

TASMANIAN RACING APPEAL BOARD

Appeal No 03 of 2023-24

Panel:	Ms Amber Cohen (Chair)	Appellant:	Mr Anthony Darmanin
Adviser:	Mr Chris Taylor		
Appearances:	Mr Bruce Free (on behalf of the Stewards)	Rules:	AR 131(a) Careless riding
Heard at:	Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	Suspension of 3 Tasmanian rate dates
Date:	28 September 2023	Result:	Upheld

REASONS FOR DECISION

1. On 28 September 2023, the Board heard this appeal.
2. The appellant, Mr Darmanin, was the rider of ZEVA ROYALE. This appeal concerns race 4 on 22 February 2023, at a meeting held by the Tasmanian Turf Club.
3. Stewards held an inquiry on 30 July 2023, at which they reviewed the race footage and heard from the appellant and Mr Bruno Neto, who was the rider of the horse CAPTAIN MORGAN, which fell during the race. Stewards said they had spoken separately with Mr Daniel Ganderton, who was riding the other fallen horse, LAUNNIE NIGHTS. Mr Ganderton had advised Stewards that he was further back and did not see what occurred.
4. After the Inquiry, Stewards charged Mr Darmanin under Australian Rules of Racing 131(a), which provides:

A rider must not in the opinion of the Stewards:-
(a) engage in careless, reckless, improper, incompetent or foul riding;
...

5. Stewards gave the following particulars:

Stewards do specify careless riding and the particulars are at the Tasmanian Turf Club meeting on the 22nd February 2023, in the Sporties Hotel Benchmark 64 Handicap, you were the rider of ZEVA ROYALE, the careless riding being that near or at the 30 metres whilst riding along, you permitted your mount to shift in when insufficiently clear of CAPTAIN MORGAN... ridden by Bruno Neto... which resulted in that gelding appear to clip heels, falling and dislodging its rider... Bruno Neto which then resulted in

LAUNNIE NIGHTS, ridden by Daniel Ganderton, clipping the fallen horse and that gelding then falling and dislodging its rider.

6. Stewards asked Mr Neto what happened to him in the incident. Mr Neto responded:

...my horse wasn't [inaudible] confident on the turn he lost his balance... I didn't notice interference for the horse next to me, it just felt like very weak, look like he lost a stride or something like that. Tried to make long way ground on the back. Cause I was looking my front, there was nothing, nothing horse next to me, like I didn't clip the heels, nothing. Things went very quick.

7. When asked if he lost his position at all, he answered "no". When asked whether he was tightened, he answered "no". When asked whether the appellant had come across in front of him when he wasn't fully clear, Mr Neto answered "yeah, he was full clear, yeah". When asked if Mr Neto had an opinion on exactly how far in front the appellant was when he crossed, Mr Neto answered:

He didn't cross on me, but when I was looking, he looked like he cross, he just passed me, his horse make good ground and just passed, so I didn't think his horse crossed...

8. When Mr Neto was asked whether he kept riding normally when the appellant crossed, he answered:

Yeah, I keep riding normally... cause I didn't see any interference with the horse, anything.

9. When asked his belief on what happened to his horse, Mr Neto answered:

Look like he just lost a stride, I don't know. If I didn't clip the heel, he just go to the ground very quick. Like the way when the horse clip. He wasn't clipped, he just like, he just missed his stride, something like that. Wasn't interference to the horse, he didn't clip nothing. No, I was looking in my front.

10. After showing Mr Neto the footage, Stewards ask him what he would like to put forward. He responds:

I can't see like the horse, any horse move [inaudible] horse. They get tired the last 50 metres you know. My, maybe my horse, like, it's a bit outside but hard to see. I can't see anyone's fault [inaudible].

11. When asked again if he would agree with the Chairman of Stewards in saying he didn't believe the appellant was clear when he crossed, Mr Neto said:

It doesn't look like he crossed, its hard... all the horses turned, we're all tired. I don't think it...

12. Finally, when asked if it would be clear to cross at a length and a quarter, Mr Neto said "no".

13. Stewards asked the appellant how far he was in front of Mr Neto's horse just before the fall and he responded, "a length and a quarter". Stewards questioned him on that and there was a short discussion about whether you would measure it from his horse's outstretched leg or its normal leg. There was no agreement reached. The appellant confirmed his view he was in front a length and a quarter.

14. After reviewing the footage, Stewards asked the appellant for his comment. He said:

You can clearly see on the vision I haven't shifted. His horse is off balance, okay... His horse is all over the shop on the corner and then he's hitting it in the left and its wobbling. If you can show me on the vision where I have shifted I'd like to see it because I keep going in a straight line, his horse is weakening and has come in behind my horse. Cannot, can't confirm or deny... if my horse has clipped the heel, I can't confirm he's got my heel or his horse has fallen but his horse does directly go in behind mine.

