

TASMANIAN RACING APPEAL BOARD

Appeal No 08 of 2022-23

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| Panel: | Ms Kate Cuthbertson SC (Chair) | Appellant: | Mr Brodie Davis |
| Adviser: | Mr Mike Stiles | | |
| Appearances: | Mr Roger Brown (on behalf of the Stewards) Mr Kevin Ring (on behalf of the Appellant) | Rules: | AHRR 163(1)(a)(iii) Interference |
| Heard at: | Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS | Penalty: | Suspension of 3 race dates |
| Date: | 13 April 2023 | Result: | Dismissed |

REASONS FOR DECISION

1. The appellant, Mr Brodie Davis, was the driver of BOLD CENTURIAN in race 4 at the Launceston Pacing Club meeting held on 17 February 2023.
2. The appellant is a new driver. He first started driving in September 2022. As at the date of this race, he had participated in 77 races.
3. During the final stages of the race, soon after racing around the home turn, the appellant commenced to ease out from the inside of the one-by-one position. Mr Nathan Ford was driving ROYAL REACTOR on the outside. Mr Todd Rattray was driving MAEBEE in the death. During the course of his move outward, the appellant made contact with Mr Rattray's horse in front. The appellant subsequently moved further up the track, and Mr Ford's horse broke its stride and galloped for a short period.
4. An inquiry was held following the race. Mr Davis was assisted by an advocate during the course of the inquiry. When asked during the course of the inquiry for "*his take on the home straight*", the appellant stated the following:

"Yeah, well after racing round the home corner we came up the straight and I felt there might have been a chance of getting out so I've come up just a touch, and then as I've looked back, straight again, I've noticed that I've, my cover was very close with Mr Rattray's wheel in front of me, and probably hesitated a touch and came up a little bit more than I really should have which caused me to touch Mr Ford's legs."

Later in the inquiry after the race film was viewed Mr Davis said the following:

"After watching the film I can see what I've done wrong. Now I should've looked first but then I've come out and I have touched Mr Rattray's wheel which has forced me up the track further than what I should have been."

Stewards indicated that they were not of the opinion that Mr Rattray's horse shifted up the track. They asked the appellant if he was saying that Mr Rattray had shifted up the track. After viewing the footage again, the appellant stated "No".

5. Stewards charged the appellant with a breach of AHRR 163(1)(a) which provides:

"A driver shall not –

- (a) Cause or contribute to any...
(iii) Interference"*

6. The particulars of the charge were as follows:

The particulars of the charge are that you as the driver of BOLD CENTURIAN, when moving wider in the track in the closing stages of the event have moved up the track and contacted the wheel or caused Mr Nathan Ford to race roughly and to be checked.

7. The appellant pleaded not guilty. It was submitted to Stewards during the course of the inquiry that the appellant was entitled to take the opportunity to give his horse the best possible opportunity during the race and that Mr Nathan Ford ought to have given him room, particularly given his experience as a driver. Stewards, whilst noting that the appellant was entitled to ease out in the final lap pursuant to the Office of Racing Integrity's Harness Racing Policies and Procedures policy 31.1, which has been promulgated in relation to AHRR 164, noted that that policy requires any easing out to be undertaken without causing interference. The stewards were satisfied that interference had been caused and they found the appellant guilty of the charge.
8. In relation to penalty, the appellant indicated that he felt that Mr Ford had half caused the incident by not allowing him any room at all. Stewards ultimately imposed a 3 race date suspension. In doing so they took into account that the appellant had recently been suspended under AHRR 165 and had only finished that suspension a few weeks prior to this incident. In light of his otherwise good record, they discounted what they considered the usual penalty starting point of 4 race dates.
9. The appellant subsequently appealed against his conviction and penalty.

