

TASMANIAN RACING APPEAL BOARD

Appeal No. 27 of 2017-18

Panel:	Kate Brown (Chair) Rod Lester (Member) Wendy Kennedy (Member)	Appellant:	Tim Yole
Appearances:	Adrian Crowther, on behalf of the stewards Anthony O'Connell, on behalf of the appellant	Rules:	AHRR 162(1)(c)
Heard at:	Launceston, Tasmania	Penalty:	Fine of \$400
Date:	31 July 2018	Result:	Upheld. Penalty varied to a reprimand

REASONS FOR DECISION

1. On the 31st of July 2018 the Tasmanian Racing Appeal Board heard an appeal from Tim Yole against a penalty imposed for a breach of Australian Harness Racing Rule 162(1)(c) in that he communicated on the track with a person other than authorised official in Race 4 at Launceston on the 24th of June 2018. He pleaded guilty and was fined \$400. He appealed against penalty arguing that the fine was manifestly excessive.
2. The background to the charge was that one trainer had ten of thirteen starters in this race. The appellant was the foreman of that stable as well as the driver of *Artarama* in the race. The particulars of the charge were that *"during the race ... on two occasions racing... into the first turn, ... you have called out to driver Paul Hill who is a stable mate of yours and then a second particular is that racing down to get shortly before the winning post at about 1050 metres to travel you've again called out ... to driver Paul Hill, the stable mate."*
3. The appellant accepted he had called out on each occasion particularised and said he had, on both occasions, told Mr Hill to *"grab hold"*. He gave evidence on the first occasion that he had done so as he *"wanted to get to the breeze, I didn't want to be caught three wide"*. He refuted any suggestion that what he had said on the second occasions was in fact *"keep going"*. He refuted any suggestion that the communications amounted to giving instructions to his stablemate.
4. There was no clear evidence as to what was said from either Ms Gangell, driving *Demonstrative*, or the driver of the stablemate *Regal Major*, Paul Hill. Mr Hill denied hearing any yelling on the first occasion and as to the second communication later in the race initially gave evidence that he didn't hear any calling and then *"I heard someone calling, but I didn't think anyone was calling to me. I wasn't in anyone's way"*. Ms Gangell said she heard calling but couldn't be sure what was said. As to the second occasion she presumed the appellant was calling to Mr Hill to *"hand up"*. She said quite clearly that she *"couldn't actually hear what they were saying, but I did hear Tim calling to Mr Hill"*.

5. At the appeal the appellant noted the lack of any evidence other than his own as to what was said, and submitted that at the enquiry Stewards had, in imposing penalty, averted to the possibility that he had been giving instructions to a stablemate, which would have been far more serious than his own evidence as to what he said and the factual basis of his guilty plea.
6. Stewards proceeded with the appeal on the same basis that they proceeded at the initial enquiry: which was essentially that Mr Yole was not being truthful about what he said to Mr Hill, and that he had been giving instructions to a stablemate. It was submitted that the action of Mr Hill in response to whatever was said to him by Mr Yole was inconsistent with someone who has been told to “grab hold”. They clearly proceeded to penalty at the enquiry on the basis that something nefarious was going on, and urged the Board to do the same at the appeal.
7. The only direct evidence of what was said is the evidence of Mr Yole. Anything else can only be circumstantial. When what is being asserted amounts to something as serious as stewards accuse Mr Yole of here, the standard of evidence required is high. As noted in the Victorian Racing Appeals and Disciplinary Board case of *Oliver* (30 October 2017) at page 2:

The standard of proof is that laid down in the well-known case of Briginshaw v Briginshaw. We must be comfortably satisfied that the charge has been proved, taking into account inter alia the gravity of the charge and the consequences which flow from the conviction.

8. The Board would require something more than an inference from the fact that the horses are stablemates, particularly when there were 9 other stablemates in this race to be so satisfied. The reference to Mr Hill’s actions being inconsistent with having been told to “grab hold” is similarly insufficient even when put together with all the other evidence. The Board cannot positively find that Mr Yole said anything other than “grab hold” nor that this amounted to an improper communication between stablemates. It is noted at page 14 of the transcript of the inquiry, when asked for submissions as to penalty the appellant says “...I was only trying to benefit my horse by saying grab hold...” yet the Chairman responds “Well that’s one take on it”, clearly demonstrating an intention to sentence on a more serious factual basis that the appellant had pleaded to, or indeed, was reflected in the evidence to hand.
9. With respect to the appellant’s personal circumstances it was submitted on behalf of the appellant that the \$400 fine was equivalent to 8 losing drive fees and that represented some 16% of his income as a driver for the season taking into account drive fees and prize money. His representative argued that the appropriate penalty would have been a reprimand.
10. The Board accepted that the appellant had been sentenced on a factual basis which was inconsistent with the basis of his plea of guilty and the evidence. The Board upheld the appeal and varied the penalty to a reprimand. Pursuant to s34 of the *Racing Regulation Act 2004*, the appellant forfeits 25% percent of the appeal deposit and is to pay 25% of the cost of preparing the transcript.