15. Stewards and the appellant disagreed about whether the appellant crossed Mr Neto's horse. Stewards suggested he had shifted either a horse, and then later half a horse. The appellant maintained that he was going straight and it was Mr Neto who came in behind him marginally. The appellant says he definitely didn't feel a clip. He said any shifting by him during the race was when he was clear and he did not cause any interference. The appellant said:

There's no charge with plenty of falls. Sometimes it's a racing incident but youse [sic] are thinking, because there's a fall, it has to be somebody's fault... I haven't moved at all, the jockeys not even looking where he's going, a jockey needs to pay, take care of themselves as well... If I do shift in, he has to come in marginally with me, not just go straight...

16. Stewards made the charge and gave the particulars at paragraphs 4 and 5 above. The appellant pleaded not guilty to the charge. Stewards found the appellant guilty. The penalty given was the suspension of the appellant's licence to ride in races for three Tasmanian race meetings.

17. The appellant has appealed against the conviction, and in his notice of appeal says the following:

After viewing all angles of the incident approaching the winning post where "Captain Morgan" dislodged its rider Bruno Neto, I am adamant that my ride on "Zeva Royale" was within the rules of racing and furthermore, the evidence given by Mr Neto supported my plea...

18. The Board considered the transcript of the Stewards' Inquiry and noted the matters outlined above at paragraphs 6 to 16.

19. The appellant made statements at the hearing that were largely consistent with what he had said at the Inquiry. He was unable to say whether or not he clipped the heel of Mr Neto's horse, given that he was in front and looking ahead and you generally cannot hear something happening behind you. He said that if it did clip, it was because Mr Neto's horse had moved in behind him and not because he himself had allowed his mount to shift. He noted there was no evidence that Mr Neto's horse had clipped heels with the horse he, the appellant, had been riding. Mr Neto had confirmed they did not and had also given evidence that the appellant had not crossed. He said there was unreasonable doubt, that it was inconclusive and that he believed it should be definite for Stewards to charge.

20. At the hearing, Mr Free on behalf of Stewards said, that over the final 30 metres, the appellant starts to shift in. He says the rule of thumb is that a horse must be two lengths clear before it should be allowed to shift in and that there was a degree of tightness in the race. He said the appellant may have shifted up to two horses across and later said it was one to one and a half. He said that the legs of Mr Neto's horse and the appellant's horse basically intertwine. As to whether there was enough evidence that Mr Neto's horse had clipped heels with the appellant's horse, Mr Free said that they usually put it that the standard is "that it is not beyond reasonable doubt" that they clipped heels.

21. The Board disagrees with Mr Free's characterisation of the standard and notes the standard of proof in these matters was outlined in the Victorian Racing Appeals and Disciplinary Board case of Oliver (30 October 2017), page 2, as follows:

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.

22. The Board notes that the footage did not conclusively show that Mr Neto's horse clipped heels with the appellant's horse.

Determination of Appeal against Conviction

23. The Board has carefully considered the submissions of each of the parties to this appeal. The Board has also viewed very carefully the footage and has had the benefit of the assistance of the thoroughbred racing adviser, Mr Taylor, in relation to this matter.
24. The Board has taken into account the evidence of the rider of the horse which fell. Much of Mr Neto's evidence has been stated in the preceding paragraphs because it appears from review of the transcript of the Steward's Inquiry that Mr Neto was questioned at some length about whether there was interference and maintains at all times that there was none. He does not believe his horse clipped heels with the appellant's horse, and he did not feel that the appellant had crossed him or interfered with his ride. He said that he just kept riding normally because there was not any interference. His evidence was clear and consistent, and he provided an alternative explanation for the fall. He said he could not see fault on anyone's part.
25. The Board accepts the submission put by the appellant that Stewards have insufficient evidence to establish, to the requisite standard, that the appellant engaged in careless riding. There was clearly a divergence of views as to whether and, if so, how far, the appellant allowed his mount to shift. It is unfortunate that a dangerous fall occurred in the course of the race, but the independent witness positively denies that the appellant crossed him, denies that he interfered with his ride and denies that the fall was the result of any conduct of the appellant. The footage does not assist the Board to form any contrary view.
26. Taking into account the requisite standard of proof and the evidence available, the Board cannot attain a comfortable level of satisfaction that the appellant engaged in careless riding.
27. The appeal against conviction is upheld – and the orders of the Stewards are quashed per s 34(1)(a) Racing Regulations Act 2004. (As such there remains no need to further consider or determine or the related appeal against penalty).
28. As the decision of the Stewards has been quashed, the Board orders pursuant to ss 34(2)(e) of the Racing Regulations Act 2004, that the appellant's prescribed deposit be refunded in full.

DATED: 30 OCTOBER 2023