

TASMANIAN RACING APPEAL BOARD

Appeal No 8 of 2013/14

Panel:	Mr R Foon (Chair)	Appellant:	Mr M Yole
Adviser:	Mr D Arnott		
Appearances:	Mr I Swain on behalf of the appellant Mr A Crowther on behalf of stewards	Rule:	Australian Harness Rule AR163(1)(a)
Heard at:	Launceston	Penalty:	A 4 race date suspension
Date:	19 March 2014	Result:	Penalty varied to a 3 race date suspension

REASONS FOR DECISION

1. The appellant, Mr Yole, was the driver of *The Adriatic* which raced in race 6 over 2090 metres at the Tasmanian Pacing Club on 24 February 2014. Following an inquiry into his drive the stewards charged Mr Yole with a breach of AR163(1)(a), which provides:

“A driver shall not – cause or contribute to any crossing, jostling or interference”

2. The particulars of which were *“when racing into the first turn whilst attempting to cross from a position three-wide to the peg-line Mr Yole did so when insufficiently clear. As a result Mr Ford has had to check away from him and as a result Mr Hodges had to check his horse which then broke.”*

3. Mr Ford was the driver of *Gosh Heza Rebel*, Mr Hodges the driver of *Melpark Maestro*.

4. The ultimate finding of the stewards was that when attempting to shift from a three-wide position to get to the lead whilst racing to the outside of Mr Ford on *Gosh Heza Rebel*, the appellant crossed when insufficiently clear. There was no contact by him to Mr Ford and also no contact by Mr Ford to Mr Hodges’ horse, however, the shift from the appellant resulted in Mr Ford, as seen on the film, steering away resulting in Mr Hodges running out of room and having to check his horse which then broke gait.

5. Mr Yole was suspended for four race dates. A stay was granted over the operation of that penalty pending the determination of this appeal.

6. The Board sat with an adviser, Mr Arnott, 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. The submissions of the appellant were that the appellant did not cause or contribute to any crossing, jostling or interference and that he did not pressure Mr Ford’s horse; that Mr Ford’s horse didn’t break stride and that at no time did Mr Hodges’ horse seek relief and was at all times well outside the peg line. The submission was there wasn’t a crossing of Mr Ford’s horse until after

Mr Hodges' horse broke stride. It is submitted that any apparent movement was accentuated by the initial movement of Mr Ford's horse in moving to the right whilst Mr Yole moved inwards.

8. The appellant believed that he was clear. Effectively the appellant's appeal is that he did not believe he was the cause of the incident and that he did not cross until afterwards; that he did not take Mr Ford's line and there was no interference or pressure on Mr Ford by his movement inwards.

9. The stewards submitted the onus is on the driver to ensure that he does not cross in a way which would result in interference and that in this case it did. Mr Ford did not take hold but what was established was that he had to take action to avoid contact with Mr Yole when he was receiving pressure from his outside and as a result the video shows that Mr Ford pulled on his left rein and shifted away from Mr Yole and once he had done that, Mr Hodges being tightened, had to restrain.

10. Stewards submitted that the relevance was not the type of action of Mr Ford, but the fact that he had to take action.

11. The evidence from Mr Ford at the inquiry was to the effect that *"Yeah, I, I was getting pressure from my outside but I'm pretty sure Mr Yole thought that I was all but across Mr Hodges. That's how come he was applying pressure cause he was nearly all but across me."* The evidence of Mr Ford was that Mr Yole got a bit tight on him and in turn he got a bit tight on Mr Hodges. As the stewards pointed out they accepted there was no contact and the Rule does not require contact.

12. I have considered the evidence given at the stewards' inquiry, the submissions during the appeal and the footage of the race. Having viewed the multiple angles of the footage I am of the view that Mr Yole was insufficiently clear when he proceeded to cross Mr Ford and that caused Mr Ford to check away from Mr Yole and as a result Mr Hodges had to check his horse which has caused it to break gait. In my view I am satisfied Mr Yole was insufficiently clear, however, he was only just so. My view is Mr Yole's wheel line was just inside Mr Ford's wheel line which was just inside Mr Hodges' when his horse broke.

13. In relation to penalty, with regard to this rule, stewards apply a three month turn-around timeframe for offences. Mr Yole had two offences in close succession, being a two race meeting suspension in early November 2013 and a three race meeting suspension in December 2013. Just outside the three month threshold was a further prior on 29 October 2013. The penalty guidelines have been consistently applied over a number of years. A rigid application of the penalty guidelines would have seen a penalty of four race meetings being applied to Mr Yole in any event, notwithstanding the loading that may apply to interference on the first turn.

14. However, in this case the offence is somewhat unusual. In my view it warranted a departure from the guidelines albeit not to a significant extent. It was pointed out by the appellant's advocate that all Mr Yole's previous offences under the Rule were for direct contact. In this case there has been a contribution to the crossing of Mr Hodges' horse. Importantly no horse was contacted and whilst we are of the view that whilst he caused or contributed to it, he was only insufficiently clear by a small measure. It was a minor misjudgement which may not have led to the consequences it had if Mr Ford had taken relief or Mr Hodges sought to move further inside or sooner. If Mr Ford had called out as Mr Hodges had to him the incident could have been avoided completely. We find in fact Mr Yole did have the momentum and had his crossing occurred just a frame or two later the offence would not have occurred at all. In other words whilst he is culpable his culpability in this instance is not high.

15. As is often the case the stewards know far more about the appellant and his circumstances than are disclosed in the transcript. Therefore the Board took evidence from the appellant regarding his personal circumstances. Those personal circumstances including that his sole income is derived from driving would not necessarily, in isolation, justify a reduction in penalty, however, in combination with the objective nature of this offence led the Board to the view that the appropriate penalty is a three race date suspension.

16. Therefore, whilst the appeal against conviction fails, the stewards' decision with respect to penalty is varied to a three race date suspension.
17. Pursuant to s34(2)(e) of *the Racing Regulation Act 2004*, 25% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay the Secretary of the Department 25% of the costs incurred in preparation of the transcript.
18. Pursuant to s.34(1)(B) the decision is to take effect immediately.