

# TASMANIAN RACING APPEAL BOARD

## Appeal No 04 of 2023-24

<b>Panel:</b>	<b>Ms Amber Cohen (Chair)</b>	<b>Appellant:</b>	<b>Mr Dylan Ford</b>
<b>Adviser:</b>	<b>Mr Mike Stiles</b>		
<b>Appearances:</b>	<b>Mr Neil Finnigan (on behalf of the Stewards) Mr Adrian Hall (on behalf of the Appellant)</b>	<b>Rules:</b>	<b>AHRR 168(1)(e) Improper driving</b>
<b>Heard at:</b>	<b>Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS</b>	<b>Penalty:</b>	<b>Suspension of 5 Tasmanian rate dates</b>
<b>Date:</b>	<b>28 September 2023</b>	<b>Result:</b>	<b>Upheld</b>

### REASONS FOR DECISION

1. On 28 September 2023, the Board heard this appeal.
2. The appellant, Mr Ford, was the driver of AMILLION PROMISES. This appeal concerns race 6 on the 18<sup>th</sup> August 2023 that was held by the Launceston Pacing Club.
3. Stewards held an Inquiry on 27 August 2023, at which they reviewed the race footage and heard from the appellant and Mr Kayleb Williams, who was the driver of the horse MIA RAGAZZA NZ and Mr Barrie Rattray, a harness trainer, who was there as an advocate for Mr Williams.
4. At the conclusion of the Inquiry, Stewards charged Mr Ford under Australian Harness Racing Rules rule 168(1)(e), which provides:

A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards:-

...

(e) improper.

5. Stewards gave the following particulars:

Your body movement in the sulky... was improper in that you voluntarily, in our opinion, have moved your body wider and out of the sulky coming in towards the vicinity of Mr Williams' horse MIA RAGAZZA, causing that horse to steady its pace at that point in the race, some 150 metres from the finish.

6. Stewards asked the appellant how he saw the incident. He responded that at the relevant point in time, he was stopping. He said to another driver that he was not driving out because he was not in contention. He felt there was something on his back, a horse racing close to his vicinity. He stopped driving and a horse touches the inside of his outside wheel and it “just jolts me”. He expresses the view that the footage will show that the line of his sulky will change, not the horse. He went on to say the horse behind him “grabbed” his sulky, which jolted him. He said it didn’t puncture the wheel, but hit the inside of the disc. He said it was that contact that caused his movement in the sulky. It was a natural reaction, “probably a safety thing”. He said it sort of knocked him off balance and took his sulky a fraction wider. It was a split-second thing but he had not thrown his arms out, only moved sideways in the sulky. He said he made no contact with Mr Williams’ horse in making that movement.
7. Stewards asked Mr Williams if he recalled what happened and Mr Williams responded that he had seen the appellant move in his cart and then, as it happened, Mr Williams made his run off his back. He said he couldn’t see the appellant’s body because he had a horse in front of him. When the appellant had described that Mr Williams’ horse has contacted the appellant’s sulky, Mr Williams had said that he wasn’t aware that had happened. When asked if he felt there was contact with his horse when the appellant moved in his sulky, Mr Williams answered “no”. Mr Williams was not asked if his horse lost any momentum or was caused to “steady its pace” as a result of the movement by the appellant.
8. Stewards further reviewed the footage and stated that they could not accept what the appellant had put forward that the amount of movement in his body was the result of the contact to the sulky from behind. They found that the amount of contact was minimal at best and did not reflect the amount of movement of the appellant’s body in the cart.
9. 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 driver’s licence for 5 race meetings.
10. The appellant has appealed against the conviction, and in his notice of appeal says the following:

I believe I am not guilty of the charge. Due to another horse’s action, I felt the need to protect myself from harm/safety concern and my body automatically reacted in these circumstances...
11. During the course of this hearing the appellant was represented by Mr Hall.
12. Mr Hall noted that the appellant was unrepresented at the time of preparing his appeal and sought to amend the grounds of appeal, as follows:

*Ground 1: No panel of stewards properly instructed as to the law could have made the finding of guilt.*

*Ground 2: The penalty was manifestly excessive.*
13. There was no objection to the amendment from Stewards and the amendment was accepted by the Board.
14. The Board considered the transcript of the Stewards’ Inquiry and noted the matters outlined above at paragraphs 6 to 9.
15. At the hearing of the appeal, the appellant made statements largely consistent with what he had put at the Stewards’ Inquiry. He did not deny the movement in the sulky but said it was the result of contact to his wheel, which he asserted could be confirmed in the footage by observing the line of his sulky move, albeit, the line of the horse did not move. The footage was inconclusive at best as to whether the line of the sulky moved. The appellant said he was out of contention and had stopped driving [to win] at the time of incident.

