

TASMANIAN RACING APPEAL BOARD

Appeal Number 10 of 2016/17 – TIM YOLE

Panel:	Mr Tom Cox (Chair)	Appellant:	Mr Tim Yole
Appearances:	Mr Leigh Dornauf on behalf of the appellant Mr Adrian Crowther on behalf of the stewards	Rule:	Australian Harness Rule 149(1)
Heard at:	Launceston	Date:	25 January 2017
Penalty:	A 6 race meeting suspension	Decision:	Varied to a 4 race meeting suspension

REASONS FOR DECISION

1. The appellant Mr Tim Yole was the driver of *Union Force* which raced in Race 4, the Gowans Motor Group Stakes over 2500, at the Burnie Harness Racing Club meeting on 15 January 2017. Following an inquiry into his drive the stewards found Mr Yole 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 particulars of the charge were outlined in the stewards’ report as follows:

“Stewards inquired into the tactics adopted on UNION FORCE and after taking evidence from drivers Tim Yole (UNION FORCE) and Todd Rattray (BYMARJAC) as to the reasons for UNION FORCE racing up on level terms with the leader throughout the race, Mr Yole was charged under the provisions of AHRR149(1). The particulars of the charge were that, as the driver of UNION FORCE, after racing three wide early to get up outside the leader he then raced up on level terms with BYMARJAC over the extended distance of 2500 metres and at no stage gave his drive any respite when the reasonable and permissible opportunity was clearly present to do so. Stewards further stated that his actions in giving his horse no respite were a major contributing factor in his drive tiring from the entrance to the back straight on the final occasion to finish seventh and beaten by 22.5 metres, and that his actions failed to give his drive the full opportunity to win or obtain the best possible placing in the race. Mr Yole’s licence to drive in races was suspended for six race dates, commencing midnight tonight and expiring at midnight on 5 February 2017. Mr Yole was advised of his rights of appeal. UNION FORCE underwent a post-race veterinary examination which revealed no apparent abnormalities.”

3. The race film shows that after the start of the race *Bymarjac* went straight to the lead on the rails. *Union Force*, driven by Mr Yole, progressed forward, three wide, before sitting outside the leader. As the race progressed Mr Yole’s drive sat on level terms with *Bymarjac*. *Union Force* remained, more or less, directly to the outside of *Bymarjac* for approximately two laps. Over the concluding stages *Union Force* can be seen to tire and move back through the field before finishing seventh, some 22.5 metres from the leader.

4. At the hearing Mr Dornauf, on behalf of the appellant, contended:
 - (a) That the appellant was given instructions by the trainer, Mr Ben Yole, to move forward early in the race and put the horse into the race.
 - (b) Those instructions were conveyed to the stewards and the stewards were content with those tactics "*if circumstances permitted*", which they did.
 - (c) The track at Burnie is tight and keeping a position at the front of the race is preferable.
 - (d) There was no move by any driver until the concluding stages of the race. Accordingly, an opportunity did not present for Mr Yole to take cover behind another horse.
 - (e) Once Mr Yole raced forward he controlled the tempo of the race, which was not overly fast.
 - (f) The horse did not need to be given respite because of the tempo. Mr Yole did not strike the horse once he had raced up on level terms.
 - (g) *Union Force* simply did not perform in the race and has now been given a spell.
 - (h) The final margin, 22.5metres, was not large, and another horse, *Dodgermemate*, made up over 60 metres throughout the race, indicating that the tempo was not fast.

5. Mr Crowther, on behalf of the stewards, contended that:
 - (a) There was no dispute with the tactics employed by Mr Yole in moving forward early and putting *Union Force* into the race.
 - (b) However, once Mr Yole had raced up on level terms with the leader he controlled the tempo of the race and failed to give his drive any respite.
 - (c) While Mr Yole was sitting in the breeze, immediately outside the leader, he should have sat back in that position rather than continue to race up on level terms.
 - (d) Mr Yole could and should have sat 1/2 a length off the leader while in the outside position.
 - (e) Mr Yole remained on level terms for in excess of 2,000 metres.
 - (f) The fact that Mr Yole sat in the position he did, for such a period of time, was the reason why *Union Force* tired and moved back through the field over the concluding stages of the race.

6. 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.”

7. The Board has considered the evidence given at the stewards’ inquiry, the submissions during the appeal and the footage of the race. The Board finds that despite Mr Yole being given tactics to move forward early in the race, and the fact that those tactics were approved by the stewards, Mr Yole’s conduct over the course of the middle part of the race was culpable for the following reasons:
 - (a) Mr Yole was entitled to move up early in the race and was entitled to sit off the leader, but he was not entitled to race up on level terms for a period of in excess of 2,000 metres when the option was clearly present for him to sit back in the breeze.
 - (b) Mr Yole should have and could have sat back in the breeze and not applied pressure to the leader.
 - (c) Mr Yole, by his own admission, controlled the tempo of the race.
 - (d) The application of that pressure over such an extended period of time clearly resulted in the horse tiring and finishing as it did some 22.5 metres from the lead.
8. Mr Yole’s culpability is to be tempered by the instructions he was given. However, he did not apply those instructions correctly. He could have sat back in the breeze, given his drive some respite and then put his drive further into the race over the concluding stages. The Board does not accept that the horse simply did not perform.
9. There is a clear onus upon the driver to “obtain the best possible placing.” Accordingly, the stewards contend that six race dates should be the minimum penalty for a breach of this rule.
10. The Board does not consider that there should be any particular minimum penalty for a breach of this rule. Every case must turn upon its facts. In this case, the Board has taken into account that this is the appellant’s first offence in relation to this rule and his culpability is relatively modest in light of the tactics he was given. As noted above, Burnie is a tight track and the Board accepts that because of this there is a

need to be close to the front of the field. Having regard to these matters, the penalty will be reduced to four race dates.

11. Accordingly, the appeal is dismissed and the penalty varied from four race dates.
12. In accordance with s.34 of the Act, 25% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 25% of the cost incurred in the preparation of the transcript.