

TASMANIAN RACING APPEAL BOARD

Appeal No 07 of 2023-24

Panel:	Mr Patrick O'Halloran (Chair)	Appellant:	Ms Hannah Vandongen
Adviser:	Mr Mike Stiles		
Appearances:	Mr Roger Brown (on behalf of the Stewards) Mr Nathan Ford (on behalf of the Appellant)	Rules:	AHRR 164(1)(b) force another runner wider
Heard at:	Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	Suspension of 2 Tasmanian race dates
Date:	8 November 2023	Result:	Dismissed

REASONS FOR DECISION

1. The appellant was the driver of MACHS MARETA NZ in Race 6 at the Tasmanian Trotting Club meeting on 29 September 2023.
2. Following an inquiry into her drive on that date Stewards found that the appellant had breached Australian Harness Racing Rule 163(1)(b). Such rule provides:

163(1) A driver shall not

(b) subject to rule 164

(i) Make another horse cover more ground than necessary

(ii) Impede the forward progress of another horse

3. Within the inquiry the particulars of the breach were stated that the appellant '*just after racing past the bell lap, have moved to a three wide position and you have obliged JUNIPER, driven by Mr Heath Woods into a four wide position for approximately 50 meters before Mr Woods was then able to work on with his horse*'.
4. Within the appeal the breach was referred to as 'Forcing Another Runner Wide'
5. The appellant pleaded guilty and was suspended for a period of two Tasmanian race dates.
6. The Stewards Report succinctly summarised the inquiry and reasons for penalty as:

After an inquiry into the reasons for JUNIPER racing in a four wide position racing around the turn after the bell Driver Hannah Van Dongen (MACHS MARETA NZ) pleaded guilty to a charge under AHRR 163(1)(b)(i) for obliging JUNIPER to race wider. After taking into account Miss Van DONGEN's guilty plea and her recent good record under this rule she was suspended for a period of two Tasmanian race dates.

7. On 2 October 2023 the appellant filed an appeal against conviction and penalty. Within that notice the appellant relevantly provided that the penalty imposed was '*unfair due to the fact that there was other (contributions) that caused it – that weren't taken into consideration*'.
8. Within the appeal hearing on 8 November 2023 the appellant was granted leave to withdraw her appeal against conviction.
9. Regretfully the Board did not have before it the full transcript of the inquiry conducted on 29 September 2023.
10. Within the transcript provided to the Board was included the following '***There is no recording available for the initial inquiry into Race 6, The Granada Tavern Pace at the TTC meeting on Friday 29th September 2023***'.
11. Within additional material provided - without opposition or challenge - to the Board was a document labelled '*Letter supplied by Mr Roger Brown regarding the missing section of the recording of the inquiry held on Friday 29 September 2023*'. That letter relevantly provided:

On 29 September I was chairing the Harness meeting conducted by the Tasmania Trotting Club held at Hobart.

After race 6 the Panel had cause to inquire into the reasons JUNIPER was obliged to race in a four wide position after the bell lap (approaching the 800 metre mark). MACH MARETA NZ driven by Ms Van Dongen was racing to the inside of JUNIPER at the relevant section of the event .

Driver H Van Dongen and H Woods were called to the inquiry.

Following Race 7 Ms Van Dongen knocked on the Steward room door and asked if the inquiry could be held without Mr Woods as he had a drive in Race 8 and she was travelling with Trainer G Smith who was waiting to leave the course. The panel informed Ms Van Dongen that they needed Mr Woods however she stated that we could progress without his evidence because she acknowledged that she had caused Mr Woods to be forced wider on the track.

The panel deliberated and decided to go ahead with the inquiry without Mr Woods

Ms Van Dongen then sat down and evidence was taken. However I had not started the recording system properly and the evidence was not recorded.

Ms Van Dongen gave evidence regarding her horses manners contributing to Mr Woods being forced to a four wide position around the entire turn and into the back straight

We adjourned to deliberate and decided to proceed with a charge

Ms Van Dongen then returned to the room and the next part of the inquiry was conducted.

