TASMANIAN RACING APPEAL BOARD

Appeal No 3 of 2015/16

Panel:	**Mrs Kate Brown (Chair)**	**Appellant:**	**Mr Mehmet Ulucinar**
Adviser:	**Mr Chris Taylor**		
Appearances:	**Mr Glen Stevenson on behalf of the appellant** **Mr Anthony O'Connell on behalf of the stewards**	**Rule:**	**Thoroughbred Rule AR137(a)**
Heard at:	**Launceston**	**Penalty:**	**A two race meeting suspension**
Date:	**29 October 2015**	**Result:**	**Upheld**

REASONS FOR DECISION

1. The appellant rode *Shipspotting* in Race 8 at the Tasmanian Turf Club meeting held on 7 October 2015.

2. Following the race stewards held an inquiry and reported the following:

   Mehmet Ulucinar, rider of Shipspotting, was found guilty of a charge under AR 137(a) careless riding, the particulars being that near the 1800 metres he permitted his mount to shift ground inwards when insufficiently clear of Sandeep resulting in that gelding being tightened onto Bitter Dan with both horses being severely unbalanced which resulted in Kyle Maskiell, rider of Bitter Dan, almost being dislodged. Stewards deemed the interference to be of a high level and carelessness to be of a low level due to both Sandeep and Bitter Dan overreacting when being restrained by their riders. Mehmet Ulucinar's licence to ride in races was suspended for a period of two (2) Tasmanian race meetings.

3. On 9 October 2015 Mr Ulucinar appealed that conviction and requested a stay of the penalty, which was subsequently granted.

4. The rule in question is Rule 137(a) of the Australian Rules of Thoroughbred Racing which states:

   "Any rider may be penalised if, in the opinion of the Stewards,

   He is guilty of careless, reckless, improper, incompetent or foul riding."

   Submission by stewards to adjourn the hearing

5. Mr O'Connell sought an adjournment of the appeal. In support of that application he put to the Board that:

   (a) On Tuesday, 20 October 2015 Mr Ulucinar had his apprenticeship indentures deferred for one month so he can assess his continued participant in thoroughbred racing in the capacity of an apprentice jockey. The deferment of his indentures now makes him

unlicensed to ride in races until the Apprentices Committee meets again, which will occur in approximately one month.

(b) In support of the application stewards put to the Board that:

- If the appeal is heard Part 5 Section 34(1B) of the *Racing Regulation Act 2004* (the Act) gives the Board Chairperson no discretion to defer a penalty.
- As Mr Ulucinar has no current licence a dismissal of his appeal means he effectively serves no penalty.
- Whilst not as significant if Mr Ulucinar's appeal is upheld it equally does not advantage him.
- If the appeal is heard and dismissed, based on current circumstances Mr Ulucinar would serve no penalty and this, in the opinion of stewards, would be detrimental to industry perception that breaches of the rules require penalties which act as a deterrent.

6. Section 30 (1)(a) of the Act requires the time and place for hearing of an appeal to be fixed "as soon as practicable". The same phrase is noted in s.30(1)(d) and (e). Strict time frames for the filing of hearing are set out in s.29 of the Act. While the TRAB is permitted to adjourn the hearing of an appeal from time to time, it is clearly contemplated in the Act that appeals are to be dealt with as expeditiously as possible and that, once listed an appeal should proceed unless there is good cause to adjourn.

7. The circumstance of the appellant's licensing while noted, are not in this case a proper basis to adjourn. To do so could only be for the purpose of maximising the impact of a penalty on the appellant, and not for any reason pertaining to the proper hearing of the appeal, the merits of the case or the need to comply with the rules of natural justice. It is akin to a criminal court adjourning the hearing of a driving charge until the driver had served any pre-existing period of disqualification so as to maximise any further period of disqualification. If the appellant had sought an adjournment to allow for him to race in particular races, or until such time as he no longer required his licence the stewards would no doubt have objected.

8. While it was noted that the impact of any penalty may well be lessened by proceeding to hear the appeal, it would be altogether ameliorated, as the penalty would still be noted on the appellant's riding record. It was determined that the hearing would proceed.

