

TASMANIAN RACING APPEAL BOARD

Appeal No 29 of 2023-24

Panel:	Ms Amber Cohen (Chair)	Appellant:	Mr Jackson Radley
Adviser:	Mr Chris Taylor		
Appearances:	Mr Bruce Free (on behalf of the Stewards)	Rules:	AR 131(a) Careless riding
Heard at:	Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	Suspension of 2 Tasmanian race dates
Date:	28 September 2023	Result:	Dismissed – varied suspension to 3 Tasmanian race dates, with 1 race date suspended for a period of 12 months pending no further breaches under AR 131 (a)

REASONS FOR DECISION

1. On 24 May 2024, the Board heard this appeal.
2. The appellant, Mr Radley, was the rider of MUSCLE UP. This appeal concerns race 6 on 24 April 2024, at a meeting held by the Devonport Racing Club.
3. Stewards held an inquiry on 24 April 2024, at which they reviewed the race footage and heard from the appellant and five other riders in the race. Mr Radley was represented by one of the riders in the race, Ms Codi Jordan, who was more experienced than Mr Radley.
4. After the Inquiry, Stewards charged Mr Radley under Australian Rules of Racing 131(a), which provides:

A rider must not in the opinion of the Stewards:-
(a) engage in careless, reckless, improper, incompetent or foul riding;
...

5. Stewards gave the following particulars:

We do specify careless riding, the particulars of the charge are that you as the rider of MUSCLE UP, allowed your mount to shift in at about the 1200 metres, resulting in MYWORDIS receiving pressure and being carried in on to WELDBOROUGH which ended up being tightened and checked, which was then carried in on to ALPINE BLAST and then carried in on to HOT

RELATION which had to then check out of it as well and lose its rightful position.

6. Stewards heard first from Ms Siggie Carr, who rode HOT RELATION as follows:

CHAIRMAN: At the 1200 metres Ms Carr, you, it looked like you had to restrain your mount?

MS CARR: Yeah, look, I jumped well and just wanted to sort of keep my position where I jumped and I was on the inside of Mr Baker's mount and just continued to run out of room. The pressure from the outside of me to the extent that I then had to grab hold and come out of it.

CHAIRMAN: So did you have to check?

MS CARR: Yeah, yep.

7. Stewards then heard from Mr Troy Baker, who rode ALPINE BLAST, who said:

I drew barrier 2, we jumped out, first turn, it come quite tight, so the horses to the outside were coming across quite quickly and just had pressure from my outside.

He later said:

I just rode my mount forward, tried to get out of the pressure.

8. Stewards asked Mr Bulent Muhcu, who rode WELDBOROUGH in the race, what he could put forward. Mr Muhcu said that he felt the pressure from the outside and that to his outside was Mr Ulcinar. He said he, Mr Muhcu, "just had to come off". Mr Muhcu said later, when he asked if he was aware of Mr Ulcinar attempting to relieve the pressure, that he was aware and that he, Mr Muhcu, was "calling to him a fair bit" because he was only half a length to the one on the inside. The Board understood Mr Muhcu's evidence to be that he was under pressure from the horse to his outside, that he was not clear enough in front of the rider to the inside and that he then had to ease off as he was in an unsafe position.

9. Stewards asked Mr Ulcinar what he could put forward. Mr Ulcinar rode MYWORDIS and was the rider to the inside of the appellant and to the outside of Mr Muhcu. He said:

Yeah, my horse has jumped well fair and gone forward and I saw that [the appellant], he was coming outside me and pretty much he's half in, come half a length in front of me inside, inside shifted in and I had nowhere to go, I just tried to hold my position.

When asked where the pressure was on him, he said "outside". To his outside was Mr Radley.

10. Stewards then asked the appellant for his evidence. He said

... My horse began well and we wanted, our intention was to lead the race, thought I held my line, then when there was a couple of yells from the inside I did think I was, wasn't on, pushing on Mr Ulcinar, I probably three or four strides going where I was in front by a good margin.

