

TASMANIAN RACING APPEAL BOARD

Appeal No. 20 of 2020-21

Panel:	Kate Cuthbertson (Chair)	Appellant:	Jordan Chibnall
Adviser:	Mike Stiles		
Appearances:	Steven Shinn (on behalf of the Stewards) Anthony O'Connell (on behalf of the Appellant)	Rules:	AHRR 163(1)(b)(ii)
Heard at:	Office of Racing Integrity 171 Westbury Road PROSPECT TAS	Penalty:	Suspension for 2 race meetings
Date:	15 June 2021	Result:	Upheld

REASONS FOR DECISION

1. The appellant was the driver of *Mach Charm* in Race 7, Clubs Tasmania Pace, 2,090 metres held at the Tasmanian Trotting Club meeting on 23 May 2021.
2. Following an inquiry into her drive which was held on that same day, the appellant was charged with a breach of AHRR 163(1)(b)(ii) which provides:

163. (1) A driver shall not -
...
(b) subject to rule 164
...
(ii) impede the forward progress of another horse;
3. The particulars of the charge were as follows:

We allege that in race seven tonight where you were the driver of Mach Charm, at the bell you elected to pull out three deep in front of Mr Ashwood who was making a fast move at the time, and impeded his forward progress.
4. The appellant pleaded guilty to the charge. Following brief submissions from the appellant, Stewards suspended the appellant's licence for two race meetings.
5. The appellant is now appealing against both penalty and conviction. Before addressing the Board on the grounds of her appeal, the appellant submitted that she ought be permitted to withdraw her plea of guilty for the following reasons:

- although she was accompanied by a senior driver during the course of the inquiry, he did not provide much assistance to her;
 - at the inquiry, Stewards also heard from another driver, Mr Ashwood. The appellant said that she felt intimidated by him during that inquiry;
 - during the inquiry, the appellant was shown only one view of the race film which did not provide the full story;
 - AHRR 163(1)(b)(ii) is rarely utilised and was not one that the appellant fully understood at the time she entered her plea of guilty;
 - in her notice of appeal and application for a stay of proceedings, the appellant indicated that she had viewed the films of the race since the inquiry and talked with her more experienced employer and as a consequence would like to change her plea to not guilty. She referred to feeling intimidated during the course of the inquiry, that she was a young driver with little experience in inquiries, and as a consequence entered a plea of guilty that she ought not to have entered.
6. Stewards did not oppose the appellant withdrawing her plea given the circumstances. The Board agrees that the appellant be permitted to withdraw her plea. She has signalled her desire to do so at the earliest opportunity, that is when she lodged her notice of appeal shortly after the inquiry was concluded. The combination of circumstances, including her inexperience and the uncommon nature of charges under this rule, also contributed to the Board's view that it was appropriate for her to be allowed to withdraw her plea.
7. The harness racing advisor attended the hearing and provided advice to the Board on the drive the subject of the appeal. The Board had access to and viewed the footage of the race patrol film of the race.

The inquiry

8. During the course of the inquiry, Stewards heard from both the appellant and Mr Ashwood who was the driver of *Yourockanna*. Stewards noted at the outset that it appeared that Mr Ashwood's horse was checked for clear running when the appellant pulled out three deep. Mr Ashwood told Stewards the following:

I made a run, yeah I made a run coming to the bell. Jordy looked once and then she wasn't going to go and then when I've got outside her, and then she went then so I was out wider then so I was pacing outside her wheel. So you know if she's going to go she's got to go. She was hesitating the first time, the second time she went and then I was forced out wider, and then the other horses punched up through and then I was caught back out, so I had to come out and back onto her back. So I was full of running to get up in that position to go early, yeah but she looked once and then she hesitated and the second time she come out.

...

why did she look three four times behind, Chairman, for me, now when I was in full motion. She looked twice and then when I've paced up again she looked again so that's three times looking for me, and then she's moved out and then the other horse of her stable mate's moved forward with her anyway so she's got that run anyway. You know at the end of the day I've lost my momentum to take that position to keep them running along anyway.

9. In response, the appellant stated the following:

I was just making my run three-wide at the time, I did look to see if there was anyone coming. I saw Mr Ashwood and he was still quite a fair way off me at the time, and I was...I was just waiting to make my run.

10. Stewards then played the side-on angle of the race patrol film. The following exchange then occurred:

MR BROWN: *When you did look round Ms Chibnall, you see Mr Ashwood moving and when you pulled out did you immediately go forward or did you just pull out, sit there wait for the other horse to go in front of you?*

MS CHIBNALL: *Yeah I was waiting...*

MR BROWN: *...was it your intention to pull out and go forward?*

MS CHIBNALL: *No it was my intention to flush the horse in front of me out, which it did at the time.*

11. Later, Stewards put to the appellant the proposition that Mr Ashwood had made a fast three wide move and that the appellant had pulled out in front of him and just sat there waiting for another runner to cut her into the race. She was asked if that is how she saw it and she agreed.
12. Following the entry of her guilty plea, the appellant stated that the way Mr Ashwood's horse raced throughout the race was quite dramatic and to her point of view out of control at some stages. On that basis, she believed that if it was any other horse in the race her manoeuvre would not have impacted in the way that it did.

Appellant's submissions

13. The appellant noted that AHRR 163(1)(b)(ii) was a relatively new rule which had rarely been utilised in this jurisdiction. It was noted that the terms of the rule appeared to mirror AHRR 162(1)(www) which provides that a driver shall not allow his horse to shift ground in a manner which impedes another horse.
14. AHRR 163(1)(b) has to be read in conjunction with AHRR 164 which provides as follows:

164. *The Controlling Body may determine the circumstances in which a driver who does not have a clear passage in the course of a race may take action to secure such a passage.*

15. Further, Harness Racing Policies and Procedures issued by the Office of Racing Integrity provide in respect of AHRR 164 that:

31.1. A driver can ease out from the designated ease out pole in the final lap, providing they do not cause interference to another runner when doing so.

