TASMANIAN RACING APPEAL BOARD

Appeal No 07 of 2022-23

Panel:	**Mr Patrick O'Halloran (Chair)**	**Appellant:**	**Mr Nathan Ford**
Advisor:	**Mr Mike Stiles**		
Appearances:	**Mr Roger Brown (on behalf of the stewards)**	**Rules:**	**AHRR 163(1)(a)(iii) causing interference**
Heard at:	**Prospect Government Offices 171 Westbury Road Prospect TAS 7250**	**Penalty:**	**Suspension of 3 Tasmanian race dates**
Date:	**27 February 2023**	**Result:**	**Dismissed**

REASONS FOR DECISION

1. The appellant was the driver of *Game of Chance* in Race 5 of the Bendigo Bank Pace – 1670m held on 26 January 2023 at the Carrick Park Pacing Club.

2. Following an inquiry into his drive on that date, the Stewards found that the appellant had breached *Australian Harness Racing Rule* 163(1)(a)(iii), which provides:

   "A driver shall not
   (a) Cause or contribute to any…interference"

3. The particulars of the charge were stated as:

   '*That in Race 5 today at Carrick, you as the driver of GAME OF CHANCE, on the point of the home turn, shifted your horse away from the rails position causing interference to the horse on your outside which was LORIMERTYRREL driven by Dylan Ford, which that horse then went up the track and locked wheels and caused THE UGLY SISTER to gallop'*

4. Within the race THE UGLY SISTER was driven by Tianna FORD and ROAD RUNNER NZ by Todd RATTRAY.

5. The appellant plead not guilty to the charge. Following the inquiry, he was found guilty, and his licence was suspended for three Tasmanian race dates.

6. In determining penalty Stewards made reference to:

   a. That the charge in terms of penalty '*usually attracts a starting point of four race meetings*';

b. That the scale of the interference was 'high' due to the consequences of the horse galloping and getting put out of the race;

c. That the appellant, having plead not guilty, had demonstrated no remorse;

d. That the appellant was last suspended under ***that*** rule on 22 July 2022 (i.e. 26 weeks prior) and had 198 drives since that suspension (***emphasis*** added)

e. Their consideration that the appellant's record of breaching that specific rule mitigated or gave relief to the 'starting point penalty' of four race meetings.

7. On 30 January 2023 the appellant filed an appeal against conviction and penalty. Within the notice the appellant provided '*I feel there was more reasoning to the interference that happened'.*

8. The appellant was granted a stay of the penalty pending the determination of the appeal.

9. The appellant represented himself both before the Stewards and the Board.

SUBMISSIONS ON APPEAL

As to conviction

10. Before the Board the appellant maintained his primary contention as stated within the written appeal notice and submitted his actions were impacted or indeed caused by what he submitted was pressure coming from the outside 'the whole way around the corner' in the lead up to and at the time of the relevant portion of his driving.

11. More specifically he stated this pressure was coming from the driving of Todd Rattray's on ROAD RUNNER NZ 'by *laying in* with his horse head turned sideways' which caused pressure on Dylan FORD and then consequently on to the appellant.

12. The appellant further submitted that having thus been exposed to that set of circumstances his actions were reactionary, that any pressure he had applied was 'slight' and within the context of that race at that location at that time he drove in what he assessed was the only competitive but still appropriate manner.

13. In support of those submission the appellant referred the Board to the available race film footage – (specifically at the race film footage commencing at 15:53:39.06).

14. The appellant also referred to some of the evidence from some of the drivers at the original inquiry:

a. In regard to the evidence of Dylan Ford the appellant highlighted that it was that witness' evidence that, at the relevant time point, he was restraining his horse before there was any movement at all from (the appellant coming from) the inside

b. Whilst the appellant made reference to some aspects of some answers from the driver Rattray - The Board finds that, in contrast to the inferences the appellant asked it to draw, the substance of the entirety of Mr Rattray's

evidence was that he thought that '*he was **three wide** the whole way really*' (ref p 10 of 13) (as he had stated earlier at p 6 of 13)

15. The appellant did not seek to make submissions as to the Steward's findings regarding causation or consequences (including the impact upon THE UGLY SISTER) that occurred as a result of his purported interference.

