

# TASMANIAN RACING APPEAL BOARD

## Appeal No 19 of 2015/16

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| <b>Panel:</b>       | <b>Mr Tom Cox (Chair)<br/>Ms Kate Cuthbertson<br/>Mr Graham Elliott</b>                                   | <b>Appellant:</b> | <b>Ms Taylor Ford</b>                       |
| <b>Appearances:</b> | <b>Mr Bradley Walters on<br/>behalf of the appellant<br/>Mr Adrian Crowther on<br/>behalf of stewards</b> | <b>Rule:</b>      | <b>Australian Harness Rule<br/>AR149(1)</b> |
| <b>Heard at:</b>    | <b>Hobart</b>   | <b>Penalty:</b>   | <b>A 12 race date suspension</b>            |
| <b>Date:</b>        | <b>1 April 2016</b>   | <b>Result:</b>    | <b>Dismissed</b>                            |

### REASONS FOR DECISION

1. The appellant, Miss Ford, was the driver of *Flylika Hawk* which raced in Race 7 “The Harding Hot Mix Claiming Novice Drivers” over 2,297 metres at Devonport on 18 March 2016. Following an inquiry into her drive, which was conducted during the course of the race meeting, the stewards found the appellant had breached AR149(1), which provides:

*“A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field.”*

2. The appellant pleaded guilty at the inquiry. The appellant’s driver’s licence was suspended for a period of 12 race dates. A stay was subsequently refused over the operation of that penalty. The appellant now seeks to move this Board to quash the stewards’ finding that she was in breach of the rule and the penalty imposed.
3. The particulars of the charge laid against the appellant at the inquiry were as follows:

*“As the driver of Flylika Hawk you have on the first turn elected to shift from a three wide position to a four wide position which Stewards state was not a reasonable or permissible action. This not only disadvantaged your runner by giving up any opportunity to gain a forward position. Your actions have also advantaged another runner in Black Saddle as that horse was able to progress to a forward position. Furthermore after restraining to the rear of the field you then failed to take a reasonable and permissible opportunity to progress along the pegs to a midfield position when clearly available, and by both of these actions you have failed to take all reasonable or permissible measures to win or obtain the best possible placing in the field.”*

4. It was not in dispute before this Board, and indeed it was confirmed from race footage, that the appellant’s drive shifted from the three wide position to at least the four wide position on the first turn; that the horse behind, *Black Saddle*, was able to progress forward beneath the appellant’s drive as a consequence; and, later in the

race, the appellant did not take any steps to progress her drive along the pegs when that opportunity was clearly available.

5. At the inquiry the appellant explained:

*“(her drive) felt pretty good and then coming out of the gate he was still fine and I’ve given him a slap on the bum around the corner then he went half rough so I’ve grabbed hold of him and he’s run up the track and then I’ve got back to last and tried to go up the inside and yeah.”*

6. She continued in her evidence at the inquiry to explain that the drive “felt” rough; had taken her up the track; that it had happened “pretty quick” and that after her drive had shifted up the track she “grabbed on to him”; and that she had no option to go forward, rather her only option was to retreat to the rear of the field and take cover.

7. The appellant also explained with respect to the option to progress her drive up the pegs later in the race, that she couldn’t do so because:

*“Shane Boon was half in and half out so I couldn’t ... it was going to be very tight.”*

8. The stewards’ position was quite different. Chairman of Stewards, Mr Crowther, observed, having watched the race film:

*“I didn’t see any evidence watching the race on the film as it panned out that Ms Ford’s horse had a tendency to run away from her or get up the track and what I remember thinking to myself is - she’s steering this horse from a position of three wide to a position of four wide, why is she doing that?.....And then you’ve gone up the track and then you steered, it appears to be two movements there, you’ve steered up the track and then you’ve steered again.”*

9. There was no response by the appellant at the inquiry to this last observation.

10. Before this Board, the appellant, with the assistance of her representative, contended a completely different version of events leading to her drive shifting up the track on the first turn.

11. First, the appellant, by her representative, stated that on 11 May 2015, on the same track, and on the same turn, the appellant was involved in a fall. As she entered the first turn in the race the subject of this matter, she deliberately steered her drive up the track because she had a “vision” or “flashback” of the earlier fall.

