

TASMANIAN RACING APPEAL BOARD

Appeal No 21 of 2017/18 – MARK YOLE

Panel:	Kate Brown (Chair) Rod Lester	Appellant:	Mark Yole
Appearances:	Adrian Crowther on behalf of the Stewards Anthony O’Connell on behalf of the appellant	Rules:	Australian Harness Racing Rule 165(1)(b)
Heard at:	Launceston	Penalty:	2 race-date suspension
Date:	17 May 2018; and 12 June 2018	Result:	2 race-date suspension

REASONS FOR DECISION

1. The appellant, Mr Mark Yole, was the driver of MORDERN CHIC which raced in race 5 – the John McKenna Race Night Vet Pace – over 2645 metres at the Devonport Harness Racing Club on the 20th April 2018. Following an inquiry into his drive, which was conducted at the race meeting, the Stewards found the appellant had breached AHHR165(1)(b). This rule is in Part 9 of the Australian Harness Racing Rules which deals with drivers. Rule 165 deals with the early part of any race, defined as ‘*From the start through the first turn, and until reaching the next straight, ...*’, and Rule 165(1)(b) states that a ... *driver shall not move the driver’s horse towards the inside running line unless the rear of the driver’s sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.*’
2. The appellant pleaded not guilty at the inquiry. His driver’s licence was suspended for a period of two (2) race dates. The appellant was subsequently granted a stay with respect to the operation of that penalty. He now seeks to have this Board quash the Steward’s findings he was in breach of the rule, and failing that, quash the penalty for being excessive.
3. In laying the charge at the inquiry the Chairman of Stewards says in part “... *that when you, as driver of MODERN CHIC, racing into the first turn, have shifted toward the inside running line when not the required one metre clear and, as a result, Mr Hadley then has to restrain his drive ...*” The Stewards asserted that Mr Yole’s actions constituted a clear breach of the rule, and in accordance with recent practice when dealing with offences under this rule a suspension was the only appropriate penalty.
4. Mr Yole’s position was that when he commenced his move toward the inside running line he was far in excess of the required distance in front of Mr Hadley’s horse, and that any interference Mr Hadley’s horse suffered was, at least partly, due

to Mr Hadley opportunistically moving up along the pegs in an apparent effort to deny Mr Yole the inside running line.

5. The Stewards did not necessarily disagree with much of what Mr Yole contended, especially with respect to Mr Hadley's opportunistic actions, however remained of the view that Mr Yole's actions were in contravention of AHHR165(1)(b).
6. Both parties used the race films to demonstrate their respective points of view and the Board has studied the films at length in reaching its decision. The following facts are evident to the Board from viewing the film and considering the submissions of the parties:
 - a. The race was a standing start pace with Mr Yole's drive starting from barrier two (2) on the front line and Mr Hadley's drive starting from the inside of the 10-metre line;
 - b. The inside horse on the front line started somewhat wider than appears necessary – perhaps almost a full sulky outside the peg line. This horse stands flat footed at the start and even though Mr Yole's horse does not race particularly generously initially it passes and crosses the first horse to its inside very quickly and clearly in accordance with rule AHHR165(1)(b).
 - c. Even although he notionally started from barrier 2, having passed the horse on his immediate inside Mr Yole is some way outside of the inside running line;
 - d. Mr Yole appears to be crossing toward the inside running from the beginning of the race, although his horse appears somewhat reluctant to comply with his directions;
 - e. Mr Hadley's horse begins well from the 10-metre line and he immediately goes forward in an effort to secure the lead position on the inside running line.
 - f. When Mr Yole commenced his move the Board's view is that he is well clear of Mr Hadley's horse, however by the time he is moving into the inside running line Mr Yole's sulky is clearly less than a metre clear of Mr Hadley's horse.
7. The Board considered the operation of the rule and how it may be interpreted so as to be effective. It makes the following observations:
 - a. For it to be effective the Board is of the view that there needs to be a continuing responsibility of behalf of the 'crossing' driver to maintain the metre separation until he has affected the move to the next position closer to the inside running rail;
 - b. Once he has affected the move the same responsibility exists to the next lane in and the horse in it and so on.
 - c. It appears from the rule that there does not need to be any interference to other runners for a driver to be in breach of the rule.
8. The Board formed the view that Mr Yole failed to affect the move whilst at all times maintaining the required 1 metre separation and consequently dismisses the appeal against the conviction.

9. When considering the appeal against penalty the Board noted that the onus is on the appellant to persuade the Board that the penalty should be disturbed.
10. The Board accepts that there has been a national focus on this rule for some time now and the current penalty range is be a two or three meeting suspension.
11. Ultimately the Board came to the view that the appellant had not persuaded it on the balance of probabilities that the penalty was unreasonable, and consequently the appeal against penalty is dismissed.
12. In accordance with section 34 of the *Racing Regulation Act 2004* the Board orders that 50% of the appellant's deposit be forfeited to the Secretary of the Department and the appellant is ordered to pay to the Secretary of the Department 50% of the cost of preparing the inquiry transcript.