

# TASMANIAN RACING APPEAL BOARD

## Appeal No 21 of 2015/16

<b>Panel:</b>	<b>Ms Kate Cuthbertson (Chair)</b>	<b>Appellant:</b>	<b>Ms Samantha Freeman</b>
<b>Adviser:</b>	<b>Mr David Arnott</b>		
<b>Appearances:</b>	<b>Mr Leigh Dornauf on behalf of the appellant Mr Cameron Day on behalf of stewards</b>	<b>Rule:</b>	<b>Australian Harness Rule 168(1)(a)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>A two race meeting suspension</b>
<b>Heard on:</b>	<b>2 May 2016</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. The appellant, Ms Samantha Freeman, has appealed against the conviction and penalty imposed upon her by stewards following an inquiry during which she pleaded not guilty to a charge under Rule 168(1)(a) of the Australian Harness Racing Rules.
2. At the time the appellant was the driver of *Majorama* in Race 7 – the *View from the Deck Pace Division Two*, conducted at the Devonport Harness Racing Club on 11 April 2016.
3. AR168(1)(a) provides as follows:

“A person shall not before, during or after a race drive in a manner which is in the opinion of the stewards - careless.”
4. Following a brief inquiry, during which the race patrol films were viewed, stewards charged the appellant with a breach of the rule. The allegation was that the appellant drove in a manner which in the opinion of the stewards was careless in that she shifted from the running line to a three wide position forcing *Isundula Artist* out on to *Art Edition* which then led to *Isundula Artist*'s wheel making contact with the hind leg of *Art Edition* and inconveniencing both horses.
5. During the inquiry, stewards heard evidence from the appellant and the driver of *Isundula Artist*, John Walters. They found that the evidence sustained the charge.
6. In determining penalty, stewards noted that the interference involved was at the lower end and also took into account the appellant's “reasonably good record” which included two previous convictions under rule 168(1)(a) and two suspensions under similar rules in the previous 14 months.
7. The appellant raised the following ground of appeal:

“I don't think I'm guilty of the offence and there was no real interference.”

8. At the commencement of the hearing Mr Dornauf, on behalf of the appellant, requested that fresh evidence be permitted in the form of the film of a race which took place on 24 September 2015 at the Devonport Harness Racing Club. Mr Dornauf stated that he believed the film depicted a similar incident. Apparently an inquiry was held in respect of the race but stewards did not take action against the driver in question.
9. The Board did not grant leave for the film to be shown. It determined that looking at the film would not assist it in assessing whether the appellant's drive was careless or not. There was no transcript available of the inquiry that had been held in respect of that race. The Board was not, therefore, able to ascertain what view the stewards took of the conduct of that race or what explanations had been provided. As such, the drive depicted in the film was not capable of being used as a standard or yardstick by which other driving conduct could be assessed.
10. The Board has viewed the patrol film in relation to appellant's drive and the transcript of the inquiry. The incident occurred in the late stages of the race. The appellant was on the fence behind another horse then began to shift out to the three-wide position coming around the turn. Mr Walters on *Isundula Artist* had been moving forward at that stage. *Majorama* and *Isandula Artist* were initially travelling wheel to wheel. The appellant has continued to move *Majorama* out and ahead of Mr Walters who also moves out, with his wheel making contact with the leg of *Art Edition* driven by Mr Viney. Mr Walters has then taken hold of his drive and loses significant ground.
11. During the inquiry, the appellant stated as follows:

*SF: ..to start off with I came out just a little bit before the thing so I come back in before the push out pole and then we were still wheel to wheel so I come out and I was travelling a little bit better so I got a little bit ahead of him but then, you know, the gap came and I kept going.*

*Q: Okay so the gap... so you believe the gap was there you wasn't trying to force the gap so to speak?*

*SF: No I was pushing out while we were side by side and then obviously he's grabbed hold and I just kept going...." (T2 ll. 40-49)*

*"SF: To start off with we were side by side and obviously I've got a little bit close to Mr Walters coming towards the gap coming, but I didn't interfere with him but I did get too close like I should have, but the horse had a tendency quite bad to race up the track the whole time like I had a lot of trouble steering the horse and keeping it down the track at the best of times.*

*Q: So I note that when you come through here your horse's head is turned to the inside.*

*SF: Yep.*

*Q: Then straightens again, and then we'll see again he comes in again.*

*SF: Yes he is real bad for running up the track." (T3 ll. 24-38)*

*"SF: Yes I know I come up onto Mr Walters but it's not like I was coming out and forcing him I was actually trying to get the horse back down the track. Like it's not like I just kept coming up the track I was actually trying to make an effort to come off Mr*

*Walters but, you know, if you watch the whole film I had trouble the whole race keeping the horse down the track that's what it does and apparently it is worse on the fence so yes I realise I was pushing him out but it is not like I kept forcing up on Mr Walters I tried to come back down the track but, you know, it's not through lack of trying. I'm trying to get off Mr Walters but.*" (T5 ll.16-24)

*"Q: So just to you Ms Freeman you stated your horse has a tendency to hang out throughout the race does that not then make you even more aware of attempting to shift another runner, of your obligations to do so in a safe manner?"*

*SF: To start off with like I was just pushing Mr Walters out and it was fine then he just sort of just kept going like and I'm trying to bring him back down the track because I know that we had gone too far but he said once he comes out into the one out line he is a different horse. He said once he's on the pegs he will run up the whole time then he said once he gets out he will be fine, so I was just trying to give the horse every possible chance but also not to cause interference to the rest of the field.*

