

# TASMANIAN RACING APPEAL BOARD

## Appeal No 06 of 2022-23

<b>Panel:</b>	<b>Ms Kate Cuthbertson SC (Chair)</b>	<b>Appellant:</b>	<b>Mr Mitchell Ford</b>
<b>Advisor:</b>	<b>Mr Mike Stiles</b>		
<b>Appearances:</b>	<b>Mr Nathan Ford (on behalf of the Appellant)</b>	<b>Rules:</b>	<b>AHRR 163(1)(a)(iii) causing interference</b>
<b>Heard at:</b>	<b>Prospect Government Offices 171 Westbury Road Prospect TAS 7250</b>	<b>Penalty:</b>	<b>Suspension of 2 Tasmanian race dates</b>
<b>Date:</b>	<b>25 January 2023</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. The appellant Mr Mitchell Ford was the driver of ROCKS ARNT PETS in race 3 at the North Eastern Pacing Club meeting held at Scottsdale on 6 January 2023.
2. Mr Ford has been driving for around 18 months. This was his first race meeting at Scottsdale, although he had driven on the track in the first two races that day.
3. During the course of the race at approximately the 400-metre mark and as he approached a corner, Mr Ford's horse came up the track leaving an opening to his inside. Mr Gareth Rattray was driving INDIANNA SANZ. He was behind Mr Ford and saw the opening and moved down to take the opportunity left by the movement of Mr Ford's horse up the track. Mr Ford's driving of ROCKS ARNT PETS immediately after Mr Rattray moved to take advantage of the opening was the subject of the inquiry.
4. During the course of the inquiry, stewards stated that after looking at the films they intended to charge Mr Ford, as:

*We believe that as the field raced down the back straight on the final occasion whilst at the initial stages you were entitled to attempt to shift your horse back down the track, but it's our belief that Mr Rattray was established inside you and you continued to attempt to shift down, forcing him over the marker pegs. We say that you as the driver of ROCKS ARNT PETS in Race 3 at Scottsdale today, the Enzed Stakes, as the driver of ROCKS ARNT PETS you raced away from the 400-metre mark on the final occasion, and you forced Mr Rattray down over the marker pegs.*
5. Mr Ford's advocate had left the room briefly and was not present when the charge was initially put to him. Stewards re-issued the charge when his advocate returned. They reiterated they had issued a charge under 163(1)(a)(iii),

*which states that a driver shall not cause or contribute to any interference, and we say as Stewards, that you as the driver of ROCKS ARNT PETS in the Enzed Stakes at Scottsdale, Race 3 today, allowed your horse to shift back down the track when insufficiently clear of Mr Gareth Rattray and caused him to race over a number of marker pegs. Stewards believe that initially, in the initial stages that your horse was getting up the track and you were making every effort to get back down but stewards believe at that point in time that Mr Gareth Rattray was established inside you and that was the time that you needed to give him room.*

6. The appellant pleaded not guilty. The transcript of the inquiry is not complete, but all parties agreed he was found guilty of the charge by stewards who then proceeded to impose penalty. The penalty imposed was a 2 race-date suspension. The recording of stewards' penalty determination is also not available. The appellant subsequently appealed against his conviction and penalty.

### **Submissions on conviction**

7. The appellant argued that Mr Rattray had taken a position that was not truly open. It was explained that the appellant's drive was hanging up the course and that the appellant was pulling the horse back down. It was submitted that the appellant's drive had not moved up sufficiently to entitle Mr Rattray to attempt to move up inside, and that the appellant was half-carting at the time Mr Rattray put his horse's head in. While there was room for Mr Rattray's horse, there was no room for the cart. Further, the appellant argued that he attempted to give Mr Rattray room but was also entitled to maintain his own line.
8. Stewards submitted that they took into account the race footage and the evidence of Mr Rattray who they described as very experienced and with an impeccable record. He gave evidence during the inquiry that the appellant had attempted to shift wider on the track, that he then tried to take a run inside and felt there was enough room at the time but as the corner came up the appellant came back down and forced him over a few pylons. He acknowledged that the corner comes up "pretty quick" on the Scottsdale track, but that initially there was a run for him. Stewards argued that when Mr Rattray made his move, he had a full run and was established on the inside, coming within a neck of the appellant, when the appellant continued to drive down including using his whip on the horse. In their view, once Mr Rattray had established the run to the inside, the appellant was obliged to hold his line and not continue to drive down and crowd Mr Rattray's horse. As it was, Mr Rattray was required to take evasive action including by running over 3 marker pegs.

