

TASMANIAN RACING APPEAL BOARD

Appeal Nos 5, 6 & 7 of 2013/14

Panel:	Mr T Cox (Chairman) Ms K Cuthbertson (Deputy Chair) Mr Rohan Foon (Deputy Chair)	Appellants:	(1) Ms R Mangan (2) Mr J Luttrell (3) Mr P Geard
Adviser:	Mr C Taylor		
Appearances:	Mr Ring on behalf of Ms Mangan Mr Richardson on behalf of Messrs Luttrell and Geard Mr McKee on behalf of the stewards	Rule:	Thoroughbred Rules (1) AR135(b) (2) AR135(c) (3) AR135 (c)
Heard at:	Launceston	Penalty:	(1) A 5 race meeting suspension (2) A \$3,000 fine (3) A \$10,000 fine
Hearing Date:	15 April 2014	Result:	(1) Upheld (2) Upheld (3) Upheld

REASONS FOR DECISION

1. Over no less than five days between 31 December 2013 and 6 February 2014 stewards conducted an inquiry into the racing tactics employed on *Pengalas Gee Gee* which competed in Race 6 – R.W. Trinder Quality Handicap - at the Tasmanian Turf Club race meeting on 31 December 2013. Ms Rhonda Mangan was the rider of *Pengalas Gee Gee* during that race. The horse was trained by Mr John Luttrell and owned by Mr Paul Geard. Before the race Ms Mangan was instructed by Mr Luttrell to go forward and by Mr Geard to go forward early and push for the lead. That is what she did.
2. The efficacy of that instruction, and the result it had on the opportunity given to *Pengalas Gee Gee*, has been questioned by the stewards. In their opinion, the instruction and the manner in which Ms Mangan rode the horse amounted to breaches of the rules of racing. Following the lengthy inquiry, the stewards imposed a five week suspension on Ms Mangan for failing to give the horse the best opportunity to win or obtain the best possible place contrary to AR135(b). Mr Luttrell and Mr Geard were fined \$3,000 and \$10,000 respectively for their role in being a party to Ms Mangan breaching AR135(b), contrary to AR135(c).
3. Those rules provide as follows:
 - (a) The particulars of the charge involving Ms Mangan, as outlined in the stewards' inquiry, were as follows:

".....that after being slow to begin you took up a forward position in the early stage of the race. The particular one being that between the twelve hundred metres to the nine hundred metres you have permitted Pengalas Gee Gee to race forward to the outside of The Cleaner and applied pressure to that gelding and you failed to take measures to restrain your mount during that section of the race. Particular two - and from the nine hundred metres to the six (hundred) metres you have ridden Pengalas Gee Gee forward in advance of The Cleaner in an attempt to cross that gelding which in the opinion of the stewards was unreasonable given Pengalas Gee Gee was allowed to stride without restraint between the twelve hundred metres and nine hundred metres. In the opinion of the stewards your actions prevent Pengalas Gee Gee from obtaining the best possible place in the field."

- (b) The particulars of the charge involving Mr Geard, as outlined in the stewards' inquiry, were as follows:

"You as the managing owner of Pengalas Gee Gee issued explicit instructions, namely being to lead on the gelding prior to the RW Trinder Quality Handicap, which was run at the TTC meeting on the 31st of December 2013". Those instructions which were in the opinion of the stewards you were a party to the riding actions of Pengalas Gee Gee by Rhonda Mangan in a manner which prevented the gelding from obtaining the best possible place in the field."

- (c) The particulars of the charge involving Mr Luttrell, as outlined in the stewards' inquiry, were as follows:

"That you as the trainer of Pengalas Gee Gee issued the instructions prior to the RW Trinder Quality Handicap, which was run at the TTC meeting on the 31st of December 2013, prior to the race to Rhonda Mangan, the rider of Pengalas Gee Gee, which in the opinion of the stewards you were a party to her riding actions of Pengalas Gee Gee in a manner which prevented the gelding from obtaining the best possible place in the field."

4. Ms Mangan, Mr Geard and Mr Luttrell have appealed to this Board seeking an order that the findings of the stewards be quashed. If the appeals are unsuccessful, they do not challenge the penalties imposed.

