IN THE RACING APPEALS TRIBUNAL

DESMOND CECIL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Appearances:	**Mr M McGirr of counsel instructed by Mr Cleverley, Solicitor, for the Appellant**
	Mr M Watts of counsel instructed by Ms Summerson-Hingston, Solicitor, for the Respondent
Date of hearing:	**25 September 2024**
Written submissions:	**11 October 2024 (Appellant)** **18 October 2024 (Respondent)**
Date of determination:	**2 December 2024**

ORDERS

1. **The appeal is dismissed.**

2. **The appeal deposit is forfeited.**

INTRODUCTION

1. By a Notice of Appeal dated 31 May 2024, Desmond Cecil (the Appellant) appeals against determinations made by the Greyhound Welfare and Integrity Commission (the Respondent) in respect of his commission of breaches of the *Greyhound Racing Rules* (the Rules). The hearing of the appeal took place on 25 September 2024, at which time judgment was reserved and orders were made for the provision, by each party, of written submissions which have now been received.

2. For the purposes of the hearing of the appeal, I was provided with a Tribunal Book of some 422 pages containing evidentiary material. I also heard oral evidence from the Appellant, and from the Respondent's Senior Steward, Mr Dean Degan.

THE CHARGES

3. The Appellant was charged with separate breaches of:

   (i) r 156(g)(iv) of the Rules which creates an offence of (inter alia) wilfully assaulting a Steward, the particulars being that the Appellant made physical contact with Mr Degan by pushing him in the chest with both hands (the assault offence);

   (ii) r 165(c)(iv) of the Rules, which creates an offence of engaging in contemptuous, unseemly, improper, insulting or offensive conduct, the particulars of which are that the Appellant said words to the effect to Mr Degan "*Me and you have got problems, Dean. You know we've got problems. Let's fucking sort this out out the back of the kennel block now. Let's fucking sort this out* (the conduct offence); and

   (iii) r 156(h) of the Rules, which creates an offence of disobeying or failing to comply with a lawful order of a Steward, the particulars being that the Appellant failed to comply with a direction given by

Mr Degan to attend the Stewards Room for the purposes of finalising a previously adjourned inquiry (the failure to comply offence).

4. Each offence is said to have been committed on 21 December 2023.

5. In what could only be described as a protracted hearing before the Stewards, the Appellant:

    (i) pleaded guilty to the assault offence; and
    (ii) pleaded not guilty to the conduct offence and the failure to comply offence, but was found guilty by the Stewards of both.

6. 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.

7. 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. As matters presently stand, the period of disqualification will expire on 21 March 2026. A previous application to the Tribunal for a stay of proceedings was refused.

8. At the commencement of the hearing of the appeal, counsel for the Appellant confirmed advice which had been conveyed to the Appeals Secretary late on 24 September that the Appellant proposed to plead guilty to the conduct offence and the failure to comply offence. That position was confirmed at the commencement of the hearing of the appeal.[1] As a consequence of that change of position, the sole issue for my determination is that of penalty.

[1] Transcript 2.16 – 2.30.

THE AGREED FACTS

9. The following facts are agreed between the parties.[2]

10. The Appellant is a registered greyhound racing industry participant under the *Greyhound Racing Act 2017* (NSW). Specifically, he is a registered greyhound owner, trainer and breeder. He has held registration as an owner since 2006, and as a trainer since 2016.

11. On 2 November 2023, a meeting was held at the Casino racetrack. During that meeting, Mr Degan asked the Appellant to attend a Steward's inquiry in respect of matters which are not the subject of the present charges. Shortly after making his way to the Stewards' room to participate in that inquiry, the Appellant suffered a medical episode which saw him taken to hospital. The Appellant said in the course of the hearing before me that he was diagnosed as having suffered a mild stroke,[3] although there is no medical evidence corroborating that diagnosis.

12. On 21 December 2023, a race meeting was held at Casino racetrack at which the Appellant was in attendance. Mr Degan was the Senior Steward on duty that day and, in that position, was responsible for the general oversight of the meeting. The Appellant had two greyhounds nominated to participate in a clearance trial prior to the actual meeting commencing, one of which was *Valour Rain* (the greyhound). He also had other greyhounds nominated to participate in races at the meeting itself. The Appellant was assisted by Ms Jamie Hancock, who is also a registered greyhound racing industry participant, and who was responsible for handling the Appellant's greyhounds on that day.

