

# TASMANIAN RACING APPEAL BOARD

Appeal No. 08 of 2019/20

<b>Panel:</b>	<b>Kate Cuthbertson (Chair) Wendy Kennedy (Member) Suzanne Martin (Member)</b>	<b>Appellant:</b>	<b>David Pires</b>
<b>Appearances:</b>	<b>Tim North (on behalf of the Stewards) Chris Taylor (Thoroughbred Advisor)</b>	<b>Rules:</b>	<b>AR131(a)</b>
<b>Heard at:</b>	<b>Tasracing Glenorchy Tasmania</b>	<b>Penalty:</b>	<b>Suspension for 2 race meetings</b>
<b>Date:</b>	<b>14 February 2020</b>	<b>Result:</b>	<b>Appeal against conviction: dismissed Appeal against penalty: varied to suspension for 1 race meeting</b>

## REASONS FOR DECISION

1. The appellant was the jockey riding *Queens Needs* in Race 4 Agema Cross Fit Gym Benchmark 60 HCP 1200m on 29 January 2020. Following an inquiry into his ride, the Stewards found that the appellant had breached AR131(a), which provides:

*"A rider must not, in the opinion of the Stewards:*

*(a) engage in careless ... riding".*

2. The particulars of the charge were as follows:

*"The particulars being you in Race 4 as the rider of Queens Needs passed the 300m while riding the mount along you have permitted your mount to shift when insufficiently clear of Coutinho, resulting in that runner having to be checked and carried onto The Greatness which also had to be checked".*

3. 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.
4. This appeal relates both to the conviction and penalty. The appellant was granted a stay of the suspension pending the determination of the appeal.

## Conviction Appeal

5. During the inquiry, Stewards heard evidence from the appellant and two other jockeys Sigrid Carr and Stan Tsaikos, the jockeys of *Coutinho* and *The Greatness* respectively. The Stewards questioned Ms Carr regarding an incident they believed occurred at the 300m mark in Race 4. She stated the following:

*MR NORTH: Sigrid Carr you rode Coutinho, do you recall an incident passing this point?*

*MS CARR: Yes sir I was obviously travelling quite well, coming to the outside of The Greatness who was stopping quite quickly...and probably a tight run to commit to and just ran out a little bit of room.*

*MR NORTH: Ok so how did you run out of room?*

*MS CARR: A bit of pressure from the outside.*

*MR NORTH: And who was to your outside?*

*MS CARR: Mr Pires.*

*...*

*MR NORTH: Sigrid Carr after viewing the films, is there anything you'd like to put forward?*

*MS CARR: No just as I stated it was a neat run, yep that's about all.*

*MR NORTH: So obviously did you call to David Pires to advise him you're into his inside?*

*MS CARR: Yeah I did.*

*MR NORTH: You called?*

*MS CARR: When I noticed that he didn't really know I was there so I did call to him.*

*MR NORTH: Ok so after that you called?*

*MS CARR: Yes yep.*

6. Mr Tsaikos was also questioned regarding the incident and gave the following evidence:

*... my horse was stopping quick as Siggy stated and yeah she just, to me it didn't look like there was much in it, my horse was stopping and then Pires' might have got in slightly and Siggy as she stated just before committed to sort of taking that run there.*

7. The appellant was also questioned regarding the incident and stated as follows:

*MR NORTH: David Pires ... Do you recall an incident past this point?*

*MR PIRES: Yeah I do recall. I looked to the inside of me Stan was tiring quite quickly, I was going to take a run on to the inside of Mr Schmitt, I didn't know Siggy Carr was coming quickly. I did move in, I heard her call, I think I hit my horse as I heard her call and then I came straight back out sir.*

*MR NORTH: Ok so were you aware that Sigrid Carr was to your inside?*

*MR PIRES: No I was aware that Stan's horse was tiring (inaudible).*

*MR NORTH: Tiring, yep so you weren't aware that she was to you inside?*

*MR PIRES: Not until she called, no sir.*

8. Following the race film being viewed he was asked some further questions. He reiterated that he did not know Ms Carr was to his inside until she had called out. When questioned about turning his head prior to his horse moving inwards, he stated that he did not see Ms Carr and that he would not have moved in if she was there. He did not state that his horse was inclined to lie in, but did say that the horse ducked in. The appellant agreed with the Stewards' proposition that *"the horse ducked in under the persuader and the horse shifts in at that point"*. No further evidence of substance was given during the course of the inquiry.
9. Following consideration of the evidence, Stewards found the charge proved, stating that they did feel that the appellant was guilty of the charge of careless riding. During the course of handing down penalty, Stewards expressed the view that the carelessness was in the medium range.

### ***The Appellant's Notice of Appeal and Submissions***

10. In his notice of appeal, the appellant stated that *"the evidence and horse's manners that contributed to this charge were not taken into account"*. He asserted that it was a rushed inquiry after the last race of the night.
11. He submitted during the appeal that the horse had a part to play in what occurred. He asserted that the horse moved in while he was striking it with his whip. He acknowledged he turned his head to his left to look around, but did not see Ms Carr as her horse's head was at the backside of his horse. He stated that in order to see her he would have to look behind rather than to the side, which was

not possible in the circumstances. He asserted that he was trying to maintain the three wide line, and was not anticipating that *Queens Needs* would duck under when using the persuader. It was not a movement he anticipated as the horse, he said, had exhibited no tendency to lay in or duck under in such circumstances. He confirmed that he did hear Ms Carr call out to him, but it was after his horse had shifted inwards and he immediately corrected.

12. Given his submissions during the appeal, he was asked why it was he looked to his inside if he was not wanting to move inwards and was intending to maintain the three wide line. He stated he did so in order to make sure that *The Greatness* had sufficient room.

