TASMANIAN RACING APPEAL BOARD

Appeal No 38 of 2007/08

Panel:	**Mr T Cox (Deputy Chairman)** **Mr G Elliott** **Mr B McKay**	**Appellant:**	**Mr J Rattray**
Appearances:	**Mr Reynolds for the appellant** **Mr Larkins for the stewards**	**Rule:**	**Harness Rule AR149(1)**
Heard at:	**Launceston**	**Penalty:**	**A six (6) week suspension**
Date:	**26 May 2008**	**Result:**	**Dismissed - penalty reduced to a four (4) week suspension**

REASONS FOR DECISION

Mr Rattray was the driver of the horse *Never Say Sorry* which raced in Race 5 "The Balmoral on York Launceston Pace Division 1" of the meeting conducted in Devonport on 19 May 2008. Following an inquiry into his drive the stewards found that Mr Rattray had breached 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."*

A general description of the particulars of the breach is set out in the stewards' report dated 19 May 2008. It records:

> *"NEVER SAY SORRY, which raced three wide during the middle and latter stages, tired noticeably to be beaten 51 metres. This mare underwent a subsequent veterinary examination, which failed to reveal any apparent abnormalities.*
>
> *James Rattray (NEVER SAY SORRY) was found guilty of a charge under AR 149(1) for failing to take all reasonable and permissible measures to finish in the best possible placing, in that after progressing three wide in an attempt to find a position outside the leader, he elected to persist to gain this position for approximately a lap and a half. As a result this mare commenced to give ground with a lap and a half to run to be beaten a considerable distance. The driver's licence of James Rattray was suspended for 6 weeks to commence midnight tonight."*

It is trite to say that for a breach of this rule to have occurred it is necessary for the stewards to establish something more than a mere error in judgment on the part of the driver. We must be reasonably satisfied that the quality of the drive was culpable and deserving of punishment.

The Board has had the opportunity to review footage of the race and hear evidence from a number of witnesses, all of which, including the appellant, gave honest and reliable accounts. From the footage and those observations the following findings may be distilled.

On the day or morning before the race Mr Wesley, the trainer of *Never Say Sorry*, engaged the appellant to drive the horse and provided instructions to the effect that the horse was better suited to race forward and the appellant should aim to do so when he considered it appropriate. A further instruction was provided that the appellant should use the whip as little as possible.

The race was over three and a half laps on what is generally regarded as a tight circuit.

At the beginning of the race *Never Say Sorry* settled at the back of the field. After approximately half a lap the appellant took his drive three wide and commenced to move forward. Over the next half a lap *Never Say Sorry* progressed to a position immediately outside Mr Toulmin's drive, *Eyes of Courage*, which was racing one outside the leader. Once in that position the appellant says, and we accept, that he expected *Eyes of Courage* to give up its position and allow the appellant to cross. What transpired was that *Eyes of Courage* began to pull hard and, effectively, hold out *Never Say Sorry* over the next lap until, ultimately, *Never Say Sorry* tired.

Compounding the appellant's difficulties was the fact that *Never Say Sorry*, on the turns, tended to hit its knees and, as a result, the appellant was unable to challenge on those parts of the track.

Once *Never Say Sorry* tired it gave ground before finishing some 51 metres behind the winner.

We find that over the lap and a half the appellant remained in the three wide position. He applied pressure to his drive, although we also find that initially such pressure was minimal, consistent with the relatively slow lead time for the race.

Against this background the stewards say that the appellant was culpable in that he afforded his drive no respite or relief from the three wide position over one and a half laps. They say that the horse was required to do too much work over far too much ground and, further, the stewards contend that the appellant should have, long before the expiration of one and a half laps in the three wide position, sought an alternative and dropped back and sought cover.

In response the appellant says that he had no alternative but to remain forward in the three wide position. It was consistent with his instructions and by the time there was only a lap and a half to run there was no prospect of obtaining a win or place by moving back in the field and finding cover. That last proposition may well be true, but only at that stage of the race. The appellant did not dispute that at earlier stages in the race an alternative position to one which was three wide may have been sought.

We must have regard to all of the circumstances of the drive and, objectively, assess whether those circumstances satisfy us that the drive was blameworthy.

In our view the appellant has breached AR149(1). What was apparent to the Board from both the footage and the evidence of Mr Toulmin and the appellant was that from as soon as *Never Say Sorry* got to the outside of *Eyes of Courage* the latter horse would not, as expected, give up its position and allow *Never say Sorry* to cross. Despite this continuing difficulty, together with the difficulties he had moving the horse forward on the turns, the appellant persisted in his attempts over at least the next lap to cross. In our view he should have taken alternative measures long before the expiration of one and a half laps in the three wide position. For the combination of these reasons the appellant's conduct was culpable.

Penalty

Although this is a serious offence we find the degree of the appellant's culpability to be low. We have also had regard to his excellent record. In those circumstances, the appellant will be suspended for a period of four weeks to commence from midnight 26 May 2008.

The appellant's deposit will be returned.

<u>DATED:</u> 3 June 2008.