

TASMANIAN RACING APPEAL BOARD

Appeal No 10 of 2013/14

Panel:	Mr R Foon (Chair)	Appellant:	Mr P Dornauf
Adviser:	Mr D Arnott		
Appearances:	The appellant in person Mr A Crowther on behalf of stewards	Rule:	Australian Harness Rule AR156(2)
Heard at:	Launceston	Penalty:	\$200 Fine
Date:	4 April 2014	Result:	Penalty varied to a reprimand

REASONS FOR DECISION

1. The appellant, Mr Dornauf, was the driver of *Agent Lizbon* which raced in race 3 over 2200 metres at the Launceston Pacing Club on 2 March 2014. Following an inquiry into his drive the stewards reported that:

“Driver Peter Dornauf (AGENT LIZBON) was found guilty of a charge under AR 156(2) in that he used his whip with a free hand on more than six occasions prior to the 200 metres. Mr Dornauf was subsequently fined the sum of \$200.”

2. The rule relevantly provides that:

“A driver shall hold a rein in each hand at all times unless he or she is adjusting approved gear or driving in the final 200 metres of a race.”

3. Mr Dornauf has appealed his penalty but not the conviction.

4. The sole ground of the appeal is that the imposition of the fine of \$200 was manifestly excessive.

5. The Board has considered the evidence given at the stewards’ inquiry, the submissions during the appeal and the footage of the race. As is frequently the case the stewards, in making a decision as to penalty, know far more than about the appellant than is disclosed in the transcript. Therefore pursuant to s.30(6B) of the *Racing Regulation Act 2004* (the Act) I allowed the appellant to advise the Board of some of his personal circumstances. They are not relevant to the disposition of the appeal.

6. The Board has had regard to the records of other drivers who have also recently been dealt with under the rule and which were provided to the Board.

7. The reason for considering those records was Mr Dornauf’s submission that in light of the penalties imposed on those drivers the penalty imposed on him was excessive.

8. The stewards’ submissions were that the penalty was in accordance with the standard penalties applied by stewards in relation to this charge. In their submissions they referred to the three month rule whereby a first offence under this rule, within a three month period, will result in a reprimand if there are two or less instances of whipping, whereas if there are three or more the

penalty would ordinarily be \$200 and a subsequent offence \$400 and further offence a suspension. They submitted the rule is consistently applied and provided evidence to show it had been applied to drivers within a proximate time.

9. What was described by the stewards is their own guide. In the only other previous decision by the Tasmanian Racing Appeal Board concerning penalty for this type of offence (Ratray Appeal 11-2009/10) there was reference to a tariff set by the National Chairmen of Stewards. The Board was advised it is no longer applied. That is, there are no longer mandatory minimum penalties.

10. As to determining the penalty the stewards indicated that they took into account the appellant's good record, however, it is apparent that they applied the penalty that would have been applied to any driver who had whipped his horse three times or more and simply not offended under that rule within a three month period.

11. The three month rule and guidelines are clearly of advantage to the stewards. It creates certainty and effectively wipes the slate clean for drivers who frequently offend. The consequence of that is that some drivers who frequently offend under the rule will receive a reprimand as a consequence of not having committed the offence within three months. It is apparent that some of the other drivers referred to in the course of submissions received the benefit of having their slate wiped clean, and received penalties the same or less than the appellant.

12. Mr Dornauf's record shows that his last offence (and not a whip offence) was in August 2012. The offence prior to that was in October 2009 and the offence prior to that in June 2003.

13. His record discloses the most recent offence with reference to a whip at all, and not a similar offence by any means, was a reprimand in April 1996.

14. Whilst the Board makes no criticism of the general penalty rules applied by the stewards, in this case its rigid application has led to a penalty which it ought not have imposed having regard to the objective nature of the offence and the appellant's extremely good record over a number of years. In the Board's view the lack of a relevant offence for over 18 years should have led the stewards to impose a reprimand, notwithstanding the fact the horse was whipped more than twice.

15. Therefore the appeal is upheld. In place of the fine of \$200 the appellant is reprimanded.

16. Pursuant to s34(2)(e) of the Act, the deposit is to be refunded.