

TASMANIAN RACING APPEAL BOARD

Appeal Nos 16 & 17 of 2015/16 – SIGRID CARR

Panel:	Mr Tom Cox (Chair)	Appellant:	Ms Sigrid Carr
Adviser:	Mr Chris Taylor		
Appearances:	Mr Kevin Ring on behalf of the appellant Mr Anthony O’Connell on behalf of the stewards	Rule:	Thoroughbred Rule AR137A(5)(a)(ii)
Heard at:	Launceston	Date:	25 February 2016
Penalties:	(1) A one meeting suspension & a \$500 fine (2) A one meeting suspension	Varied	
Decision:	(1) A fine of \$250 (2) A fine of \$250	Wholly suspended on condition Wholly suspended on condition	

REASONS FOR DECISION

1. This is an appeal against the severity of two penalties imposed against the appellant, an apprentice jockey, for excessive whip use during two races at separate meetings conducted by the Tasmanian Racing Club at Elwick on 8 February and 14 February this year. The appellant abandoned her appeal against the stewards’ findings she was in breach of the excessive whip rule at the commencement of the hearing before this Board. She maintains that the penalties imposed were excessive.
2. The relevant rule is Rule 137A(5)(a)(ii) of the Australian Rules of Thoroughbred Racing which was introduced on 1 December 2015 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. It is a recent rule, adopted on 1 December 2015. Its effect is simple: a jockey must not strike their mount on more than five occasions until they reach 100 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 5 at the meeting held on 8 February 2016. The appellant was riding *Gee Gee Double Dee*. As she entered the home straight she commenced to strike her mount. By the 100 metre mark from the winning post she

had used her whip on seven occasions. It is noteworthy in this incident that after she had struck her mount on those seven occasions she did not use the whip over the final 100 metres.

6. The stewards proceeded to charge her with excessive whip use by striking her mount on seven occasions (two more than is permissible) before the 100 metre mark from the winning post.
7. She pleaded guilty before the stewards, citing that she was riding the favourite; almost lost her mount on the back straight; had lost count of the number of times she had struck her mount, and lost track where she was in the race *vis a vis* the 100 metre mark when using the whip.
8. Having regard to the appellant's plea of guilty and her poor record, which I will come to shortly, stewards proceeded to impose a one race meeting suspension and a fine of \$500.00.
9. The second incident occurred during Race 4 at a race meeting the following week on 14 February at Elwick. She was riding *Gee Gee's Cool Gal*. On this occasion she struck her mount on six occasions prior to the 100 metre mark from the winning post. It is noteworthy for this incident that the final, sixth, strike occurred very close to the 100 metre mark. Once the appellant traversed the 100 metre mark she struck the mount every second stride until the winning post.
10. For this race, the stewards proceeded to charge the appellant with using the whip on six occasions "*which is one more than the permitted number under the rules prior to the 100 metres*".
11. The appellant again pleaded guilty, citing, this time, that it was difficult from her position on the outside of the field, with three inside runners, to see the 100 metre marker on the inside of the track.
12. Having regard to the appellant's poor record, and the fact that the race was a maiden rather than a listed race the stewards imposed a one race meeting suspension.
13. As noted above, it is necessary to set out the appellant's prior breaches of the relevant rules:

Date	Penalty	Location	comment
05/12/15	Reprimand	Morphetville	Reprimand – whip offence
11/12/15	Reprimand	Devonport	Reprimand – whip prior to 100 metres - 8 occasions (3 over)
01/01/16	Fine	Longford	Fined \$100 – whip before 100 metres – used whip on 8 occasions (3 over)
06/01/16	Fine	Devonport	Fine \$200 – used whip 9 times prior to the 100 metres (4 over)
06/01/16	Fine	Devonport	Fine \$200 – used whip 11 times prior to 100 metres (6 over)
06/01/16	Fine	Devonport	Fine \$500 – used whip on 9 occasions prior to the 100 metres (4 over)
06/01/16	Fine	Devonport	Fine \$500 – used whip on 11 occasions prior to 100 metres (6 over)
08/01/16	Suspension	Hobart	Suspension – 1 race date – used whip 12 times prior to the 100 metres (7 over)
05/02/16	Fine	Hobart	Fine \$500 – Used whip on 8 occasions prior to to 100 metres (3 over)

