

TASMANIAN RACING APPEAL BOARD

Appeal No 30 of 2015/16 – VICTOR WONG

Panel:	Mrs Kate Brown (Chair)	Appellant:	Mr Victor Wong
Adviser:	Mr Chris Taylor		
Appearances:	Mr Leon Wells on behalf of the appellant Mr Dominic Tyson on behalf of the stewards	Rule:	Thoroughbred Rule AR137(a)
		Penalty:	A two race meeting suspension
Heard at:	Launceston	Date:	17 August 2016
Decision:	Penalty varied to a one race meeting suspension	Decision handed down:	23 August 2016

REASONS FOR DECISION

1. The appellant was the rider of *Gee Gees Style* which raced in Race 9 at the Devonport Racing Club on 24 July 2016.
2. Following the race stewards held an inquiry and reported the following:

“V Wong, rider of Gee Gees Style was found guilty of careless riding, the carelessness being that V Wong shifted in towards the rail when insufficiently clear of Meconsul approaching the 600 metre turn resulting in that gelding having to be checked by its rider. V Wong had his license to ride in races suspended for a period of 2 Tasmanian race dates. Commencing at midnight on 30/7/16 and expiring at midnight on 14/8/16.”
3. The rule in question is Rule 137(a) of the Australian Rules of Thoroughbred Racing which states:

“Any rider may be penalised if, in the opinion of the Stewards - he is guilty of careless, reckless, improper, incompetent or foul riding.”
4. On 27 July 2016 Mr Wong appealed that conviction and penalty and requested a stay of the penalty, which was granted.
5. The Board heard his appeal on 17 August and was assisted by the Thoroughbred Adviser Mr Chris Taylor, who whilst present to hear all the evidence and submissions did not take part in the decision making process.
6. At the hearing the appellant was represented by Mr Leon Wells and the stewards were represented by Mr Dominic Tyson.
7. During the hearing the Board had regard to:
 - (a) A copy of Notice and Grounds of Appeal and Application for Stay of Proceedings lodged on 27 July 2016.

- (b) Transcript of Stewards' Inquiry held on 24 July 2016.
 - (c) A copy of Mr Wong's recent offence record.
 - (d) A copy of Stewards' Report from the Devonport Racing Club meeting held on 24 July 2016.
 - (e) Copy of race patrol film of Race 9 at the Devonport Racing Club meeting on 24 July 2016.
8. Submissions were heard from Mr Wells and Mr Tyson as to both the conviction and the penalty and each had the opportunity to have the race film played and direct the Board's attention to aspects of the footage. The hearing was conducted in accordance with s.30 of the *Racing Regulation Act 2004* (the Act).
 9. In his submissions, Mr Wells relied on the fact that there was no contact between *Gee Gees Style* ridden by Mr Wong and *Meconsul* ridden by Mr Nathan Punch. He submitted that to the extent that any interference occurred, it occurred because *Meconsul* over-reacted to *Gee Gees Style* rather than anything Mr Wong did. He submitted stewards could properly have charged under a less serious provision, but that Mr Wong was not guilty of a breach of rule 137(a), and further that the penalty imposed was too severe, bearing in mind the behaviour being penalised, that there is only one race meeting per week at this time, and penalties imposed for similar breaches by other jockeys. At the core of his submissions was the assertion that there was room to cross when the appellant did and that the gap then closed which resulted in a reaction by *Meconsul*, albeit one that did not involve any contact between the two horses.
 10. Mr Wells also relied on the impact that any penalty will have on the appellant when he returns to the Hong Kong racing industry.
 11. In response Mr Tyson stated that stewards believed Mr Wong was insufficiently clear of *Meconsul* when he crossed and that caused Mr Punch to check *Meconsul* and lose considerable ground as a consequence. It was submitted that there was never room to cross and the appellant therefore shouldn't have crossed. It is noted that this was not consistent with what Mr Punch (on *Meconsul*) said at the inquiry, and that his evidence was that Mr Wong was a length and three quarters clear and "that at one point he was clear to cross". While Mr Tyson accepted the appellant's submission that there was never any contact between the horses, he argued that the incident could not be broken into two (as the appellant had submitted – first, the appellant moving across, and then a closing of the gap), but that rather it was a continuing situation in which there was never room to cross and there was effectively no closing of the gap. He submitted that at all times *Meconsul* kept a steady pace and that the appellant should have been racing further forward before attempting the manoeuvre.
 12. In terms of penalty Mr Tyson relied on the need to promote safety and to impose a penalty which acts as a deterrent both for the appellant and the other participants. He submitted the carelessness exhibited by the appellant was in the mid-range and as such would normally attract a two to three meeting suspension. He relied on the appellant having been charged a month before with the same offence and a one meeting penalty having been imposed on that occasion.
 13. In response it was submitted on behalf of the appellant that the carelessness was low-range rather than mid-range and he should have been penalised accordingly.
 14. I am not persuaded to the requisite degree that the appellant has demonstrated that the stewards erred in finding him guilty of careless riding. While I accept some of the appellant's characterisation of the incident I see those factors as being more relevant to penalty than to conviction.
 15. The appeal against conviction is dismissed. The Board accepts that the totality of the evidence demonstrates a shift occurred sufficient to warrant a charge pursuant to AR 137(a).

16. With respect to the appeal against penalty, I do not accept the stewards' submission that the culpability demonstrated by the appellant was in the mid-range, but accept that it is more properly characterised as being low-range.
17. On that basis and taking into account the submissions made by the parties and all the material before me I have determined that the penalty ought be varied to a one race meeting suspension. In so determining I note that I have taken into particular account that at this time of the year only one race meeting is held per week.
18. In accordance with s.34(1A) of the *Act*, 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) of the *Act*.