

TASMANIAN RACING APPEAL BOARD

Appeal No. 07 of 2020-21

Panel:	Kate Cuthbertson Wendy Kennedy Rod Lester	Appellant:	Conor Crook
Appearances:	Anthony O'Connell on behalf of the Appellant Roger Brown on behalf of the Stewards	Rules:	AHRR 163 (1)(a)(iii)
Heard at:	Office of Racing Integrity 1 Civic Square Launceston, Tasmania	Penalty:	Three race meeting suspension
Date:	9 December 2020	Result:	Upheld

REASONS FOR DECISION

1. The appellant was the driver of *Nova Baxter* in Race 6 Tasracing Evicus Final 1609 metres on 25 October 2020 at the Tasmanian Trotting Club. Following an inquiry into his drive which was held on 25 October 2020, Stewards found that the appellant had breached AHRR 163(1)(a)(iii) which provides:
 - (1) *A driver shall not -*
 - (a) *cause or contribute to any -*
 - (iii) *interference*
2. The particulars of the charge were as follows:
 - ... what the stewards allege here is that you, tonight at Hobart 25th October 2020 in race six, when driving Nova Baxter near the thousand metre point, have shifted from a position wider on the track to one closer to the marker peg line, the one-wide line when not sufficiently clear of Mr. Yole's drive, resulting in Mr. Yole having to take evasive action, and losing what was his rightful position at the time. That's the charge and the nature of the charge. Do you understand the charge and where it occurs?*
3. The appellant pleaded not guilty to the charge. Following the inquiry, he was found guilty by Stewards and his licence was suspended for 3 race meetings.

4. This appeal relates both to conviction and the penalty imposed. The appellant was granted a stay of the suspension pending the determination of the appeal. The appeal was heard on 9 December 2020. The harness racing advisor attended the hearing and provided advice to the Board on the drive the subject of the appeal. The Board upheld the appellant's appeal against conviction and quashed the Stewards' decision on that date. These are the Board's reasons for doing so.

The inquiry

5. During the course of the inquiry, Stewards outlined their observations and took evidence from the appellant and another driver, Mark Yole. The Chairman of Stewards outlined to the appellant his observations which were as follows:

... alright, with the stewards from race six we have Conor Crook who drove Nova Baxter and we have Mark Yole who drove Laurens Runner. Gentleman, there appeared to be an incident, just near the winning post, where Mr. Crook you were three-wide and trying to get back to a trailing position and Mr. Yole you were, had gapped out a little at that point, and then I noticed from the top of the tower that as you dropped into that spot Mr. Crook I heard a very loud sound, and I'm assuming that was contact between your sulky wheel and Mr. Yole's horse's front legs. I'm not sure about that but there was a very loud bang at that point.

6. The video Steward also observed the incident which he outlined as follows:

I noticed Mr. Cook was working round the field in a three-wide position. It become obvious that the horse outside the lead wasn't going to surrender that spot, and I observed Mr. Crook attempted to restrain back through the field. Mark Yole was back in the running line, and there appeared to be contact as Mr. Crook's come back and Mr. Yole appeared to be trying to get his horse forward to get into the spot and beat Mr. Crook to it, and there was contact.

7. Another Steward, Mr Free, outlined his observations as follows:

... I think Heath Woods was leading at that time and you were challenging him for the lead to his outside and then obviously you've decided to try and take a sit and not continue with the challenge, you've ducked back in behind Mr. Woods, and as a result there was a gap there but you've ducked back in and then Mr. Yole's then made contact with the back on your sulky.

8. Mr Yole confirmed that the Stewards' observations were correct and then stated as follows:

... Mr. Crook went to challenge for the spot outside the leader. I was holding the one one but then as the speed clamped on my filly got left a little bit flat-footed. I endeavoured to hunt up and hold the spot on the back of Mr. Woods. At that same time Mr. Crook went to restrain to go for that position and I honestly think it was just me hunting her up. Conor was able to get in there but then I had to try and restrain a two year old that once I tried to kick up and hold that spot probably just took a little bit to

come back. There was a slight bit of contact but as I said it was more I was trying to grab hold before that because the position had been lost.