11. When asked if he was aware he was putting pressure on runners to his inside, Mr Radley said

I don't think I was putting the pressure on Sir.

12. Stewards showed the footage to the appellant and other rider witnesses. Stewards then invited Ms Jordan to put anything forward on the appellant's behalf. Ms Jordan had ridden THREE'S A CROWD in the race but was not involved directly in the alleged incident. Ms Jordan said the appellant had intended on going forward. She said

...it's like [the appellant] said, he's intended on going forward, obviously coming into the turn its got quite tight. He's just held his line...

13. The appellant added that it could not be seen from the footage whether he had put pressure on other riders and that he did not agree with Stewards observation that he had come over on a sharp angle.
14. Ms Carr said that you could see in the footage she was starting to come up in the irons and started to take hold. Mr Ulcinar said he was trying to hold his horse's head out to hold the pressure from the outside. Ms Jordan agreed that you could definitely see this in the footage. Mr Muhcu agreed with Stewards observation that he had to check out of the race due to the pressure.
15. Stewards made the charge and gave the particulars at paragraphs 4 and 5 above. The appellant was invited to, and took some time outside of the Inquiry, to discuss his plea with Ms Jordan. He then pleaded guilty to the charge. Stewards accepted the guilty plea.
16. The appellant, however, then went on to make some statements that were not consistent with a guilty plea. He said the camera angle does not show enough that he had put "enough" pressure on Mr Ulcinar. He said his horse was always going forward and improving and a second after the incident, he was a length and a half in front and was doing his best to stay off. When asked if he relieved the pressure, he said that yes he had. When he heard the call from the inside, he relieved the pressure by moving forward and taking up the lead.
17. Stewards considered the appellant's record, in relation to this rule, before determining penalty and noted that the appellant had started riding towards the end of the 2023 and had had three reprimands and three suspensions under the rule in the approximately six months until this incident.
18. The penalty given was the suspension of the appellant's licence to ride in races for two meetings.
19. The appellant has appealed against the conviction and penalty, and in his notice of appeal says the following:

Our belief is that the evidence used to convict [the appellant] (video evidence) was inconclusive and he should not have been found guilty. We also ask that [the appellant's] guilty plea be reversed as he was confused and made the incorrect plea.

20. Mr John Blacker represented the appellant at the appeal. He said he is the appellant's Master and was disappointed that he wasn't called upon to represent the appellant at the Steward's Inquiry. He would have advised the appellant against a guilty plea. He said this track has one of the worst starts in the country as they run down hill straight out of the gate. He said that the problem arose from the number 5 horse, which was ridden by Ms Carr, being on the wrong leg. The Board accepts this can be seen in the footage. Mr Blacker said that jockeys tend to "throw each other under the bus" but in this case, the damage had already been done before the appellant had gone forward. He said this should have been a reprimand.
21. Mr Free, on behalf of Stewards, said that it is every rider's duty to hold a straight line until they are two lengths clear. The appellant was not sufficiently clear to cross when he did. He

said, although the transcript of the Steward's Inquiry did not pick it up, one of the riders, Mr Muhcu, who rode the horse directly to the inside of Mr Ulcinar, who was directly to the inside of the appellant, expressed he was extremely fearful at the time of the incident. Mr Free said in his opinion, jockeys "throw pillows under each other", rather than cast blame on other jockeys willingly. Stewards made no submission as to the change of plea.

