

TASMANIAN RACING APPEAL BOARD

Appeal No 14 of 2021-22

Panel:	Mr Patrick O'Halloran	Appellant:	Mr Anthony Darmanin
Adviser:	Mr Chris Taylor		
Appearances:	Mr Bruce Free (on behalf of the Stewards) Mr Anthony O'Connell (on behalf of the Appellant)	Rules:	AR 129(2) – A rider must take all reasonable and permissible measures
Heard at:	Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS 7250	Penalty:	Suspension for 4 Tasmanian race dates
Date:	13 May 2022 31 May 2022	Result:	Dismissed

REASONS FOR DECISION

1. The Appellant was the jockey riding *Be Kinder* in Race 5 of the Ladbrokes Odds Boost Maiden 1200m held on 2 March 2022 at the Tasmanian Turf Club Meeting.
2. A Stewards Inquiry was conducted (as agreed between the parties) on the following dates:
 - 9 March 2022 (with the Appellant present)
 - 16 March 2022 (where the Appellant was not present but at which time Stewards questioned the trainer Ms Dalco)
 - 10 April 2022 (with the Appellant present)
3. A transcript of each of those listings was produced, on or about 6 May 2022, and subsequently provided to the parties and the Board for this appeal. Before the Board there was an agreed position between the parties as to the date to which each page of the transcript referred to¹.
4. On 10 April 2022 the Stewards found that appellant had breached AR129(2), which provides:

¹ 9 March 2022 – pp 2 to 4 (line 7), 16 March 2022 – pp 4 (line 11) to 6 (line 7), 10 April 2022 – pp 6 (line 11) to p 14 (line 18)

‘A rider must take all reasonable and permissible measures throughout the race to ensure that the rider’s horse is given full opportunity to win or obtain the best possible place in the field’(emphasis added).

5. The particulars of the charge were stated as:

‘that you as the rider of BE KINDER which participated in Race 5 at the Tasmanian Turf Club meeting on the 2nd March 2022 failed to ride your mount out from entering the home straight to the winning post with sufficient vigour or purpose where it was reasonable and permissible to do so’.

6. The Appellant plead not guilty to the charge. Following the inquiry, he was found guilty, and his licence was suspended for four Tasmanian race dates.

The Appellant’s Notice of Appeal

7. In his notice of appeal – against conviction and penalty - the Appellant filed the following grounds of appeal:

APPEAL REASONS ANTHONY DARMANIN THAT RELATE TO CONVICTION, PENALTY AND STAY OF PROCEEDINGS

1. That on the night of the race and prior to the publication of the Stewards Report for the meeting the Stewards took no issue with my ride
2. That this matter was determined by Stewards on either 9/3/22 or 16/3/22. I cannot recall the exact date and the reason I have referred to the above dates is that the Steward’s determination of the matter is published on those Stewards Reports. It is my recollection the Stewards issued a reprimand against me and I cannot see how they can retrospectively open another inquiry and arrive at a different verdict. I therefore request that a transcript be made available that relates to the first inquiry.
3. That at the second separate inquiry where I was found guilty and penalised, the Stewards failed to determine that I had breached the rule 129(2). It is my recollection that they did not particularise (sic) in their charge where I failed to take all reasonable and permissible measures in the race nor did they establish that my ride was of standard that would be captured under this rule.
4. I pled not guilty and maintain that plea.
5. That in considering all of the above it is my opinion that my appeal has a high chance of succeeding.
6. That the penalty imposed is manifestly excessive.

Amendment of Grounds of Appeal

8. At the commencement of the appeal (on 13 May 2022) the Appellant, through his advocate, sought to amend the grounds of appeal. The sought amendments were not opposed, and leave was so granted by the Board. Such leave was granted in consideration of the Appellant filing the original Notice when unrepresented and without the benefit of a transcript of proceedings.

9. In regard to Ground 2 the Appellant in submissions to the Board maintained that his impression was that he was issued a reprimand however accepted that a formal reprimand was not in fact given. The relevance of that impression – the Appellant submitted however – was relevant to the assessment of the (amended) Ground 3.
10. In an expansion of the particulars of Ground 3 (as filed) the Appellant submitted that a combination of breaches of natural justice and procedural fairness had occurred within the Steward’s inquiry and in culmination necessitated – within the manner provided for within Hillier 2013/14 – a rehearing as a hearing *de novo*.
11. In consideration of the totality of all submissions made by the Appellant to this Board it is convenient to address the issues in the following manner:

Ground(s) of Appeal relating to procedural fairness and natural justice

On the basis that - based on the representations and/or publications of Stewards - the appellant believed the matter had been finalised without penalty

