

TASMANIAN RACING APPEAL BOARD

Appeal Number 7 of 2016/17 – CHRISTIAN SALTER

Panel:	Mrs Kate Brown (Chair) Mr Rod Lester	Appellant:	Mr Christian Salter
Adviser:	Mr David Arnott		
Appearances:	The appellant in person Mr Adrian Crowther on behalf of the stewards	Rule:	Australian Harness Rule 168(1)(a)
Heard at:	Launceston	Date:	5 January 2017
Penalty:	A 3 race meeting suspension	Decision:	Varied to a 2 race meeting suspension

REASONS FOR DECISION

1. This is an appeal by Mr Christian Salter against a finding by the stewards that the manner in which he drove *Ark Breeze* in Race 8 at the Launceston Pacing Club meeting on 27 November 2016 was “careless” contrary to AR168(1)(a). Consequent to that finding the stewards suspended Mr Salter for three race dates.
2. The relevant rule states:

“A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards – careless:”
3. The stewards’ report states that:

“Stewards inquired into a series of incidents which occurred racing off the back straight on the final occasion and to the 400 metres. Driver Christian Salter (ARK BREEZE) was found guilty of a charge under R168(1)(a) for careless driving, the particulars being that he shifted up the track, off the back of KOTARE MAHDI, causing TIMELY SOVEREIGN(J Walters) to be tightened on to WHATELSUGOT (T Rattray). Shortly after ATTORNEY STRIDE (G Rattray) then contacted the wheel of TIMELY SOVEREIGN and raced rough. In determining penalty, Stewards considered Mr Salter’s not guilty plea and his record in recent times under careless driving rules. His licence to drive in races was suspended for three race dates commencing midnight tonight and expiring midnight 11 December 2016.”
4. On 30 November 2016 Mr Salter appealed the conviction and penalty and requested a stay of the penalty, which was granted.
5. The Board heard his appeal on 5 January 2017 and was assisted by the Harness Adviser Mr David Arnott who, whilst present to hear all the evidence and submissions, did not take part in the decision making process.
6. At the hearing the appellant contended that while he had gone up the track, his doing so had a far more limited effect than the stewards had found at the hearing. His

evidence was that there was a call and he alleviated the pressure straight away; that it was a minor shift, and at no stage were he and Mr Walters wheel to wheel. He stated that he did not cause Mr Walters to ease off nor to shift himself. He stated that he realised that he could not continue his move and tried to move back, but was not able to get fully back as to do so would have put Mr Hillier onto the pylons. He said he was “more than cautious” when he went out.

7. Mr Salter submitted that in finding him guilty and penalising him on the basis they had, the stewards had confused the consequences of his “minor shift” with the consequences of the careless driving of Mr Hillier in that race, of which Mr Hillier was also found guilty and charged.
8. Mr Crowther, on behalf of stewards, contends that Mr Salter moved out when he was not entitled to do so as he, Mr Walters and Mr Rattray were three wide at that point in the race. He further submitted that the shift resulted in Mr Walters and Mr Salter locking stays for 30-40meters which caused Mr Todd Rattray to drive his horse into the back of Mr Walters.
9. The race footage was viewed and the transcript of the hearing before the stewards also formed part of the evidence. It was clear that when Mr Salter attempted to shift to a position one off the peg line, that Mr Walters had Mr Gareth Rattray on his outside, and as it was described in the transcript, Mr Walters became the “meat in the sandwich”. It was accepted by the Board that in so doing, Mr Salter was careless and guilty of the charge.
10. The further particulars alleged by the stewards were in the Board’s view, less clear, as was the extent to which Mr Salter ought to be held liable for them. In the transcript (page 2 lines 6-15) the Chairman of stewards refers to two separate incidents, The first part is “... when Mr Salter, when racing on the peg line, attempted to shift to a position one off the peg line, at that stage to his outside was Mr Walters and there is also a further runner to the outside of Mr Walters. And there is a second incident, occurs shortly afterwards in which Mr Troy Hillier... attempts to shift off and ultimately does shift off the pegs and at that stage Mr Salter, racing to his outside, was in a chain reaction of events which has occurred involving Mr Walters and Mr Gareth Rattray’s drive.”
11. Later in the transcript that particularisation of the two incidents become muddled in the Board’s view, and it becomes uncertain what exactly the stewards are seeking to hold Mr Salter responsible for. This is no doubt because the actions of Mr Salter becomes part of a chain of events in which the actions of all the drivers around him play a part. However, the lack of clarity and the somewhat fluid nature of the particulars of the charge at both the hearing before the stewards and the appeal make it difficult for Mr Salter to respond to, and for this Board to determine whether the appeal is made out, beyond what is described above as the first part or incident.
12. The transcript contains admissions by Mr Salter that “I did start to come up the track there and realised I wasn’t able to cause then all of a sudden Mr Walters had one to his outside. As that happened I then eased the pressure and I’ve started to come back down again but then the horse in front of me sort of at the same time tired a bit and I so I couldn’t get right back down...”. Later on the Chairman says: “we’re stating that you’ve shifted Mr Walters out and tightened him because he’s got another runner to his outside and in advance of him. That’s what we are saying the carelessness is”. That evidence is supported by the other evidence given at the original hearing and appeal and is consistent with the race film.
13. The Board is satisfied that paragraph 12 above accurately describes both the particulars and the evidence.

