

TASMANIAN RACING APPEAL BOARD

Appeal Number 11 of 2016/17 - TIM YOLE

Panel:	Mr Tom Cox (Chair)	Appellant:	Mr Tim Yole
Appearances:	Mr Ben Yole on behalf of the appellant Mr Adrian Crowther on behalf of the stewards	Rule:	Australian Harness Rule 149(1)
Heard at:	Launceston	Date:	20 March 2017
Penalty:	An 8 race meeting suspension	Decision:	Dismissed

REASONS FOR DECISION

1. The appellant Mr Tim Yole was the driver of *Union Force* which raced in Race 3, the SNTA/TPCG Junior Development Programs Pace over 2090 metres at the Tasmanian Pacing Club meeting on 24 February 2017. Following an inquiry into his drive, the stewards found Mr Yole had breached AHRR149(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:

"UNION FORCE tired after racing three wide in the early stages to finish in eleventh place beaten 134 metres. A post-race veterinary examination revealed no apparent abnormalities. After taking evidence from drivers Tim Yole (UNION FORCE), Paul Williams (METRO DIGBY) and Braden Howlett (WASONIE SNAKE), Mr Yole was found guilty of a charge under AHRR149(1) "a driver shall take all reasonable and permissible measures during the running of a race to ensure their drive is given full opportunity to win or obtain the best possible placing." The particulars of the charge were that Mr Yole progressed forward from his wide draw and persisted in racing four wide and later three wide around the first turn, and then continued to challenge for the position outside the leader down the back straight until after the start of the last mile which the Stewards stated was the major contributing factor in his horse then tiring to finish eleventh (11th), beaten 134 metres, and further stated his actions did not give UNION FORCE the full opportunity to win or obtain the best possible placing and were not reasonable or permissible given the established racing pattern and exposed form of both his own drive and the runners drawn to his inside. After hearing submissions on penalty Mr Yole's licence to drive in races was suspended for eight (8) race dates, commencing midnight tonight and expiring at midnight on 23 March 2017.."

3. The race film shows that Mr Yole, on *Union Force*, started on the outside of the track and, as the race commenced, pushed his drive forward with at least four runners to his inside. It can be seen that a number of drivers expressed an intention to move forward early in the race. As a result Mr Yole found himself four wide over at least the first 350 metres. By that time, Mr Rattray, who had been in the one out position, had retreated; *Metro Digby*, driven by Mr Paul Williams, was in the lead on the pegs; Mr Braden Howlett, driving *Wasonie Snake*, was close behind on Mr Williams'

shoulder, and Mr Yole was outside in the three wide position. From this point in the race there is a dispute between the parties as to what exactly transpired.

4. The stewards contend that Mr Yole persisted in an extended challenge for the lead in circumstances where:
 - (a) He had already traversed a significant portion of the early part of the race in the four wide position;
 - (b) The early speed of the race was fast;
 - (c) Mr Williams had indicated that he would not give up the lead and, moreover, Mr Howlett had not indicated to Mr Yole that he intended to retreat from his position outside the leader.
 - (d) Mr Yole's extended attack on the lead, in the three wide position, persisted for approximately 120 metres.
5. Having regard to these matters, the Stewards contend that the drive was culpable.
6. By contrast, the appellant says that at that point in the race (once he had moved into the three wide position) he persisted for only 50 metres in his attack before restraining his drive. The following further circumstances were submitted:
 - (a) He did not see Mr Williams indicate that he did not intend to give up the lead;
 - (b) He was optimistic that Mr Howlett would surrender his position because Mr Howlett had pulled back slightly indicating that he might;
 - (c) Mr Howlett, if he did not intend to relinquish his position, should have advised Mr Yole of that fact;
 - (d) Mr Yole's tactics were to look to take the lead early.
 - (e) *Union Force* performs better when at the front of the race and performs poorly if required to move forward from the back of the field.
7. The appellant contends, having regard to these matters, that his drive was not culpable.
8. 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."

9. I have considered the video footage, the transcript of the stewards' inquiry and heard from both parties. To the extent that there is any factual dispute between the parties, I find that: Mr Yole was not aware that Mr Williams had indicated to Mr Howlett or anyone else for that matter that he did not intend to give up the lead; Mr Yole persisted with his attack for at least 100 metres in the three wide position and after his drive had travelled a significant distance in the four wide position; Mr Howlett did not give any indication to Mr Yole as to whether Mr Howlett intended to give up his position outside the leader; and that the lead time for the race was fast, and Mr Yole must have been aware of that fact and the fact that his horse would have undertaken a significant amount of work while in the four wide position before attacking the leaders.
10. I also accept that Mr Yole had been given tactics to move forward early in the race, and that those tactics were approved by the stewards, subject to the proviso that Mr Yole was not to move forward regardless of the circumstances.
11. Ultimately I find that Mr Yole's conduct over the 100 or so metres that he persisted with his attack from the three wide position on Mr Howlett and Mr Williams was culpable for the following reasons. First, the early speed of the race and the fact that Mr Yole had traversed such a lengthy period in the four wide position meant that he should have been acutely aware of the risk that his drive might suffer from a persistent attack from the three wide position. Secondly, despite the proposed tactics, at the start of the race *Union Force* was placed in a difficult position to move forward and vie for the lead. No less than four horses, all to his inside, had shown an intention to move forward to take the lead. Thirdly, Mr Yole could not assume that Mr Howlett would give up his position to the outside of Mr Williams. There was no need for Mr Howlett to do so and, although it may have been courteous to Mr Yole for Mr Howlett to advise him accordingly, he was not required to do so. This fact may have contributed to the difficult position in which Mr Yole found himself, but it is not, in my opinion, an excuse. Finally, Mr Yole's drive ultimately finished some 134 metres behind the winner. This clearly suggests that by the time Mr Yole relinquished his attack on the lead his drive was spent, or at least all but spent.
12. In the circumstances, the appeal is dismissed. I am not minded to vary the penalty imposed by the stewards. Although Mr Howlett may have placed Mr Yole in a more difficult position than he should otherwise have been, Mr Yole's drive was culpable and occurred on the back of a recent suspension for a breach of the same rule, in similar circumstances, on the same horse.
13. In accordance with s.34 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.