

# TASMANIAN RACING APPEAL BOARD

## Appeal No 05 of 2017/18

<b>Panel:</b>	<b>Tom Cox (Chair) Rod Lester Wendy Kennedy</b>	<b>Appellant:</b>	<b>Tim Yole</b>
<b>Appearances:</b>	<b>Lance Justice on behalf of the Appellant Adrian Crowther on behalf of the Stewards</b>	<b>Rules:</b>	<b>Australian Harness Racing Rule 149(2)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>12 race date suspension</b>
<b>Date:</b>	<b>8 November 2017</b>	<b>Result:</b>	<b>Appeal Upheld, Penalty Quashed</b>

### REASONS FOR DECISION

1. The appellant, Mr Tim Yole, was the driver of PHILTRA PHELLA which raced in Race 9 – the Nichols Sound & Communications Claimer – over 2200 metres at the Launceston Pacing Club on 10 September 2017. Following an inquiry into his drive, which was conducted after the race meeting, and then continued on 22 September 2017 at the Office of Racing Integrity, Launceston, the Stewards found the appellant had breached AHRR149(2). This rule is in Part 8 of the Australian Harness Racing Rules which deals with Required Racing Standards. Rule 149 generally requires drivers to ‘Race to win or for best position’, and 149(2) specifically states “A person shall not drive in a manner which in the opinion of Stewards is unacceptable”.
2. The appellant pleaded not guilty at the inquiry. His driver’s license was suspended for a period of twelve (12) race dates. The appellant was subsequently granted a stay with respect to the operation of that penalty. He now seeks to have this Board quash the Steward’s findings he was in breach of the rule, and failing that, quash the penalty for being manifestly excessive.
3. In laying the charge at the inquiry the Chairman of Stewards said, in part; “...*the specifics of that charge are, that by moving PHILTRA PHELLA out from a position with cover to three wide at the 800 metres, bearing in mind the horse’s recent race form is unacceptable. ... The driving tactics that you adopted has resulted in the horse finishing well back, it could not sprint, and in our view it was unacceptable to expect that PHILTRA PHELLA could move out three wide, lead the three wide line and be competitive based on its recent racing.*”
4. At the appeal hearing the Stewards further contended that the appellant was not entitled to move his drive as he did from one out to two out and not make ground due to the operation of AHRR162(1)(ww) which states “A driver shall not – allow his or her horse to shift from its running line unless it is commencing a forward move or improving its position;” The Stewards took the view that unless the appellant required his drive to make a forward move he was in breach of this requirement and this reinforced their view that the drive was unacceptable.

5. The appellant, with respect to the move of his drive at the 800 metres from the one out line to the two out line, contends that he was anticipating a much better performance from the horse and the move was reasonable in light of this. He further contends that the horse in front of him had been working hard and he was of the view that he would weaken and force PHILTRA PHELLA back if he maintained his position.
6. Both parties submitted precedents for appeals in relation to AHRR149 and the Board was mindful of them when reaching its decision.
7. Prior to the race PHILTRA PHELLA's previous 10 starts, all within the preceding 12 months, had produced relatively consistent results – he had finished 5<sup>th</sup> of 8, 6<sup>th</sup> of 8, 7<sup>th</sup> of 9 twice, second last twice and last 4 times with an average beaten distance of 46.7 metres.
8. After considering the contentions of the parties, the Board has come to the following conclusions:
  - a. The appellant's proposition that PHILTRA PHELLA had been working well at home and that he had anticipated a much better run cannot be affirmatively disproved;
  - b. The Board rejects the proposition put by the Stewards that AHRR162(1)(ww) precludes a driver from changing his or her running line unless that driver, in fact, moves forward. The rule is in two parts and includes the notion of "improving" a horse's "position". Clearly, the rule contemplates that a horse may improve its position without commencing a forward move or, in fact, moving forward;
  - c. The appellant's move out from his line at the 800 metres was not of itself an unreasonable move. As that stage of the race, the move may have resulted in an improvement in the horse's position had the horse in front started to tire;
  - d. The Steward's assertion that "...*The driving tactics that you adopted has resulted in the horse finishing well back ...*" assumes that the tactics caused that result. However, given the horse's recent form it was unlikely to finish anywhere better than it did. There is also some footage late in the race which shows that the horse races rough and this may have contributed to its poor finish. Ultimately, the horse finished at or around where most people would have anticipated it would have done prior to the race.
  - e. There was no compelling reason put to this Board why the appellant would have remained any more competitive in the race if he stayed where he was. Given the horse's form, if he had taken this alternate course, the result was likely to be the same.
9. In our view, the appellant's tactics were reasonable, albeit they did not bear fruit. Hindsight may be said to be 20/20, but just because the horse finished last, it does not follow that the appellant's tactics caused that result and in so doing were unacceptable, especially given the horse's form.
10. The Board is satisfied that, given the circumstances of the race, it was not reasonable for the Stewards to come to the conclusion that the appellant's drive was unacceptable.
11. We uphold the appeal. The penalty is quashed and the appellant's deposit is refunded.