

TASMANIAN RACING APPEAL BOARD

Appeal No 13 of 2013/14

Panel:	Mr R Foon (Chair)	Appellant:	Ms H McCarthy
Adviser:	Mr C Taylor		
Appearances:	Mr P Keays on behalf of the appellant Mr A O'Connell on behalf of stewards	Rule:	Thoroughbred Rule AR137(a)
Heard at:	Launceston	Penalty:	A 2 race date suspension
Date:	6 May 2014	Result:	Dismissed

REASONS FOR DECISION

1. The appellant was the rider of *The Stockman* in Race 1 at the Tasmanian Turf Club meeting held on 16 April 2014. At approximately the 200 metre mark she allowed her mount to shift inwards when insufficiently clear of *Ordain*, ridden by Jason Lyon, resulting in that mare having to be checked.
2. As a result of the incident an inquiry was held before the stewards and the appellant was convicted of careless riding in breach of AR137(a).
3. AR137(a) provides that:
“Any rider may be penalised if, in the opinion of the Stewards - he is guilty of careless, reckless, improper, incompetent or foul riding.”
4. The appellant was convicted in relation to an incident that occurred at about the 200m mark when she shifted in on *The Stockman*. The incident resulted in *Ordain* being checked. The appellant has appealed against her conviction and the penalty imposed.
5. The appeal against the conviction is somewhat unusual in that the appellant pled guilty to the charge.
6. The Appeal Board sat with an adviser, Mr Taylor, which is provided for under the Act under s.23(4)(a). The role of an adviser in hearing appeals before the Board is not dealt with at all in the legislation. The adviser is not however a member of the Board. The adviser has no role as an advocate, nor do they have any role in the decision making process. The adviser was present to hear all the evidence and the submissions and the parties were made aware of the adviser's role.
7. As to the issue of the conviction and the appellant's plea of guilty there is nothing in the submissions for the appellant which would lead the Board to the conclusion that her plea ought be set aside.
8. It is the Board's view that the plea of guilty was the more than appropriate plea and that changing her plea would have been futile.

9. There is nothing put on behalf of the appellant that would be sufficient in the Board's view to allow a change of plea. The appellant was asked whether she required representation. The charge was put to her as follows:

CHAIRMAN:It is Australian Rule AR137(a) which states: "*Any rider may be penalised if in the opinion of the stewards he or she is guilty of careless, reckless, improper, incompetent or foul riding.*" The particulars of the charge tonight is that you were the rider in Race 1 of *The Stockman* that passing the 200 metres you permitted that gelding to shift in when insufficiently clear of Jason Lyon's mount *Ordain* resulting in that mare having to be checked and losing its rightful position. Having heard the particulars of the charge first of all do you understand the rule?

H McCARTHY: Yep.

CHAIRMAN: Okay and you understand where we say the incident took place passing the 200?

H McCARTHY: Yep

CHAIRMAN: Do you wish to plead to the charge? Guilty, not guilty or reserve your plea?

H McCARTHY: Ah it happened so yeah guilty.

10. In hindsight the stewards may have been more particular in specifying which of careless, reckless, improper, incompetent or foul riding they were alleging. I do not need to decide on whether that is a requirement conclusively because in this case there was no prejudice to the appellant. Of the five basis under AR137(a) careless is the least culpable of the five. It must have been clear in being charged that the appellant was facing at least one of those.
11. Mr Keays, on behalf of the appellant, submitted that her riding was not careless as her actions need to be seen in light of her inexperience and further that Mr Lyons had not called out to her so that she was aware of his presence.
12. For the stewards, Mr O'Connell submitted that it was open for the stewards to find the appellant guilty. He submitted the appellant's decision to shift in and to use the whip was, in the circumstances, a poor one. It was a textbook case of careless riding. The appellant had a clear duty to take care irrespective of whether or not Mr Lyons called out.
13. The appellant's appeal against her conviction is dismissed. Having reviewed the race footage I agree with the steward's submission that it is indeed a textbook case of careless riding. There was more than sufficient evidence to appropriately found the conviction and that the appellant was right to have pled guilty. Carelessness is an objective test. The rules of racing do not apply differently having regard to the experience of the rider.
14. As to penalty Mr Keays submitted that having regard to another incident that occurred in the same race and the relative inexperience of the appellant that the penalty imposed was unjust, unfair or excessive. The other incident referred to in submissions was contained in the race footage. I agree with the stewards that the incidents are distinguishable.
15. The stewards found the incident subject to appeal to be in the mid to high range of carelessness. I agree with that assessment. There was no reason at all for the appellant to shift in on her mount. She should not have done so. The interference is in the mid-range and would have been high had the other jockey not taken action. Indeed my view of the race footage is that but for Mr Lyons' anticipation there would have been a collision.
16. Notwithstanding the appellant's inexperience and plea of guilty the incident justified the penalty imposed. I am satisfied the penalty imposed is consistent with the guidelines followed by the stewards and that they have not failed to take into account the relevant factors. Indeed, bearing in mind the level of danger attendant upon her failure a harsher penalty could have

been imposed notwithstanding her inexperience due to the recent penalty under the same rule and taking into account her guilty plea.

17. It has not been demonstrated that the penalty was unjust, unfair or excessive. The appeal as to penalty is dismissed.
18. I order that the appellant forfeit 50% of her deposit pursuant to Section 34(2)(a) of the *Racing Regulation Act 2004* and pay 50% of the costs of the transcript in accordance with section 34(4B)(a) of the Act.
19. Pursuant to s.34(1)(B) the decision is to take effect immediately.

DATED: 12 May 2014