

TASMANIAN RACING APPEAL BOARD

Appeal No 04 of 2022-23

Panel:	Mr Patrick O'Halloran (Chair)	Appellant:	Ms Taylor Johnstone
Adviser:	Mr Chris Taylor		
Appearances:	Mr Bruce Free (on behalf of the Stewards) Mr Leon Wells (on behalf of the Appellant)	Rules:	AR 131(a) Careless Riding
Heard at:	Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	Suspension of 2 Tasmanian race dates
Date:	21 December 2022	Result:	Quashed

REASONS FOR DECISION

1. This is another appeal in regard to a charge of Careless Riding.
2. The appellant was the jockey riding Quicken Up in Race 5 [MCB Developments 3 YO Cup- (1200 meters)] held on 23 November 2022 at the Tasmanian Turf Club.
3. Following an inquiry into her ride on that date, Stewards found that the appellant had breached AR 131(a). This rule provides:

'A rider must not, in the opinion of the Stewards:

(a) Engage in careless.....riding'

4. The particulars of the charge were that *'as the rider of QUICKEN UP....(when) entering the home straight, or on entering the home straight you allowed your mount to shift out resulting in GEEGEE JET BY (ridden by I Toker) having to check his mount'*.
5. The appellant plead not guilty to the charge. Following the inquiry, she was found guilty, and her licence to ride in races was suspended for two Tasmanian race dates.
6. Within the Stipendiary Stewards report it was recorded in determining penalty that *'Stewards took into account her not guilty plea, her record in relation to this rule and that the carelessness was in the mid-range and that it was a feature race'*.

Conviction Appeal

7. Within her filed *'Notice and Grounds of Appeal'* (against conviction and penalty) the appellant relevantly provided (as re-grouped by the Board into separate issues):
 - a. (the Stewards) *'didn't take all evidence from all riders (so I was denied justice)'* and *'I wasn't given the chance to ask or hear from all jockeys as one jockey wasn't there T Baker'*

- so I couldn't ask him any questions' (***the procedural fairness / natural justice*** ground); and –
- b. *'(I was) dictated to by my fellow senior riders which caused the initial shift and me onto his heels – and then my horse was very hesitant of the next shift'* (***the erroneous finding*** ground).
8. The appellant submitted in regard to ***the procedural fairness / natural justice*** ground that:
 - a. The contravention of these principle(s) was confined to the issue of rider BAKER not being called and/or not being present at the inquiry;
 - b. In response to direct questioning from the Board on this issue the appellant submitted that if BAKER had been present the appellant would have asked BAKER whether he had interfered with (the Appellant's horse). The appellant further submitted that BAKER's answers *'would have clearly been yes'* because this characterisation of BAKER's riding was, on their submission, clearly captured in the race footage.
 9. The appellant submitted (in summary) in regard to **the erroneous finding** ground:
 - a. That – contrary to the Steward's characterisation that there had been a 'two stage interference'- the focus of the inquiry should have been on rider Troy BAKER as he had 'caused the interference' and/or 'started the interference off' – by impacting into the appellant immediately prior to and causing the riding that the Stewards subsequently determined was the appellant's careless riding;
 - b. That the race footage recorded that BAKER - in circumstances where BAKER was required to have been two clear lengths before moving or shifting out - had in fact connected (or 'crashed') into the appellant's horse at a point in time when he was (impermissibly) only three quarters of a length in front of her.
 - c. That these actions of BAKER, it was submitted, thus provided the appellant only two options (or 'places to go') in response. These being either (i) to check back which would have most likely resulted in her clip(ping) heels and probably falling or (ii) 'go with' BAKER which, it was submitted in the circumstances, she was entitled to do.
 10. Within the appeal the appellant also referred to the evidence provided by some of the riders to Stewards – which she said properly contextualised the actions of other riders and the consequential impact it had on the appellant in her decision making at the relevant time point:
 - a. From rider MR TOKER:
 - i. *'I believe the first incident nothing happened, I don't believe, I just got tight. The second one's the, was, is serious one'*
 - ii. *'And do you believe it was (the appellant)?..... Well no'*
 - b. From rider MISS CAR:
 - i. *'I got taken out further than I wanted to go Sir, that's about all I can say'*
 - ii. *'Right. And did you put any direct pressure on (the appellant's) mount?....I, yes I did....'*
 11. The Steward's submission included - across both grounds of appeal (noting their overarching submission that their characterisation of the race film informed their decision on whom to call into their inquiry):
 - a. That they had read the relevant portion of the race and the circumstances immediately preceding the riding of the Appellant as a 'two part interference';
 - b. That they agreed that BAKER had shifted out and he had the appellant to his outside;
 - c. That the Appellant did get marginally carried out and then she (appropriately) released the pressure momentarily (because she was aware that TOKER was to her outside);
 - d. That the appellant then had to maintain a straight position and had a continued responsibility to relieve the pressure - **but instead** had continued to shift out instead of maintaining which then resulted in impacting on TOKER;

- e. That as the riding - as stated immediately above was a 'two step interference' – BAKER had only been part of the first aspect and as such BAKER was not called to the inquiry as Stewards didn't believe he played any part in the Appellants particularised riding;
- f. In submissions to the Board Stewards also submitted that at first instance the appellant did not call any witnesses themselves.

Race Film

12. The Board had available to it the film of the race. Both the appellant's representative and the Stewards referred to that footage within their submission to the Board – specifically the footage from the camera views 'Front on View' and 'Side'
13. The Board had the benefit of advice from the adviser Mr Chris Taylor and carefully considered the race film.

The procedural fairness / natural justice ground

14. As noted above within the summary of the appellant's submissions on this ground – following direct questioning from the Board as to what prejudice was caused by BAKER not being present – the appellant provided that it would be limited to a single question on a single issue.
15. It appears clear that the Appellant remained able to (and did) make every submission they thought necessary including by reference to the race footage they had available to them (ie to support their submission as to the causation of the appellant's riding that occurred immediately preceding their alleged careless riding).
16. The Board notes therefore that any questioning as to matters of fact (as opposed to submissions to the stewards as to characterising what actions or interactions were captured in the race footage) would have been limited to non controversial matters - that is confirming that the identity of the rider was BAKER and that the race footage accurately captured that portion of the race (immediately preceding the alleged careless riding).

Determination of appeal against conviction

17. Having considered the submissions of the parties, the race film and the advice of the adviser the Board accepts the characterisation of the race and the appellant's actions as was submitted by the appellant's representative both in their filed Notice and in submissions to the Board - that is the Board is not comfortably satisfied that the particularised portion of riding was an incident involving careless riding.
18. 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).
19. 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: 29 MAY 2023