

## TASMANIAN RACING APPEAL BOARD

### Appeal No 4 of 2013/14

<b>Panel:</b>	<b>Mr R Foon (Chairman) Mr G Elliott (Member)</b>	<b>Appellant:</b>	<b>Mr D Ganderton</b>
<b>Adviser:</b>	<b>Mr C Taylor</b>		
<b>Appearances:</b>	<b>The appellant in person Mr A O'Connell on behalf of the stewards</b>	<b>Rule:</b>	<b>Thoroughbred Rule AR137(a)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>A 1 race meeting suspension</b>
<b>Date:</b>	<b>30 January 2014</b>	<b>Result:</b>	<b>Upheld</b>

### REASONS FOR DECISION

1. The appellant rode *Shiralee* in Race 1 at the Tasmanian Racing Club meeting held on 19 January 2014.
2. The stewards' race day report from that meeting stated that: "*Jockey Daniel Ganderton, the rider of Shiralee was found guilty of a charge under AR 137(a) careless riding in that near the 200 metres he permitted his mount to shift out when insufficiently clear of Cookie Jar resulting in that gelding having to be checked. Stewards deemed the interference to be of a low level. Jockey Ganderton's licence to ride in races was suspended for one (1) Tasmanian race meeting to commence at midnight on Wednesday, 22 January 2014 and to expire at midnight on Wednesday 29 January 2014. In arriving at penalty, Stewards took into consideration the low level of interference and Daniel Ganderton's recent record in relation to this rule.*"
3. The appellant has appealed that conviction and the penalty imposed.
4. The rule in question is Rule 137(a) of the Australian Rules of Thoroughbred Racing which states:  
  
*"Any rider may be penalised if, in the opinion of the Stewards,*  
  
*(a) He is guilty of careless, reckless, improper, incompetent or foul riding."*
5. At this hearing the Board sat with an advisor Mr C Taylor which is provided for under the *Racing Regulation Act 2004* s.23(4A). The role of an advisor in hearing appeals before the Board is not dealt with at all in the legislation. The advisor is not, however, a member of the Board. The advisor has no role as an advocate, nor do they have any role in the decision making process. The advisor was present to hear all the evidence and the submissions and the parties were made aware of the advisor's role.
6. The appellant's position can be summarised as follows:

- (a) That his riding was not careless because either he was two or more lengths clear of *Cookie Jar* when he crossed and even if he was not two lengths ahead that it was not unsafe or careless;
- and
- (b) that the rider of *Cookie Jar* should not have checked and in any event should have moved over as she was on the outside.
7. The stewards maintained their position at the inquiry. Further they submitted that the onus should always be on the rider crossing over to ensure that there is adequate distance irrespective of what the other rider should or should not do.
8. We had the opportunity to view the varying angles of the footage of the incident. If there was a check at all it was extremely slight. It is clearly apparent that *Cookie Jar's* race was done and it had no prospects of a place whereas *Shiralee* went on to win the race.
9. It is apparent also that the rider of *Cookie Jar* had in fact allowed her mount to shift in, when insufficiently clear of another horse, immediately prior to the incident which is the subject of this appeal.
10. The evidence before the stewards' inquiry of the distance when the horses crossed was varied. The footage is also inconclusive. Although shown as *inaudible* on the transcript it is agreed that Mr Brunton, master of apprentice jockey, Rhonda Mangan, on *Cookie Jar*, indicated that he believed *Shiralee* was two lengths in front when it crossed over. On page 18 at line 25 the Chairman himself refers to the jockey of *Cookie Jar* saying "*a length and three quarters.*" Mr Ganderton on page 18 at line 40 says "*I'm probably a length and a half, a stride after I'm probably two and half lengths, three lengths. Like my horse obviously picks up quickly and gets away from it.*"
11. The issue is in essence whether or not the appellant shifted on *Shiralee* when insufficiently clear.
12. The two length rule is a rule of thumb applied by both the stewards and jockeys. It is conceded that whilst it is a rule of thumb, albeit a good one, that it is possible that a rider may cross over in some circumstances at less distance without it constituting careless riding.
13. Having regard to the evidence given before the stewards and viewing the footage, we cannot be satisfied that the appellant breached that rule of thumb. Further, in the event that he crossed over and the distance was slightly less than two lengths, we are not satisfied that his actions were careless in the circumstances.
14. As a consequence of that finding we do not have to determine whether or not the appellant is entitled to assume that the rider he is to pass will race competently or if the rider did so in this case.
15. The appeal against conviction is upheld. The stewards' decision of 19 January 2014 is quashed.
16. We order that the appellant have his deposit returned to him pursuant to Section 34(2) of the Act. The appeal having been successful we make no order as to transcription costs.