (4) was not an offence based on or referable to the 'Stewards' opinion'.

Nature of this Tribunal's appellate jurisdiction

The Appellant relied on a number of NSW Appeal Panel decisions as indicative of the approach that should be taken in appeals by this Tribunal, namely that on appeal it is the Tribunal's opinion and objective assessment that matters.

The Appellant referred to the decision of the NSW Appeal Panel in the *Appeal of Kathy O'Hara 25 March 2021 (***O'Hara**) in that regard.:

In considering that submission, it is necessary to look at the legislation that governs appeals from Stewards' decisions to the NSW Appeal Panel and compare it to the WA legislation that regulates appeals to this Tribunal.

In New South Wales, an appeal to the Appeal Panel is by way of a 'new hearing with fresh evidence': *s.43 Thoroughbred Racing Act 1996 (NSW*); *Kavanagh v Racing NSW [2019] NSWSC 40 at [12].* In effect, such an appeal is a hearing of the matter de novo and the matter is determined anew: *Ross v Harness Racing NSW [2020] NSWSC 397 at [35]*

In contrast, an appeal to this Tribunal from a decision of the Stewards is an appeal 'by way of rehearing': *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 said at 553 to 554*; *Harper v Racing Penalties Appeal Tribunal [2001] WASCA 217, [18].* Since an appeal to this Tribunal is by way of rehearing and is not a hearing de novo, the Tribunal does not approach the appeal as if it were hearing the matter anew, but approaches the appeal in the same way an appellate court reviews a decision of a lower court where the appeal is by way

of rehearing. The primary fact-finding obligation and decision-making rests with the Stewards: *Danagher, supra, at 553C*. In order to succeed, an appellant must establish that the primary decision maker expressly or impliedly made a material error of fact or law: *House v The King (1936) 55 CLR 499 at 505*.

In *Danagher*, Murray J at p 554 referred to the decision in *Australian Coal and Shale Employees Federation v Commonwealth (1953) 94 CLR 612 at 627,* where Kitto J said:

> *'the manner in which appellate jurisdiction is exercised in respect of decisions involving discretionary judgment is that there is a strong presumption in favour of the correctness of the decision appealed from, and that that decision should therefore be affirmed unless the court of appeal is satisfied that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting upon a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts. Again, the nature of the error may not be discoverable, but even so it is sufficient that the result is so unreasonable or plainly unjust that the appellate court may infer that there has been a failure properly to exercise the discretion which the law reposes in the court of first instance'*

Accordingly, contrary to the submission put by the Appellant in this case, there is an onus on the Appellant to show that the decision of the Stewards was clearly wrong or the result of a material error of fact or law. The onus referred to by the Appeal Panel in *O'Hara*, namely that the onus is on the Stewards to persuade the Appeal Panel that the rule has been breached, is based on a fundamentally different appellate regime where the Appeal Panel considers the matter anew (de novo).

The Appellant's submission that the historical approach of this Tribunal is contrary to the requirements of section 11(1)(b) of the Act which requires the Tribunal to act according to equity, good conscience and the substantial merits of the case, cannot be accepted. Section 11(1)(b) formed part of the text of the Act at the time of the Supreme Court's decisions in *Danagher, supra,* and *Harper, supra,* as to the nature and extent of this Tribunal's appellate jurisdiction.

The opinion standard

In this case, there was a contest as to whether Rules 129(2) and (4) are concerned with purely an objective assessment of the riding in question or are concerned with the Stewards' opinion of the riding in question. If it is the latter, there is a well-established line of authority in this Tribunal that it will not interfere unless satisfied that no reasonable Stewards, armed with all the information, could reasonably have formed the opinion which the Stewards did of the riding in question: *Appeal 407 Peter Darren Knuckey*

Rules 129(2) and (4) are not in precisely the same terms as the older Rules 135(b) and (c).

The old Rule 135(b) was in the following terms:

'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.'

In my view the provisions of Rule 129(2) are not materially different from the older Rule 135(b).

The old Rule 135(c) was in the following terms:

'A person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be punished, and the horse concerned may be disqualified.'

In contrast, Rule 129(4) now provides:

'*If in the opinion of the Stewards this rule has been breached:*

(a) any person who was a party to the breach may also be penalised; and
(b) the horse concerned may be disqualified.'

Significantly, Rule 129(4) seems to be confined to a person who was a party to the breach but was not the principal offender. That interpretation is consistent with reference to *'also be punished'* and with the fact that Rule 129(5), which is concerned with a breach of Rule 129(1), specifically differentiates between the person who breached the rule and a person who was a party to the breach.