16. It was submitted that the Stewards' attention was drawn to the appellant's drive by Mr Ashwood with reference being made to the extract from the transcript referred to at para. 8 above. The appellant submitted, however, that there were a number of features of the appellant's drive that needed to be carefully considered.
17. First, it was submitted that the appellant made her move to the three wide line when she was well clear of the Mr Ashwood's drive. There was more than one metre between her wheels and *Yourockanna's* front legs.
18. Secondly, it was submitted that the issue facing the appellant at the time she undertook her shift to the three wide line was that the driver of the horse in front of her, Mr Pratten, was half carting. What transpired was described as a chain reaction flowing from what was occurring ahead of her. According to the appellant, she was not able to advance until the driver in front of her decided whether to go in or out. It was submitted the appellant was effectively impeded by the driver ahead who should have been trailing the head of the horse in front of him but was instead half carting, preventing the appellant having a clear run in the three wide line. She ultimately obtained the trail behind Mr Pratten's drive.
19. Thirdly, it was asserted that Mr Ashwood's horse was not tractable. It was noted that the horse was tossing its head during the course of the race and had to be restrained. It appeared that the horse was touchy on the mouth and at the point at which Mr Ashwood's drive improved quickly, he was not holding both reins as he was pulling the shorteners. The appellant submitted that it appeared Mr Ashwood's drive got away from him which in turn required him to take more dramatic measures to prevent colliding with the rear of the appellant's cart. On that basis, it was submitted that the appellant could not be held culpable in respect of her moving to the three wide line.
20. In summary, it was submitted that:
- (a) Mr Ashwood's horse was not tractable, especially when restrained;
 - (b) The appellant's drive was within the rules in the sense that she was clear to shift out in an attempt to improve at that point in the race;
 - (c) Mr Ashwood's actions also allowed his horse to improve to the appellant's sulky; and

- (d) When the appellant attempted to get in the three wide position, she was impeded by the driver ahead of her, Mr Pratten, who was not trailing a horse in front of him but half carting.

Stewards' submissions

21. Stewards submitted that the purpose of AHRR 163(1)(b)(ii) was to prevent drivers from pulling out from the one wide to the three wide line and staying there without attempting to improve or progress.
22. The Chairman of Stewards stated that he always made the point of carefully explaining the rule to drivers in the following terms: if a driver wanted to come out they do not just come out and stay there, they must make an effort to improve or progress through the race.
23. On that basis, Stewards submitted that the charge proffered against the appellant in the circumstances reflected the intent of the rule. In their view, Mr Ashwood had started to make a run and came up reasonably quickly in the course of doing so. The shifting of the appellant to the three wide line prevented him from taking that run.
24. Emphasis was also placed on the appellant's responses to questioning during the course of the inquiry where she stated that she was waiting to flush out the horse in front of her. It was submitted that type of driving was the very reason for the rule, that is, it was to prevent people from flushing out the horse in front and therefore impeding the progress of those behind them.
25. Stewards conceded that there was sufficient distance between the appellant's rear wheels and the front legs of the horse behind her at the time that she made the move. That Mr Ashwood's horse was not tractable did not, however, permit the appellant to take that action. It was clear in the Stewards' view that Mr Ashwood's forward run had been impeded as a consequence of the appellant's driving. In their view, the appellant appeared to wait for as long as it took for the driver in front of her to finally come out. This caused Mr Ashwood to be impeded.
26. In summary, Stewards submitted that the appellant had successfully achieved what she sought to achieve which was to ease out, flush Mr Pratten out and get a trail behind him. That, in their view, was impermissible given that in doing so she impeded the forward progress of the horse behind her.

Race patrol film

27. The Board has carefully considered the race patrol film of this incident. The key views are the side-on view and the head-on view. It shows the appellant moving out to the three wide position after looking several times behind her to ensure that there was sufficient room to do so. It must have been apparent to the appellant that Mr Ashwood was progressing given the points at time at which she looked behind her.

28. It is also apparent that the horse driven by Mr Pratten was not trailing the driver ahead of him and was in effect half carting. When the appellant shifted to the three wide line, she was well clear of Mr Ashwood's drive. That move seems to have caused Mr Pratten's drive to shift further outward but not fully into the three wide position. He remained half carting the horse ahead of him. This prevents the appellant from obtaining the trail behind Mr Pratten and also prevents her from going around him unless she takes her horse further than the three wide line. Shortly after going to the three wide position, the appellant eases back in behind Mr Pratten's drive, albeit not to the same position that she had eased out from.
29. In those circumstances, the Board is not satisfied that the appellant has breached the rules. Although Mr Ashwood's forward progress, which was occurring at a considerable pace at the relevant time, was such that he came up to the back of the appellant's sulky very quickly and needed to check his horse, we are not satisfied that the appellant took the action that she did in a manner that offends the rules. In the Board's view, it was appropriate to try to move forward but the actions of the horse in front of her prevented her from progressing as she had wanted to. She did not remain there for an extended period of time but took the trail of the horse ahead of her as soon as it became apparent that it was not going to take the full three wide position or ease back in.

Decision

30. In light of the Board's view of the drive, the decision of Stewards finding the appellant guilty of a breach of AHRR 163(1)(b)(ii) is quashed. The whole of the appellant's prescribed deposit is to be refunded to her pursuant to s. 34(2)(e) of the *Racing Regulation Act 2004*.