

TASMANIAN RACING APPEAL BOARD

Appeal No 19 of 2014/15

Panel:	Mr R Foon (Chair)	Appellant:	Ms T Ford
Adviser:	Mr D Arnott		
Appearances:	Mr N Ford on behalf of the appellant Mr A Crowther on behalf of stewards	Rule:	Australian Harness Rule AR163(1)(a)
Heard at:	Launceston	Penalty:	A 4 race date suspension
Date:	10 June 2015	Result:	Penalty varied to 3 race date suspension

REASONS FOR DECISION

1. The appellant, Miss Ford, was the driver of *Original Art NZ* which raced in race 8 over 2090 metres at the Tasmanian Pacing Club on 17 May 2015. Following an inquiry into her drive the stewards charged Miss Ford with a breach of AR163(1)(a), which provides:

“A driver shall not – cause or contribute to any crossing, jostling or interference”

2. The particulars of the charge are: *“Attempting to cross to the lead on Original Art in Race 8. You have done so when insufficiently clear of Metro Digby, driven by Paul Williams, and as a result of your crossing when insufficiently clear, Metro Digby driven by Mr Williams has had to be restrained.”* Those particulars were put to Miss Ford who pled not guilty. There was nothing said in defence of her not guilty plea; nothing further put forward or no further questions of the witnesses who appeared at the inquiry. The stewards ultimately found that Miss Ford crossed when insufficiently clear causing Mr Williams to restrain his drive to avoid contact with her.

3. Miss Ford was suspended for four race dates. A stay was granted over the operation of that penalty pending the determination of this appeal. The appellant has appealed both the finding of guilt and penalty.

4. The Board sat with an adviser, Mr Arnott, which is provided for under the Act under s.23(4)(a). The role of an adviser in hearing appeals before the Board is not dealt with at all in the legislation. The adviser is not, however, a member of the Board. The adviser has no role as an advocate, nor do they have any role in the decision making process. The adviser was present to hear all the evidence and the submissions and the parties were made aware of the adviser’s role.

5. The submissions for the appellant were that the appellant:

- a. Did get tight on Mr Williams but then pulled away.
- b. Mr Williams had to grab hold but only slightly.
- c. *Metro Digby* rolled up the track.
- d. Miss Ford stayed in the barrier 3 position.
- e. The interference did not warrant a four race meeting suspension.
- f. A reprimand was appropriate.

6. The stewards submitted that Miss Ford clearly crossed and did so within a metre. They rightly pointed out that the charge was particularised as one of crossing, not jostling or interfering.

7. The stewards correctly submitted the onus is on the driver to ensure that she does not cross when insufficiently clear; that racing into the first turn is the fastest and most dangerous part of the race; and it is a safety issue and other drivers need to be protected.

8. I have considered the evidence given at the stewards' inquiry, the submissions during the appeal and the footage of the race. In my view it is clear on the footage that there was a breach of the Rule. Miss Ford did cross when insufficiently clear. I accept that the crossing was minimal, however it was there. The appeal against conviction is dismissed.

9. In relation to penalty, Miss Ford was invited to make a statement in relation to penalty and she did not do so. The stewards reviewed her previous record and stated "*Thanks Miss Ford. Stewards have considered the matter of penalty in relation to the charge under 163(1)(a) taken into consideration this was a first turn incident, that you pleaded not guilty, also that it was crossing and also taken into consideration two recent suspensions under the same rule at the same stage in the race it is our decision that a suspension of four race dates be imposed against which you have the right of appeal.*"

10. In the case of Miss Ford, the fact that she pled not guilty should not have necessarily led the stewards to impose a more significant penalty in this case. Miss Ford is not an adult. She was not represented at the hearing. Had she been more experienced or represented it would have been glaringly obvious that there was a breach of the Rule (even if a minor breach) and that the appropriate plea was one of guilty. In any event, her plea of not guilty did not prolong the matter at all. From pleading not guilty to there being a finding following the charge being read to her was outlined as follows:

Chairman: Do you wish to enter a plea to the charge?

Miss Ford: Not guilty.

Chairman: Okay, is there anything you'd like to put forward that you haven't already put forward ...

Miss Ford: No.

Chairman: ... in defence of your not guilty plea?

Miss Ford: No.

Chairman: So you ... nothing further you'd like to put forward?

Miss Ford: No.

Chairman: Do you wish to question Mr Howlett or Mr Williams ...

Miss Ford: No.

Chairman: ... to assist you in the defence of your not guilty plea?

Miss Ford: No.

Chairman: Okay anything ... any questions from the stewards to either driver?

Unknown: No.

Chairman: Take a moment outside thanks we'll consider the matter.

11. Had Miss Ford been represented or more experienced she could have put matters in mitigation which may have led to the stewards considering a different penalty. Notwithstanding Miss Ford's record and the fact it occurred on the first turn the objective seriousness of this breach only warranted a three race date suspension and in my view a four race date suspension was too severe in the

circumstances. In light of the appellant's previous record for breaches of the Rules the submission that only a reprimand was warranted is rejected. Perhaps if it had not occurred in the first turn and Miss Ford had not had at least two breaches of the Rule within three months that may have been the starting point.

12. Therefore, whilst the appeal against conviction fails, the stewards' decision with respect to penalty is varied to a three race date suspension.

13. Pursuant to s34(2)(e) of *the Racing Regulation Act 2004*, 25% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay the Secretary of the Department 25% of the costs incurred in preparation of the transcript.

14. Pursuant to s.34(1)(B) the decision is to take effect immediately.