

TASMANIAN RACING APPEAL BOARD

Appeal No 01 of 2017/2018

Panel:	Kate Brown (Chair) Wendy Kennedy Sue Martin	Appellant:	Mark Yole
Appearances:	David Farquharson & John Zucal on behalf of the Stewards Anthony O'Connell on behalf of the Appellant	Rules:	Australian Rule of Racing 168(1)(a)
Heard at:	Launceston	Penalty:	2-race meeting suspension
Date:	6 October 2017	Result:	Conviction Confirmed Penalty Varied to a one- race meeting suspension

REASONS FOR DECISION

1. On 6 October 2017, the TRAB heard an appeal from Mark Yole, filed on 7 August 2017 against a conviction and penalty imposed for careless riding on 3 March 2017. Due to an unfortunate combination of circumstances, the inquiry into that incident commenced on 3 March but did not conclude until 6 August 2017.
2. The charge was brought under AR168(1)(a) but essentially alleged a careless breach of AR162(1)(ww) in that the appellant had allowed his horse to shift from its running line when he wasn't commencing a forward move or improving its position. **Regal Stride** had gone into the race as odds on favourite and finished last by some distance. It was alleged that as a result of a shift up the track, **Regal Stride** had lost the lead to a stable mate who took a run on the inside. There was no evidence that this was the result of collusion and that aspect had been thoroughly investigated by Stewards. The only matter before the Board was whether the shift was careless.
3. At the hearing the Board had regard to:
 - a) Notice and Grounds of Appeal and Application for Stay of Proceedings
 - b) Transcripts of Stewards inquiries held on 3 March 2017 and 17 March 2017
 - c) "Summary of Evidence – Regal Stride Inquiry TPC 6/8/17"
 - d) Appellant's Offence Report dated 27 September 2017
 - e) Harness Racing Stewards Report dated 3 March 2017
 - f) Race footage
 - g) Evidence and Submissions from the appellant at the hearing
 - h) Submissions from the Stewards
4. During the inquiries Mr Yole's evidence was essentially that **Regal Stride** was tiring and that his form tends to be that once he loses a lead he "throws in the towel". The

appellant consistently expressed surprise that a run had been taken on his inside, and that he didn't shift up the track to allow that. At the inquiry he asserted that in taking that run Ms Emery had got close to the pegs; at the hearing he went further and asserted that he had gone inside the pegs. However, he conceded during the inquiry (at p7 and following) that he did shift up the track and pulled the earplugs, by which stage Ms Emery was on his inside and it would not have been safe for him to try to regain the position. The evidence does not get much clearer from that point and the film is consistent with that version. That **Regal Stride** then lost by a distance is consistent with the evidence about his form when not leading.

5. Stewards relied on the obligation set out in AR162(1)(ww). It was undisputed that when **Regal Stride** commenced that shift it had the lead. Stewards conceded that the run taken by Ms Emery was tight.
6. The Board found that the appellant had shifted up the track and therefore been careless as to his obligation to maintain his line. The appeal against conviction accordingly failed.
7. However, the Board saw some merit in the evidence and submissions of the appellant around the limited options he had to respond to that shift once Ms Emery had taken the inside run. The totality of the evidence was that if the run was there, it was tight, and the Board accepts that the appellant could not have safely regained that line once the run was taken by Ms Emery. The Board accepted that the appellant's carelessness was of a more limited nature than the Stewards had found.
8. The appellant's case at the hearing was that he maintained a consistent line and that there was no run for Ms Emery, on **Washies Chance**, to take. The Stewards contend that the carelessness consisted of shifting up the track whilst continuing to use the whip.
9. The conviction was affirmed but the penalty was varied to a one-race suspension in recognition of the need for personal and general deterrence, whilst balancing the lower level of culpability.
10. Pursuant to s.34(2)(e) the Board orders that 50% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay 50% of the costs incurred in preparation of the transcript.