

TASMANIAN RACING APPEAL BOARD

Appeal No 6 of 2015/16

Panel:	Ms K Cuthbertson (Chair)	Appellant:	Mr G Rattray
Adviser:	Mr D Arnott		
Appearances:	Mr D Hayes on behalf of the appellant Mr A O'Connell on behalf of stewards	Rule:	Australian Harness Rule 156(2)
Heard at:	Launceston	Penalty:	A \$200 fine
Heard on:	30 November 2015	Result:	Dismissed

REASONS FOR DECISION

1. The appellant, Mr Gareth Rattray, has appealed against the penalty imposed upon him by stewards following an inquiry during which he plead guilty to a charge under Rule 156(2) of the Australian Harness Racing Rules.
2. At the time the appellant was the driver of *Bumble Don* in Race 1, The Collins Homes Pace, conducted at the Devonport Harness Racing Club on 5 November 2015.
3. AR156(2) provides as follows:

"A driver shall hold a rein in each hand at all times unless her or she is adjusting approved gear or driving in the final 200 metres of a race."
4. Following a brief inquiry, during which the race patrol films were viewed, stewards charged the appellant with a breach of the rule. The allegation was that the appellant used the whip free of the rein in a backhand fashion about 10 times shortly after the start of the race.
5. Stewards characterised it as a significant breach of the rule due to the number of times the whip was used. They accepted that the backhand motion used was not as serious as an action where the whip is raised over the shoulder.
6. During the inquiry stewards also took into account the appellant's previous record under the rule and that record is in summary as follows:

In 2014 he was dealt with on three occasions for breaching the same rule -

- On 2 February 2014 he was reprimanded.
- On 18 May 2014 he was fined \$200.
- On 22 June 2014 he was fined \$400.

7. His record also showed one other offence in August 2013 and in that case he was also reprimanded.
8. In light of the appellant's guilty plea and prior offending, together with the number of occasions the whip was used, stewards determined that a \$200 fine was appropriate in the circumstances.
9. During this appeal, Mr Hayes, on behalf of the appellant submitted that the penalty imposed was not consistent with guidelines issued by Harness Racing Australia regarding penalties to be imposed for breaches of this rule.
10. The guideline, which is not published but is well-known in the industry, is to the effect that for a first breach of the rule a reprimand is issued. For a second offence within three months of the first breach a \$200 fine is issued. If there is a further breach of the rule within another three months of that prior offence a \$400 fine is imposed. If a further offence occurs within three months of the most recent prior matter, a suspension is to be imposed.
11. The rule operates such that a driver has a clean slate if there are no breaches of rule in the preceding three months.
12. According to this guideline, Mr Hayes argued that the appellant should only have been reprimanded as it had been 18 months since he last breached AR156(2).
13. As was noted by the Board in the decision of *Dornauf* (No 10 of 2013/14) at paragraph 8 of the decision, this guideline has been applied by stewards in respect of breaches of the rule involving two or less instances of whipping. Where three or more instances of whipping are involved it was noted in that decision that the penalty would usually commence with a fine of \$200 and further fines of \$400 for a further offence. During this inquiry, Stewards confirmed this was the approach taken by them when dealing with breaches of the rule.
14. The Board has viewed the patrol film in relation to this race. It shows that this race commenced by way of a standing start. Shortly after the start of the race, the appellant transfers the rein from his left hand into the right hand. With the whip in his left hand he strikes the horse in a backhand motion 11 times. It is noted that the whipping action used would not have amounted to excessive whip use under AR156(4). There is one further apparent use of the whip that appeared to involve the appellant's arm being raised before the rein was transferred back into his left hand.
15. Mr Hayes referred to the appellant's absence of breaches of the rule since June 2014. He noted that the appellant has had in excess of 250 drives since that time. He is a leading driver in the State and, as such, has a greater chance of being found in breach of this rule. Although the number of times that the whip was used was acknowledged by the appellant, it was submitted that the use of the whip only involved a minimal action to entice the horse to start from a standing start. Any guideline that referred to the number of times the whip was used as a basis to impose a fine ought to have yielded, in Mr Hayes' submission, to the fact that there had been this 18 month gap between offences.
16. During the course of their submissions, stewards referred to the rationale of the rule. This rule had been implemented with a number of other whip rules to alleviate concerns of the racing industry and the broader community about animal welfare. The rationale is that by holding a rein in each hand drivers are less able to raise the whip

and use force in their whipping action. Originally the rule imposed a blanket ban requiring the reins to be held in each hand at all times but was relaxed more recently to allow transfer of the rein to the other hand in the last 200 metres of a race.

17. Stewards acknowledged the guidelines already referred to but reiterated their application in respect of instances involving one or two strikes of the whip. In instances where greater use of the whip is involved, stewards submitted that the guideline must yield to the concerns relating to animal welfare that have driven the imposition of the rule in the first place.
18. They emphasised that the use of the whip at least 10 times represents a high level breach. Stewards acknowledged that the appellant is the leading driver in the State but in their view that means the appellant has a greater awareness of the rule and a commensurate responsibility to set an example to the rest of the industry.
19. Given the nature of the use of the whip involved in this case, the Board finds that the penalty imposed by stewards was appropriate despite the absence of offending against the rule for some 18 months. The penalty of \$200 imposed was not excessive in the circumstances.
20. The appeal against penalty is dismissed. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 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 in accordance with s.34(4A).