

TASMANIAN RACING APPEAL BOARD

Appeal No 11 of 2014/15

Panel:	Ms K Cuthbertson (Chair)	Appellant:	Mr G Rattray
Adviser:	Mr D Arnott		
Appearances:	Mr B Rattray on behalf of the appellant Mr A Crowther on behalf of stewards	Rule:	Australian Harness Rule AR163(1)(b)
Heard on:	13 January 2015	Penalty:	A 2 race date suspension
Decision handed down on:	23 January 2015	Result:	Upheld

REASONS FOR DECISION

1. The appellant, Mr Gareth Rattray, was the driver of *Safety Girl* which raced in Race 2 – Maxfield Drilling Pace over 1930 metres at the Devonport Harness Racing Club on Monday, 15 December 2014. Following his drive, the stewards inquired into the reasons for *Always a Show*, driven by Mr Craig Hayes, racing four wide into the home straight on the first occasion. Following the inquiry the stewards found Mr Rattray in breach of AR163(1)(b), which states:

“A driver shall not – subject to rule 164 make another horse cover more ground than necessary.”

Rule 163(5) states:

“A driver who, in the opinion of the Stewards, fails to comply with any provision of this rule is guilty of an offence.”

Rule 164 provides that:

“The Controlling Body may determine the circumstances in which a driver who does not have a clear passage in the course of a race may take action to secure such a passage.”

2. The particulars of charge were as follows:

“Stewards have discussed the matter and after doing so to you Mr Rattray will issue a charge to you under AR163(1)(b) which says ‘a driver shall not force another runner wider’ the particulars of the charge are that after racing...commencing to race out of the first turn when Mr Craig Hayes, driver of ALWAYS A SHOW endeavoured to make a three wide run, you’ve then also elected to race three wide and as a result of your shift Mr....Mr Hayes’ drive has been obliged to race four wide for a short distance before then obtaining a trail...restraining and getting a trail on your back.”

3. Mr Rattray’s licence was suspended for a period of two race dates, commencing midnight 21 December 2014 and expiring at midnight 28 December 2014.

4. The appellant applied for, and was granted, a stay of the penalty pending the determination of his appeal.

Rule 164

5. Stewards have issued a policy pursuant to AR164 which is as follows:

“A driver can ease out passing the ‘candy pole’ located in the back straight providing he/she does not cause interference, as determined by the Stewards, to another runner when doing so.”

6. The driving, the subject of this appeal, occurred at an early stage of the race. Consequently the policy issued pursuant to AR164 had no application to the assessment in this case of whether there had been a breach of AR163(1)(b).

“In the opinion of the stewards”

7. The combined effect of AR163(1)(b) and AR163(5) requires stewards to form the opinion that the driver has made another horse cover more ground than necessary. As such, stewards are required to make a professional assessment based on their experience. For an appeal to be successful, that professional assessment must be displaced. An appellant in such circumstances is required to establish that the stewards could not reasonably have formed the relevant opinion: see discussion in *Panella*, decision dated 15 March 2012 of the Racing Appeals Tribunal of New South Wales.

Application to admit further evidence

8. I have had the benefit of reviewing the race footage, considering the transcript of the inquiry, which included the observations of stipendiary steward, Mr Bruce Baudinette, hearing the submissions of Mr Barrie Rattray, on behalf of the appellant, and Mr Crowther on behalf of the stewards, and taking advice from Harness Racing Adviser, Mr David Arnott.
9. Mr Barrie Rattray sought leave to adduce evidence of footage of another race held shortly before the hearing of the appeal. The footage apparently showed a similar incident occurring during the course of the race which did not result in a charge being preferred against the driver involved. He argued it was relevant to show how AR163(1)(b) should be interpreted and disclosed inconsistency in the stewards’ approach. Mr Crowther objected to the evidence being lead for the purposes of the appeal, arguing that each race is not necessarily the same and that the Board was required to consider the particular drive, the subject of the appeal, on its own merits.
10. I declined to admit the additional evidence. In my view, a comparison with another race would not have assisted in this appeal. This is particularly so as there was no transcript available of the inquiry convened in respect of the race depicted in the footage. It would not, therefore, be possible to ascertain what factors had played a part in the decision taken by stewards not to charge the driver involved. The footage on its own would not provide any information from which the Board would be able to safely extract any principles relating to the proper interpretation of the rule the subject of this appeal.

