TASMANIAN RACING APPEAL BOARD

Appeal Nos 1, 2 & 3 of 2016/17 – SIGRID CARR

Panel:	**Ms Kate Cuthbertson (Chair)** **Mr Tom Cox** **Mrs Kate Brown**	**Appellant:**	**Ms Sigrid Carr**
Adviser:	**Mr Chris Taylor**		
Appearances:	**Mr Stephen Maskiell on behalf of the appellant** **Mr Cameron Day on behalf of the stewards**	**Rule:**	**Thoroughbred Rule AR137A(5)(a)(ii)**
Heard at:	**Launceston**	**Date:**	**17 August 2016**
Penalties:	**(1) A $300 fine** **(2) A $600 fine** **(3) A one race meeting suspension**	**Decision**	**(1) Dismissed** **(2) Dismissed** **(3) Dismissed**

REASONS FOR DECISION

1. This is an appeal against convictions and penalties imposed against the appellant, an apprentice jockey, for excessive whip use during three races at the meeting conducted by the Devonport Racing Club on 30 July this year.

2. The relevant rule is Rule 137A(5)(a)(ii) of the Australian Rules of Thoroughbred Racing and states:

   "In a race, official trial or jump-out prior to the 100 metre mark - the whip shall not be used on more than 5 occasions."

3. The rule was adopted on 1 December 2015. Its effect is simple: a jockey must not strike their mount on more than five occasions until they reach one hundred metres from the winning post. After that point, the jockey may use their whip on as many occasions as time and their discretion permits.

4. The purpose of the rule is to protect the welfare of horses from excessive strikes of the whip and, in turn, promote (or perhaps more accurately protect) the image of racing as it is perceived by those within the industry and the broader public. It is, like many of the rules of racing, prescriptive. Exceeding five occasions marks what is excessive whatever the circumstances before the 100 metre mark and whatever occurs after it.

5. The first incident occurred during Race 2. The appellant was riding *Tilmosa*. As she entered the home straight she commenced to strike her mount. By the 100 metre mark from the wining post she had used her whip on six occasions.

6. The stewards proceeded to charge her with excessive whip use by striking her mount on six occasions (one more than is permissible) before the 100 metre mark from the winning post.

7. She pleaded guilty before the stewards.

8. Having regard to the appellant's plea of guilty and her poor record, stewards proceeded to impose a $300 fine which then activated a one race meeting suspension which had been imposed on a previous occasion but suspended on condition she was not in breach AR137A(5)(a)(ii) prior to 31 July 2016.

9. The second incident occurred during Race 5. The appellant was riding *Dropaclanga*. On this occasion she struck her mount on eight occasions prior to the 100 metre mark from the winning post.

10. For this race, the stewards proceeded to charge the appellant with using the whip on eight occasions.

11. The appellant again pleaded guilty.

12. Having regard to the appellant's guilty plea and her poor record the stewards imposed a $600 fine.

13. The third incident occurred in Race 6. The appellant was riding *Welcome Invader*. On this occasion she struck her mount on nine occasions prior to the 100 metre mark from the winning post.

14. For this race, the stewards proceeded to charge the appellant with using the whip on nine occasions.

15. The appellant again pleaded guilty.

16. Having regard to the appellant's guilty plea and her poor record the stewards imposed a one race meeting suspension.

Conviction appeal

17. The appellant pleaded guilty to each of the three charges during the course of the inquiry. She was assisted by Mr Kevin Ring on that occasion. Mr Maskiell on behalf of the appellant conceded that it could not be said that the appellant was not afforded procedural fairness during the inquiry. She was shown the footage and had the assistance of an experienced advocate. Nevertheless, the conviction appeal was pursued on the basis that it was not possible to identify whether the whip in fact made contact with the horse in excess of five times as required by the rule or whether it was waved about and did not make such contact.

18. The footage was viewed by the Board, and the relevant whip use identified by the parties. The Board was also assisted by an advisor. It is quite clear from the footage of each of the races in question that the appellant transfers the reins out of her whip hand and strikes the horse on the occasions identified by the stewards during the inquiry. It is possible to ascertain quite deliberate strokes of the whip which contact with the horse and rebound.

19. The appeals against conviction are dismissed. There is no basis for finding that the decision of stewards that the appellant had used the whip in excess of five times prior to the 100m mark in each of the relevant three races was unreasonable. The findings clearly accord with the relevant race patrol films.

