

# TASMANIAN RACING APPEAL BOARD

## Appeal No 18 of 2016/2017

<b>Panel:</b>	<b>Kate Brown (Chair) Sue Martin Rod Lester</b>	<b>Appellant:</b>	<b>Paul Ashwood</b>
<b>Appearances:</b>	<b>David Hayes on behalf of the Appellant Adrian Crowther on behalf of the Stewards</b>	<b>Rules:</b>	<b>Australian Harness Racing Rule 163(1)(c)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>\$200 Fine</b>
<b>Date:</b>	<b>3 May 2017</b>	<b>Result:</b>	<b>Appeal Dismissed</b>

### REASONS FOR DECISION

1. On the 3<sup>rd</sup> May 2017 the Tasmanian Racing Appeal Board heard the appellants appeal against conviction and penalty. The appellant has been found guilty of breaching AHRR 163(1)(c) in Race 1 at Mowbray on the 31<sup>st</sup> of March 2017 in that he allowed his horse or sulky to contact the marker pegs. He was fined \$200. The grounds of appeal were that  
*“The horse is a two year old having his second life time start (2) the horses overcheck broke at release point of the start, that caused the horse to break gait and also to hang thus hitting the marker poles”*
2. The Board raised with the appellant that the grounds of appeal did not reveal any challenge to the conviction. The appellant did not succeed in challenging that and the matter proceeded as an appeal against penalty. Despite proceeding on that basis only it was necessary to have regard to the nature of breach and its seriousness. During the appeal the Board had regard to the transcript of the steward’s inquiry, the race film, the appellant’s Offence Report, and the evidence and submissions at the appeal.
3. Essentially the appellant’s case was that:-
  - Krafty Boy was a 2 year old that had had only one previous start;
  - The appellant did not allow Krafty Boy to shift across and make contact with the pegs, rather it was “a horse action”;
  - The horse’s gear was broken from the start which compromised the appellant’s ability to control it;
  - This was the first time the appellant had offended under this rule, therefore, a caution would have been appropriate given the broken gear issue;
  - The appellant is an experienced reinsman, a fulltime trainer and driver who has been a licensed participant in the industry for some 25-30 years;
  - It was to the appellant’s credit that he “tried to get a run”;
  - As well as being a financial penalty, the conviction amounted to a “slur” on the appellant’s name;

- The conviction would have a cumulative effect (by which it is inferred that Mr Hayes was submitting that any future penalty would take into account this one and most likely be higher).
4. The submissions in response from the stewards were broadly that:-
- Once over the pegs the appellant's obligation, in accordance with AHRR 163(2) was to restrain his horse and regain position in the true running line, but it is clear from the film that, in fact, once he was inside the pegs, the appellant activates his gear and uses his whip;
  - The evidence of Mr Walters (driving Ideal Karalta) at the inquiry was that at no stage was there a run there for the appellant;
  - The footage is clear that at one point a substantial part of the appellant's sulky is inside the pegs;
  - The reliance by the appellant on the broken gear was unhelpful as the gear had not prevented the appellant from racing tractably for much of the race leading up to the incident;
  - The appellant had previously been reprimanded twice for this offence;
  - On this occasion the circumstances of the offending were aggravated as the appellant travelled a significant distance inside the pegs whilst actively driving forward.
5. The Board was unpersuaded by the appellant's case, and accepted the submissions of the stewards in the context of the race footage. The broken gear may have caused the appellant some difficulty at the start but he had regained control of the horse for a significant distance leading into this incident. While it is not possible to rule out that there may conceivably be an incident during a race for which a driver is not responsible, this is not one of them, and shifting blame to the horse was not only inappropriate but not applicable in the face of the footage. Drivers must be able to control horses on tracks and be able to be held responsible for failing to do so, otherwise the safety of both humans and horses on the track would be compromised. In this regard, the appellant's experience as a reinsman is something of a double edged sword – his experience should enable him to be more capable of controlling a horse, even a green two year old, than most. Likewise, he ought to have been capable of judging that the run he was attempting simply wasn't there for him to take.

## **Conclusion**

6. The Board accepted that the appellant's action in driving forward and using his whip whilst inside the pegs was aggravating. The penalty imposed in the circumstances of the offending, the appellant's experience and his record (particularly the two previous reprimands) was an appropriate one.
7. After hearing an appeal the Board is obliged by s.34(1A) of the *Racing Regulation Act 2007* to make an order regarding the disposal of the prescribed deposit paid by the appellant. While the Board on this occasion affirmed the decision the subject of the appeal, it does not find that any of the aggravating factors referred to in s.34(3) existed. Accordingly, the Board orders that:
- a. 50% of the prescribed deposit paid by the appellant is to be 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.