12. It was not submitted as a ground of appeal or line of argument that Stewards could not have given the Appellant a penalty because they had already given him a reprimand. Within the appeal hearing the Appellant accepted that no ‘official reprimand’ appeared within any of the publications of the Stewards.
13. Notwithstanding that acceptance/concession the Appellant maintained reliance on the confusion that was said to have occurred by the publications of the Stewards.
14. It was submitted to the Board, without contention, that the Stewards published the following information in regard to the Appellant and the relevant ride:
 - Within a Stewards Report dated 2 March 2022² under heading ‘RACE 5 – LADBROKES ODDS BOOST MAIDEN 1200 METRES’ - ‘*BE KINDER – Began very awkwardly then ran wide – settled well back*’
 - Within a Stewards Report dated 9th March 2022³ and published on 13 March 2022 under heading FOLLOW UP – TASMANIAN TURF CLUB – 2nd MARCH 2022’, RACE 5 – BE KINDER - ‘*Stewards questioned rider A Darmanin in relation to his tactics adopted on Be Kinder. Especially his vigour on entering the home straight and in the home straight. Rider A Darmanin stated that he had placed the mare under pressure to the 600 metres but it had failed to respond until he started riding quieter and his mount started to run on.*’
 - Within a Stewards Report dated 16th March 2022⁴ under heading FOLLOW UP – TASMANIAN TURF CLUB – 2nd MARCH 2022’, RACE 5 – BE KINDER - ‘*Stewards questioned rider A Darmanin in relation to his tactics adopted on Be Kinder. Especially his vigour on entering the home straight and in the home straight. Rider A Darmanin stated that he had placed the mare under pressure to the 600 metres but it had failed to respond until he started riding quieter and his mount started to run on.*’

² Provided to the parties within the ‘Appeal Pack’

³ Received as an exhibit on this appeal – Exhibit 1

⁴ Received as an exhibit on this appeal – Exhibit 2

- Within a ‘Stipendiary Stewards’ Report’ dated 10 April 2022 under heading ‘Addendum’

TASMANIAN TURF CLUB 2 MARCH 2022

RACE 5

Rider A Darmanin was found guilty of a charge under the provisions of AR 129(2) of ensuring that his horse was given the opportunity to obtain the best possible place in the field. Rider A Darmanin’s licence to ride in races was suspended for four Tasmanian race dates. In determining penalty stewards took into account his record under this rule, his cooperation during the inquiry and the circumstances surrounding the race. Rider A Darmanin was reminded of his rights of appeal.

15. It was submitted that each of the Stewards Report(s) had impressed upon the Appellant that nothing about the manner of his ride on the relevant race was, or would be, the subject of a potential penalty.
16. Even if the Board was to accept that those publications had the potential to provide the Appellant with that asserted impression, a proper assessment of the Appellant’s basis for that belief also requires the review of what was expressed to the Appellant within the Stewards Inquiry.
17. As noted above (at para 3) after the filing of the notice but before the hearing of this appeal before the Board all parties were provided a copy of the transcript from each listing of the Steward Inquiry.
18. With the benefit of the entirety of the transcripts the Board observes that within each listing involving the Appellant the Stewards:
 - a. outlined the gravamen of their concern;
 - b. outlined the basis and materials and/or evidence on which they were conducting their inquiry;
 - c. specified the nature of the charge sought to be potentially laid against the appellant;
 - d. (At the conclusion of the first listing) conveyed the impression that the inquiry was ongoing
19. Based on those observations the Board finds that it could not reasonably be understood that the Stewards had conveyed to the Appellant that they ‘took no issue with (the Appellant’s) ride’.
20. In regard to the listing dates of the inquiry and the inquiry being heard over several separate calendar dates it is observed that within an *ideal* world each Steward Inquiry would be conducted and concluded in close temporal proximity to the event or ride the subject of inquiry. However, it is further observed that a hearing being conducted in a part heard manner does not *prima facie* give rise to arguable grounds that natural justice or procedural fairness principles have been impinged.
21. The Board also observes that it is evident that there are a multitude of factors that impact on the ability to hear and determine inquiries. It is trite to note that all involved in the inquiry process are often faced with competing tensions including the need to work within particularly tight time frames, capacity to obtain and review race footage, coordinate all relevant people and witnesses to attend.

On the basis that the appellant believed that the matter had been finalised by way of reprimand

22. For the reasons stated above including at paragraph 12 to 21 the Board finds that it could not reasonably be understood that the Stewards had conveyed to the Appellant that they had in fact indicated or issued a reprimand.