16. On behalf of the appellant, Mr Hall submitted at the hearing of the appeal that there was no dispute about whether the movement had occurred. The dispute was whether it was done with ill-intent.
17. Mr Finnigan, on behalf of Stewards submitted that, having reviewed the race footage, they formed the opinion that the appellant's movement in sulky was not a simple matter of a driver leaning out of a sulky, which is a breach of AHRR 170(2), but was an abrupt and deliberate movement. Stewards did not accept that there was any contact from another horse to the appellant's wheel. Stewards submitted that the other horse MIA RAGAZZA NZ had put in a rough stride or two following the appellant's movement in the sulky. Mr Finnigan said that the appellant had changed his story from describing the contact from the horse which hit his wheel as a jolt, to a tap to a fraction. Mr Finnigan said the movement was deliberate, dangerous and improper and was solely designed to move MIA RAGAZZA NZ away from his vicinity.
18. The Stewards submitted it was not their role to provide an explanation for why the appellant would deliberately move himself in that manner, only that he did so.
19. Mr Hall submitted that the only part which is contentious is whether there is any intent to move Mr Williams wider, or any ill intent. He said there is clearly movement in the sulky. Mr Hall noted that Stewards did not charge the appellant on the night of the race, 18 August 2023, but rather on 27 August 2023, after review of the race footage. There was no direct observation of the conduct on the night. Mr Hall submitted the footage was inconclusive. He noted there was no other direct evidence. Mr Hall said Mr Williams conceded that he was not aware of his horse having made contact with the appellant or his sulky but did not deny it, and that Mr Williams' evidence was that the appellant had not, by his movement, made any contact with himself or his horse. Mr Hall said there was a lack of evidence of any improper intent to push Mr Williams wide.
20. Mr Hall referred the Board to the Tasmanian Racing Appeal Board decision of Collins, being appeal number 3 of 2019/2020, which addressed both the standard of proof and what constitutes improper conduct. That case noted 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.*
21. Bowman J in that case further noted that "improper riding involves an element of deliberate or conscious conduct, which creates a danger or a potential for danger". The Board in Collins was also referred to the NSW Racing Appeals Tribunal case of Morris (9 August 2016), with respect to the same charge, which expressly noted that the Briginshaw standard of proof is to be met in such cases, and there is a 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."
22. Mr Hall contended that in this case, there is a witness in the room giving cogent evidence that his sulky was contacted, to a degree it was a jolt or a tap and to a degree it was a conscious safety decision to re-align himself in the sulky, but there was a lack of intent to push Mr Williams wide.

### **Determination of Appeal against Conviction**

23. The Board has carefully considered the submissions of each of the parties to this appeal. Although both parties to the appeal concede that the movement did occur, the Board has also

viewed very carefully the footage and has had the benefit of the assistance of the harness racing adviser, Mr Stiles, in relation to this matter.

24. The Board accepts the submission put on behalf of the appellant that the charge of improper driving requires an element of intent. There was no advantage likely to be taken by the appellant in making this movement given the position he was in at the time it occurred and indeed, no advantage occurred. The driver of the other horse conceded there was no contact to his horse by the appellant and there was no evidence that the movement caused any interference and otherwise had any impact on the race.
25. Taking into account the requisite standard of proof and the comments made by the Victorian Racing Appeals and Disciplinary Board as to what constitutes improper driving, the Board is not comfortably satisfied that the movement of the appellant could reasonably be held to constitute improper driving. The Board accepts that there was a significant movement of the appellant's body in the sulky. The appellant concedes the movement occurred but explains it as an involuntary action resulting from having been jolted by contact from another horse to his wheel. Whether he was conscious of his reaction or not, there was no ill-intent, rather it was described by the appellant as a safety reaction and there is no evidence to the contrary. For these reasons, the Board is not satisfied that the appellant's driving was improper.
26. 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).
27. 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**