13. During its participation in the clearance trial, the greyhound sustained an injury and was carried from the track for examination and treatment by the Respondent's veterinarian, Dr Kasia Hunter. The Appellant attended Dr Hunter's room, where

[2] Appellant's submissions at [9]; Respondent's submissions at [7] – [9].
[3] Transcript 12.24.

she informed him that the greyhound was injured and would require treatment. With Dr Hunter's permission, the Appellant then left to get breakfast.

14. After the Appellant had left Dr Hunter's room, he sat down to eat in the company of a Mr David Brodie. At some point, Mr Degan walked past the Appellant and told him that he was required to attend an inquiry in the Stewards' room. The Appellant did not hear that request. Subsequently, the Appellant walked into the kennelling area. Several other individuals were present, including Shannon Kearney, who invited the Appellant to "settle down" and take a seat. Mr Degan then approached the Appellant and again requested that he attend an inquiry in the Stewards' room. The Appellant maintains that this was the first time he became aware of the need to do so.

15. The Appellant and Mr Degan then became involved in an argument. The Appellant concedes that during the course of that argument, he pushed Mr Degan with both hands,[4] and thus committed the assault offence. The conduct offence and the failure to comply offence were committed at or about the same time.

THE DISPUTED FACTS

16. By virtue of his pleas of guilty, the Appellant obviously accepts that the fundamental elements of each charge are made out. Specifically, in respect of the conduct offence and the failure to comply offence, the Appellant takes no issue with the particulars which have been provided. There remain some facts which are disputed on the evidence. They include:

    (i) the terms of Mr Degan's direction to the Appellant on 21 December 2023 to attend the inquiry;
    (ii) whether the Appellant or Mr Degan should be viewed as the instigator of what eventuated;

[4] Appellant's submissions at [9](j); Transcript 19.14 – 19.25.

(iii) what factual findings should be made on the basis of the video footage which forms part of the evidence;

(iv) the location at which the conduct offence occurred; and

(v) whether Mr Degan's racebook came in contact with the Appellant's face during the incident and, if it did, in what circumstances that occurred.

17. With the possible exception of (ii) above, the disputed facts are largely immaterial. Having reviewed the final submissions of the parties closely, nothing has been put which renders it essential for any such disputed facts be resolved for the purposes of assessing penalty. I would simply make the following observations in relation to them.

18. First, whilst the terms of Mr Degan's direction to the Appellant to attend the inquiry are in dispute, counsel for the Appellant accepted[5] that there was no need to resolve that dispute, for the simple reason that on any view of the evidence, it was clear that Mr Degan directed the Appellant to attend an inquiry, and that the Appellant refused to do so.

19. Secondly, what is depicted on the video footage is, in my view, not particularly probative of any issue. It is clear, having viewed it, that both the Appellant and Mr Degan were agitated, perhaps to differing degrees. That is generally consistent with the nature of what had eventuated and nothing specific seems to turn on it.

20. Thirdly, the location of the conduct offence is of little or no consequence. Even if it did occur in view of a broad range of patrons, rather than in the kennelling area, that fact does not increase its objective seriousness to any real degree.

21. Fourthly, although the question of whether Mr Degan's racebook came into contact with the Appellant's face occupied some time at the hearing, in my view it

[5] Written submissions at [9](i).

too is of little consequence. It is not suggested that, if contact was made, it was the result of any deliberate act on Mr Degan's part.

22. As to who should be viewed as the instigator of what eventuated, I observed the Appellant carefully when he gave evidence. Although, at times, he tended to deviate from the questions he was being asked, I formed the impression that he was doing his best to give an honest account of what occurred, to the best of his recollection. That is generally accepted by the Respondent.[6] That said, it is necessary to recognise that the Appellant has previously conceded that in some respects, his memory of what occurred is limited,[7] and that he has been influenced to some degree by what others have told him about what occurred.[8] That is not a criticism of him, but it means that there is, to an extent, a reconstructive aspect to his evidence.