Use of Advisers

9. I further note I have sat on this appeal with an adviser, Mr Chris Taylor, as provided for in the Act at Section 23(4)(a). The role of advisers in the hearing of appeals before the Board is not dealt with at all in the legislation. It is plain that advisers are not members of the Board. They have no role as advocates for any party, nor do they have any deliberative role. I have proceeded at this hearing on the basis that Mr Taylor is present to hear all the evidence and all the submissions made. I have advised the parties that I would discuss the matter with the adviser, but that his advice would not form part of the evidence.

The inquiry before the stewards

10. Before the stewards were the race patrol films of the incident. Evidence was also given before stewards by Mr Ulucinar himself, Ms McCarthy and Mr Maskiell.

11. Essentially the case against Mr Ulucinar was that at about the 1800 metre mark he rode his mount carelessly in that he shifted in when insufficiently clear of *Sandeep* ridden by Ms McCarthy thereby causing that horse to tighten *Bitter Dan* ridden by Mr Maskiell,

which was travelling on the rail, thereby severely checking that horse and causing Mr Maskiell to almost be dislodged. There is no doubt whatsoever that *Bitter Dan* was severely checked and that Mr Maskiell's run was effectively ended by what occurred.

12. Before stewards the appellant stated that he "was clear but then [he] shifted in and it [sic] stopped where [he] was"; but also "I'm not shifting in there sir, I'm staying where I was". He disagreed when it was put to him that he was continuing to shift in; and then later said he may have shifted in "slightly" but not too much. Later still he agreed that he was still clear, but started to encroach on the territory of McCarthy's horse, but said that he was a "bit more than one and a half lengths", "maybe a bit less than two lengths but definitely more than one and a half lengths". They were the concessions made by the appellant. His evidence on appeal was consistent with that.

13. The evidence of Ms McCarthy at the inquiry was that she did not "believe he [Mr Ulucinar] was two lengths clear, but she was no stronger than that. She also said that she believed Mr Ulucinar shifted "half a horse" onto her. The uncontradicted evidence was that she tried to restrain her mount but that she was unable to do so, that horse being well known as a "dead set leader".

Material before the Board

14. Before this Board the appellant was represented by Mr Stevenson who conceded that Mr Ulucinar marginally shifted in, however, it was the actions of Ms McCarthy, who failed to hold her mount, that caused Mr Maskiell's horse to be tightened.

15. Mr O'Connell, on behalf of the stewards, contends that the appellant was careless in that he shifted in when not sufficiently clear of Ms McCarthy's mount.

16. On viewing the film of the race, I was able to observe that at the time of the alleged "shift" which is the subject of the charge, Mr Ulucinar was at least one horse length clear and probably closer to the one and a half lengths he estimated. More importantly it was clear that the alleged "shift in" was minimal. In fact, in his evidence Mr Ulucinar stated that he was trying to maintain his line. He did not, however, dispute the slight shift in.

17. I do not accept Ms McCarthy's estimate that the shift was "half a horse". She was ambivalent about that at best, and in the whole of the circumstances, potentially facing a careless riding charge herself, therefore vested in placing blame on Mr Ulucinar. Further, the film clearly shows the shift was nothing like "half a horse".

18. I also do not accept that for a horse to be sufficiently clear it must be two horse lengths in every circumstance. It is no doubt a very good guide, but it is not a rule, and what is "sufficiently clear" is a matter which must be determined taking into account all the circumstances that exist at the time. Of course, it will always be the case that decisions are made in race conditions that are not perfect, but are nonetheless not such that ought to attract a charge of careless riding.

19. This is such a case. I do not believe that the evidence before the stewards, being the film, the evidence of Mr Ulucinar and the evidence of Ms McCarthy (Mr Maskiell's evidence being largely irrelevant) could satisfy them on the balance of probabilities that the riding of Mr Ulucinar on this occasion was culpable to the point that it was careless.

20. Indeed, it seemed to me on viewing the film that Ms McCarthy, due to her inability to control her mount, was unable to prevent *Sandeep* from trying to push through where there was insufficient room. In fact, Ms McCarthy was not entirely in control of her mount and if anything those factors lead to the unbalancing of Mr Maskiell. Of course in making that finding I have had the benefit of watching the race film repeatedly and at slow speed. Moreover, my concluding observation is that the real cause of the incident was *Sandeep*'s over-racing.

21. The appeal against conviction is upheld. The stewards' decision of 7 October 2015 is quashed.

22. I order that the appellant have his deposit returned to him pursuant to Section 34(2) of the Act. The appeal having been successful I make no order as to transcription costs.