IN THE RACING APPEALS TRIBUNAL

DESMOND CECIL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION OF AN APPLICATION BY THE APPELLANT PURSUANT TO CL 14(1)(a) OF THE RACING APPEALS TRIBUNAL REGULATION 2015 (NSW)

ORDERS:

1. The application is refused.
2. The parties are to file with the Appeals Secretary, by 5.00 pm on 9 August 2024, a draft timetable for the prosecution of the appeal, and are to provide availability for a hearing in September.

INTRODUCTION

1. By a Notice of Appeal dated 31 May 2024, Desmond Cecil (the Appellant) appeals against a determination made by the Respondent in respect of a number of breaches of the Greyhound Racing Rules (the Rules). The Appellant also applies a stay of that determination pursuant to cl 14(1)(a) of the *Racing Appeals Tribunal Regulation 2015* (NSW), pending the hearing of his appeal. The Respondent opposes that application.

2. For the purposes of determining the stay application, I have been provided with the following documents:

    (i) the Notice of Appeal and accompanying stay application;
    (ii) the submissions of the Appellant which accompanied the present application, totalling 40 pages;
    (iii) the submissions of the Respondent;
    (iv) the transcript of the hearing before the Respondent of 24 April 2024, totalling 75 pages;
    (v) the transcript of the resumed hearing before the Respondent of 1 May 2024 totalling 109 pages;
    (vi) the Appellant's submissions in reply.

3. I have read the entirety of that material. It should be noted that the timetable for the filing of material was extended by consent on various occasions, most recently to meet the convenience of the Appellant.

THE CASE AGAINST THE APPELLANT

4. In summarising the case against him, I acknowledge that the Appellant raises a number of factual issues as to what occurred during the incident giving rise to the charges. However, as detailed further below, there is some common ground between the parties, which explains the Appellant's plea of guilty to the most serious charge.

5. On 2 November 2023, the Appellant attended a race meeting at Casino. He was asked to attend the Stewards room in respect of matters which are unrelated to the present proceedings. Upon doing so, the Appellant suffered a medical episode, from which, I infer, he has largely recovered.

6. On 21 December 2023, the Appellant attended a race meeting at Grafton where he had several greyhounds nominated to compete. One of them, *Valour Rain,* sustained an injury and was examined by a Veterinary Surgeon. The Appellant left the area where the greyhound was being examined. After a period of time, the Veterinary Surgeon required the Appellant's attendance for the purpose of completing various administrative and related procedures to allow the greyhound to be taken away for treatment.

7. The Senior Steward, Mr Degan, located the Appellant and asked him to attend the Stewards' room. A verbal altercation ensued. It is not disputed that in the course of that altercation, the Appellant physically pushed Mr Degan.

8. As a consequence of these matters, the Appellant was charged with:

    (i) a breach of r 156(g)(iv) of the Rules, which creates an offence of (inter alia) wilful assault of a Steward (the assault offence);
    (ii) a breach of r 165(c)(iv) of the Rules, which creates an offence of engaging in contemptuous, unseemly, improper, insulting or offensive conduct (the conduct offence); and
    (iii) a breach of r 156(h) of the Rules, which creates an offence of disobeying or failing to comply with a lawful order of a Steward (the failure to comply offence).

9. The Appellant pleaded guilty to the assault offence. He pleaded not guilty to the conduct offence and the failure to comply offence, but was found guilty by the Stewards of both.

10. The following penalties were imposed:

    (i) the assault offence – a disqualification of 27 months;
    (ii) the conduct offence – a disqualification of 9 months;
    (iii) the failure to comply offence – a disqualification of 6 months.

11. It was ordered that all penalties be served concurrently, and commence on 21 December 2023, that being the date on which the Appellant's registration was suspended. The period of disqualification will expire on 21 March 2026.

THE PENALTY FOR THE ASSAULT OFFENCE

12. It is appropriate at this point to make a preliminary observation in respect of the penalty imposed for the assault offence, and the impact of that penalty on the present application.