5. There are a number of simple facts that should be set out at a preliminary stage:

- (a) The race was over 1600m;
- (b) the favourite for the race was a horse named *Geegees Blackflash*, ridden by Stephen Maskiell, owned by Mr Geard and trained by Mr Luttrell;
- (c) the second favourite in the race was a horse by the name of *The Cleaner*, ridden by Anthony Darmanin.
- (d) *The Cleaner* was not owned by Mr Geard, nor trained by Mr Luttrell;
- (e) *The Cleaner* is known to go forward early and push for the lead;
- (f) Subject to some further comments below, *Pengalas Gee Gee* is known to go forward and push for the lead and, when it has done so, has had success;

- (g) *Geegees Blackflash* is not known to go forward and push for the lead, rather it is known to sit behind the leaders, preferably among the top four horses, before sprinting for the line;
 - (h) Mr Geard and Mr Luttrell separately instructed Ms Mangan to go forward. Mr Geard also instructed Ms Mangan to push for the lead. It is not clear that Mr Luttrell's instructions to Ms Mangan extended to pushing for the lead. He did, however, add that "*the horse will go out quick.*"
 - (i) there were only six horses in the race;
 - (j) *Geegees Blackflash* won the race;
 - (k) *The Cleaner* finished second;
 - (l) *Pengalas Gee Gee* finished last.
6. A large amount of evidence was placed before this Board relating to *Pengalas Gee Gee's* previous racing form, in particular its success or otherwise when leading and its success or otherwise when in the field. The evidence included footage of previous races, the racing record for *Pengalas Gee Gee*, and the evidence given at the original stewards' inquiry by Andre Kassay, a Form Analyst with Racing Victoria Limited. It is not necessary to traverse that evidence in any detail in order to come to the conclusion that *Pengalas Gee Gee's* form over the last two years indicates it has had success when it has gone forward and taken the lead. What is important in this appeal is whether Miss Mangan should have done so in this race and in the manner she did.
7. The evidence also dealt with a race which occurred on 21 December 2013 involving *Pengalas Gee Gee*, *The Cleaner* and *Geegees Blackflash*. That race was also over 1600m. *Pengalas Gee Gee* and *The Cleaner* had both gone forward and challenged each other for the lead. Ms Mangan was not the jockey on *Pengalas Gee Gee* on this occasion. Both horses apparently tired, with *Pengalas Gee Gee* finishing last and *The Cleaner* second last. *Geegees Blackflash* finished second in that race. Although that ride was the subject of an inquiry, the jockey who rode *Pengalas Gee Gee* was not charged.
8. We have had the benefit of reviewing the race footage and hearing the parties' commentary on that footage. It was common ground that *Pengalas Gee Gee* missed the start – an event that was not considered by its connections before the start. Having missed the start, Ms Mangan worked forward on *Pengalas Gee Gee* and, by around the 1200m mark, pushed further forward to vie for the lead with *The Cleaner*. From this point the two horses - with *Pengalas Gee Gee* on the outside – have fought for the lead over approximately 500m to 600m to around the 600m mark. At that mark (600m) *Pengalas Gee Gee* has tired and given up ground to *The Cleaner*, been passed by the balance of the small field and finished last by **several** lengths.

9. It is important to note that the sectional times were unremarkable. The pace set by *Pengalas Gee Gee* and *The Cleaner* over the period the two horses vied for the lead was not quick. Importantly, the pace was slower than the race on 21 December 2013.
10. We have also heard a great deal of evidence relating to what the stewards and the connections of *The Cleaner* were told by the appellants about *Pengalas Gee Gee's* plans for the race, along with evidence relating to the relative experience and skill of the various riders, in particular Ms Mangan, and the relative prospects of the horses in this race.
11. All of that evidence, along with the other matters we have mentioned above, informs whether Miss Mangan took all reasonable and permissible measures to ensure that *Pengalas Gee Gee* was given full opportunity to win or obtain the best possible place in accordance with AR135(1).
12. It is well established that the rule:
 - (a) imposes an objective standard of care;
 - (b) does not permit the mere substitution of the stewards' view of how the horse should have been ridden;
 - (c) does not seek to punish an error of judgment;
 - (d) attempts to ensure not merely that the horse has a winning chance but that, assuming an inability to win, it will still do the best it can in the circumstances;
 - (e) is designed to penalise the rider's conduct where it is culpable in the sense that it is blameworthy;
 - (f) intends to penalise a rider when he or she fails to take some measure which was either the only reasonable and permissible measure open to him or her or so clearly the measure that he or she should have adopted as to make the failure to do so deserving of punishment.
13. The assessment of Ms Mangan's conduct should not be made exclusively with the benefit of hindsight. The inquiry is prospective. Its focus should be on what Ms Mangan could or should have done in the circumstances.
14. Ultimately, it is for this Board, exercising its own discretion on the evidence before it, to determine whether it is comfortably satisfied that Ms Mangan failed to give *Pengalas Gee Gee* full opportunity to win or obtain the best possible place.

