

TASMANIAN RACING APPEAL BOARD

Appeal No 11 of 2013/14

Panel:	Mr Tom Cox (Chair)	Appellant:	Mr Gareth Rattray
Adviser:	Mr David Arnott		
Appearances:	Mr David Hayes on behalf of the appellant Mr Adrian Crowther on behalf of stewards	Rule:	Australian Harness Rule AR163(1)(a)
Heard on:	10 April 2014	Penalty:	A 2 race date suspension
Decision handed down on:	14 April 2014	Result:	Dismissed

REASONS FOR DECISION

1. The appellant, Mr Gareth Rattray, was the driver of *Mickwillrev* which raced in Race 1 – The Cressy Chaff Cutters 3 Year Old - over 2,180 metres at the Burnie Harness Racing Club on Friday, 21 March 2014. Following his drive, the stewards inquired into the reasons for *Le Wi Bulent*, driven by Mr Dylan Ford, breaking gait while racing off the back straight at the first turn. Following the inquiry the stewards, acting on their own observations and viewing the official race footage, found Mr Rattray in breach of the provisions of AR163(1)(a), which provides:

“A driver shall not – cause or contribute to any crossing, jostling or interference”
2. The particulars of charge were as follows:

“That racing into the first turn as the driver of MICKWILLREV he allowed that horse to shift from a position half a cart off the fence to a position wider on the track and as a result LE WI BULLENT was checked and broke.”
3. Mr Rattray’s licence was suspended for a period of two race dates, commencing midnight 23 March 2014 and expiring at midnight 6 April 2014.
4. The appellant applied for and was granted a stay of penalty, pending the determination of his appeal.
5. I have had the benefit of reviewing the race footage, considering the transcript of the inquiry, which included the observations of stipendiary steward, Mr Scott Quill, hearing evidence from the appellant and taking advice from Harness Racing Advisor, Mr David Arnott.
6. The appellant’s contention is that he was not racing on or half a cart off the fence as the field approached the first turn, but rather he was in the genuine one out position trailing immediately behind the two leading drives. At this time, the appellant contends, that he was entitled to traverse the first corner in the one out position and, in the process, gain position on the leading horses and ultimately find himself, as he did, in the one out one back position.

7. It is apparent from the footage (and this was not disputed by the appellant) that the leading horses were descending the track, to the fence, as they traversed the first turn. As this occurred, those horses and Mr Rattray's horse were, for a moment, all aligned in the approach to the first turn. However, the reality of the situation was that the alignment was fleeting for the appellant was not descending the track, but instead drifting from a position approximately half a cart off the fence into the one out position throughout the turn. In this process, *Mickwillrev*'s head can clearly be seen to turn out, that is, turned to the right, presumably in an attempt by the appellant to keep the horse off the pegs. Simultaneously, the appellant can be seen pulling the right rein and on two occasions striking the horse with his left rein. The appellant was undertaking a manoeuvre to better position his horse in the race. At the time he commenced the manoeuvre Mr Ford, on *Le Wi Bulent*, was directly to his outside with Mr Todd Rattray, on *Karalta Dazzler*, directly to Mr Ford's outside. Although the appellant's drive was half a cart off the fence, in a sense, he was driving "three on the pegs". In that position, and drifting up the track, it was inevitable that Mr Ford's drive would be put under pressure. That circumstance was compounded by the fact that Mr Rattray's drive, *Karalta Dazzler*, can be seen descending the track, despite Mr Todd Rattray's efforts to keep his drive from closing on Mr Ford's position. This is exactly what Mr Quill observed from the tower immediately above the field.
8. Mr Quill observed that:

"Shortly after the start LE WI BULLENT, driven by Dylan Ford, which began....which broke after the start just shifted up marginally with Gareth Rattray on MICKWILLREV taking a position on the pegs. As they raced into the first turn MICKWILLREV shifted off the pegs I believe contacting, contacting the wheel of LE WI BULLENT which broke. To the outside of LE WI BULLENT was KARALTA DAZZLER which didn't allow Mr Ford any room to move out, he then tightened to his outside."
9. The stewards made no finding as to whether or not there was contact between the horses. The finding was that Mr Ford's drive was checked and, as a result, broke gait.
10. Having regard to all of the evidence put before the Board, I am comfortably satisfied that the appellant was in breach of AR163(1)(a) in that he did allow his drive to shift from a position approximately half a cart off the fence to the one out position as the field traversed the first corner on the back straight for the first time. With Mr Ford and Mr Todd Rattray's drives to his outside he ought to have remained behind the leading horses, moving to the pegs, while traversing the first turn. To attempt a manoeuvre as he did brought with it the inevitable risk that his conduct would cause or materially contribute to interference with Mr Ford's drive. I find that is exactly what occurred.
11. As far as penalty is concerned, it was not contended that if I found the charge proven as alleged that the penalty was manifestly excessive. Accordingly, the appeal against penalty, as well as the appeal against the conviction, is dismissed.
12. Pursuant to the *Racing Regulation Act 2004* s.34(2)(a) the appellant will forfeit 50% of his deposit and is ordered to pay 50% of the costs of the transcript pursuant to s.34(4B)(a). I note that pursuant to s.34(1B) of the Act the penalty which has been affirmed, that is two race meeting dates, is to take effect immediately.