23. I also formed the view that Mr Degan was being honest when he gave evidence. He made contemporaneous notes of what occurred.[9] That does not mean that his evidence should, as a matter of course, be accepted in preference to that of the Appellant in respect of matters in dispute, but it is obviously a factor which is relevant to that assessment.

24. Although I do not have to resolve the conflicting accounts of the conversation which initially took place between Mr Degan and the Appellant, I would tend to accept the account of Mr Degan. Even if I had reached a contrary view and accepted the Appellant's account, that would provide no justification for the Appellant to act in the way that he admits he did. If Mr Degan's account is accepted, it follows that the Appellant must be viewed as the instigator, given his response to the direction from Mr Degan.

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[6] Respondent's submissions at [18](c).
[7] TB 201 at A 56.
[8] TB 201 at A 61; Transcript 19.8 – 19.25.
[9] TB 80.

SUBMISSIONS OF THE PARTIES ON PENALTY

Submissions of the Appellant

25. With what could only be described as commendable candour, counsel for the Appellant expressly conceded that the Appellant's conduct (particularly as it related to the assault charge) was unacceptable, that it had the capacity to erode public confidence in the greyhound racing industry, and that it was, by its very nature, objectively serious.[10] Counsel further conceded that the conduct was unwarranted and unacceptable.[11] Nevertheless, counsel submitted that there were a series of factors which warranted a lesser penalty being imposed, including:

    (i) the serious health episode suffered by the Appellant on 2 November 2023 which, it was submitted, had placed him "*on edge*";[12]

    (ii) the absence of any enquiry by Mr Degan about the Appellant's state of health on 21 December 2023;[13]

    (iii) the fact that the Appellant was in a state of "*emotional agitation*" at the time, due to the injury sustained by the greyhound;[14] and

    (iv) the fact that the offence was committed in the context of a heated exchange.[15]

26. In terms of the conduct charge and the failure to comply charge, the Appellant relied upon essentially the same submissions.[16] It was further submitted, in effect, that all 3 charges arose from the one incident, such that principles of totality had a role to play in determining the appropriate penalty,[17]

[10] Written submissions at [3]; [11].
[11] Written submissions at [15].
[12] Written submissions at [14](b).
[13] Written submissions at [14](c).
[14] Written submissions at [14](c).
[15] Written submissions at [14}(d).
[16] Written submissions at [17].
[17] Written submissions at [18].

27. Counsel emphasised that the Appellant had now pleaded guilty to both of the conduct charge and the failure to comply charge. Whilst acknowledging that those pleas were entered at a late stage, it was submitted that they nevertheless carried some utilitarian value which, it was submitted, should be reflected in a discount of 15%.[18] In circumstances where the periods of disqualification imposed for those charges had now been served in full, it was submitted that any discount which might be applied would have no practical effect.[19] It was submitted that in the circumstances, the fact that the disqualifications had now been served should be viewed as a mitigating circumstance. Counsel further submitted that the assault charge should continue to attract a discount of 25%,[20] given the early plea.

Submissions of the Respondent

28. Counsel for the Respondent submitted that any reliance on the medical episode suffered by the Respondent on 21 November 2023 must, for the purposes of penalty, be viewed in its proper evidentiary context, and that there was nothing to support the conclusion that such episode was linked, in any causative way, to any of the offending.[21] It was further submitted that the Appellant's presence at the meeting on 21 December 2023 indicated that he had regained his fitness and that, by virtue of that presence, he was required to comply with the rules.[22] Counsel also pointed out that the Appellant did not indicate to Mr Degan, at any stage, that he was too unwell to attend the inquiry, but responded to the request that he do so with hostility and aggression.[23]

29. Counsel for the Respondent also took issue with the proposition that the Appellant was in an emotional state as a consequence of the injury sustained by the greyhound, pointing out that by the time that the confrontation with Mr Degan

[18] Written submissions at [19]; [22].
[19] Written submissions at [21].
[20] Written submissions at [22] – [23]
[21] Written submissions at [19](a)(i).
[22] Written submissions at [19](a)(ii).
[23] Written submissions at [19](a)(iii).