15. The stewards did not suggest that it was inappropriate for Ms Mangan to have planned to go forward in the course of the race. They had been notified by Mr Luttrell in advance of the race of that plan. They contend, however, that it was inappropriate to push for the lead particularly after she missed the start. Secondly, they say, that after she did push forward and vie for the lead she should have taken cover behind or on the hind quarters of *The Cleaner* when it was apparent that *Pengalas Gee Gee* could not take the lead. When that moment came to pass was not explained. Thirdly, they say, that Ms Mangan had a discretion how she rode *Pengalas Gee Gee*, but failed to exercise that discretion at any stage on account of the instruction from Messrs Gear and Luttrell to go forward and take the lead. Stewards submitted that she was so “blinded” by those instructions that she had closed her mind to the options available to her, particularly after she had missed the start. Fourthly, and perhaps most importantly, they say that Mr Luttrell’s observation that “*I’m not dobbing but she probably should have just slotted in behind*” is evidence that she failed to take all reasonable and permissible measures, in particular to take a place in the field, having missed the start.
16. Despite the merits of those submissions, we are not comfortably satisfied that Ms Mangan failed to give *Pengalas Gee Gee* full opportunity in the sense that her conduct was such that it may be described as culpable and deserving of punishment.
17. First, it was reasonable for her to be instructed and for her to attempt to go forward and push for the lead. The horse had previously had success doing so and, on one view of things, could only win or place adopting this tactic. The fact that the horse missed the start was clearly a cause to reconsider tactics. Stewards argued that Ms Mangan failed to give any consideration to taking a place in the field. In fairness to Ms Mangan there was evidence that she did consider other tactics but ruled them out due to her knowledge of the horse’s form and behaviour when in the field. Specifically, she stated during the inquiry that “*with that horse I wouldn’t take the risk of putting him in a field, because I know a lot of jockeys have had trouble with him and he’ll end up going on heels and, and causing all sorts of trouble*”. The films of previous races involving *Pengalas Gee Gee* support this view.
18. A finding that she did not give any or any adequate consideration to the option of taking a place in the field does not constitute a breach of the rule unless the choice to take a place in the field was the only reasonable option or was so clearly the option she should have taken. The pace throughout the race was modest. *Pengalas Gee Gee*’s pace in moving forward was not excessive. The horse has a high cruising speed and Ms Mangan had, in a sense, cruised up to *The Cleaner*. She knew the horse had not finished well from back in the field and she also knew that *Pengalas Gee Gee* had won races when the horse had taken the lead and *ran the legs off the field*. To put her decision in perspective it should be noted that Mr Darmanin, on *The Cleaner*, had seriously considered giving up the lead at around the 800m mark. There is also the evidence that she did not consider taking a place in the field on account of the horse’s form and behaviour as noted above.

19. Secondly, the fact *The Cleaner* adopted a similar tactic, and was more fancied, does not mean that *Pengalas Gee Gee* should defer to apparent superior competition. If that were the case, Ms Mangan may have faced criticism for not attempting to ride the horse in its preferred manner. Also, we observe the evidence from the racing analyst that the racing styles of *Pengalas Gee Gee* and *The Cleaner* were incompatible on account of their similarity.
20. Thirdly, we reject the submission that Ms Mangan should have sought cover behind or at the hind quarters of *The Cleaner*. This submission was not agitated at the inquiry, no doubt because it would have placed *Pengalas Gee Gee* in a position where it would have subsequently needed to have rounded a horse ranked significantly higher than it.
21. Finally, we observe that *Pengalas Gee Gee* failed to run out the race. The very same thing occurred just ten days earlier in a similar race. That risk was present in this race. Messrs Luttrell and Geard must have been aware of that risk. The stewards too must have been aware of that risk for Mr Luttrell told them that *Pengalas Gee Gee* would attempt to lead. Mr Luttrell gave evidence during the inquiry that he had been happy with *Pengalas Gee Gee*'s preparation prior to the 30 December race and thought it would perform better than it did. It seems to this Board that for a horse such as *Pengalas Gee Gee* in a field like the one in this race the risk of him failing to run out the race was off-set by the chance he may not.
22. For these reasons, we are not comfortably satisfied that the option to take a place in the field after the start or sit off *The Cleaner* were the only reasonable and permissible measures open to Ms Mangan or so the clearly the measures she should have taken when they presented, even in circumstances where she gave those options no, or little, consideration.
23. Ms Mangan may well have blindly followed her instructions, but it does not follow that she failed to give *Pengalas Gee Gee* full opportunity to win or obtain the best possible place.
24. Ms Mangan's appeal is upheld and the decision of the stewards quashed.
25. It was common ground among the parties that if Ms Mangan's appeal should succeed so too should the appeals lodged by Mr Luttrell and Mr Geard. Those appeals are upheld. However, those appeals raised important matters of principle that deserve some comment.
26. The combined effect of AR 135(b) and (c) makes any person who in the opinion of the stewards was a party to the rider of a horse failing to take all reasonable and permissible measures throughout the race to ensure that the horse is given full opportunity to win or to obtain the best possible place in the field liable to be penalised. The Board has been unable to locate any decisions dealing with a person charged as a party to a breach of AR 135(b).