13. The Appellant pleaded guilty to the assault offence. It is clear that the principal issue on the hearing of the appeal in relation to that charge will be the appropriate penalty. As I have outlined above, the Stewards imposed a disqualification of 27 months for the assault offence. Periods of disqualification were also imposed in respect of the conduct offence and the failure to comply offence. However, those periods of disqualification were substantially less, and were subsumed in the penalty for the assault offence by the order that all penalties be served concurrently. The total period of disqualification is therefore one of 27 months.

14. The present application for a stay is made in respect of all three penalties which were imposed. However, practical considerations dictate that the application should be considered, in the first instance, solely by reference to the assault charge.

15. If I am not satisfied that the penalty imposed for the assault charge should be the subject of a stay, then the Appellant would continue to serve the disqualification imposed in respect of that charge until the hearing of the appeal. In those

circumstances, even if a stay were ordered in respect of either or both of the two remaining charges, it would be entirely futile. If, on the other hand, I am satisfied that a stay *should* be granted in respect of the assault charge, it will be necessary to go on to consider whether it should extend to the two remaining charges.

16. I propose to proceed on that basis. In doing so, I note that the principles relating to an application of this kind have been set out at length in previous determinations. Put simply, it is incumbent upon the Appellant to establish that:

    1. there is a serious question to be tried; and
    2. the balance of convenience favours the making of the order.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

17. The principal submission advanced on behalf of the Appellant is that the penalty imposed for the assault charge was *"manifestly excessive, unfair, disproportionate and unreasonable"* given what have been described as the *"circumstances of the event"*. Those circumstances are said to include *"unreasonable conduct"* by Stewards leading up to, and during, the incident which gave rise to the assault offence. It would appear from the Appellant's submissions that such unreasonable conduct on the part of the Stewards is said to encompass (but is not limited to):

    (i) demanding that the Appellant attend the Stewards room, in the knowledge that he had previously suffered a medical episode;

    (ii) *"inviting and promoting",* by engaging in such conduct, *"the same adverse personal injury medical outcome"*;

    (iii) failing to avoid *"physical hardship and [a] possible fatal outcome"* by not suggesting another time or location at which the Appellant could attend.

18. The Appellant's submissions also incorporate lengthy references to the Stewards *"improperly obtaining"* evidence, and were accompanied by a copy of s 135 of the *Evidence Act 1995* (NSW) which confers a power on a Court to reject evidence which has been illegally or improperly obtained. Whilst nothing turns on it, I am compelled to point out that s 135 has no application whatsoever to these proceedings. Cl 16 of the Regulation makes it clear that when hearing an appeal, the Tribunal is not bound by the rules of, or practice as to, evidence.

Submissions of the Respondent

19. The submissions of the Respondent placed emphasis upon the penalty guidelines, which provide a starting point of a disqualification of 3 years for the assault offence. The submissions pointed out that the Appellant received the benefit of a discount of 25% (i.e. 9 months) to reflect his plea of guilty, resulting in a penalty which, it was submitted, was well within the guidelines. That said, the Respondent fairly acknowledged that I was not bound by the guidelines, but submitted that irrespective of how the circumstances of the assault offence might be viewed, the Appellant's conduct was serious, and a lengthy disqualification was warranted.

20. The Respondent further submitted that any determination of the penalty for the assault offence would necessarily involve taking into account both general and specific deterrence. It was submitted that in all of these circumstances, the Appellant had failed to establish, in relation to the assault offence, that there was a serious question to be tried, particularly in circumstances where the Appellant had entered a plea of guilty.

21. In terms of the balance of convenience, the Respondent stressed the objectives of ensuring that the integrity of, and public interest in, greyhound racing was maintained. It was submitted that, bearing in mind the nature of the case against the Appellant in respect of the assault offence, the granting of a stay would have the capacity to erode those objectives.