CHAIRMAN: *Yeah so the contact, that would have been the loud sound that I heard I would imagine? Was a bang.*

MR. YOLE: *I would imagine so, it was a bit of contact but as a I said it was just more the momentum me trying to hold that spot and Mr. Crook tightening me up and all.*

9. Following that evidence, the appellant was asked to explain his drive and gave the following evidence:

Yeah can't add much further than you've summed up pretty well. I made a, well I was stuck three deep so I tried to make a move to the death and Mr. Heath Woods made his intentions pretty clear that he was holding it, so I thought if I could get enough speed on I may be able to get in somewhere, and I felt as though that was the case. When I've tried to get into the one one position I feel as though there was well and truly a run there, Nova Baxter isn't the most tractable of horses, she wears a large poll on the inside and a rein burner on her outside, and there was contact but I felt as though I'd got in there, and I probably would have got in there a lot quicker had the horse had of been more tractable, done it more tractable.

10. Following the taking of that evidence, the race film was reviewed during the course of the inquiry. The Chairman put to the appellant that:

"at a point just before the winning post there appears to be maybe sufficient room with the metre. We look at the left side shot which is the head on, and at that point we see Mr Yole having to take some evasive action while you are completing your move Mr Crook. Would you agree with that?"

11. In response, the appellant said that he agreed but added that Mr Yole had given evidence to say that he tried to restrain his horse as if there was not a position there and that he had over-raced in doing so.

12. The Chairman further observed after viewing the film the following:

The moment you ceased the challenge for the position outside the leader Mr. Crook, I'm not out there but usually at that point the two front horses have probably started to back off a fraction. Once you've grabbed hold and Mr. Woods realises that you're not going to keep challenging, and as they start to ease up that fraction, or fractionally of course the gap starts to close from the front rather than the back, as they start to go from flat chat to keep you out to not having to do that but to let them ease up a little. So that gap starts shrinking on you, certainly was a point where there was room but as they ease up slightly the gap closes from the front and the back, that's the way it appears looking at the film.

13. The inquiry was briefly adjourned to allow the appellant and Mr Yole to participate in another race. On resumption, the Chairman indicated the following:

... yeah gentleman we've had a lengthy discussion on it. The stewards feel that where there may have been sufficient room for you to drop into Mr. Crook, at one point, they feel that once you've started to ease back to attempt to take that position one off the peg line, we feel that there was insufficient room for you to drop in, in front of Mr. Yole. We did take into account Mr. Yole's evidence, however on top of that Mr. Yole's evidence we did take into account the films, clearly that Mr. Yole did have to grab hold, and quite possibly cost him a position. That's how we feel about it, so we feel that a charge is warranted.

14. After the particulars of the charge were put to the appellant, he referred to Mr Yole's evidence where he stated that the appellant's horse had sufficient room to drop in. The Chairman indicated that they had taken Mr Yole's evidence onboard but they felt that the video evidence was clear. The Chairman stated the following:

... the stewards felt that the video evidence was clear. That's not to say that the stewards don't consider the things that we did bring up within the inquiry - that the pace probably slackened, that there probably was sufficient room at one stage prior to you starting to take hold to go back. Quite clearly the pace would have slackened from near flat out when you were trying to get by Mr. Woods, the moment you started to take back, naturally that pace would have slackened off to some degree and with Mr. Yole trying to chase up, that gap had to start closing. You know and you have tried to back into it, at some point there was enough room but the bottom line is before you completed your move there wasn't enough room, in the steward's opinion and that's the nature of the charge.

15. In finding the appellant guilty, the Chairman stated that Stewards had weighed up the totality of the evidence, including the video footage, and felt that the charge had been sustained and found him guilty.

16. In discussing penalty, the Chairman stated that Stewards felt that Mr Yole suffered interference and lost his place, noting it was a close call, but indicating that was why the appellant had been charged and found guilty. Later, when indicating to the appellant what penalty was being imposed by Stewards, the Chairman stated the following:

... taking into account that when you made that decision to go back and attempt to take that spot, that the stewards feel that at that moment there was room for you to get into. The stewards felt that you started to ease back to try and take that spot, and as drivers do once you get back, your horse is still outside the, legs are still outside the wheel of the one in front of you but you're already backing in with your sulky wheel. However, we felt that at that point where Mr. Yole was driving up that you still had the opportunity to ease back out, that was his spot, clearly on the film he's yelling, you can actually see his mouth wide open and yelling, I certainly heard all that noise from my stand.