16. Mr Brown for the Stewards submitted that the portion of the race immediately prior to the appellant's offending was properly described as Mr Rattray's horse making the turn whilst three wide, that at that time ROAD RUNNER NZ's head was hanging (i.e. head wanting to turn down) but there was no significant shift to move down nor did that horse shift his line. It was submitted that (with the acceptance that the horses were running (acceptedly) tight at the relevant period) Mr Rattray had 'done enough' and raced within the rules.

17. The Steward's maintained contention was that the interference was caused when the appellant moved off the rails position, moved to his outside when he was insufficiently clear and caused the interference as stated within the particulars of the charge laid and their original decision.

18. It was further submitted that at the stage of the appellant's offending Mr Rattray had in fact cleared Mr Dylan FORD and as such the appellant's explanation for his manner of driving was not supported or justified.

19. Further the Steward's descriptions of the race film, which they also directed the Board's attention to, was supported by the *evidence* given by drivers in the original inquiry – including the fact that Rattray never wavered in his evidence as to being three wide at the relevant race and time points.

As to penalty

20. In terms of penalty the Appellant conceded that in the event the conviction appeal was dismissed - in consideration of all the matters the Stewards stated they took into account - a suspension for three Tasmanian racing dates was an appropriate or 'deserved' penalty. He further accepted that a plea of guilty to the charge would likely have resulted in a discount on penalty (i.e. possibly to a suspension for two Tasmanian racing dates).

21. Notwithstanding (i) the appellant's concession as to penalty, (ii) that it had been the appellant's filing of a Notice of Appel that had initiated proceedings and (iii) it was only when called upon by the Board to make oral submissions following the appellant's concession as to penalty - the Stewards submitted that they were seeking an 'upgrade' to the penalty as it was submitted that there were relevant matters that had not been taken into account within their initial inquiry that they had only subsequently identified when preparing this appeal.

22. The Board observes, and highlights for any future submissions of this type in this scenario, that as a matter of procedural fairness (particularly where appellants are self-represented) any such submission should have been committed to writing by the Stewards prior to the appeal commencing or at the very least raised at the commencement of the hearing of the appeal.

23. Whilst the Stewards confirmed that no notice had been provided to the appellant the appellant confirmed with the Board that he was aware that his initiation of an appeal enlivened the possibility that his penalty could be varied 'up or down'.

24. It remains a settled proposition that, by virtue of s 34(1) *Racing Regulation Act 2004*, the Board does possess such broad discretion in regard to penalty as, upon hearing an appeal, the Board '*may affirm, vary or quash the decision that was the object of the appea*l'.

25. In support of their submission to increase the original penalty the Stewards submitted:

    a. That when they were originally determining penalty the focus of their determinations and enquiries was [notwithstanding they had access to a full Offence Report (ie record of prior offending) for the appellant] whether the Appellant had any prior matters regarding breaches of *Australian Harness Racing Rules* 163(1)(a).

    b. That at that earlier time they had not sought to consider (or extract from the appellant's offence report) any offending of a similar kind including but not limited to any proved breaches against *Australian Harness Racing Rules* 165(1)(a) or (b).

    c. That in their review of the appellants' Offence Report in preparation for this appeal they had noted that the appellant had:

        i. offending against *Australian Harness Racing Rule* 165(1)(b) on 25 November 2022, and on 3 December 2022
        ii. offending against the similar (but less serious offence type) Carelessly cause interferences per *Australian Harness Racing Rule* 168(1) – on 16 April 2022, 22 May 2022, 18 September 20202 (resulting in fines and reprimands)

26. In consideration of that information it was the further submission of Stewards that having now had the opportunity to more fully review the entirety of the appellant's prior matters and specifically regarding the appellant breaches of rule 165(1) that a proper consideration of the entirety of the appellants diving history justified an increased penalty. No submission was made to the Board as to a quantification of the increase or type of (increased) disposition.