Submissions of the Appellant in reply

22. In reply, it was submitted on behalf of the Appellant in reply that the penalty guidelines *"are not law"*. The submissions repeated the proposition that the conduct of the Stewards was unreasonable, in circumstances where the Appellant's *"infirmity and state of mind"* were known to Mr Degan.

23. The submissions also took issue with processes adopted at the hearing of the charges before Stewards, which were said to exhibit conduct on the part of Mr Degan (amongst others) which was *"belligerent"* and *"officious"*. No transcript references were provided to make good those submissions, nor did the submissions attempt to explain the issue to which those matters were said to be relevant If it is the case that the Appellant is alleging some form of procedural unfairness, any issue(s) are overcome by the appeal process, and the fact that the hearing of the appeal is a hearing *de novo*.

24. In terms of the penalty imposed for the assault charge, the Appellant submitted that the prospects of a reduction in penalty were sufficient to establish a serious question to be tried. The Appellant relied upon a series of subjective circumstances in support of the proposition that the balance of convenience favoured the making of any order for a stay.

CONSIDERATION

25. Any assault of a Steward is, by its very nature, a matter of considerable seriousness. I have observed in another racing jurisdiction that Stewards are entitled to assume that they will be able to carry out their functions in circumstances where they are not subjected to personal abuse, and where their personal safety is not threatened or otherwise placed in jeopardy.[1]

[1] *Berry v Harness Racing New South Wales,* 4 June 2024 at [50].

26. The Appellant has, by his plea of guilty, admitted to assaulting Mr Degan. Any determination of the penalty to be imposed is likely to incorporate considerations of principles of general deterrence. Specific deterrence may also be an issue.

27. It is not my function, on an application such as this, to make a preliminary determination of the likely outcome of the appeal. What can be said, however, is that on the material available to me, the assault to which the Appellant pleaded guilty appears to have consisted of a single push, without Mr Degan sustaining any actual injury. Without derogating from the inherent seriousness of any assault, it may be arguable (and I put it no higher than that) that the offence committed by the Appellant falls generally towards the lower end of the scale. If that conclusion were reached, it may be arguable (and again, I put it no higher than that and make no determination) that there should be a reduction in penalty. In making those observations, I note that it has been acknowledged by both parties that the penalty guidelines are, just that – a guide. More importantly, they are not binding on me. All of that said, I make it clear that I have made no determination whatsoever of the appropriate penalty. I have simply identified issues in respect of which arguments might arise.

28. In these circumstances, I am satisfied that there is a serious question to be tried in terms of the appropriate penalty for the assault offence.

29. However, I am not satisfied that the balance of convenience favours a stay. This is so for a number of reasons.

30. First, for the reasons already stated, any assault of a Steward must be regarded as objectively serious. It is conduct which has a clear capacity to adversely affect the integrity of, and public confidence in, the greyhound racing industry. The analogy which the Appellant has attempted to draw between those circumstances, and a person charged with an offence who is released on bail, is entirely inapposite.

31. Secondly, and again without engaging in any pre-determination of the matter, it might reasonably be expected that the imposition of *some* period of disqualification on the Appellant is more likely than not. That is particularly so in circumstances where the Appellant's history is not blemish-free, and most recently includes a finding of guilt for misconduct towards a Greyhound Club employee.

32. Thirdly, it would seem, given the plethora of material provided in support of the present application, that the preparation of the appeal is well advanced, and the hearing can be listed quickly.

33. Whilst I accept that there are subjective considerations which impact on the issue of whether the balance of convenience lies, they are outweighed by the other matters to which I have referred.

34. For all of these reasons, I am not persuaded that the balance of convenience favours the grant of a stay in respect of the assault charge. It follows that the application in respect of the assault charge must be refused. For the reasons previously stated, any consideration of a stay in relation to the remaining charges would be futile.

ORDERS

35. I make the following orders:

    1. The application is refused.
    2. The parties are to file with the Appeals Secretary, by 5.00 pm on 9 August, a draft timetable for the prosecution of the appeal, and are to provide availability for a hearing in September.

THE HONOURABLE G J BELLEW SC

5 August 2024