

TASMANIAN RACING APPEAL BOARD

Appeal No 21 of 2016/17

Panel:	Tom Cox (Chair) Rod Lester Sue Martin	Appellant:	Robert Walters
Appearances:	Lance Justice on behalf of the Appellant Adrian Crowther on behalf of the Stewards David Farquharson on behalf of the Stewards	Rules:	Australian Harness Racing Rule 149(1)
Heard at:	Launceston	Penalty:	12 Race Date Suspension
Date:	26 July 2017	Result:	Upheld

REASONS FOR DECISION

1. The appellant was the driver of *Wrongly Accused* in Race 3, the Lees Orchard claimer, over 2200 metres at the Launceston Pacing Club meeting on Friday 28 April 2017. Following the race, the Stewards inquired into the appellant's tactics in driving that horse and, over the course of the inquiry, charged and found the appellant in Breach of *AHRR 149(1)* – the driver should take all reasonable and permissible measures to win and obtain the best possible placing.
2. The particulars of the charge are conveniently set out in the Steward's report dated 28 April 2017:

Stewards inquired into the tactics adopted on WRONGLY ACCUSED and, after taking evidence from drivers Robert Walters (WRONGLY ACCUSED), John Walters (TISU TOOTA) and course veterinarian Dr P Sims, Mr Robert Walters was charged under AHRR149(1) – a driver shall take all reasonable and permissible measures to win or obtain the best possible placing – and the particulars of the charge were that Mr Walters, as the driver of WRONGLY ACCUSED, after settling in a favourable one out one back position early in the race, then elected to push forward and challenge the leader and then continued to race on level terms and apply pressure to the leader TISU TOOTA which was a major contributing factor in the race being run in an extremely fast time. Further, that at no stage during the quickly run race did he attempt to take the reasonable and permissible opportunity to give his drive any respite which Stewards state was the major contributing factor in his horse tiring to finish 8th, beaten 58 metres. In determining penalty, Stewards did not accept the evidence of Mr Walters that gear malfunction played any part in his horse's performance, the exposed form of WRONGLY ACCUSED and the established racing pattern of TISU TOOTA, the veterinary evidence that although WRONGLY ACCUSED was found to have a high heart rate shortly after the race the gelding then displayed a normal recovery, that

Mr Walters' is an experienced professional race driver and stated that his actions were grossly culpable. Mr Walters' licence to drive in races was suspended for a period of twelve race dates, commencing midnight tonight and expiring midnight 18 June 2017. Mr Walters was advised of his rights of appeal. Stewards will also investigate betting patterns on the race.

3. The appellant contends that the Stewards could not be satisfied he was in breach of the rule on account of the following considerations:
 - (a) Although the appellant moved forward in the early stages of the race and then raced on level terms with the leader, *Tisu Toota*, he did not set the tempo of the race (which the Stewards contend was extremely fast) until his drive and the leader were on level terms.
 - (b) The pace was not extremely fast, rather that the pace up until the mile marker, when the horses were on level terms, was 61.6 seconds, which, although firm, was not extreme bearing in mind that the drivers were required to complete the first half of the race within 65 seconds.
 - (c) The appellant did not have the benefit of the first quarter sectional time being displayed at the end of that quarter because that display was not working on the evening.
 - (d) The appellant drove in accordance with his instructions which were to “put the horse into the race” which, it was accepted by all parties, meant that the appellant was to move forward if the opportunity presented.
 - (e) The appellant’s instructions also included that the horse “liked to run up on the pace”, meaning it liked to move forward and set the pace of the race.
 - (f) The appellant had not driven the horse before and simply drove it as instructed.
 - (g) The opportunity to move forward and run up on the pace presented when the appellant found himself, early in the race, trailing one out, behind a 48 to 1 long shot.
 - (h) Once the appellant raced up on level terms with the leader the pace of the race decreased, although, he conceded, the pace could have been lessened further without impinging the minimum times for the sectional times.
 - (i) The horse simply performed below expectations. It was, in the appellant’s words, a horse that had “seen better days” and was coming to the end of what was otherwise a good career in racing.
 - (j) The horse was reported as having a possible heart murmur and this may have explained why it performed poorly.
4. By contrast, the Stewards contend:
 - (a) Although the appellant was entitled to go forward early in the race behind the 48 to 1 long shot, the appellant should not have pushed forward and vied for the lead when he knew that the pace of the race was extremely fast.

- (b) *Wrongly Accused* was not a horse that should be driven hard forward when the tempo is fast.
 - (c) The veterinary report that the horse had a possible heart murmur was disregarded by the Stewards because the veterinarian reviewed the horse some forty minutes later at which time its heart rate had returned to normal and, moreover, that the veterinarian did not make a finding that the horse had a heart murmur, she merely queried the possibility. This was confirmed in evidence by Dr Sims, who said she was unable to assess whether it did in fact have a heart murmur because of its elevated heart rate.
 - (d) All this, the Stewards say, points to the fact that the horse had an elevated heart rate not because it had a heart murmur but because it had been driven too hard.
5. We accept the Steward's contention with respect to the veterinary evidence. We accept that the horse was driven hard and that is the likely explanation for its elevated heart rate immediately post-race. However, the ultimate question in the appeal is whether or not the appellant's tactics in moving forward and vying for the lead, in circumstances where the pace of the race might be described as fast, but not extreme, was culpable. In our view, the Stewards could not have been comfortably satisfied that the drive was culpable merely because of the tactics employed and the fact that the horse tired late in the race and finished some 58 metres behind the leader. We have come to this conclusion because it was accepted between the parties that the appellant had driven in accordance with the trainer's instructions and those instructions – to go forward and run up on the pace – were reasonable. Further, we do not consider the fact that the appellant raced on level terms with the lead horse to have been culpable because the pace of the race was not extreme and there was little point in the appellant dropping off the leader. He would have remained in "the death", one out, without cover. To expect the appellant to do more to reduce the tempo of the race, in the circumstances, is setting too high a standard, in our view. Finally, we also observe that the lead horse finished last behind the appellant. It, along with the appellant's drive, did not enter the race with high expectations and, in our view, those expectations were met.
6. The appeal is upheld and the appellant's deposit is to be returned.

DATED: 4 August 2017