Submissions

11. The appellant's contention is that he moved out into the three wide position at the same time as Mr Hayes. The appellant argued that the horse in the death slowed, and that he made a decision to move wider to get around it. At the same time, Mr Hayes had moved to the three wide position and commenced to make ground under the whip and, rather than ease himself, made a decision to take the four wide position for 15 to 20 metres to go around the outside.

12. The Board was referred to a number of parts of the transcript of the inquiry in support of this argument. After the race patrol film had been viewed and during the course of questioning Mr Hayes, the Chairman of Stewards made the following comment:

"Okay, so at the stage you pull out and give your horse one tap with the whip, it appears in the film that that's about the same point where Mr Rattray pulls out and you again tap with the stick at the same time and then end up four wide."

The appellant argues that this discloses an acknowledgement that both drivers made a move to take the three wide position at about the same time.

13. During the course of the inquiry, Mr Hayes explained that he took the four wide position as his horse was a "little bit fierce" and he might have run into the back of the appellant as he was building up momentum.

14. Mr Baudinette outlined his observations during the inquiry prior to the films being viewed as follows:

"I was a steward at the turn into the front straight and as they raced towards me Mr Hayes, who had been in the.....the rear of the one outline, decided to go forward and as he did, he's gone forward and I believe he got up to at least Gareth Rattray's cross bar on SAFETY GIRL and Mr Rattray's decided that he wanted to come to a three wide position which he did and this obliged Mr Hayes to go four wide and he had to check to get back onto Mr Rattray's back and this I would say took over a space of about 50 metres...."

15. Stewards gave the following reasons for finding the appellant guilty of the charge:

"Mr Rattray we don't accept the evidence that Mr Hayes went four wide of his own accord. We took note of Mr Baudinette's observation that Mr Hayes covered your wheel before he moved... when he moved three wide and that your shift to a three wide position has obliged Mr Hayes to race four wide. The three film angles of the race also support this chain of events. We do sustain the charge on that basis."

16. It is quite clear from the footage that Mr Hayes had not reached the appellant's cross bar prior to the appellant moving into the three wide position. Mr Crowther relied on the head on home straight footage of the race and argued that it showed that Mr Hayes was the first to move into the three wide position and that he covered the appellant's wheel prior to the appellant making his own move to that position. I have viewed the footage several times, and am not satisfied that the footage, and in particular the head on home straight view, shows that Mr Hayes covered the appellant's wheel prior to the appellant's move to the three wide position. It is not clear which of Mr Hayes or the appellant made the move to the three wide position first. If the appellant's move occurred subsequent to that of Mr Hayes, it was within such a short space of time that

it is difficult to conclude that he made *Always A Show* cover more ground than necessary.

17. Clearly Mr Baudinette's outline of his observations did not properly reflect what had occurred during the course of the race. Stewards in effect acknowledged this when they gave their reasons for decision. Although they purported to base their decision on Mr Baudinette's observation, their reasons inaccurately represent what he said occurred. I am not satisfied that the footage or Mr Baudinette's observations were adequate to reasonably reach the opinion arrived at by stewards during the course of the inquiry.
18. As a consequence the appeal against conviction is upheld. The stewards' decision of 15 December 2014 concerning the appellant is quashed.

Penalty

19. Although it is unnecessary to decide the appeal against penalty, I make the following observations.
20. Stewards have relied on a policy dated from June 2011 regarding penalties to be imposed for breaches of AR163(1)(b) to justify the imposition of a two race meeting suspension upon the appellant. The policy is as follows:

"It has been the practice for many years for fines to be issued for offences under AR 163(1)(b). After discussing this matter with many industry participants including the support of Light Harness Tasmanian and Northern Tasmanian Light Harness Association, and taking into consideration the frustration of some drivers who believe that their opportunity to finish in the best possible position is prejudiced by the interference caused by drivers who force them wider on the track, Stewards have determined that from 1 March 2005 those drivers who breach this rule will be suspended."

21. The justification for the imposition of suspensions for the breach of the rule relate to prejudicing the other driver's position in the race. Stewards accepted that in this case no specific prejudice of the type being addressed by the policy occurred.
22. The appellant had an excellent driving record. On any view, Mr Hayes was in the four wide position for a short period of time. He ultimately went on to win the race. In those circumstances, a two race meeting suspension is excessive. Previous penalties imposed for such breaches have included reprimands and fines. Such penalties would have been appropriate in the circumstances of this case if the breach had been made out.
23. I order that the appellant have his deposit returned to him pursuant to Section 34(2) of the *Racing Regulation Act 2004*. The appeal having been successful I make no order as to transcription costs.