

TASMANIAN RACING APPEAL BOARD

Appeal No 05 of 2022-23

Panel:	Mr Patrick O'Halloran	Appellant:	Mr Ismail Toker
Advisor:	Mr Chris Taylor		
Appearances:	Mr Bruce Free (on behalf of the Stewards) Mr Anthony O'Connell (on behalf of the appellant)	Rules:	AR 131(a) Careless riding
Heard at:	Prospect Government Offices 171 Westbury Road PROSPECT TAS	Penalty:	Suspension for 2 Tasmanian race dates
Date:	21 December 2022	Result:	Penalty varied to suspension for 1 Tasmanian race date

REASONS FOR DECISION

1. The Appellant was the jockey riding Turk Warrior in Race 5 (the Jacksons Security Newmarket Handicap 1200 metres) held on 30 November 2022 at the Tasmanian Turf Club – Launceston Meeting.
2. Following an inquiry into his ride on that date, Stewards found that the Appellant had breached AR131(a), such rule providing that:

A rider must not, in the opinions of the Stewards:

(a) Engage in careless....riding

3. The particulars of the charge as stated were ‘*that you as the rider of TURK WARRIOR in Race 5 at the Tasmanian Turd Club meeting on 30 November 2022 at about approximately the 800 metres allowed your mount to shift in when insufficiently clear of SWOOP DOG, ridden by S Carr, resulting in that horse having to be checked by its rider*’.
4. The Appellant pleaded not guilty to the charge. Following the inquiry, he was found guilty and his licence was suspended for two Tasmanian race dates.
5. Within the Stipendiary Stewards Report the hearing and penalty was recorded thus:

TURK WARRIOR – *Shifted in when not clear of SWOOP DOG near the 800 metres, checked near the 100 metres when THE INEVITABLE shifted in. Rider I TOKER was found guilty of a charge of careless riding under the provisions*

of AR 131(a), the careless riding being that near the 800 metres he permitted his mount to shift in when not sufficiently clear of SWOOP DOG resulting in that gelding being checked by its rider. Rider I Toker's licence was suspended for two Tasmanian Race dates. In assessing penalty, Stewards took into account his plea, his record in relation to this rule, that the carelessness was in the mid range and that it was a feature race'.

6. On 5 December 2022 the Appellant filed an appeal against conviction and penalty. Within that notice the Appellant relevantly provided that:
 - a. *I did not plead guilty at the inquiry as I am of the view my actions did not cause (Rider Carr) to check*
 - b. *I can demonstrate at appeal that there were other factors which were the reason for the interference*
7. Within his submissions to the Board the Appellant further particularised these factors and circumstances. Mr Free on behalf of the Stewards submitted there had been no such error and that all relevant factors had been properly taken into account in determining both conviction and penalty as evidenced in the published report.
8. A focus of both the Appellant and Steward's submissions to the Board was on the portion of race captured in the race footage commencing at the 20:31:25:09 time stamped point covering a three second period.
9. The Board had available to it the film of the race captured from multiple camera angles and assistance from the adviser, Mr Chris Taylor. Footage from all camera angles were reviewed with more assistance obtained from angles '1200m', 'head on front' and '800m'.
10. It was submitted on behalf of the Appellant (as was asserted by the Appellant within the Steward's inquiry - with reference to page 9 of 12, line 14 of the Stewards inquiry) that the '*damage was done before I crossed*'. The Board does not accept this as an accurate categorisation of the situation that Mr Toker was facing, and in the Board's assessment there was further interference committed by the Appellant when he was crossing.
11. It is noted – in consideration of submission made by the parties to the Board - that Sigrid Carr's mount's head and its movements, contemporaneous to Mr Toker's increasing proximity, has the capacity to mislead, in terms of the direct impact that Mr Toker's actions had on Ms Carr's actions. This is in addition to other contributing factors that can be seen to be impacting on Ms Carr's mounts head movement at that same time point also.
12. In its assessment of the race and the riding the Board is satisfied that Mr Toker did inconvenience Jockey Sigrid Carr, riding SWOOP DOG.
13. Having considered the submission of the parties, the race film and the advice of the adviser, the Board was satisfied that there was careless riding in this case.

14. The Board's assessment of the specific actions was made with a consideration of the full context and prelude in which the particularised riding event was said to have occurred.
15. In doing so it is noted that review and assessment of the decisions of riders made in the heat of racing are not to be measured on golden scales (that is there is an inherent appreciation that rider's decisions are made in pace and split second timeframes). It remains prudent for advocates, when making submissions to the board as to how a portion of riding could be characterised, to be mindful not to artificially extract a portion of racing and ask the Board to assess it in isolation.
16. The appeal against the conviction is dismissed.
17. However, the Board finds that the carelessness is more properly categorised in the low range, adjusting from the mid-range as categorised by Stewards at first instance. In categorising the riding as such the Board is satisfied that there were pre-existing circumstances impacting upon Carr's riding at that time.
18. The Board's having come to a different conclusion regarding the characterisation of the carelessness therefore enlivens the separate considerations as to the appropriateness of the penalty imposed.
19. In consideration of the findings as to the level of carelessness the appeal against penalty is upheld and varied from a penalty of a suspension for two Tasmanian races dates to a suspension of one Tasmanian race date.
20. As the decision of the Stewards having been varied, the Board orders that the Appellant forfeit twenty-five percent of his prescribed deposit to the Secretary of the Department pursuant to s.34(1A) and (2)(d). Further, the Board orders that the Appellant pay twenty-five percent of the cost incurred in preparing the transcript of the inquiry pursuant to s.34(4A) and (4B)(c).

DATED: 1 September 2023