12. Secondly, at the same time as her “vision” or “flashback” or immediately preceding it, she had concerns about the horse’s gear, in particular the horse’s “spreaders”, which were designed to prevent the horse’s knees from knocking, and, as a result of those two events she deliberately steered the horse up the track in order to take a moment to check the gear before re-joining the race at the back of the field.

13. Thirdly, the appellant took the course of action she did out of an abundance of caution for her, other drivers and horses’ safety in what was a novice drivers’ race in which it was said that the drivers are overly cautious in their approach.

14. Fourthly, the appellant desisted from taking action to move forward on the pegs later in the race because, in her mind, she was “*too cautious in driving the horse along the pegs*”, having been unsettled by the incident on the first turn.

15. Fifthly, the appellant did not offer this explanation at the inquiry and chose to plead guilty, despite these relevant events, because she did not have a driver's licence, her "lift" was anxious to leave the track, and so she just "wanted to get it over with".
16. The stewards made the following submissions to this Board:
- (a) despite the appellant's age, 17, she is an experienced driver having competed in almost 300 races with almost 50 wins;
  - (b) it was clear that she elected to steer the horse up the track, and this was confirmed in the footage;
  - (c) the appellant made no effort at all to bring her horse into the race, at any stage;
  - (d) her evidence before the Board that she had concerns about the horse's gear and that she had suffered a flashback of an earlier incident was a recent invention and inconsistent with her plea of guilty;
  - (e) the footage did not depict that her horse had raced "rough" as it approached the first turn; and
  - (f) as far as the second incident was concerned, the footage clearly depicted that there was an available run on the pegs, which she elected not to take.
17. The scope of rule 149(1) is well settled. In the decision of *Honan* (NSW Harness Racing Appeals Tribunal, 26 October 1983) Justice Goran stated the following:
- "In the first place the rule does not permit the mere substitution of the steward's view as to how a particular horse should be driven for the view of the driver. Secondly, the rule does not seek to punish a mere error of judgment during a race on the part of the driver..."*
- The rule attempts to ensure not merely that the horse has a winning chance in a race but that, given its inability to win, it will still do the best it can in the circumstances...*
- The rule demands that the measures of the driver must be "reasonable and permissible". Obviously it is not expected that a driver would be permitted to interfere with another horse in order to win with his own horse, but his failure to take a permissible measure to win or to secure the best possible place in the field must be a reasonable failure. It is for this reason that I have said that a mere error of judgment is not a breach of the rule because a mere error of judgment may be reasonable in the circumstances....*
- There are an infinite number of possibilities when this present rule will apply.... In short, however, the unreasonableness of the driver's tactic must be culpable, - that is blameworthy... Each case will turn upon its own merits, but overall if in taking into account all the circumstances the actions of the driver are unreasonable then he may be considered in breach of this particular rule."*
18. It is a matter of fact for this Board to determine whether it accepts the appellant's version of events put to it. This Board is not satisfied to the requisite degree that the appellant's version of events, including her concerns about the horse's gear and the "vision" or "flashback" of the earlier incident, occurred. This is so because of a number of matters: the appellant's plea of guilty, the opportunity that was given to

her at the inquiry to put forward that explanation; her experience, despite her tender years; the fact that this version is entirely inconsistent with her explanation at the inquiry that her drive raced rough and took her up the track; and the footage of the race as depicted, and as commented on by Mr Crowther.

19. We find that the appellant drove her horse up the track for reasons unknown. In the circumstances, the drive was culpable in the extreme. In determining the appellant's penalty, the stewards stated:

*"..... Miss Ford, you've had two recent charges under this rule, or one under this rule and one under 149(2) so on the 17th of January, and the inquiry for that one was conducted a couple of weeks later, that was at the Burnie Cup Race, Miss Ford was found guilty of a charge under 149(1) which is reasonable and permissible measures and was suspended for 6 race dates. On the 30th of January 2016 at Carrick Miss Ford was found guilty of a charge under 149(2) which is a lesser charge of a similar rule, and that was at Carrick and she was suspended for 4 race dates on that occasion. So one was on the 17th of January and the other was on the 30th of January a 6 meeting suspension for one and 4 meeting suspension for the other one."*

20. Having regard to the above matters, the stewards were more than entitled to impose a penalty of 12 race dates.
21. The appeal is dismissed.
22. Pursuant to s34 of *the Racing Regulation Act 2004*, 50% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay the Secretary of the Department 50% of the costs incurred in preparation of the transcript.
23. Pursuant to s.34(1B) the decision is to take effect immediately.