Penalty appeals

20. Mr Maskiell on behalf of the appellant submitted that:

(a) The rule which came into effect on 31 December 2015 is already the subject of a review due to the large number of breaches that have been identified and prosecuted in that time. A table was provided to the Board which showed the staggering number of prosecutions under the rule since 1 January 2016. 2322 breaches had been the subject of penalty across all jurisdictions. Fines amounting to $354,450 had been imposed in that period. Suspensions had been handed down in 95 cases. He submitted that it was likely the review would result in a change to the rule. The submission was essentially that "they haven't got the rule right".

(b) He identified the difficulty that jockeys, and particularly apprentice jockeys, are experiencing in adapting to the new rule. They have been trained to race in a particular way, and are expected to change. Whip use occurs in the high pressure environment of a race, and it is not always a simple matter to count the number of times the whip has been used.

(c) The appellant had been experiencing particular difficulty adapting her whip use style. She had been attending apprentice jockey school to work on her whip use. Due to the non-availability of coaching staff, the apprentice jockey school had not been operating in the weeks preceding the races the subject of these appeals. Her whip use behaviour had been improving with the assistance of the apprentice school, but she had relapsed with the break.

(d) Her difficulty in adapting was compounded by the work she does for her father riding horses that are being broken in for racing. She only races in one race meeting a week. When riding young horses during the week she relies on using the whip as an extension of her arm. Her use of the whip is second nature. Not many other jockeys are riding newly broken horses during the week.

(e) Her record needs to be considered in the context of her getting a ride in every single race. She is a successful apprentice jockey and has been identified as the next Beverley Buckingham.

(f) The appellant rode in South Australia for 18 months. She won an award while she was in South Australia which provides her the opportunity to ride in Singapore for three weeks commencing 5 September 2016.

(g) She has some other whip rule matters pending the outcome of this appeal. If the penalties are upheld and the inquiries held in respect of the outstanding matters she may not be able to take up the opportunity in Singapore.

(h) It has been identified that the appellant would benefit from seeing a sport psychologist to get help in changing her whip use behaviour.

(i) She has a 12 year old son she is raising herself and a mortgage to pay. She earns a good income from racing but has had to pay a large number of fines (in excess of $5000) in relation to breaches of this rule and would struggle to meet her commitments if the suspension stands. It was suggested that any suspension could be suspended on condition that she completes a program with the sport's psychologist who has been identified as being able to assist her.

21. Mr Day on behalf of the stewards submitted that:

(a) Over 287 of the appellant's rides, she had been before stewards on 23 occasions for breaches of AR137A(5)(a)(ii). This amounted to a breach of the rule every 12.47 rides. Over the appellant's last 24 rides, she has been cited for breaching the rule six times.

(b) It was acknowledged that prior to Race 2 on 30 July 2016, the appellant had not breached the rule in the preceding six weeks. The breach cited in Race 2 involved only one use of the whip in excess of the five permitted in the rule. Stewards accepted that this was evidence of her improving record.

(c) Stewards advised the appellant that she was to be the subject of an inquiry in respect of her use of the whip in Race 2. That inquiry commenced prior to Race 5.

(d) Race 5 was the subject of the second charge against the appellant. This involved use of the whip on eight occasions. The appellant was notified that there was going to be an inquiry in respect of her whip use in that race prior to Race 6.

(e) Race 6 was the subject of the third charge. By this stage the appellant was on notice in respect of two potential breaches of the whip rule. The particulars of this charge were that the appellant used the whip on nine occasions. It was the more serious of the charges, not only because of the number of whip uses, but because she was on notice that her whip use was under scrutiny.

(f) The breaches the subject of the appeal need to be assessed in light of the previous breaches. The appellant had a poor record under the rule.

(g) The penalties to be imposed needed to reflect the seriousness of the breaches in light of all the circumstances including the whip use in question. Stewards were required to impose a penalty that not only deterred others from breaching the rule, but acted as a specific deterrent to the appellant.

(h) The previous penalties imposed had not deterred the appellant, and the warning that her whip use was under scrutiny did not cause her to modify her behaviour during the remainder of the meeting. In fact, her breaches of the rule during the last two offences showed an escalation of behaviour.

(i) The penalty imposed in respect of Race 2, namely a $300 fine, recognised the appellant's improving record. The penalty imposed in respect of Race 5, namely a $600 fine, was proportionate in light of the use of the whip on eight occasions. In respect of Race 6, the appellant had been warned about her whip use, but used it nine times on this occasions. A clearly deterrent penalty was therefore required.