27. There was some debate regarding what is required to be established to find a person was “a party to” a breach committed by a rider contrary to AR 135(b). “Party” is not defined in the rules. Mr Richardson, on behalf of Messrs Geard and Luttrell, submitted that the rule is referring to a “party” in the legal sense of the word being an instigator, aider or abettor. He submitted that a person cannot instigate, aid or abet a breach unless what is alleged to have been done was done with the intent that of aiding, abetting or instigating a breach of the rule. This interpretation is consistent with the criminal law’s notion of a party to an offence.
28. Stewards argued that it was not necessary to establish an intention that the rule be breached. They referred to the ordinary and current meaning of the term “party” and submitted it meant, in the context of the rule in question, a person connected with the breach. The term party is used in the rule as part of the phrase “a party to”. That clearly imports a sense of a person being involved in the breach. Stewards appeared to accept that in this case knowledge that the appellants’ instructions would be followed would need to be proved but did not otherwise articulate what is generally required to be established to render a person liable as a party to the breach of the rule.
29. The appellants submitted in effect that the racing instructions given to Ms Mangan were consistent with *Pengalas Gee Gee’s* form; *Pengalas Gee Gee’s* best opportunity of winning or running a place is associated with going forward and taking the lead. It was submitted that the instructions were rational, appropriate and reflective of the horse’s history.
30. Stewards submitted that the instructions given by Mr Geard, to go forward and push for the lead, were one-dimensional. They disputed that the instruction to go to the lead was a reasonable instruction given Mr Geard’s knowledge that *The Cleaner* was likely to race in a similar manner and was the stronger horse. Further, it was submitted that Mr Geard had every reason to believe that Ms Mangan would blindly follow those instructions given her level of experience and desire to continue to receive rides from the stables. Stewards had stated during the inquiry that the instructions did not offer Ms Mangan any flexibility or other options and suggested she should have been offered a plan “B”.
31. It was conceded by stewards that there was no specific evidence suggesting that Mr Luttrell had instructed Ms Mangan to go for the lead. It was suggested, however, that he was caught by the specific instructions given by Mr Geard due to the close relationship between them. We do not agree.
32. The instructions that were given were relatively simple in nature. Stewards suggest, as evidenced in the direction given to the appellants under AR175(p), any riding instructions must allow flexibility and “also importantly taken into account all the circumstances of the race to ensure horses are ridden to their capabilities to win or obtain the best possible place in the field.”

33. It is difficult to envisage how an instruction of that potential complexity could be given prospectively to take into account *all of the circumstances* of any race.
34. In the Board's view, to find a person was a party to a breach of AR 135(b) in this context, it is necessary to show that the instructions were given with the knowledge that they:
- (a) would be followed; and
 - (b) if followed would not give the horse a full opportunity to win or to obtain the best possible place in the field.
35. In our view, the evidence in this case fell short of establishing that the instructions given would have inevitably deprived *Pengalas Gee Gee* of a full opportunity. Indeed, it was reasonable to give those instructions in light of the vast bulk of the horse's previous form. In those circumstances, it could not be said that they were given with the knowledge that if followed, *Pengalas Gee Gee* would be deprived of a full opportunity to win or obtain the best possible place in the field.
36. The appeals are upheld. The stewards' decisions are quashed. In each case, the prescribed deposit is to be returned to the appellants pursuant to s. 34(2)(e) of the *Racing Regulation Act 2004*. The appeals having been successful we make no order as to transcription costs.

DATED: 2 May 2014.