

TASMANIAN RACING APPEAL BOARD

Appeal No 29 of 2015/16

Panel:	Mr Tom Cox	Appellant:	Mr John Walters
Adviser:	Mr David Arnott		
Appearances:	Mr Kent Rattray on behalf of the appellant Mr Adrian Crowther on behalf of stewards	Rule:	Harness Rule 168(1)(e)
Heard at:	Launceston	Penalty:	A \$400 Fine
Date:	29 July 2016	Result:	Upheld

REASONS FOR DECISION

1. The appellant was the driver of *Another Derek* in Race 6 - *Cub Pace* - over 2090m at the Tasmanian Pacing Club meeting on 17 July 2016. Following the race, the stewards inquired into the manner in which the appellant drove *Another Derek* during the early stages of that race. The stewards' inquiry concerned whether or not the appellant's right foot was free of the sulky footrest and protruded forward in the early stages of the race and during the appellant's move forward to contest the lead.
2. During the inquiry, the stewards issued a charge against the appellant contrary to the Australian Harness Racing Rules 168(1) (e) which provides:

"A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards – improper"
3. The particulars of the charge were that the appellant:

"as the driver of Another Derek NZ in Race 6 tonight, after the start and racing towards the winning post on the first occasion have allowed your foot to be out of the sulky footrest and protrude forward into the vicinity of the horse's hind legs which we state is an improper action."
4. The appellant pleaded not guilty and stated at the inquiry that he did nothing wrong in having his foot forward and that any suggestion that he deliberately pushed his foot forward towards his drive's hind legs was not correct.
5. Despite the appellant's position, the stewards proceeded to find him in breach of the rule and imposed a fine of \$400 after having regard to the appellant's "lengthy time in the industry" and the fact that this was his first offence under this rule.
6. Before this Board the stewards confirmed that the appellant was in breach of the rule because they had found that he pushed his foot forward, deliberately, in an attempt to clip the drive's hind legs and quicken its gait. The practice is called "hocking". The practice is very dangerous and, in my view, worthy of significant penalty if found to have taken place.

7. At the hearing, Mr Rattray, on behalf of the appellant, put forward the following matters:
 - (a) The appellant had had difficulties with the seat on the sulky before the race. The seat was locked in position and, as a result, he couldn't readily bend his legs at right angles.
 - (b) The appellant had his right leg forward during the standing start of the race. As the race started the appellant was thrown back in his seat but maintained his foot forward while he moved forward for position.
 - (c) As the appellant moved forward he was challenged by the number six horse to his outside. He made a call and after he did the horse to his outside relinquished its challenge and the appellant moved forward into the lead. At that time, the appellant gained his balance and moved his foot back onto the footrest.
 - (d) The appellant acknowledged that his right foot was out of the footrest for longer than usual, but that there was nothing untoward about that.
 - (e) His actions occurred at the start of race when other drivers also had their legs out of their footrests at various times until the race was under way.
 - (f) The appellant had to straighten up his horse when securing the lead position and in that process his foot was turned in.
 - (g) The appellant has a "fine" driving record over 38 years and has never been accused of "hocking" or in breach of this rule for such a practice.
8. By contrast the stewards submitted that:
 - (a) Before the start of the race the appellant's foot could be seen hanging straight down, contrary to an assertion by the appellant during the inquiry.
 - (b) There was no reason, other than to clip the hind legs of the drive, for the appellant to have his foot where it was.
 - (c) The appellant's foot was there for some 12 seconds and turned in towards the horse's right rear hock.
 - (d) The appellant had given no satisfactory explanation for his conduct.
9. The competing submissions are difficult to reconcile. The appellant's actions do not appear to be in dispute. However, the inference I should draw from them is a matter of significant contention between the parties. The stewards, quite properly, have submitted that there is a basis upon which I could be satisfied that the appellant engaged in the conduct deliberately. There is also the appellant's contradictory evidence about his leg hanging down before the race – evidence that I find more curious than persuasive. His leg was hanging down before the race, but this appears to be at a time before, he says, he was pushed back in his seat. The appellant has raised a number of matters which explain why his foot was where it was and why there was nothing untoward about that. In

particular, the appellant gave evidence at the inquiry and made submissions before this Board about the difficulties he encountered with the seat on the sulky. There was much dispute about the extent, if any, to which the appellant had difficulty with the seating and how that may have affected how and when he placed his feet on the footrest. I have not been able to make any positive findings concerning the seating on the sulky suffice to acknowledge that the issue was raised during the inquiry and remains a bone of contention between the parties.

10. Ultimately, I have been left in a position of some doubt about why the appellant had his foot forward during the early stages of the race. The stewards were more than justified to levy the charge they did and make the findings of fact that they did. However, I have not reached the same level of satisfaction as the stewards having regard to the seriousness of the allegation. The timing of the conduct during the race, the appellant's long career in the industry without any allegation of this type, the evidence, albeit confusing, about the seating and the difficulties that caused, if any, and the appellant's claimed preoccupation with the horse to his outside, all combine to dissuade me from concluding with confidence that the appellant was in breach of the rule.
11. The appeal is upheld. The stewards' decision of 17 July 2016 is quashed.
12. The Board orders that the appellant have his deposit returned to him pursuant to Section 34(2) of the *Racing Regulation Act 2004*. The appeal having been successful the Board makes no order as to transcription costs.

DATED: 2 August 2016