

TASMANIAN RACING APPEAL BOARD

Appeal No 13 of 2016/17 - GRAHAM, CHRISTOPHER

Panel:	Mrs Kate Brown (Chair) Dr Sue Martin	Appellant:	Mr Christopher Graham
Appearances:	Mr Adam Trinder on behalf of the appellant Mr Cameron Day on behalf of the stewards	Rules	Thoroughbred Rule 137(a)
Heard at:	Launceston	Penalty:	A two race meeting suspension
Date:	30 March 2017	Result:	Varied to a reprimand

REASONS FOR DECISION

1. On the 31st March 2017 the Tasmanian Racing Appeal Board heard an appeal from Mr Christopher Graham arising from an incident in Race 7 at Hobart on the 4th March 2017. Mr Graham was represented at the hearing by Mr Adam Trinder and the stewards were represented by Mr Cameron Day.
2. The appeal was against both conviction and penalty. The particulars of the charge alleged that the appellant was guilty of careless riding pursuant to AR 137(a) "in that passing the 800m [he] allowed [his] mount ALMOST ART to shift in, carrying JACQUES inwards who has crossed the rightful running of ISLAND PIRATE which had to be checked by its rider". JACQUES was ridden by Mehmet Ulucinar and ISLAND PIRATE was ridden by Daniel Ganderton. The appellant was suspended for two race dates. A stay was granted suspending the commencement of that penalty pending the determination of this appeal.
3. At the hearing the appellant pleaded not guilty. He was initially represented by Mr Darmanin, who had to leave midway through the hearing and then by Mr McCoull. Mr McCoull sought an adjournment to allow the appellant's master to be there, and due to the fact that he had come in half way through the hearing. That application was refused, and the race film was played again for his benefit. The appellant is a first year apprentice.
4. At the appeal the appellant asserted (through Mr Trinder) that ISLAND PIRATE was over racing prior to the interference, and that JACQUES had shifted first which had contributed to the check of ISLAND PIRATE. Mr Trinder submitted that there was no contact between the appellant's ride, ALMOST ART, and JACQUES, and such interference as had occurred during the race was attributable to Mr Ulcinar and Mr Ganderton. With respect to the penalty Mr

Trinder submitted that if the Board upheld the conviction, then the penalty should reflect that the carelessness fell into the low range and Mr Graham should only be reprimanded.

5. For the stewards, Mr Day submitted that the interference between Mr Ulcinar and Mr Ganderton was caused by the pressure Mr Ulcinar got from outside; that Mr Ulcinar did not shift in of his own accord. He also submitted that instead of just stopping his shift in when he got the call, as Mr Graham had admitted he had done, Mr Graham ought to have shifted out.
6. The race film was viewed and both parties were given an opportunity to take the Board through that and make submissions. The Board also had regard to the transcript of the original hearing. Of particular note from that transcript is the evidence of Mr Ulcinar who maintained that he got pressure from outside. When asked specifically by the stewards whether he made contact with the outside horse Mr Ulcinar replied: "I think I did once". However, that contact was not mentioned otherwise by him, it was firmly denied by Mr Graham and is not able to be identified on the race film.
7. The Board accepted that the totality of the evidence confirmed that Mr Graham's shifting in when he did, amounted to carelessness such that he was guilty of breaching AR137(a) in that he shifted in when there may not have been room to do so. However, the Board was also satisfied that such carelessness as was made out on the evidence was momentary and in the low range of such offences. The Board was satisfied that the appellant had stopped shifting in as soon as he got the call. It was submitted by Mr Day that the appellant ought to have gone further than that in his response to the call and moved back out at that stage; however, the Board found, on the basis of the race film, that Mr Graham would not have had room to do so due to the presence of horses to his outside.
8. On the basis of the factual findings, the Board upheld the conviction but reviewed the penalty. The Board accepted that in all the circumstances the level of culpability was low and that the appellant responded to the situation as best as he was able. The penalty imposed should not reflect the reaction of Mr Ganderton's horse (which the evidence indicates was out of the ordinary) but rather the level of culpability of the appellant's actions or inactions.
9. The Board overturns the penalty of two race dates and substitutes a reprimand, taking into account the circumstances of both the breach and the appellant's particular circumstances and history.
10. In accordance with s.34 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.