

TASMANIAN RACING APPEAL BOARD

Appeal No 15 of 2016/17 – TODD RATTRAY

Panel:	Kate Cuthbertson	Appellant:	Todd Rattray
Adviser:	David Arnott		
Appearances:	Barrie Rattray on behalf of the appellant Adrian Crowther on behalf of the stewards	Rules:	Harness Rule AR163(1)(a)
Heard at:	Launceston	Penalty:	A four race meeting suspension
Date:	11 April 2017	Result:	Dismissed

REASONS FOR DECISION

1. The appellant, Mr Todd Rattray, has appealed against the conviction and penalty imposed upon him by stewards following an inquiry during which he pleaded guilty to a charge under AHRR 163(1)(a)(iii).
2. At the time, the appellant was the driver of *Pachacuti* in race 5, the Governor's Cup, at the Tasmanian Pacing Club on 19 March 2017.
3. AHRR 163(1)(a)(iii) provides:

"A driver shall not cause or contribute to any... interference".

4. The stewards' race day report from that meeting stated that:

"[the appellant] allowed his drive to shift up in the back straight resulting in his outside sulky wheel contacting the near hind leg of MELOLYN. SAPPHIRE SWAYZE... which was trailing, was also checked and broke, and MISTER LENNOX NZ... was also checked. Mr Rattray pleaded guilty to the charge and after giving due consideration to all relevant factors his licence to drive in races was suspended for four race dates, commencing midnight and expiring midnight on 2 April. MELOLYN underwent a post-race veterinary examination which revealed abrasions to the gelding's near hind leg just below the hock."

5. The particulars of the charge issued by stewards during the inquiry were as follows:

"..as the driver of PACHACUTI in the back straight you've allowed your drive to shift up and contact Mr Hillier's driver MELOLYN causing it to break".

6. The appellant pleaded guilty. His appeal, however, relates both to conviction and penalty. In a letter accompanying his appeal notice, the appellant sought to apply to have his guilty plea changed to not guilty and stated:

“My guilty plea came about after I was belittled by a driver that I have respect for and looked up too (sic.), along with the stewards making a case against me, rather than considering any evidence that I put forward or that may have been in my favour.

Please consider, as on reflection I consider my guilty plea a very poor decision and one made under stress without proper consideration”.

7. The appellant was granted a stay of the period of suspension handed down by stewards. It is not necessary in this instance to decide whether the appellant should be allowed to amend his plea. Having considered the transcript of the inquiry, the submissions made during the appeal and the footage of the race, the Board is satisfied that Stewards were justified in finding that the appellant breached the rule.

Conviction appeal

Inquiry evidence

8. During the inquiry, the chairman of stewards stated as follows:

“I was watching the race upstairs from the Chairman’s tower and I observed that MELOLYN had been racing the one one trail. I observed Mr Rattray in the back straight appeared to commence to shift outwards. I then heard a noise which indicated to me that heavy contact had taken place and then Mr Hillier’s horse, at that same instance, broke.”

9. Another steward, Mr Griffin, was in the tower in the back straight. His evidence was as follows:

“HUGO PLAY leaving the one out line and MELOLYN driven by Rohan Hillier, was in the one one, MODERN RULER, commenced to race and PACHACUTI, Todd Rattray, in the cart. As they approached me I noticed Mr Rattray move from the fence out to the one out line. He was probably half way up towards the horse’s number, his cart, and he kept moving out and made contact with Mr Hillier’s drive, causing Mr Hillier’s horse to break.”

10. Mr Hillier, the driver of the horse that was contacted during the incident stated as follows:

“I was travelling the one one. Obviously Mr Rattray pulled behind the leader. He was keen to shift and I was keen to keep in a position Sir. I came out second best.”

11. Mr Hillier did not dispute the notion that contact was made.

12. The appellant stated the following:

"..as you know, my horse hangs out really bad. As the speed commenced to come on, my horse just hung out that bad, pretty much came out himself. I was at the advance of Mr Hillier at the time but I, I didn't really shift my horse out, it was more him doing the work. Yeah, I was trying to keep him down, Sir."