Appellant's submissions

17. The appellant referred to the evidence given by the Stewards during the course of the inquiry. It was submitted that the observations of Mr Free seemed to infer that the appellant was clear and that Mr Yole had improved up and made contact with the sulky as a consequence. It was submitted that between the three Stewards' observations, the only consistent theme was that contact had been made. It was submitted that contact in this case was irrelevant as it did not form a particular of the charge. That latter submission must be accepted. There is only a reference to Mr Yole taking evasive action and losing his right to a position in the particulars of the charge put to the appellant.
18. The appellant emphasised the evidence given by Mr Yole who is described as an experienced driver.
19. Another factor that received little attention during the course of the inquiry concerned the fact that this was *Nova Baxter's* second race start. The race was one which involving inexperienced horses learning their craft.
20. It was submitted that the evidence and footage raised a number of questions such as:
 - whose run it was;
 - whether the run had been obtained by the appellant prior to contact or whether the contact was made prior to the other driver manoeuvring for position; and
 - whether the contact was made as a consequence of the appellant maintaining his position or Mr Yole improving up onto his sulky.
21. It was submitted that it was significant that the contact was not included in the particulars of the charge. This, it was submitted, must reflect an acceptance by Stewards that the contact was the result of Mr Yole improving up as only evasive action was referred to in the particulars.
22. On analysing the film, it was submitted by the appellant that it demonstrated the appellant was still in advance of Mr Yole when he shifted back to the one one line and had more purchase on the position than Mr Yole at that stage of the race. The appellant submitted that Mr Yole had lost his position and the contact was the result of him not being able to restrain his drive. According to the appellant, the film showed that the appellant was clear, albeit marginally at the time of shifting in. Related to this was the submission that it was clear that the appellant had a run at the time he made the decision to go out to the 3 wide position and challenge for the death. It was submitted that Mr Yole's evidence suggested that his horse was not tractable and would not come back underneath him. The appellant questioned why that evidence had not been accepted by Stewards during the course of the inquiry.

Stewards' submissions

23. It was submitted that the appellant is an experienced driver, currently leading the premierships in Tasmania. The race was an important race with prize money of \$50,000 and contained a field of green 2 year-olds. All drivers participating in that race were required to have an A Grade licence because of the prize money involved.
24. The Stewards accepted that the appellant's tactic to open up a gap and challenge for the death was a reasonable tactic but did not work in the circumstances as the horse in the death kicked up. The Stewards submitted that there was room for the appellant to drop back in and that he may well have done so without problems if it was not a 2 year-olds' race because horses of that age were not used to stop/start tactics.
25. According to Stewards, the appellant should have appreciated that Mr Yole was filling the gap up. It was submitted that the appellant had been slow to come back and in the intervening period Mr Yole had driven up. The Stewards submitted that the look on Mr Yole's face and the fact that he was trying to restrain his horse indicated that there had been interference.
26. It was noted that all drivers do defend their position as everyone wants to be in the one one position.

Race patrol footage

27. The Board carefully considered the race patrol footage and received advice from the harness racing advisor. Further, the Board had the benefit of the submissions made by both parties in respect of the footage. The footage shows the appellant taking *Nova Baxter* to the 3 wide position to challenge the horse in the death from the outside. That horse did improve and the appellant did not persist with that challenge as a consequence.
28. As a consequence of the increased speed, a gap did open up between Mr Yole's drive and the horse in front. There was clearly a position for the appellant to take and he did so.
29. In our view, the footage combined with the evidence given during the course of the inquiry showed that the appellant had control of that position before contact was made. In our view, we could not rule out that Mr Yole's horse had not answered the bit and that the contact with the back of the appellant's sulky was as a consequence of Mr Yole's horse continuing to improve despite having lost its position.
30. The appellant's drive was a demonstration of good racing tactics. This much was accepted by Stewards. The execution of his manoeuvre to head back into the one one position was ultimately affected by Mr Yole's drive racing greenly and not responding to the bit. As a consequence of Mr Yole not being able to properly restrain his horse, the contact occurred.

31. Having carefully considered the race footage with the assistance of the advisor, Mr Stiles, together with the evidence given during the course of the inquiry and submissions, the Board was unable to reach the requisite degree of satisfaction to find that the appellant had caused interference. Noting that the particulars alleged that Mr Yole had been required to take evasive action, it is not immediately apparent what that evasive action was. In our view, the appellant had the position, and Mr Yole's drive failed to respond to those circumstances, quite likely as a result of racing greenly due to its age and lack of experience in the racing environment.
32. As a consequence, the appeal was upheld on 9 December 2020 and the decision of the Stewards was quashed.
33. The whole of the appellant's prescribed deposit will be returned to him pursuant to section 34(2)(e) of the Act.