22. The Board is prepared to consider the appeal on the basis that the appellant does not admit guilt to the charge, and allows the change of plea, given the appellant did not have the benefit of his Master's advice at the Steward's Inquiry and that the appellant's statements following his guilty plea were inconsistent with the plea, indicating there was some confusion about the nature of a guilty plea to the charge put.
23. However, following the hearing of the appeal, the Board provided the appellant notice that the Board has the power to increase the penalty imposed by Stewards at the Inquiry. In that notice, the Board advised that if the Board dismisses the appeal against conviction for Careless Riding in breach of AR 131(a), the Board intends to consider exercising its power to increase the penalty, given that the plea of guilty was withdrawn, at the request of the appellant, leaving an absence of the mitigating factor taken into account by Stewards. The Board offered the appellant an opportunity to make submissions as to that or to withdraw his appeal. The appellant chose not to do so.
24. The Board considered the transcript of the Stewards' Inquiry and noted the matters outlined above at paragraphs 6 to 16.
25. The appellant made statements at the hearing that were largely consistent with what he had said at the Inquiry. He says it cannot be seen from the video evidence that he put pressure on the riders to the inside of him. The Board notes that on the one hand, the appellant does not accept that he put pressure on the inside riders, on the other hand, he says that he was aware of the pressure and took steps to relieve it by going forward.
26. Mr Free said that Stewards took into account that the appellant had rode the second placed horse, he would have received additional income for placing and Stewards had taken this into account. At the Inquiry
27. The Board notes the standard of proof in these matters was outlined in the Victorian Racing Appeals and Disciplinary Board case of Oliver (30 October 2017), page 2, as follows:

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.

Determination of Appeal against Conviction

28. The Board has carefully considered the submissions of each of the parties to this appeal. The Board has also viewed very carefully the footage and has had the benefit of the assistance of the thoroughbred racing adviser, Mr Taylor, in relation to this matter.
29. The Board observes that the footage clearly shows the appellant coming across his line to his inside, causing a flow on effect of tightening to the riders all the way to the fence line and indeed, causing one, if not two, riders to check out.
30. Evidence from the other riders has been stated in the preceding paragraphs because the appellant's submission is that the video footage is inconclusive. Even if that were the case, Stewards heard evidence from the four riders to the inside of the appellant, who all described pressure from the outside and each having to take evasive action to address it. The evidence was that the pressure originated from the appellant. The Board also notes the appellant

accepts there were calls from the inside to relieve the pressure, albeit that he did not accept the pressure was coming from his mount.

31. Based on the footage and the evidence of the riders, the Board accepts the submissions put by Stewards that the appellant crossed his line before being sufficiently clear of the inside rider to do so, having a flow on effect of pressuring the other riders in the race to the inside of the appellant. The Board is comfortably satisfied that this was an occasion of careless riding by the appellant.

Determination of Appeal Against Penalty

32. The Board notes the matters taken into account by Stewards as to penalty at the Inquiry and as further explained at the hearing. These were the appellant's record, the level of interference which Stewards determined to be "mid-range", with two horses having been "checked" by the appellant's action, and that the appellant would have been financially rewarded for having come second in the race. The Board considers those matters appropriate considerations and finds no error in the penalty imposed based upon those factors and the plea entered. Stewards had, however, taken into account the appellant's guilty plea, which was withdrawn at the appellant's request. Given the Board's decision to allow the change of plea, at the appellant's request, it is open to the Board to consider a change to penalty on the basis that a guilty plea was not entered. The appellant has a poor record of convictions under this Rule in the short time the appellant has been riding, which was somewhere between 6-8 months at the time of this incident. He has previously had the benefit of three reprimands under the Rule, as well as two suspensions. This incident involved a risk to the safety of other riders. The Board considers a variation to the penalty is appropriate and orders that the appellant be suspended for three Tasmanian race dates, with one race date suspended for a period of 12 months on the condition that the appellant not commit a further offence, contrary to the Australian Rules of Racing, Rule 131(a).
33. Pursuant to ss 34(1A) and (2)(a) of the *Racing Regulation Act 2004* (the Act), the appellant is ordered to forfeit fifty percent of the prescribed deposit. Further, pursuant to ss 34(4A) and (4B), the appellant is ordered to pay fifty percent of the costs incurred in the preparation of the transcript prepared in relation to this appeal.

DATED: 16 July 2024