

TASMANIAN RACING APPEAL BOARD

Appeal No 27 of 2015/16

Panel:	Mr Tom Cox (Chair) Mrs Kate Brown Mr Rod Lester	Appellant:	Miss Taylor Ford
Appearances:	Mr David Hayes on behalf of the appellant Mr Adrian Crowther on behalf of stewards	Rule:	Australian Harness Rule AR149(1)
Heard at:	Launceston	Penalty:	A 12 race date suspension
Date:	14 July 2016	Result:	Dismissed

REASONS FOR DECISION

1. The appellant was the driver of *Fortino* which raced in race 4 "*The Botra, claiming novice drivers heat three*" over 2090m at Elwick on 3 July 2016. Following an inquiry into her drive, which was conducted on the day of the meeting, the stewards found the appellant in breach of AR149 (1), which provides:

"A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field."

2. The appellant pleaded not guilty at the inquiry, however, the stewards found otherwise and proceeded to suspend the appellant's driver's licence for a period of twelve race dates. Subsequently I refused to grant a stay over the operation of that penalty. The appellant now seeks to move this Board to quash the stewards finding that she was in breach of the rule and, alternatively, impose a lesser penalty.

3. The particulars of the charge laid against the appellant at the inquiry were as follows:

".....We've considered the evidence put forward to date Miss Ford and we do believe a charge is in order. So we'll issue a charge to you under Australian Harness Racing Rule 149(1) which says "a driver should take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field". The particulars of

the charge are that as the driver of FORTINO you've restrained your drive at the start when there was both a reasonable and permissible opportunity for you to follow the horse's usual racing pattern and go forward to attempt to lead. Further that after not pursuing that option you then continued to restrain your drive when both a reasonable and permissible opportunity existed for you to obtain a trail in a forward position. Overall your actions we state in issuing the charge were unreasonable and that you continued to restrain until you were in last position which we state compromised your horse's opportunity to win or obtain the best possible placing in the field."

4. After receiving evidence from the appellant and Fortino's trainer, Todd Rattray, together with taking submissions from Ricky Duggan on behalf of the appellant, the stewards made the following findings of fact:

"Drivers Ricky Duggan assisting driver Taylor Ford and trainer Todd Rattray. We've considered the evidence put forward throughout the entirety of the inquiry and the evidence put forward in defence of Miss Ford's guilty plea. Reference has been made in this inquiry to the horse perhaps racing rough in the score up or after the start. We don't accept that evidence. We didn't see on our observations watching the race or on watching the film that there is any credence to that evidence and don't believe it plays a significant role or any role in Miss Ford restraining to the extent that she did. Likewise, reference was made to Miss Ford's horse hanging out and whilst we concede that Miss Ford's horse had its head turned slightly to the inside, indicating a slight inclination to get up the track we also note that Miss Ford your horse does at all times score up behind barrier one and in fact starts from behind barrier one, so we don't believe that is a significant factor in the reasons for you restraining the horse in the manner you did. Further reference was made to a shin boot coming loose and looking at the film it's clear the shin boot comes off at the end of the back straight on the first occasion, however, in the early stages of the race, in fact until they go into the back straight where you can see the shin boot start to move, we don't accept that has played a part in the early part of the race which has caused you or given sufficient grounds for you to restrain in the manner you did."

5. The appellant explained before the stewards and this board the following matters which, in her submission, warranted a finding that she was not in breach of the rule:
 - (a) The appellant was late onto the track for the start of race 4 after being involved in stewards' inquiry in relation to race 3.
 - (b) She was given limited instructions by the trainer, Todd Rattray, suffice to note that the horse was a good starter and that he had, for the first time, given the horse hopple shorteners to restrict its gait in the lead up to the mobile start.
 - (c) The shorteners and other gear, including tendon protectors had been put on by Mr Rattray.

- (d) During her warm up with the horse both of the shortener pins released, requiring the appellant to dismount the cart and re-pin both shorteners. At that time she was directed by the Clerk of the Course to get back into the cart owing to the limited time left before the race.
- (e) Following the warm up and as the horses prepared to take up the barrier positions behind the mobile start, the outside shortener pin again released. As a result the appellant released the inside pin to square up her drive. This can be clearly seen when the appellant was approximately 50 to 75 metres before the start of the race.
- (f) As the horse took up its position in barrier one, the appellant contends the horse was racing rough with its head pointing to the inside and its body hanging out on the track.
- (g) At this point the appellant kept a firm grip on the horse restraining him and kept restraining him for "safety reasons", those reasons appearing to be:
 - (i) That the horse had had difficulty with its gear, in particular the shorteners.
 - (ii) The horse was racing rough.
- (h) It can clearly be seen on the footage that as *Fortino* reached the mobile start and just before the mobile arms retracted, the appellant restrained *Fortino*, looked continually to her right up the track, and brought her drive back as the horse to her immediate outside took the lead and all of the other horses in the race followed suit. After all that occurred the appellant took up the position at the rear of the field seven horses behind the lead, some thirty metres behind.

6. By contrast, the stewards contend as follows:

- (a) The appellant was on the favourite, had drawn the inside barrier, was on a horse that started well and was expected to take the lead, and that for no reason connected with safety the appellant elected to restrain her drive.
- (b) The appellant failed to take up a position behind the leader and instead took up a position at the rear of the field.

- (c) Her drive, in those circumstances, the stewards say, was highly culpable and blameworthy.
7. We accept the stewards' contentions. We reject the appellant's contention that the horse was racing rough in the lead up to the commencement of the race. We further reject the contention that any difficulties the appellant encountered with the hopple shorteners had any role to play in the appellant's decision to restrain her drive and move to the back of the field. She may well have been rushed before the race, and no doubt she encountered some difficulties with the hopple shorteners, however, any such difficulties had resolved by the time she released the other shortener, some 50 to 75 metres before the race commenced.
 8. It is not necessary in our view to set out the principles concerning the application of this rule. In the circumstances, as we have found them, the appellant's drive was highly culpable and deserving of punishment. She could have pushed forward at the commencement of the race. She could have taken up a position behind the leader. She could have continued to run along the pegs taking up an inside position on the pegs towards the front of the field.
 9. We also accept the stewards' contention that after the appellant took up the position at the rear of the field she failed to make any attempt to get her drive into the best possible position until it was so late in the race that any prospect of recovering the distance between her drive and the leader was lost.
 10. As far as the penalty is concerned, we endorse the stewards' determination of a 12 race day penalty. As noted, we consider the appellant's drive to be highly culpable. Although the appellant may have been rushed in the lead up to the race, we do not find any other mitigating factors tending.
 11. Clearly she will suffer a financial impost over the period of the suspension, however, we have not been told that that impost will cause any severe or unusual hardship.
 12. The appeal is dismissed.
 13. Pursuant to s34 of the *Racing Regulation Act 2004*, 50% of the prescribed deposit is to be forfeited to the Secretary of the Department and the appellant is to pay the Secretary of the Department 50% of the costs incurred in preparation of the transcript.