

TASMANIAN RACING APPEAL BOARD

Appeal No 2 of 2014/15

Panel:	Mr R Foon (Chair)	Appellant:	Mr B Rattray
Adviser:	Mr D Arnott		
Appearances:	The appellant in person Mr A Crowther on behalf of stewards	Rule:	Australian Harness Rule AR156(3)(b)
Heard at:	Launceston	Penalty:	\$200 Fine
Date:	16 September 2014	Result:	Appeal upheld

REASONS FOR DECISION

1. The appellant, Mr Rattray, was the driver of *Margin Girl* which raced in race 1 over 2090 metres at the Tasmanian Pacing Club on 17 August 2014. Following an inquiry into his drive the stewards reported that:

“Driver Barrie Rattray (MARGIN GIRL) was charged under AR 156(3)(b) for his excessive whip action over the concluding stages. After hearing evidence from Mr Rattray in defence of his not guilty plea Mr Rattray was found guilty of the charge and fined the sum of \$200.”

2. The rule relevantly provides that:

“A driver shall be deemed to have used the whip excessively in the following circumstances, which are not exclusive – a) if the tip of the whip is drawn back further than the driver’s shoulder, b) if the whip action involves more than a wrist and elbow action, c) if the reins are lengthened so as to result in loose reining regardless of whether the whip is being used at the same time or d) if the whip is being used other than a flicking motion.”

3. Mr Rattray has appealed his conviction and the penalty imposed.

4. The grounds of the appeal are that “stewards failed to make a reasonable case and were not consistent with decisions made in past circumstances.” I have taken that to mean that the appellant believed the stewards erred in finding him guilty of the offence.

5. Mr Rattray was found guilty on the basis that stewards believed that by getting his hand up above his head on a number of occasions that it constituted more than a flicking motion.

6. The appellant effectively submitted that he believed the stewards had changed their interpretation of the Rule in recent weeks. I do not know if they have in fact changed their interpretation. He wished to rely on a number of previous instances where there had been occurrences of a similar nature where he was aware there had been no penalties imposed. The appellant submitted that he had not used the whip excessively. He showed photos of the different types of sulkies used and submitted that effectively the position he had to sit in the sulky he was using in that race meant that whilst there might be an appearance of excessive whip use he was not using anything more than a flicking motion, or his wrist and elbow, but that the position of his shoulder and his arm may give that appearance due to the angle from which he was whipping.

7. He tendered the footage of the race on 3 August where he had been penalised and pled guilty for excessive whip use and submitted there was a significant distinction between the whip use on the two occasions and he submitted that he had adjusted his whip action following that penalty.

8. The stewards' submissions were consistent with the findings made at the hearing. At Page 9 of the transcript the Chairman stated "*Thanks Mr Rattray. Stewards have considered the matter and considered your evidence in relation to your whip use in race one as the driver of MARGIN GIRL. We don't accept your evidence that your whip is within the rule and we've read through the definitions of it and the rule states in more the ... with more than a wrist and elbow action and part d of 156(4) defined as other than a flicking motion. We believe on this occasion by getting your hand up above your head on a number of occasions that constitutes more than a flicking motion. So on that basis we sustain the charge.*" The stewards' position was that half way down the straight the appellant's whip action changed and goes higher and submitted there was evidence of excessive whipping by reason of him getting his hand up above his head on a number of occasions, that constitutes more than a flicking motion.

9. Having considered the video of the previous race, in my view there is no doubt the appellant was right to plead guilty on that occasion. I see a significant difference between the appellant's action in both of those races.

10. In my view the fact others have not been caught excessively whipping is entirely irrelevant as to whether or not the appellant is guilty on this occasion. The stewards cannot, no matter how hard they try, be expected to catch everyone. However, in light of the fact the issue has been brought to their attention, no doubt they will be more vigilant in relation to these types of offences committed by other drivers.

11. In this case, having viewed the footage, I can see only one whip in the straight which in my view could possibly be deemed excessive. In light of the explanation given by the appellant as to how he was seated and the action he demonstrated, I could not, based on that footage, reject his explanation. However, I do note that seating position is always going to put the driver at risk of the suggestion of excessive whip action given the position of the shoulder. There is significant risk that a driver driving in that position is going to commit an offence of excessive whipping by a whip action involving more than a wrist and elbow or more than a flicking motion due to the position of their arm.

12. The appeal against conviction is upheld. The stewards' decision of 17 August 2014 is quashed. As a consequence it is unnecessary to decide concerning penalty.

13. 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.