In my view, the difference between the wording used in old Rule 135(c) and that used in Rule 129(4) is material and cannot be ignored.

I agree with the submission made on behalf of the Appellant that the 'opinion of the Stewards' standard when assessing the ride of a jockey has not been retained by Rule 129(4) in contrast to the old Rule 135(c).

In my view, Rule 129(2) sets a prescribed standard that must be met by riders and any penalty imposed for a breach of that standard by a rider (in contrast to any other party to the breach) must rely on Rule 227 which empowers the Stewards to penalise any person who commits a breach of the Rules.

Accordingly, the previous decisions of this Tribunal in respect of appeals involving the review of Stewards' decisions relating to Rule 135(b) and (c) must be distinguished to the extent that they stood for the proposition that the Tribunal could only interfere with the decision of the Stewards if satisfied that no reasonable Stewards armed with all the information, could reasonably have formed the opinion which the Stewards did as to whether the rider in question had failed to take all reasonable and permissible measures throughout the race as required by the Rule.

That said, this Tribunal when being asked to review a conviction for a breach of Rule 129(2) must still give due respect to the fact that the Stewards are the subject matter experts and through their wealth of experience, have a highly developed understanding and appreciation of race craft and tactics, of the racing styles of the various riders involved, and of each rider's history of performance. The Stewards are, accordingly, very well placed to assess whether a ride falls short of, or fails to meet, the required standard.

An appeal against an adverse finding made by the Stewards that a rider has breached Rule 129(2) involves a discretionary judgment of an evaluative nature. As such, this Tribunal must still adopt the approach in *House v The King, supra. T*here is a strong presumption in favour of the correctness of the decision of the primary decision maker, and it will be affirmed unless the Tribunal is satisfied that it is clearly wrong or is attended by some error of law or fact.

This Tribunal, accordingly, will be slow to interfere with a decision of the Stewards in cases such as this where an evaluative discretionary assessment is to be made as to whether a jockey's ride in any given instance falls short of the minimum standards prescribed by the Rule.

Consideration of the merits

I have carefully watched the vision of the Race repeatedly. In my view the Stewards' impression that the Appellant's ride was quiet and lacking vigour between the 400m mark and the 200m mark was a justifiable observation. One gets the strong impression that she unduly delayed increasing her riding vigour whilst the eventual winner, PHANTA, was being ridden with vigour over that same section of the Race, and was able to increase its lead such that over the last 200m the Appellant's horse, FLURO NEURO, could not make up all the necessary ground. Whether FLURO NEURO would have made up that ground had it been more vigorously ridden earlier, can only be speculated on and it was unnecessary to establish that FLURO NEURO would have otherwise won the Race in order for a breach of Rule 129(2) to be made out.

It was noteworthy that one of the horse's owners, Mr Morley, observed in his evidence at the Stewards' Inquiry immediately after the Race on 9 August 2025 (at T8):

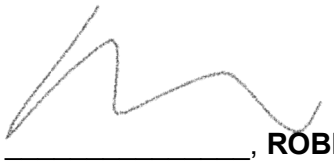
> *Chairman: Any comments on the Race?*
>
> *Morley: Well yes, he just got beat and I had 200 on it, so I was a little bit grieved but I'm only talking from a punter's point of view. From an owner's point of view, maybe I would like to have seen her go for the horse a little earlier, especially seeing as the leader kicked away. That's my only comment.'*

It is, no doubt, a fine judgment whether one can be comfortably satisfied that the Appellant's lack of vigour over the 400m to 200m mark in the Race was such that she was culpable of failing to *'use all reasonable and permissible measures throughout the race to ensure that the horse is given full opportunity to win or to obtain the best possible place in the field'.*

The purpose of the Rule is to ensure that all horses run on their merits and that all reasonable and permissible measures are used by jockeys throughout the race to ensure that purpose is met. Every jockey carries with him or her the weight of public money and the reputation of the sport to ensure that is so.

Ultimately, I was left with the impression that FLURO NEURO was not given the full opportunity to potentially win the Race given the lack of vigour shown. *A fortiori*, I cannot be satisfied that the evaluative discretionary assessment of the Stewards was wrong or attended by error.

In the circumstances, I dismiss the appeal and the stay previously granted in respect of the Appellant's suspension is discharged.



_____, **ROBERT NASH, CHAIRPERSON**