

TASMANIAN RACING APPEAL BOARD

Appeal No 2 of 2015/16

Panel:	Mr Tom Cox (Chair)	Appellant:	Mr Dylan Ford
Appearances:	The appellant in person Mr Michael Hoyle on behalf of stewards	Rule:	Australian Harness Rule AR162(1)(www)
Heard at:	Hobart	Penalty:	A \$400 fine
Date:	21 October 2015	Result:	Upheld - penalty varied to a \$100 fine

REASONS FOR DECISION

1. The appellant was the driver of *Smiling Force* in Race 3 – The Saloon in Sight Pace - over 2090 metres in Hobart on 13 September 2015. As the field entered the home straight for the winning post the appellant's drive was on the pegs and leading with Mr Mark Yole on *Sign of Oro* trailing directly behind and Mr Tim Yole on *Wealthy Warrior* gaining ground to the appellant's outside. At this point in the race the appellant's drive shifted up the track, out of its running line, and presented Mr Mark Yole, behind, with a run on the inside on the pegs to the winning post. The three drivers raced down the track to the winning post. Mr Mark Yole's drive won the race by a nose from the appellant's drive with Mr Tim Yole's drive a head behind.
2. Following the race stewards conducted an inquiry in which the appellant pleaded guilty to shifting ground to the advantage of another runner contrary to AR162(1)(WWW), which provides:

"A driver shall not – once the horses have entered the home straight on the final occasion, allow his or her horse to shift ground in a manner which impedes, hinders or advantages another runner."
3. The appellant was fined the sum of \$400. In determining penalty the stewards took into account the appellant's "*lack of effort in maintaining a straight course*" and the fact that Mr Mark Yole's drive had won the race on account of gaining the advantage of the running line which had been vacated by the appellant's drive.
4. The appellant contends that the fine is excessive in all the circumstances.
5. He submitted to this Board that:
 - (a) after his drive traversed the turn for home it shifted up the track on its own accord and without any direction from him;

- (b) at that point the appellant observed that Mr Tim Yole, to his outside, had “*all the momentum*” and was likely to win the race if the appellant took any action to correct his drive’s line;
 - (c) he did not consider that Mr Mark Yole’s drive, which was directly behind him, posed as great a threat as the other horse until he saw Mr Mark Yole “*late in the race*” at which time he attempted to shift back down the track;
 - (d) the stewards ordinarily impose a reprimand for drivers in breach of this rule in the event the driver has not been in breach of the rule for a period of three months; the appellant’s last breach being in November 2014;
 - (e) the tariff for a breach of this rule is ordinarily in the range of a reprimand to a fine of \$100.
6. The stewards maintained before this Board the matters which they took into account in imposing the original penalty and further submitted that there are matters of safety and integrity that also informed the penalty imposed. I accept that the rule is designed to protect the safety of drivers and protect the integrity of the industry, especially in circumstances where a conscious decision is made by a driver to advantage another runner. However, in circumstances where a driver unintentionally advantages another runner by shifting ground, the risk of undermining the integrity of the industry lessens. The appellant’s conduct in allowing his drive to shift up the track did not present any risk of injury to any runner or driver. The appellant was clearly motivated to win the race. There is no suggestion that the end result - Mr Mark Yole’s drive winning the race - was intended by the appellant.
7. The appellant conceded that he had allowed his drive to shift up the track and consciously decided not to correct it on account of the threat posed by Mr Tim Yole’s drive. I accept that if the appellant had taken action to correct his drive his prospects of winning the race would diminish and that Mr Tim Yole’s prospects would increase. I find that the course taken by the appellant was explicable, although not excusable, for this reason.
8. The appellant’s conduct delivered to Mr Mark Yole a chance to win the race that he should not have received. However, this consideration should be tempered by the appellant’s plea of guilty and the reasons for his conduct, noted above.
9. Finally, from a review of the penalties imposed for a breach of AR162(1)(www) over the period 17 October 2010 to date, it appears that, in the main, the stewards have either imposed a reprimand or a fine in the order of \$100 or \$200 for drivers who “shift ground” in the home straight. There is one instance in which a fine of \$400 was imposed (Zeke Slater, 4/2/2013). Although this Board has no information in relation to the circumstances of that case, it is notable that Mr Slater was charged with hindering another runner rather than advantaging it.
10. In the circumstances, the appeal will be upheld and the appellant will be fined the sum of \$100.
11. In accordance with Section 34(2) of the *Racing Regulation Act 2004* his deposit will be returned to him.