14. The record discloses that the appellant was in breach of the rule on four occasions at the meeting at Devonport on 6 January 2016. Incredibly, she was given notice of and dealt with for each breach after each race. One would have thought that after at most two calls before the stewards she would have complied with the rule for the balance of the meeting. At first blush, it seems odd that she transgressed the rule on so many occasions at the one meeting.
15. The appellant contends that both penalties, individually and collectively, are excessive for the following reasons:
- The rule prohibiting the use of a whip in excess of five occasions was only introduced on 1 December 2015 and the appellant, like many other jockeys, has had significant difficulty in changing her riding style to ensure compliance with the rules.
 - Her riding style involves the “strong use” of the whip. She has been trained and instructed to be strong with the use of the whip; she has practised accordingly (indeed, she has practised on mechanical horses in South Australia to improve the strength of her whip use) and she has had much success as a result of her “strong” whip use.
 - The purpose of the rule is to allay animal welfare concerns and, accepting that to be so, the fact that she “put the whip away” over the final 100 metres in the first race should be given significant weight.
 - The use of the whip in the first race was modest in the sense that the first strike was with the backhand, followed by six forehand strikes at modest force.
 - She was unable to see the 100 metre marker during the second race on account of her position on the outside with three horses between her mount and the 100 metre marker post. The use of the whip (on the six occasions before the 100 metre mark and on the few occasions thereafter) was of minimal force.
 - After her troubles with this rule on 6 January 2016 at Devonport she sought out advice from Steven Maskiell, a very experienced jockey, who provided her with instructions on how to use the whip effectively without striking the horse.
 - She says she is working hard on modifying her style and adopting techniques provided by persons such as Mr Maskiell to ensure compliance with the whip use rules.
 - Her efforts to change have been hampered by the fact that the apprentice school is closed between October and March. As a result, she has not had any education, other than that which she has sought herself, to ensure compliance with the whip use rules.
 - As far as her offending at Devonport was concerned, although she accepts that she was on notice for each offence, she says she had significant difficulty in adapting her style and further difficulty on that track because she believed that the 200 metre marker was the 100 metre marker on account of the track’s similarity to the track at Longford.

16. The stewards contend that that the penalties were appropriate having regard to her poor record. They say that she is a repeat offender and the imposition of a suspension was required for each breach. The stewards also tendered before this Board a document setting out penalty guidelines which were recently settled at a meeting of the National Chairmen of Stewards. The Jockeys Association had no input into those guidelines.
17. The penalties imposed in this case are in line with those guidelines. For instance, for a ninth or subsequent offence for one or more strikes of the whip over the threshold (five) a suspension or a suspension and a fine is deemed appropriate.
18. It is true that the appellant had a poor record for offending under this rule. However, it is important to note that four of the previous nine breaches all occurred during the one race meeting at Devonport. I find that this is explicable by the fact that appellant's had particular difficulty in adapting her style and those difficulties were acute at that meeting and compounded by her confusion about the position of the 200 metre marker post. In my view, this explanation should certainly prevail over any suggestion that she is conducting herself in contumelious disregard for the rule.
19. In my view, each breach of the rule was a minor transgression from the standard of whip use the appellant was expected to meet. I find as much having regard to the circumstances of each ride and her difficulty in adapting her riding style to meet the new standard. The penalty imposed for the additional strikes in the first race should be tempered by the fact that she "put the whip away" over the final 100 metres, the modest force she applied, and the perception that her use of the whip, taken as a whole, did not appear aggressive or unnecessary.
20. Similarly, I find that her use of the whip in the second race, taken as a whole, did not appear aggressive or unnecessary. The sixth strike occurred just before the 100 metre mark. Given her difficulties with adapting her style and seeing the 100 metre mark, it is easy to understand her non-compliance.
21. Having said all of this, the appellant must ensure that she complies with the rules as they relate to whip use. I accept she is attempting to do so, but having lapses in that process. Further education and training is required and the stewards would be wise to encourage that rather than adopt a prescriptive approach under the guise of meeting out "specific deterrence." I also observe that the circumstances of this appeal show why a prescriptive approach to penalty, under guidelines purported to take into account the circumstances of every breach, may be unfair to jockeys, at least in the short term.
22. The appellant is fined the sum of \$250 for her use of the whip in each race. That is, in total, she is fined the sum of \$500, but that fine will be wholly suspended provided she is not in breach of Rule 137A(5)(a)(ii) for a period of three months from the publication of these reasons.
23. I have taken the view that the appeal was effectively one against penalty and is therefore wholly successful. Accordingly, the appellant's deposit will be returned to her pursuant to s.34(2)(e) of the *Racing Regulation Act 2004*.

DATED: 2 March 2016.