TASMANIAN RACING APPEAL BOARD

Appeal No 26 of 2015/16

Panel:	**Mrs Kate Brown**	**Appellant:**	**Miss Kristy Grant**
Appearances:	**Mr David Hayes on behalf of the appellant Mr Adrian Crowther on behalf of stewards**	**Rule:**	**Australian Harness Rule AR162(1)(g)**
Heard at:	**Launceston**	**Penalty:**	**A $200 fine**
Date:	**14 July 2016**	**Result:**	**Dismissed**

REASONS FOR DECISION

1. The appellant, Kristy Grant, was the driver of *One Mans Pass* which raced in Race 8 "*The Elderslie Horse Care Pace Division One*" over 2090 metres at the Tasmanian Pacing Club on 12 June 2016.

2. Stewards delayed the all-clear following the event to view the official replays of the start of the race in relation to the starting positions of *Iden Makin Tim*e, driven by Paul Williams, and *One Mans Pass,* driven by the appellant. It was determined that both drivers had started from the incorrect barrier positions but that as no advantage or disadvantage had been gained stewards declared all-clear.

3. The rule in question is AR162(1)(g) which provides that:

   A driver shall not – start from the wrong barrier position.

4. At the stewards' inquiry the appellant pleaded guilty and was fined $200.

5. She subsequently filed an appeal against both conviction and penalty, noting the following ground: "*I pleaded guilty to starting in wrong barrier position as my position was taken already. I am not guilty of the offence*."

6. At the hearing as the appellant sought that the TRAB set aside her previous plea of guilty she was asked to provide any evidence or submissions as to why that plea ought to be set aside before any other issue was considered.

7. As to that Mr Hayes on behalf of the appellant put forward the following:

   a. That Miss Grant had pleaded guilty to being in the wrong position "under cross examination";

   b. That she hadn't intended to plead guilty to the charge;

   c. That she relied on Mr Williams which put the appellant at a disadvantage;

   d. That the appellant, in entering that plea, did so "under duress from the Chairman";

e. That she was not represented by a senior reinsman at the inquiry which is "mostly" the case; and

f. That the transcript cleared Miss Grant of any wrong-doing.

8. Mr Crowther, on behalf of stewards, relied on the transcript, submitting that it was an accurate record of the inquiry and that there was no basis to set aside the guilty plea.

9. I had regard to the submissions, the transcript and the appellants' Offence Report in determining whether to set aside the plea. I was mindful of the need for the appellant to be accorded procedural fairness at both the inquiry and before this Board.

10. I determined not to set aside the plea. I did not accept the submissions of Mr Hayes referred to in 7 (a), (b), (c) and (f) above. It is clear from the transcript that:

a. Miss Grant was not being cross-examined by the stewards, but rather they were putting to her the basis upon which they were issuing the charge;

b. That the stewards had done all they ought to ensure the appellant understood the charge, and conversely there was no indication that she did not understand it, or was not acting intentionally when she stated "*Well guilty, I am in the wrong position*";

c. She entered her plea prior to Mr Williams, so to the extent that Mr Hayes was submitting her plea was reliant on his actions, that is not borne out by the evidence;

d. There is no evidence of duress; and

e. The evidence in the transcript does not clear the appellant "of any wrong doing".

11. The role of an advocate before a steward's inquiry or the tribunal can significantly affect the outcome. The *Racing Regulation Act 20*04 s.30(9) provides that "*A party to an appeal may be represented by an Australian legal practitioner or any other person*". The obligations of a legal practitioner when appearing for a client are defined by rules around professional conduct. No such rules apply to lay advocates, however, they should properly restrict their submissions to what they are instructed as to the facts by the person they are representing, and the objective evidence. This is particularly the case when making an allegation of misconduct against a steward, in this case that the stewards subjected the appellant to "duress". That is a serious allegation which should only be made when there is a proper basis. No such basis existed here, as was clear from the transcript.

12. As there was no basis to set aside the plea of guilty, there was no proper basis upon which to the appeal against conviction could proceed.

13. The parties were heard as to penalty. It is noted that although the Notice and Grounds of Appeal stated it was against both conviction and penalty, the grounds of appeal did not specifically address penalty.

14. As to penalty Mr Hayes submitted the following on behalf of the appellant:

    a. That although the appellant knew at the start of the race she was in the wrong position, she had nowhere to go;

    b. The starter or Chief Steward should have realised she was in the wrong position and acted to correct that;

    c. If she had pulled her horse out of position, the appellant would have been left behind;

    d. That a reprimand only was the standard penalty and ought to have been imposed in this case, being akin to similar offences committed by a Mr Walters and a Mr Hill recently

    e. That it did not affect the outcome of the race;

    f. That the offending was due to the actions of other drivers; and

    g. That the appellant always does the best for her horse.

15. When questioned directly as to her state of mind when lining up at the barrier, Miss Grant stated that she knew she was in the wrong position but believed she had pushed the other horses up the track enough so that she was still starting in the right position.

16. Of some concern is the fact that both the appellant and her advocate then seemed to make the submission that she did not know about the scratchings because they were late, and that **she believed that she was in the right position at the start on that basis**. That is completely in contradiction with the evidence from the stewards' inquiry, and the direct evidence from her noted above, and the balance of the submissions from her advocate. I do not accept that in any way the appellant's actions were influenced by a belief that there had been no scratchings.

17. Mr Crowther responded by submitting that:

    a. It was inarguable that the appellant was in the wrong position;

    b. The appellant could and should have alerted the starter so that the positions could be corrected prior to the start of the race;

    c. When imposing the $200 fine the stewards had regard to the fact that the appellant knew at the start she was in the wrong position, and that her record for offending at the start of the race is "appalling". Stewards had taken into account the greater culpability of Mr Williams in the course of events, but noted that he had no prior offences under this rule in his long history of driving;

    d. There were two scratchings, but they had been made known to the public on the Thursday and the appellant ought to have known about those, and had ample opportunity to factor those in; and

    e. The cases referred to by Mr Hayes where reprimands were imposed were significantly factually different.

18. While I accept that the appellant took her position from Mr Williams I do not accept that reliance was reasonable in all the circumstances, particularly bearing in mind her record. It was not in dispute that she had 18 prior offences in approximately three years, just for infringements at the start.

19. Miss Grant has previously been reprimanded and fined which has apparently done little to deter her from re-offending under this rule. While she is still classified as a novice, her record of offending indicates she has been driving since May 2013 and she is not entitled to rely heavily on inexperience as a factor on that basis. It is also concerning that she (through her advocate) placed blame on Mr Williams, the starter and the Chief Steward for her starting in the wrong position. That approach indicated that she was not taking responsibility for her actions, even at that stage in the appeal. There is a significant element of personal deterrence required in those circumstances in considering an appropriate penalty.

20. I note Mr Hayes' reference to the penalties imposed on the previous Sunday night but I also note Mr Crowther's submissions as to the experience of those drivers and their history with that particular rule and the different circumstances.

21. I note with respect to Mr Williams, that both he and Miss Grant were fined the same amount. I accept on the basis of the transcript Mr Williams comment that *"….in all the time of driving it's the first time I've ever done it*." I therefore accept that it was proper for stewards to impose the same penalty on Mr Williams as he was substantially responsible but has no history of breaching the rules in this regard. Miss Grant on the other hand had lesser responsibility but has a significant history of offending under this rule.

22. In all the circumstances I dismiss the appeal. The penalty imposed by the stewards was entirely appropriate in all the circumstances.

23. 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.