22. The appeal against conviction is dismissed.

23. The Board is sympathetic to the situation that the appellant and all jockeys that are dealing with this new rule are in. We accept that this rule is under review in what is a fairly short period of time after its implementation. The table provided by the appellant showing the amount of fines that have been imposed and the number of breaches that have been identified in such a short space of time is clear evidence that jockeys are having difficulty adapting to the new whip use regime.

24. Nevertheless, it is the rule that is currently in place and stewards are obliged to enforce it.

25. The other issue that the Board has to take into account is that the appellant is well aware of the consequences of breaching the rule and has been afforded leniency in the past in respect of the very matters that have been raised and in particular her personal difficulty in adapting to the rule. The Board cannot engage in a process where a particular person who is having more difficulty than other jockeys in adapting to a new rule is treated differently absent a specific explanation that would amount to exceptional circumstances. We have not heard anything that would justify us taking a different approach in respect to the appellant than we would in respect of any other jockey that appears before us or before stewards.

26. Having said that, we have also taken into account that the appellant does have a generally good record. AR137A(5)(a)(ii) appears to be the only rule that is bringing the appellant unstuck on any sort of regular basis. It is, however, a rule and it is one that needs to be abided by the appellant and all other jockeys.

27. The Board has taken into account that the appellant has significant personal circumstances, namely that she has a mortgage, is the single mother of a child and has financial obligations as a consequence.

28. The Board has also taken into account that she has received a number of fines in respect of this rule since 1 January 2016.

29. The Board is also mindful of the fact that the appellant has the opportunity to go to Singapore, however, it seems to us the best course is for the suspension that we say was appropriate in the circumstances to be activated as soon as possible to give her the very best chance to get there.

30. The Board accepts the stewards' submissions in respect of the appropriateness of the penalties. We note that the first of the breaches was the least serious of the breaches and occurred some six weeks after the appellant's previous breach of the rule and that this was properly reflected in the penalty that was imposed. There might be some argument that the fine could have been less than $300, but in our view any change to that would have amounted to tinkering. The amount of the fine imposed did not raise any substantive point of principle.

31. The breach identified in Race 5 was more significant than the one which occurred in Race 2. It occurred at a time when Ms Carr was on notice that her use of the whip had caught the attention of stewards and the inquiry process had commenced. Again the breach in Race 6 was more serious still and that occurred again after being warned that stewards were scrutinising her use of the whip.

32. Those factors together with her prior record meant that penalties have to be imposed that have both the effect of deterring the appellant from breaching the rule but also deterring others. The rule is one that applies to the appellant as it applies to every other jockey that is involved in the thoroughbred racing industry.

33. For those reasons, we are of the view that suspension is a penalty that may be properly imposed for a breach of this rule in appropriate circumstances. It is not a penalty that should be imposed in respect of a first offence, for example, but where a jockey demonstrates a pattern of behaviour and a difficulty in adapting to the new circumstances whilst that rule is in place despite warnings that their whip use is not appropriate, suspension is clearly a penalty that may be open to stewards to deter the

jockey and others. We accept that the rule is under review and may not be maintained in its current form but the fact is that it is in place and it is the rule that has to be upheld.

34. For those reasons the Board is of the view that the penalties that were imposed were not excessive. The decision of stewards is affirmed in respect of each of the appeals.

35. Pursuant to ss34(1A) and 34(2)(a) of the *Racing Regulation Act 2004*, 50% of the prescribed deposit is to be forfeited to the Secretary of the Department. Pursuant to ss34(4A) and 34(4B)(a) the appellant is to pay the Secretary of the Department 50% of the costs incurred in preparation of the transcript.

36. Sections 34(2)(a) and 34(4B)(a) do permit the Board to order an amount in excess of 50% of the prescribed deposit to be forfeited or of the transcript cost to be paid. In doing so, the Board is to have regard to whether the appeal appears to have been made in good faith or vexatiously, whether the grounds of appeal appear to be serious or frivolous, whether the appellant appears to have been seeking genuine redress or merely a delay in the implementation of a decision under appeal, whether in the reasonable opinion of the Board the appellant pursued the appeal with due diligence or was obstructive and such other matters as the Board thinks reasonable or fair in the circumstances.

37. In this case the Board has not decided to order an amount in excess of 50% under ss34(2)(a) or 24(4B)(a) but wanted to make the appellant aware that there were considerable problems with her appeals against conviction and that the Board gave serious consideration to ordering the forfeiture and payment of greater amount of the prescribed deposits and transcript fees.