*Q: Okay so were you aware that Mr Walters had a runner to his outside?"*

*SF: When we started there was no runner but Mr Viney then as we were both coming up the fence off the inside I was coming off the inside pushing Mr Walters out I did notice that Mr Viney happened to start making ground, yes." (T5 l.43 – T6 l.12)*

12. Mr Walters also gave evidence at the inquiry. His evidence was to the following effect:

- that the appellant had elected to start moving him from the ease out pole, things got a little bit tight, he tried to have a bit of a tussle with her and in the end he sort of gave it away;
- he had a horse on the outside and thought he had to relieve the pressure and get off;
- there was no contact with his legs;
- he did not notice any contact with Mr Viney, but once he was shown the film accepted there had been contact but that he never felt anything.

13. During the course of the appeal, the following submissions were made on behalf of the appellant:

- the incident occurred after the "candy pole". As a consequence, the appellant was entitled to ease out;
- the appellant was not careless, but in fact had complete control of the horse, having eased the horse back down the track and waited for the pressure to release before moving forward;
- Mr Walters had tried to have a tussle with the appellant but was not entitled to do so after the "candy pole" and in circumstances where his horse was not making any ground;
- Mr Walters was using the whip during the course of the driving the subject of the charge but the appellant was not. This demonstrated that the appellant was waiting for the pressure to be relieved before moving forward;

- There was no calling out during that part of the race which suggested that there was no interference;
  - Stewards did not take evidence from Mr Viney. This was surprising given that Mr Walter's evidence raised doubt about whether there had been contact between his wheel and the leg of Mr Viney's horse.
14. There are three issues raised by the appellant's submissions. First, the version of events presented on behalf of the appellant during the appeal are in contrast to the evidence given by the appellant during the inquiry. There are three issues raised by the appellant's submissions. First, the version of events presented on behalf of the appellant during the appeal are in contrast to the evidence given by the appellant during the inquiry. The appellant's initial version was to the effect that she was not in complete control of the horse and had tried to get it to come back down the track without success. By contrast, Mr Dornauf submitted that she was in complete control.
  15. Secondly, the Board does not regard the failure of stewards to take evidence from Mr Viney during the inquiry as having any significance. That there was contact between Mr Walters's wheel and *Art Edition's* leg is plainly apparent from the race patrol film. Mr Walters appeared to concede that was the case during the inquiry.
  16. Thirdly, it was submitted that the appellant was entitled to ease out as she had passed the "candy pole" and did not otherwise have clear passage. Rule 164 provides that 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. A policy has been formulated in respect of this rule. It provides that 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.
  17. Stewards submitted that this policy does not mean that another driver is required to give up their position to the driver easing out; the onus is always on the driver on the inside to ease out in such a way as to not cause interference. In their view, Mr Walters was entitled to hold his line without being endangered by a horse easing out from the inside. Stewards submitted that the manoeuvre undertaken by the appellant resulted in Mr Walters shifting out and interfering with Mr Viney. Such a manoeuvre was not, therefore, in compliance with the ease out policy.
  18. Stewards acknowledged that the appellant initially relieved pressure, but that she then permitted her drive to shift further out to the three-wide position thus causing the interference between Mr Walters and Mr Viney. The side-on view of the race shows that Mr Walters lost considerable ground having taken hold of his horse in order to relieve the pressure. Whilst the interference was not at a high level, in their view that was more a case of good luck and the result of the skill exercised by Mr Walters in avoiding any further interference.
  19. The careless driving rule is not concerned with mere errors of judgement or split-second mistakes, but with blameworthy driving. In assessing whether a particular drive is careless, it is necessary to have regard, not only to the evidence of what happened, but to the driving, knowledge and experience of the driver involved: see *Oates*, Racing Appeals Tribunal (NSW), 3 April 2013 at p. 6 ll. 11-17.
  20. Having viewed the film, considered the explanations provided during the inquiry, the advice of the adviser and the submissions made by the parties, the Board was satisfied that stewards were entitled to form the opinion that the appellant drove in a manner that

was careless at the time of the incident. At the time of the inquiry, the appellant had had about 200 drives. The evidence showed that the appellant eased out in a manner that caused interference between two other horses. It was not a mere error of judgment or split-second mistake but a conscious manoeuvre. Such a manoeuvre was clearly blameworthy in the circumstances.

21. As a consequence, the appeal against conviction is dismissed.
22. In arriving at penalty, stewards noted that the appellant was a claiming driver who does not drive all that often. It was noted that she had been reprimanded under AR168(1)(a) in November 2015 and was also fined under the rule in June 2015. Further, she had been suspended on two previous occasions in respect of breaches of AR 163(1)(a) and (b). Although stewards characterised the interference at the lower end of the scale, in their view a two race meeting suspension was warranted. The appellant argued that her record was quite good in the context of her age and number of drives and that the penalty was, therefore, excessive.
23. Although the interference involved was at the lower end of the scale, the appellant's careless driving did cause that interference. Mr Walters' loss of position was associated with the appellant's driving. In those circumstances, and in view of the appellant's prior matters under the rule and other similar rules, the Board is satisfied that the penalty imposed ought not be disturbed.
24. The appeal is dismissed. In accordance with s.34(1A) 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 in accordance with s.34(4A).