13. The appellant repeated that explanation during the inquiry. When asked what effort he had made to keep his horse straight, he referred to the race patrol film and stated:

"Well, as you can see, his head's turned. I tried to turn him in hard there, hard there again, hard there again."

14. After the appellant pleaded guilty to the charge, he stated:

"I didn't pull him up the track at all but he's done it before down here [referring to Hobart Pacing Club], he obviously doesn't want to be on the pegs. I didn't want to do it at all, I did not want to do it."

15. In response stewards put to the appellant the following:

"But looking at the film he shifts up and then you do seem to make a, I'd call it a very belated effort, because up until the point, he commences to shift about now, and I'm not seeing, in your left hand, doing anything".

16. The appellant then said:

"But you see I'm front, in front of him there, Sir. I was only shifting slightly, but I knew that it was going to get close so I, I tried to pull him back down, and obviously he didn't respond."

Appellant's Submissions

17. The appellant was represented by Mr Barrie Rattray. He made the following submissions on the appellant's behalf:

- (a) The incident occurred after the candy pole, so the ease out rule applied;
- (b) Mr Alford on *Never Sighted NZ* was coming up under the appellant;
- (c) If Mr Hillier was to succeed in holding his position, he would have to force the appellant down the track and Mr Alford was inside at that point;
- (d) Mr Hillier was effectively in the four wide position at the time of the contact. He was not entitled to hold that line given he had not been able to keep in advance of the appellant. Once he had lost his position, he was required to pull down and not try to come back into position;

- (e) Mr Hillier pulled his horse down on top of the appellant's horse to move into a position he had already lost. As he was behind, the only thing that could have resulted was that he would "get knocked over";
 - (f) The appellant had taken steps (though not severe steps) to stop *Pachicuti* moving out, which was evidenced by the horse's head turning in prior to the interference. The appellant pointed to *Pachicuti's* head being left of square. It was submitted that this was evidence of the appellant resisting the horse's movement up the track;
 - (g) The appellant was limited in what he could do to respond as he would take out Mr Alford's legs if he moved back down.
18. The appellant has, in part, invoked the ease out rule in the context of this appeal. AHRR 164 provides:

"The Controlling Body may determine the circumstances in which a driver who does not have a clear passage in the course of a race may take action to secure such a passage".

19. The Office of Racing Integrity, which is the joint Controlling Body in this State (together with Tasracing), has published Harness Racing Policies and Procedures which includes the following in respect of AHRR 164:

"A driver can ease out passing the "candy pole" located in the back straight providing he/she does not cause interference, as determined by Stewards, to another runner when doing so".

Stewards' submissions

20. Stewards referred to the significant nature of the interference involved, which was clearly heard by the Chairman of Stewards in the tower and evidenced by the minor contusions detected when *Melolyn* was vetted. They submitted that the observations of attending stewards were of significant weight. The appellant in their view made no real effort to prevent his horse from shifting until after the contact occurred.
21. Stewards' submitted that prior to the incident, the appellant was maintaining a position back of *Hugo Play* in the one out one back and racing approximately a metre clear of the pegs. It was a case, in their view, of the appellant allowing his drive to shift out to improve its advantage in the race. *Pachicuti* in fact won the race, having obtained a clear passage in the course of the driving the subject of the charge.
22. In respect of the ease out rule, Stewards pointed out that it was the overriding responsibility of a driver easing out to ensure that they did not cause any interference. In this case, the appellant was not entitled to take the action he did. Mr Hillier was entitled to try and maintain his position and it was incumbent on the appellant to ensure he did not make contact with another runner when attempting to obtain a clear passage.

Race Patrol Film

23. The Board has viewed the race patrol film which shows three views of the incident. The side view shows that the appellant's wheel was just in front of the wheel on Mr Hillier's cart at the time of contact. It appears as though the wheels connected, though it is not clear whether this was as a result of *Melolyn's* legs being contacted first. This view shows the appellant's left hand side. There is no apparent significant movement of the appellant's left hand rein prior to the contact occurring.
24. The head on back view shows that as the field was coming into the back straight, *Pachicuti's* head is distinctly directed towards the inside of the track. The horse's head is allowed to almost straighten up which coincides with its brisk move to take the three wide position. *Pachicuti's* head is not turned back in until the point during which contact is made.