27. In response to questioning from the Board the Stewards accepted that because of the record retrieval process they had undertaken and the timing in which they had completed it they had not given the appellant an opportunity to address them in regard to those additional offences within their initial inquiry.

28. The Stewards further clarified that their finding that the interference was 'high' also drew upon the facts that the interference had impacted two horses putting them out of the races and had put a driver's safety in jeopardy.

29. Understandably such submissions within the appeal hearing caught the appellant by surprise and having been given the opportunity by the Board to consider the Stewards revised position – the appellant did not seek leave to withdraw his appeal.

30. The appellant did submit however that the Stewards in now seeking to rely upon matters that they had overlooked in addressing at their inquiry (particularly when they had access to those records at that earlier time) was akin to seeking this appeal be heard as a hearing *de novo.* Further that leave should not now be granted to the Stewards to allow them to bring in what, it was submitted, was new or fresh evidence (of other prior matters contained within his offence report) before the Board.

31. The Board notes that the references to information the Stewards discussed with the appellant as to what they had to hand at the initial hearing was seemingly limited:

    a. '*So in regards to penalty is there anything else you can put to us, your record under this Rule?*
    b. *No, I wouldn't have a clue. I've always got a good record, you know this*
    c. *'Mr Ford was last suspended under this Rule (22.07.22) which is 26 weeks ago. You've had 198 drives since*

32. It appears clear from that exchange that at the inquiry the appellant did not have with him, nor was he provided by the Stewards, a copy of his offence report or extracts from it.

DETERMINATION

Conviction

33. The Board carefully considered the race film and received information from Mr Stiles to assist in interpreting the race film and the submissions made by each party.

34. On the basis of all the submissions and viewing of the race film the appellant's characterisation of the driving could not be accepted and the Board is comfortably satisfied that this was an incident involving interference. The Board does not identify any error in the description or stated particulars of the driving as articulated by the Stewards.

35. The decision of the Stewards in finding the appellant guilty of the charge is affirmed.

Penalty

36. In regard to the submissions made by Stewards to the Board seeking to increase the original penalty they imposed and the related leave sought in regard to the additional offences said to support such a submission - the Board observes that it was not submitted that the full records were not available at the time of the Steward's initial inquiry – rather it was the parameters of the Steward's chosen search terms that seemingly lead to this situation arising.

37. Appreciating the circumstances and time pressures under which Stewards make their decisions it remains incumbent on Stewards, to the extent possible, to obtain any and all material that is possibly relevant to any determination of penalty at first instance with the further requirement that any such material is then disclosed or at the very least outlined to a driver at first instance.

38. On its face it appears unfair for the Stewards to now seek to heighten a penalty because of their own errors in record extraction. This is particularly so in

circumstances where the appellant whilst self-represented had asserted, without challenge, that he had a good riding history and where he was not provided his offence report to properly inform any further or more particularised submissions to Stewards.

39. In favour of granting the leave sought the Board observes that the appellant was aware when filing his appeal of the possibility at law of his penalty being increased - albeit on his extended understanding that that would only occur on the Board's review of the same material the Stewards had at first instance.

40. Within this appeal the appellant was not able to articulate to the Board any prejudices he would suffer as a result of the leave being granted and did not dispute as a matter of fact that he had those matters on his offence report (history).

41. It is fair to assume that the appellant having represented himself, before the Stewards and before the Board, would have had knowledge of his own offence history.

42. With those considerations and in the specific circumstances of this case the Board finds that it is 'proper' (as that word is used per s 30(6B) *Racing Regulation Act 2004*, to allow consideration of the additional matters the Stewards now seek to rely upon.

43. In consideration of the totality of factors in this matter the board is not satisfied that any variation to the original penalty is justified. The totality of the appellant's riding history whilst relevant is but one of the factors to take into account in the determination of penalty and does not in and of itself elevate this matter to a different penalty length or type.

44. The (original) decision of the Stewards in suspending the appellant for three Tasmanian races is affirmed.

45. 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 ss 34(4A) and (4B)(a) of the Act.

DATED: 3 OCTOBER 2023