TASMANIAN RACING APPEAL BOARD

Appeal No. 03 of 2019-20

Panel:	**Kate Brown (Chair)** **Rod Lester (Member)** **Wendy Kennedy (Member)**	**Appellant:**	**Adrian Collins**
Adviser:	**Mike Stiles**		
Appearances:	**Steven Shinn (on behalf of the stewards)** **Anthony O'Connell (on behalf of the appellant)**	**Rules:**	**AR 168 (1)(e)**
Heard at:	**Launceston, Tasmania**	**Penalty:**	**$500 fine**
Date:	**28 November 2019**	**Result:**	**Upheld**

REASONS FOR DECISION

1. This appeal arose from an incident at a Launceston Pacing Club meeting on the 3rd of November 2019. The Board heard and determined the appeal on the 28th of November 2019. The Board had regard to all the written material before it, oral evidence and submissions and the race footage.

2. The particulars of the charge (set out at the top of page 7 of the transcript) were that:

> *"Entering the home straight on the final occasion you've dropped your left foot from the sulky stirrup down to a position where it was quite possible for your foot to contact the horse's hind legs and Stewards would consider that to be an improper action on your part."*

Change of Plea

3. Having been charged with a breach of AHRR 168(1)(e) and pleading guilty to the same at the enquiry, the appellant appealed against both conviction and penalty. Accordingly the appeal commenced by hearing submissions as to the change of plea, with the appellant's advocate referring to the transcript generally and specifically at pages 6-7. He essentially argued that leading to that point in the transcript there had been a discussion about the appellant's foot dropping out of the sulky and how that came about without any mention of a charge or what that might be. The appellant was frank and consistent. When the charge is put to him on the 7th page his plea of guilty is ambivalent in that he clarifies that he is not being charge with "hocking" and then pleads on the basis that it is possible that his foot dropped down and refers to it being a "grey area".

4. In response Stewards submitted that the charge was clearly and correctly laid at the original hearing, and in asserting he hadn't acted improperly, that the appellant was possibly confusing impropriety with corruption.

5. The Board allowed the plea to be amended and accepted that the transcript indicated some justifiable confusion on the part of Mr Collins at the enquiry, and a lack of clarity by Stewards about their intention to charge him and if so, under which rule. The Board took into account that the conduct particularised was unusual, and the charge is a broad one, and also that it had not been laid on the night but some 6 days later, which ought to have given Stewards ample opportunity to determine which charge(s) they were considering and make that clear to the appellant at the outset of the enquiry.

Appeal against Conviction

6. In support of the appeal against conviction Mr Collins' advocate noted that the allegedly offending act was not identified at the race meeting on the 3rd of November and that in reaching the conclusion that the appellant was guilty stewards had only had regard to race footage and no direct observation. Further the evidence was only shown in the head on film of the race. The enquiry was undertaken at a race meeting on the 9th of November and Mr Collins was given no notice of stewards' intention to convene that.

7. The appellant argued that the Briginshaw standard of proof applied when alleging impropriety and relied on the Victorian Racing Appeals and Disciplinary Board case of Oliver (30 October 2017) in support of that contention. The Board accepted that and adopts the following from that case at page 2:

> *The standard of proof is that laid down in the well-known case of Briginshaw v Briginshaw. We must be comfortably satisfied that the charge has been proved, taking into account inter alia the gravity of the charge and the consequences which flow from the conviction*.

8. And further on that page Bowman J noted "*that improper riding involves an element of deliberate or conscious conduct which creates a danger or a potential for danger*". Further the case of Morris (9 August 2016) with respect to the same charge the NSW Tracing Appeals Tribunal expressly noted that the Briginshaw standard of proof is to be met in such cases and there is discussion of what constitutes "improper" driving which notes that '*the word "improper" contains within it a failure not just to reach a standard but reach it with some sort of mental element*'.

9. The case of Walters (TRAB 2016) was also relied upon by the appellant particularly this paragraph where it notes the stewards asserted that "*the appellant was in breach of the rule because they had found that he had pushed his foot forward, deliberately, in an attempt to clip the drive's hind legs and quicken its gait. The practice is called 'hocking'. The practice is very dangerous and …worthy of a significant penalty if found to have taken place*". The Board finds those cases persuasive.

10. The appellant's advocate noted the need for the act to be intentional and referred to the evidence of the appellant at the enquiry which was to the effect that it was possible that his foot had slipped but it was not intentional (page 5, line 12). He further submitted that at no time during the enquiry was it alleged or established that there had been any contact between the appellant's dropped foot and the horse, only that it was in the vicinity of the hind legs.

11. In viewing the footage it is noted that the only viable vision of the appellant's foot was in the head on footage. The Board observed that the appellant's left foot to be out of the stirrup, and lower than his right. However it was at all times in contact with the stirrup, with the appellant's toes bracing on the bottom of the stirrup. It is not hanging loose of the stirrup and it is never anywhere near the horse's hind legs. The appellant admitted in the enquiry that he had "got into the habit of driving with one toe in compared to a whole foot".

12. Steward's submitted that it was "clear on the film" that the appellant dropped his foot down and forward to the vicinity of the horse's hind legs. The Board does not accept that submission. The angle the film is taken from shows only the base of the appellant's foot. It is not possible to see whether the foot moves forward, only that it is lower than the stirrup. It is shown to be in line with the stirrup. That is all that can be determined from that angle.

13. As noted above the Board has to be comfortably satisfied that a charge such as this is proved, not just the physical act alleged, but also that any such act was done deliberately with improper intent. Leaving aside the very limited evidence about the physical position of the appellant's foot, there is absolutely no evidence of any improper intent.

14. The Board upholds the appeal against conviction, and therefore does not need to consider the appeal against penalty. The conviction is quashed and the whole of the deposit is to be refunded to the appellant.