### ***Stewards' Submissions***

13. The Stewards referred to the appellant's answers during the course of the inquiry, and particularly to those concerning whether he noted Ms Carr on his inside. They submitted that the appellant's response that he would not have moved in if he knew Ms Carr was there, was evidence from which it could be inferred that there was an intention to move in, rather than something that was purely the result of the horse's manners.
14. They also pointed out that whilst the appellant was intending to move the horse forward, to obtain a clear run to the inside of the horse in front required that his mount shift inwards. During the course of the appeal, Stewards referred to the intention to move inwards being evident from the horse's head being turned inwards. On reviewing the film it was apparent that the horse's head was not turned in and Stewards did not maintain that submission. They did however submit that the appellant had allowed his mount to move inwards and used a persuader whilst it was doing so. The failure to make sure he was sufficiently clear of the other riders established the carelessness in this case.

### ***Race Film***

15. The Board had available to it the film of the race. The Board also had available an adviser, Mr Chris Taylor, to assist interpreting the film. The film shows that *Queens Needs* head was not turned inwards, but had commenced shifting in just prior to the appellant commencing use of his whip. There was no other obvious action taken by the appellant to shift the horse inwards. It was evident, however, that the movement inwards was something he was attempting to achieve in order to run to the inside of the horse in front. At the same time Ms Carr's mount was making ground and had a clear run between *The Greatness* and *Queens Needs* at about the two wide line. She was required to take significant evasive action. It is not clear whether the horses connected and there is certainly no allegation or suggestion given during the course of the inquiry that that occurred. *The Greatness* was also checked as it was placed under the pressure of Ms Carr's mount as she was forced inwards.

### ***The Decision on Conviction Appeal***

16. The Board is comfortably satisfied that the appellant's ride was careless in the circumstances. In our view, the film clearly established that the appellant's mount had commenced shifting inwards prior to the commencement of use of the whip.

To in effect encourage his mount to continue to shift inwards without making sure he had sufficient room gave rise to the carelessness. We are fortified in the view that the horse's movement inwards was a deliberate strategy undertaken by the appellant in light of the following additional evidence:

- (a) that the appellant looked inwards which suggested he was looking to take a line to the inside; and
  - (b) his answers during the course of the inquiry (confirmed during the course of the appeal) that he would not have moved inwards if he had known that Ms Carr was there.
17. Those two pieces of evidence strongly suggest that the appellant's intention was to move inwards in the manner in which he did.
  18. We do, however, take the view that the absence of evidence of the horse's head being turned in supports, in part, the appellant's assertion that the horse's manners contributed to the state of affairs. Nevertheless, it was the appellant's duty as a rider to ensure that he did not allow that movement to continue in circumstances where there was insufficient room for it to occur. He did not do this and instead encouraged the further movement inwards by using the persuader.
  19. The appeal against the conviction is dismissed.

#### **Appeal Against Penalty**

20. During the course of the inquiry, the appellant made no substantive submissions regarding penalty. Stewards noted that the appellant had been out of the saddle for 21 months due to injury and that from their perspective he had a clean record back to 2017 prior to incurring that injury. As already noted, Stewards formed the view that the carelessness was in the medium range, that this typically resulted in 2-3 race meeting penalties, gave consideration to the appellant's good record and imposed a two Tasmanian race date penalty.
21. The appellant submitted that the penalty was too harsh in light of his record. He is a leading jockey in the State and has approximately 400 rides per year. In February 2018 he sustained a serious injury in a race related fall and was not able to ride again until September 2019. Whilst he was in receipt of workers compensation payments during that period of time, they did not compensate him fully for his lost income. This caused him financial difficulty, as racing has been his sole source of income for a very long period of time. As a jockey with over 5000 rides in his career, he has been found guilty of careless riding in the past. In the year prior to his injury, he had four convictions for careless riding, two of which resulted in suspensions. A quick perusal of his record suggests that his riding has improved as he has become more experienced.
22. This careless riding charge followed on from two earlier convictions, one in December 2019 and one early in January 2020. Both of those convictions resulted in reprimands.
23. Stewards stated during the appeal that they took into account how long the appellant had been out of the saddle in two respects. On the one hand, it

explained why there had been an absence of convictions in recent times, but also they took into account that the appellant was getting his eye back and they claimed to have given him more latitude as a consequence. They stated that the suspension imposed was justified given that it was a medium level infraction.

24. The Board carefully considered the submissions made by both the appellant and the Stewards. In our view, a two Tasmanian race meeting penalty was excessive in the circumstances, particularly given the time of year and the appellant's long time out of the saddle. We were satisfied that the horse's manners had played some part in the movement and as a consequence took a different view to the Stewards as to the degree of carelessness involved. In our view, it was appropriate to suspend the appellant but that the carelessness warranted a one race meeting suspension. Such a penalty properly reflects the gravity of the riding and the appellant's recent history. The appellant's record is a good one for someone who is riding at the level at which he rides and the number of races that he participates in. He has suffered significant financial detriment as a result of a racing related injury he incurred in 2018. He has only recently resumed riding and the penalty imposed was particularly harsh given the time of the year and the important race meetings that the appellant would otherwise be able to participate in.
25. The decision to suspend the appellant for two Tasmanian race dates is varied to a suspension for one Tasmanian race date.
26. The decision of stewards having been varied, the Board orders pursuant to ss. 34(1A), (2), (4A) and (4B) of the *Racing Regulation Act 2004* that 25 per cent of the appellant's prescribed deposit is forfeited to the Secretary of the Department and that the appellant pay 25 per cent of the cost incurred in the preparation of the transcript of the stewards' inquiry.