Decision

25. The Board is satisfied that the appellant caused interference with Mr Hillier's drive in the course of easing out. The Board does not accept that what resulted was due to *Pachicuti's* manners or Mr Hillier's drive. Indeed, as noted the appellant in effect submitted that the manoeuvre was deliberately undertaken to obtain clear passage. Mr Hillier was entitled to maintain his position. He was not falling back to any significant extent. If *Pachicuti* was inclined to hang out, it was incumbent on the appellant to exercise sufficient control. The footage shows, in the Board's view, that no particular effort was being made by the appellant to stop his drive from shifting out. It was submitted on his behalf that he was entitled to shift out. He was not. To do so in manner in which he did in the circumstances was fraught with danger, and in fact resulted in significant contact and injury to *Melolyn*.

Penalty appeal

26. In imposing penalty, stewards noted the appellant's record included an offence under the same rule from 5 February 2017 and a reprimand for careless driving in October 2016. They noted as follows:

"We've considered your plea of guilty. We've also considered your recent record which is a good record albeit does have suspension in the last couple of months. We'll also take into consideration that MELOLYN was put out of the race and sustained some abrasions to his near hind leg. We've taken also into consideration that SAPPHIRE SWAYZE was checked and broke and we've also taken into consideration that MISTER LENNOX who was trailing him, was also checked.

So we've seen three runners checked... Having summed all that up, that three other runners were interfered with, it is our decision that a suspension be applied, and that suspension be for four race dates".

27. The appellant submitted that he is not someone who is frequently before stewards which is a significant matter given the number of drives he undertakes. In the last 12 months he has had less than six traffic offences. He drives at 95% of the meetings and has four to six races at each meeting. He is a professional driver and derives his entire income from his racing activities. The income he loses from missing four race dates represents approximately four per cent of his annual taxable income which is around \$50,000.00 per annum. It was submitted that he has an outstanding record as a fair and complying participant in harness racing.
28. Stewards submitted that the starting point for the penalty for causing interference is three race dates and that a one meeting discount is generally considered for a plea of guilty. In this case, stewards took into account the appellant's two race date suspension issued on 5 February 2017. They recognised the plea of guilty, but were also required to take into account the significant interference which resulted in two other horses losing ground and being denied an opportunity to get the best possible place. The appellant had six prior suspensions under the same rule over the last four years, although it was acknowledged that his record had improved over the last 18 months. Over the eight years that he has been licensed, the appellant has had 12 suspensions under the same rule, which stewards submitted was a significant number when compared with other like drivers. It was submitted those factors warranted the imposition of a heavier penalty. It was incumbent on stewards to enforce the rules of racing to ensure the safety of all participants and horses; the penalty imposed needed to act as a sufficient deterrent to others to prevent like occurrences.
29. The Board is satisfied that a four race meeting penalty was not excessive in the circumstances. The rules directed as preventing interference during races are extremely important and must be upheld to help ensure the safety and welfare of all participants and animals and the integrity of harness racing. The appellant breached the rule in a significant way. He caused considerable interference and disruption to the race, injuring another horse and affecting the outcome. He had recently been suspended for a breach of the same rule. A four race date suspension was a severe penalty in the context of the rule, but entirely warranted in the circumstances.

Conclusion

30. The Board affirms the decision to convict the appellant of the breach of AHRR 163(1)(a)(iii) and to impose a four race date suspension. Pursuant to ss. 34(1A), (2)(a), (4A) and (4B)(a) of the *Racing Regulation Act 2004*, the Board orders that:
 - (a) 50% of the prescribed deposit paid by the appellant is forfeited to the Secretary of the Department; and
 - (b) the appellant pay 50% of the cost incurred in the preparation of the transcript of the stewards' inquiry held on 19 March 2017.