12. The Board notes that the statutory framework under which it hears and determines appeals finds the expectation that fair and accurate *verbatim* recordings of the stewards inquiries are created.
13. For the purposes of this appeal against penalty the appellant did not submit that they were prejudiced in any way in their appeal by the missing transcript (*cf* see for example questions arising from missing transcripts in Appeal No. 5 of 2021-22)

14. This it was submitted on behalf of the appellant was because the race footage which was and remained available in essence 'spoke for itself' and was the only material required or sought to be relied upon by the appellant to properly characterise the circumstances in which the driving occurred and the asserted manner of driving(s).
15. Further it was noted that the portion of transcript that was available to the Board captured the appellant's submission to the Stewards as to penalty and that the Board had (as the Stewards had) a copy of the appellants offence record.
16. In characterising the driving the appellant submitted to the Board that her penalty should have been mitigated in consideration of:
 - a. The manners of her horse including that it was 'giving her a hard time'
 - b. That her driving was less blameworthy than Stewards had characterised and as such this was a less serious example of this breach of the rule - thus warranting a lesser penalty
 - c. That within the relevant portion of the race WOODS was (already) four out at the time the appellant moved such that the appellant's actions were not placing any undue pressure on WOODS
17. The Board had available to it the film of the race captured from multiple camera angles and assistance from the adviser, Mr Mike Stiles. Both parties directed the Board to aspects of the footage at the relevant time point to emphasise their respective submissions as to how the appellant's and Mr Woods driving should be characterised.
18. In characterising and contextualising this drive with her previous drives it was submitted on behalf of the appellant that she had been licenced since August 2016 and had had 1037 drives. The further matters submitted on behalf of the appellant mirrored that which was said (by herself) to the Stewards.
19. Of relevance within the available transcript when there was discussion of penalty:
 - a. The appellant submitted that she had a pretty clean record for the last 12 months, that she was averaging a fair bit of driving lately and that (with reference to her plea of guilty) the appellant confirmed that she would make sure it (i.e. the breach of this rule) didn't happen again
 - b. The stewards seemingly accepted that the appellants clean record (or gap in offending against this rule) had extended for a period two years
 - c. The stewards when indicating what level of seriousness they placed this example of the rule breach - denoted that the appellant had obliged Mr Woods to race four wide for a period of 50 meters in one of the fastest parts of the track round the corner
 - d. Further the Stewards - in an indication of the range of sentences potentially applicable for this rule breach - noted '*So, as is usual with the penalty's under this Rule, they usually attract a three, usually a three day, two day suspension of your licence*'

FINDINGS

20. On review of all the relevant material (including but not limited to the race footage) the Board finds no error in the steward's characterisation of the race.
21. Further the Board finds that the ultimate penalty reflects that Stewards properly and appropriately - but for one matter – took into account all matters personal to the appellant.
22. A plain reading of the transcript reflects that Stewards when referring to the appellant's 'recent good record' may have been operating under the impression that the appellant had had a two year 'gap in offending' of breaching this specific rule. A review of the appellants offence report denotes that the appellant had last breached the rule on 16 December 2022 (ie

a gap of offending of 10 months not two years) (in addition to breaching it on 21.11.21, 31.01.21, 29.11.19, 21.07.19, 16.03.19, 08.01.19, 03.02.17, 05.05.17, 08.02.16)

23. Whilst an error may have been made by stewards - such an error of this type could only have worked in favour of the appellant by mitigating the penalty.
24. As a consequence, the appeal is dismissed and the decisions of Stewards is affirmed.
25. Pursuant to ss 34(1A) and (2)(a) of the *Racing Regulation Act 2004* (the Act), the appellant is ordered to forfeit fifty percent of the prescribed deposit. Further, pursuant to ss 34(4A) and (4B), the appellant is ordered to pay fifty percent of the costs incurred in the preparation of the transcript prepped in relation to this appeal.

DATED: 23 APRIL 2024