### **Determination on conviction**

9. The Board considered the race footage on a number of occasions and also listened carefully to the submissions of the parties, including their highlighting of particular aspects of the race film. The Board was also assisted by an advisor, Mr Stiles, in this matter. Following consideration of all of these matters, the Board concluded that the position on the inside was there for Mr Rattray when he took it. The appellant, however, also moved back down and in doing so tightened Mr Rattray, who, in the Board's view and consistently with the stewards' view, was already established on the inside. As a consequence, Mr Rattray was tightened over the marker pegs causing interference; the Board accepts the conclusion of stewards in that regard. Mr Rattray was established with his horse on the inside of the appellant and the appellant either continued to move in or failed to take sufficient measures to relieve the pressure. On that basis the appeal against conviction is dismissed.

## Submissions on penalty

10. In relation to penalty, I have already noted that the Board did not have the benefit of the transcript of the stewards' explanation for the penalty they handed down. Stewards, however, explained their reasoning during the course of this appeal. The matters that were identified as relevant were, first, that although Mr Ford is a relative newcomer to racing, he has been a very successful driver. Secondly, stewards also explained that they consider the degree of interference in arriving at penalty and, in this case, they formed the view it was a mid-level interference, in the sense that Mr Rattray was able to get away with it because he was able to get inside the marker pegs. There was some speculation whether Mr Rattray may have lost the win as a consequence of the appellant's drive, but that is not at all clear on the film. At that stage of the race, the leader who went on to win the race was well established on the inside. In order to take the lead, Mr Rattray would have needed to go around the outside of the leader, which was unlikely to have been effective at such a late stage in the race.
11. Stewards indicated that they considered a starting point of a 4-race date suspension because of the safety concerns involved with any such offences. In this particular case it was accepted by stewards that the horses' manners had contributed to an extent in that it naturally wanted to hang in as it came to the corner. A further aspect was that the appellant had last been suspended under the rule on 16 October 2022, where he also received a 2-race date suspension, however, since then has had 119 drives without any other suspensions. His record shows earlier suspensions for whip matters and a suspension on 18 February 2022 for the same offence, but also shows some other charges of careless driving that have resulted in fines. Stewards noted that it is a serious rule and often accompanied by suspension as a consequence of the safety concerns associated with breaches.
12. The appellant's submissions as to penalty were similar to those in respect of conviction. He argued he was put in the position by a senior driver, was holding his line and trying to give ROCKS ARNT PETS the best possible chance the whole time.
13. The Board considers that the penalty imposed was appropriate in the circumstances. There was no error at arriving at 2-race date suspension in light of Mr Ford's record, the nature of the rule and the circumstances of the breach. The penalty imposed by Stewards appropriately took into account the length of time between the appellant's last suspension, but the nature of these offences is such that consideration must be given to imposing penalties that will bring home to drivers the need to race in a way that ensures the safety of all participants. The appeal in respect of penalty is also dismissed.
14. In accordance with ss 34(1A) and (2)(a) of the *Racing Regulation Act 2004*, fifty percent of the Appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The Appellant is also ordered to pay fifty percent of the cost incurred in the preparation of the transcript in accordance with ss34(4A) and (4B)(a) of the Act.

**DATED: 29 MAY 2023**