On the basis that not all Stewards were present at all listings of the (part-heard) inquiry

23. With reliance on and reference to the transcript of the Steward Inquiry - it was submitted by the Appellant that the Stewards said to have been making the ultimate determination had not been present at all listings of the inquiry. It was further submitted that if that had in fact occurred then a breach of procedural fairness had arisen as the Stewards were making determinations when not privy to all evidence called at each and every listing. This on a plain reading of the transcript(s) was specifically so – it was submitted – in regard to Steward Griffin.
24. Following submissions from the Stewards at the appeal hearing the Appellant accepted the assurances made by the Stewards, that Mr Griffin was in fact present on all occasions. As such the appellant effectively abandoned this line of argument/particular of Ground 3 of the appeal.
25. The Board observes that – for recording purposes – it may be prudent for a practice to develop for all those present within a hearing (particularly when it is part heard) to announce or confirm their attendance or appearance at the beginning of each and every listing.

On the basis that he was neither advised of the listing nor present when Stewards questioned the trainer Ms Dalco (on 16 March 2022)

26. Within this appeal hearing it was agreed between the parties that the part heard Stewards Inquiry had included a listing on 16 March 2022 in which the Appellant was not present.
27. That part heard hearing was attended by the trainer of BE KINDER Ms Dalco (refer p 4 of 16 of transcript). Relevantly within that listing the Stewards:
- Outlined the specific mount/ horse and race date they wished to speak to the witness about
 - Confirmed that they had (already) spoken to the rider/Appellant ‘*about his ride and his vigour on the horse that particular day*’
 - Asked the witness what the riding instructions for the race were - with the witness providing ‘*To have him forward but with cover*’
 - Asked the witness’ opinion of the ride where she provided that she was not happy with the ride noting ‘*the horse has missed the start by four lengths’... ‘at the 600 metre she’s twelve off the leader and I get beat four lengths’... ‘She did it all on her own*’
28. It was submitted by the Appellant that his absence had produced an unfairness to the Appellant. The Appellant submissions however were silent on what specific prejudice had arisen or what line of questioning or issues the Appellant would have sought to put to the witness.

29. To this Board the Stewards submitted that the evidence given by Ms Dalco as to the instructions given by Ms Dalco to the Appellant were of limited relevance in their considerations as the primary factor in the determination of whether the charge had been made out was the observations (and assessment) of the ride itself by the Stewards.
30. The Board notes that within the subsequent listing on 10 April 2022 Stewards advised the Appellant that they had questioned Ms Dalco – (refer p 13 line 17 ‘*We asked the trainer what the riding instructions were and they were exactly same....*’).
31. Whilst the Board raises concern that the Appellant was not present for all listings of the Stewards Inquiry (and that as a general rule it would be prudent for a person the subject of an inquiry to be notified and/or present at all listings) in the absence of any particularised submission as to what specific prejudice arose and in consideration of all the circumstance of the appeal this particular argument of Ground 3 in and of itself does not rise to the level of establishing an error or failing of such type that would require a rehearing.

On the basis that Stewards did not provide adequate explanation or elaboration as to their use of the phrase ‘vigour’ or ‘sufficient vigour’ when particularising their concerns to the Appellant as to the manner in which the Appellant rode

32. Within the appeal counsel for the Appellant submitted that throughout the Stewards Inquiry the appellant was disadvantaged when, whilst unrepresented, Stewards did not provide adequate explanation or elaboration as to their use of the phrase ‘vigour’ or ‘sufficient vigour’ when particularising their concerns to the Appellant as to the manner in which the Appellant rode.
33. On careful review of the transcript(s) the Board finds that the Stewards clearly and appropriately outlined the specific nature of the inquiry they were undertaking:
 - (Hearing on 9 March 2022) ‘*But you seemed to be making ground over the concluding stages and we were just wondering if you could have ridden it with a bit more vigour’ ‘Definitely could have rode with more vigour....*’ (refer p 2 of 15 transcript of Steward’s Inquiry)
 - (Hearing on 10 April 2022)
 - o Following a discussion where the Steward’s outlined and confirmed from the Appellant what they understood the Appellant’s riding instructions were - in regard to BE KINDER the Stewards articulated that....‘*You stated that you placed the mare under pressure at the 600 but it failed to respond until you started to ride quieter and your mount started to run on*’ (refer p 6 of 15 transcript of Steward’s Inquiry)
 - o Stewards then subsequently clarified the time point on which their concerns were focused upon ‘*So Stewards have some issues with your ride from the home turn to the winning post*’ - whereupon immediately following that clarification and in direct response to a query from the Appellant as to their concerns the Stewards provided ‘*Well the vigour for a start*’ (p 7 of 15)

- Stewards also directly raised with the Appellant whether, at that relevant time point, he had considered using his whip ‘*on one or two occasions*’ (p 8 of 15)

34. For the reasons outlined above – the Board is not satisfied that the identified particulars said to support the (amended) Ground 3 – either in isolation or in combination – are established. Ground 3 must fail.

