

TASMANIAN RACING APPEAL BOARD

Appeal No 28 of 2015/16

Panel:	Mr Tom Cox	Appellant:	Mr Kyle Maskiell
Adviser:	Mr Chris Taylor		
Appearances:	Mr Kevin Ring on behalf of the appellant Mr Cameron Day on behalf of the stewards	Rule:	Thoroughbred Rule AR 37A(3)
Heard at:	Launceston	Penalty:	A \$300 Fine
Date:	29 July 2016	Result:	Dismissed

REASONS FOR DECISION

1. The appellant was the rider of *Teddy's Fault* in Race 1 - "*Tas Bonus Three Year Old Maiden*" – over 1000m at Devonport on 9 July 2016. Following the race, the stewards conducted an inquiry into the appellant's use of his whip when pulling up his mount after the race. In the course of the inquiry the stewards issued a charge under AR137 (A) (3), which provides:

"The Stewards may penalise any rider who in a race, official trial, jump-out or trackwork, or elsewhere uses his whip in an excessive, unnecessary or improper manner."

2. The particulars of the charge were that the appellant "*struck Teddy's Fault with a whip forward of that horse's shoulder in an improper manner upon pulling up post-race.*" The appellant pleaded not guilty to the charge and stated:

"That I didn't make contact, simple as that".

3. He went on, through his advocate, to explain that the film did not depict whether he had struck the horse. When asked to explain why he could be seen in the footage raising his whip and bringing it down quickly, he said:

"I've got no idea to be honest, but I could imagine that I was trying to get the horse to turn around, you can tell when pulling up that it has run to the outside fence, it actually hit the fence, so obviously its bit of, you know, trying to turn around the other way and there is more the fact that it is just trying to get it to go forward and turn around. It's its first start and doesn't know what was going on."

4. The inference in Mr Maskiell's explanation was that he simply raised his hand and flicked the whip in front of the horse's eyes to control its movements.

5. The stewards clearly did not accept that contention; found that the appellant had struck the horse with the whip, proceeded to find the appellant in breach of the rule and imposed a fine of \$300.
6. Mr Ring on behalf of the appellant submitted that:
 - (a) The appellant was merely trying to turn the horse around and waved the whip near its head “with a flick” to get its attention.
 - (b) There were track staff nearby and not one of them reported anything to stewards, which is something that would have occurred if something unacceptable took place.
7. Mr Day on behalf of the stewards submitted that:
 - (a) The manner in which the appellant raised his whip and brought it down was consistent with the whip striking the horse.
 - (b) The 400 metre race patrol film clearly showed the appellant’s hand being raised above his head and being brought down with considerable force.
 - (c) The footage also depicted the horse react to the whip, the inference being that it was struck with it.
8. I do not accept the appellant’s submission that the film is inconclusive. It can be seen that the appellant raised his hand over his head while holding the whip and brought it down, with some force, over the horse’s head. The action was purposeful and, indeed, forceful and brought with it an immediate response from the horse. I also do not accept the appellant’s submission that he merely waved his whip in front of the horse.
9. Put simply, I am comfortably satisfied that the appellant struck the horse with his whip.
10. In all the circumstances I dismiss the appeal. The penalty imposed by the stewards was entirely appropriate in all the circumstances.
11. 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.