14. What happened after Mr Salter shifted out and then attempted to shift back in again was not entirely clear from the film or the oral evidence. It is complicated by the apparent slowing of *Kotare Mahdi* in front. There is an assertion that Mr Walters locked wheels on the outside with Mr Rattray (p11 of the transcript) and also that Mr Walters locked stays with Mr Salter (p10). The Board cannot be sufficiently satisfied as to whether either Mr Rattray or Mr Salter locked wheels or stays with Mr Walters or for how long, although accepts it is possible interpretation of the race film that Mr Walters and Mr Salter did lock stays for a time.
15. The Board is not satisfied that there was cogent evidence of carelessness on the part of Mr Salter beyond the point at which he shifted onto Mr Walters when he, Mr Walters and Mr Rattray were three wide. It accepts that shift impacted the other drivers and created a situation in which Mr Hillier took certain steps which formed the basis of the charge he faced, but not that Mr Salter should be held responsible for that. Accordingly, while the Board upholds the guilty verdict of the stewards with respect to Mr Salter, it does so on the basis of the limited factual situation set out above, not the chain of event which flowed therefrom. Mr Salter's appeal against conviction therefore fails, but the factual finding regarding the particulars of the charge justifies a review of the penalty imposed.
16. In imposing a penalty on Mr Salter the Stewards took into account Mr Salter's history, particularly his recent history including two suspensions for careless driving; his plea of not guilty and the level of culpability. They imposed a three race date suspension, which was subsequently stayed pending appeal.
17. In reviewing the penalty imposed the Board does not accept the stewards' submission that the culpability demonstrated by the appellant was in the mid-range, but consider that it is more properly characterised as being low-range. Mr Salter's submission that his movement was minimal and that he attempted to rectify the situation as soon as he became aware of Mr Rattray on the outside of Mr Walters, but was unable to do so without interfering with Mr Hillier is accepted.
18. The description of Mr Slaters' record as "very poor" is certainly accurate in terms of his recent record, but does not accurately describe his 25 years of involvement with the harness industry in one role or another. However, he certainly needs to address the manner of his driving and recognise that continued offending will inevitably attract more and more significant penalties by way of deterrence both of him and other participants.
19. With respect to Mr Salter's perception that he was being penalised for pleading not guilty, it is worth noting the distinction between a discount for a plea of guilty and penalising for pleading not guilty. The former is appropriate in certain situations, the latter is never appropriate, as all persons facing charges in any jurisdiction are entitled to have the case against them proved. The proper approach is to consider what penalty would be otherwise appropriate and then discount to take into account the benefit to the prosecuting authority of not being put to proof. That might include the costs saved by not requiring a witness to travel to give evidence and be cross examined, time and costs saved by not requiring expert witnesses, the time saved where a party will inevitably be found guilty in the face of overwhelming evidence, and whether the guilty plea is genuine evidence of remorse.
20. Taking into account the submissions made by the parties and all the material before the Board we have determined that the penalty ought to be varied to a two race meeting suspension.

21. In accordance with s.34(1A) of the Act, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A) of the Act.