

TASMANIAN RACING APPEAL BOARD

Appeal No 8 of 2007/08

Panel:	Mr R Pearce (Chairman) Mr G Elliott Mr B McKay	Appellant:	Mr T Pullicino
Appearances:	Mr S Larkins for the stewards	Rule:	Harness Rule AR149(1)
Heard at:	Launceston	Penalty:	6 week suspension
Date:	5 February 2008	Result:	Reduced to 3 week suspension

REASONS FOR DECISION

Mr Pullicino was suspended for six weeks for his drive on *Black Washout* in Launceston on 9 December 2007. Stewards found that he, contrary to R149(1), failed to take all reasonable and permissible measures during the course of the race to ensure that the horse driven by him was given the full opportunity to win or obtain the best possible placing in the field.

The race was a standing start over 2698 metres. It was the final of the Class 2 race for which Mr Pullicino's horse had qualified by winning a heat about 10 days earlier. *Black Washout* started wide on the front line. It galloped at the start but quickly began pacing and settled one out and about five back. With about 1650 metres to go Mr Pullicino elected to move his horse three wide to look to find a position outside the leader. The driver of the horse then in that position, Mrs Emery, realised that he was coming and kicked her horse up so as to make it clear that she was not going to hand up. Mr Pullicino's horse improved to be on about equal terms with Mrs Emery's horse but did not have the speed to get further forward. Nevertheless, Mr Pullicino continued to drive his horse hard from the end of the back straight, around the whole of the turn and then for about a 100 metres of the front straight, a distance of a further 400 metres or so. By the time the field reached the 1000 metre mark with a lap to go his horse commenced to tire and was eventually beaten by about 70 metres. The veterinary examination revealed no apparent injury or ailment.

The stewards did not criticise Mr Pullicino for going three wide and attempting to get to the lead. However, they say that by the time the field left the back straight he should have realised that his horse was not going to get to the position he wanted. He should then have either remained three wide but driven his horse less vigorously or dropped back and looked for a position. They argue that by continuing to drive so hard, three wide and without respite or cover, he left his horse no chance.

Mr Pullicino said that, based on his knowledge of the horse, he thought that it could do work either to get to the lead or to race in the death and still perform well. He is an aggressive driver who likes to put his horse into a race. This particular horse is a front runner. He said that once he got to the outside of Mrs Emery's horse and realised that he would have to work harder than he had expected to reach the position that he wanted, it was too late to then drop back the 30 or 40 metres that he had already worked up. Neither was it satisfactory, he said, to stay three wide (even if he drove

more quietly) because there was still a large part of the race to go. Thus, he decided to persist with his efforts to get to the front by maintaining his horse's position around the turn and try again in the front straight when his horse had balanced up.

We have considered evidence presented to us, including the race films. It is obvious that, having been unable to get to the position outside the leader and been caught three wide, none of the alternatives then available to Mr Pullicino were particularly attractive. However, we agree with stewards' argument that the decision made by Mr Pullicino to persist in driving his horse so hard over such a distance when three wide was incorrect. The work he asked his horse to do effectively meant that it was left with no reasonable chance to be competitive in the race. Mr Pullicino's tactic to go three wide and try to get to a position outside the leader is not in question. He says that his horse "performed below par". However, we find that his failure to take steps to even attempt to give his horse some relief when he could not get to the position outside the leader, was a failure to take all reasonable and permissible measures to obtain the best possible placing in the field. It is a drive which in our view goes beyond more than a mere error of judgment, so as to warrant punishment for a breach of the rule.

Mr Pullicino is a professional trainer and driver. He relies mostly on driving, as opposed to training, for his income. He averages between five and six drives per meeting and drives horses for not only himself but for other persons. He informed the Board that he has been driving in Tasmania on and off for the last six years. Mr Larkins indicated to us that since 1999 Mr Pullicino has had 1120 drives in Tasmania without having been convicted of a breach of this rule on any other occasion. That is an excellent driving record. He is a single man. He has financial commitments. This particular offence is at the lower end of the scale of culpability for breaches of this rule. It is a busy time of the racing year with a greater number of meetings than usual.

For all of those reasons this case warrants a suspension for three weeks. Mr Pullicino will miss six meetings. That is a lesser penalty than a breach of this rule would normally attract but having regard to the particular circumstances of this appeal, it is the one we think is appropriate.

We uphold the appeal against penalty. Mr Pullicino's driver's licence is suspended for three weeks, such suspension to expire at midnight on 26 February 2008.

Mr Pullicino's deposit will be returned to him.

DATED: 5 February 2008