Submissions on conviction

10. The appellant argued that there were contributing factors leading to the incident that occurred between the appellant and Mr Ford. It was acknowledged that the appellant's wheel had touched the leg of Mr Ford's horse, but that this was the result of the actions of the horse driven by Mr Rattray. It was argued that the moving out of Mr Rattray's drive caused the appellant to make contact with Mr Rattray's wheel, which then had a flow-on effect, causing him to move out further and contact Mr Ford. It was also argued that Mr Ford, at that stage of the race, was in a no-win situation and the appellant's horse clearly had the running. In those circumstances it was submitted that a senior driver such as Mr Ford should have exercised a bit of courtesy and given the appellant a bit of margin, in which case the incident would not have occurred.
11. It was submitted that the driver in front was required to hold its line and had no need to move out. Its movement to a wider position was said to have caused the appellant to clip the driver in front's wheels.
12. Stewards submitted that Mr Ford was entitled to keep his own line. They referred to the appellant's initial responses during the course of the inquiry and submitted that they were an accurate reflection of what transpired, and indicative of the appellant having caused interference as a result of his own manner of driving. Stewards accepted that the appellant

was entitled to utilise policy 31.1 to ease out in appropriate circumstances, however what occurred was something more than easing out. The interference with the horse ahead, in their view, caused the appellant to move outwards suddenly and that in turn caused the interference with Mr Ford's drive. Stewards submitted that Mr Ford had the right to have an uninterrupted run to the finish line and there was no rule or policy reflective of the so-called 'courtesy' or 'margin', that had been suggested ought to have been afforded the appellant.

Determination on conviction

13. The Board has considered the race footage on a number of occasions and also listened carefully to the submissions of the parties including where they have highlighted particular aspects of the race film. The Board was also assisted by an adviser, Mr Stiles, in this matter. Following consideration of all these matters, and in particular having regard to the appellant's own responses during the course of the inquiry, the Board is comfortably satisfied that the appellant did breach AHRR 163(1)(a)(iii). In the Board's view, it was open to the appellant to attempt to ease out at the point of the race in which he did. It was evident from the footage that he moved his horse up at speed and in very close proximity to the horse in front, driven by Mr Rattray. Mr Rattray's horse was taking a fairly standard line around the track at that point and the appellant's horse has contacted the rear of Mr Rattray's wheel. In the Board's view this was a consequence of driving up too fast and too close to Mr Rattray's drive in front. The subsequent contact caused the appellant to move more suddenly further to the outside and, in turn, the contact with Mr Ford. In no way can this movement be considered easing. It was an abrupt move, albeit caused by the initial contact with the horse in front. However, the Board is comfortably satisfied that it was the manner of the appellant's driving that caused the initial contact to occur and not something that was done by Mr Rattray in the circumstances. On that basis the appeal against conviction is dismissed.

Submissions on penalty

14. It was submitted on behalf of the appellant that he was a very young but promising driver who ought to have been afforded a reprimand in the circumstances. Any problems with his driving could be attributed to his lack of experience rather than any deliberate conduct on his behalf. It was also submitted that what occurred was in the low to mid-range having caused Mr Ford's drive to gallop only one or two strides.
15. Stewards, however, submitted that the penalty they imposed was within the range of penalties ordinarily imposed for such matters. They indicated they rarely impose fines for such breaches and do not issue reprimands. This is reflective of the safety considerations that are at front of mind in the context of such rules. In their view, the interference was in the mid to high range as it did cause Mr Ford's horse to gallop. They referred to their starting point of 4 race dates in such circumstances but indicated that it had been reduced reflective of the contribution of the appellant's lack of experience. It was also noted that the appellant was unable to avail himself of the mitigatory benefit of a plea of guilty and also that he had only recently received a suspension for a similar breach pursuant to rule 165. On the 26 January 2023 Mr Davis had been suspended for a period of 2 race dates. It was acknowledged that the appellant is doing a wonderful job as a junior driver and has a lot of promise, however given the circumstances and the need to bring home to the appellant and other drivers the importance of these rules and of maintaining safe practices on the racecourse, in their view the penalty was appropriate. In their words, "*other drivers have to know that they can't win at all costs*".
16. The Board considers the penalty imposed was appropriate in the circumstances. There was no error in arriving at the 3-race date suspension in light of the appellant's recent suspension and the circumstances of the breach. In the Board's view, Stewards appropriately took into account the relevant circumstances and the Board accepts 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.

17. In accordance with ss 34(1A) and (2)(a) of the *Racing Regulation Act 2004*, 50 percent of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50 percent of the cost incurred in preparation of the transcript in accordance with ss 34(4A) and (4B)(a) of the act.

DATED: 29 MAY 2023