Ground(s) of appeal relating to sufficiency of evidence to find the charge proved – Grounds 4 and 5

35. Within amended ground(s) 4 and 5 the Appellant submitted in essence that taking the evidence that was available to the Stewards within their inquiry at its highest - there was insufficient evidence to substantiate the charge.

Evidence before the Board

36. With reference to the Steward’s observation and assessment of the Appellant’s use (or non use) of his whip at the relevant time (ref above referencing p 8 of 15 of the inquiry transcript) the Appellant sought leave per s 30(6B) of the Act to call the Appellant to give evidence on this issue.

37. Such leave was granted.

38. Within his evidence to the Board the Appellant’s evidence included (in regard to how he had used his whip) the impact of earlier animal welfare allegations and proceedings which alleged inappropriate use of a whip. These allegation, he said, had ‘played on (his) mind’ and his decision-making process in the instant race.

39. The Board’s impression of the Appellants evidence on this point included that the particulars and timing of the earlier animal cruelty allegation lacked specificity and the link that this was said to have on his decision making within the instant race was not overly compelling or clear.

40. Within his submission to the Board the Appellant further argued that proper consideration should have and need be made of the bad start - and that all actions and riding of the Appellant was appropriate. The Appellant also tendered exhibits relating to the past racing history of the mare (ref Exhibits 3 and 4).

Race Film

41. The Board had available to it the film of the race. Both the Appellant and the Stewards referred to that footage within their submission to the Board.

42. The Board had the benefit of the advice from the adviser, Mr Chris Taylor, and carefully considered the race film. Having considered the submissions of the parties, the evidence given to the Board, the race film and the advice of the adviser, the Board was satisfied that the Appellant had breached the rule stated by the Stewards in the manner originally particularised by them.

43. It is the view of the Board that the film shows that the use of the whip by the Appellant and the observable actions of ‘bridging the reigns’ at the relevant time point can properly be described only as tokenistic.

AR 129(2)

44. Within submissions to the Board regarding the appropriateness of the charge Stewards laid the Appellant submitted that in consideration of the riding actions taken at their highest that an alternate (lesser) charge should have been contemplated ie '*Fail to ride to the end of the race*' AR 131(b).
45. The appellant further submitted that in consideration of the race in its entirety Stewards had misinterpreted the object and requirements of AR 129(2). In support of that contention, it was submitted the following passage bespoke error.
 - a. When at the inquiry the appellant enquired where would I have finished if I was aggressive – '*it doesn't matter where you finish ...you've got to give your horse every reasonable and permissible opportunities to finish in the best place possible*'
46. The Board finds no such error on either basis occurred. The Board agrees with the Stewards interpretation of the rule – noting the use of the word 'or' such that it is not a requirement of the rule that the horse is in a winning position for the rule to be infringed.

The Decision on Conviction Appeal

47. The Board is satisfied that based on those circumstances as observed (and detailed above) that the Appellant is guilty of AR 129(2) in the manner identified by Stewards at first instance.
48. The appeal against the conviction is dismissed.

As to penalty

49. Within his submissions to the Board as to penalty the Appellant's submissions included that:
 - a. The Appellant had a good and long standing record
 - b. Suspension of 4 race meeting too harsh
50. Within their submissions to the Board the Stewards submission included:
 - That within any assessment of penalty there necessarily needs to include a consideration that charges of this type involve the need to maintain the public image and integrity of the industry (noting that the prize money for the instant race flowed through to the 6th placing)
 - The trainer had not been happy with the result
 - In this case there had been a substantial and prolonged breach of the rule
 - Honest in the enquiry (noting frank admissions)
51. The Board is not satisfied that there was any error in the manner or decision-making process of the Stewards at first instance when assessing and/or determining penalty or that the penalty imposed was manifestly excessive.
52. The appeal against penalty is dismissed.
53. In accordance with section 34(1A) and (2)(a) of the *Racing Regulation Act 2004*, fifty percent of the Appellant' prescribed deposit is to be forfeited to the Secretary

of the Department. The Appellant is ordered to pay fifty percent of the cost incurred in the preparation of the transcript in accordance with s34(4A) and (4B)(a) of the Act.

DATED: 21 December 2022.