occurred, almost an hour had passed since the greyhound was injured.[24] It was further submitted that on the whole of the evidence, it was the Appellant, not Mr Degan who was largely, if not solely, responsible for the incident escalating in the manner in which it did.[25]

30. As to the Appellant's subjective case, it was submitted that:

(i) there was no evidence as to any adverse financial impact which had resulted, or which might result, from the disqualification;[26]

(ii) the Appellant had never tendered an apology to Mr Degan, even though he had an opportunity to do so when he met him away from the racetrack after the incident;[27]

(iii) no discount should be applied in respect of the pleas of guilty in respect of the conduct charge or the failure to comply charge, given the time at which they were entered;[28]

(iv) the fact that the penalty in respect of those charges has now been served did not operate as a mitigating factor;[29]

(v) whilst the Appellant had expressed regret for what had occurred, he had not expressed remorse, contrition or insight;[30]

(vi) the Appellant had advanced no satisfactory basis on which to reduce the penalty which was imposed for the assault offence;[31]

(vii) there were very few mitigating factors in the Appellant's favour,[32] as a consequence of which the penalty for the assault charge should not be disturbed;[33]

(viii) in the event that I came to the view that a different penalty was appropriate, any adjustment should be limited to suspending "the

[24] Written submissions at [19](c).
[25] Written submissions at [19](d).
[26] Written submissions at [20](a).
[27] Written submissions at [20](b).
[28] Written submissions at [25].
[29] Written submissions at [26].
[30] Written submissions at [20](d).
[31] Written submissions at [21}.
[32] Written submissions at [22].
[33] Written submissions at [23].

last several months" of the disqualification imposed in respect of the assault charge.[34]

CONSIDERATION

31. In *Berry v Harness Racing New South* Wales[35] I made a number of observations regarding offending of this general nature. Although that case stemmed from an incident in the harness racing industry, those observations are of general application across the three racing industries in New South Wales. I said the following:[36]

> *[49] ... Putting it simply, and whilst each case which comes before the Tribunal will, as a matter of fairness, always be assessed and determined according to its own facts and circumstances, it is necessary to send a clear message to industry participants that any conduct towards Stewards which is (amongst other things) abusive, offensive, threatening, obstructive, intimidatory, defamatory, racist or harassing, any conduct which constitutes an assault, and any conduct which constitutes a failure to comply with a reasonable direction by Stewards, is likely to meet with a substantial penalty.*
>
> *[50] That approach stems from the fundamental fact that the tasks and responsibilities of Stewards are difficult enough to begin with. Further, and at the risk of stating the obvious, their role is essential to the proper conduct and regulation of the harness racing industry. The discharge by Stewards of what are, by their inherent nature, onerous duties and responsibilities, should not be rendered even more difficult by behaviour of the kind exhibited by the Appellant in the present case. Moreover, 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.*

32. Such observations, which are consistent with previous statements of this Tribunal,[37] constitute something of a prism through which the appropriate penalties in the present case are to be determined.

33. Viewed in isolation, it might be said that the assault committed by the Appellant was relatively minor. It was constituted by a single push, and there is no suggestion whatsoever that Mr Degan was injured. However, concentrating solely

[34] Written submissions at [24].
[35] 4 June 2024.
[36] At [49] – [50].
[37] See for example *Waterhouse v Greyhound Welfare and Integrity Commission* (13 April 2022).

upon the act which constitutes the assault, in a manner entirely divorced from its context, would be completely artificial and, in my view, would reflect an incorrect approach. The context, is that the Appellant assaulted Mr Degan, a Steward charged with the responsibility of ensuring (amongst other things) the integrity of the industry in which the Appellant was a participant. For the reasons I explained in *Berry,* Stewards are entitled to assume that they will be able to carry out their tasks without having to encounter aggressive behaviour of the kind exhibited by the Appellant in the present case. Participation in the industry is to be viewed a privilege, not a right.

34. For all of these reasons, I am unable to accept the submission of the Appellant that the objective seriousness of the assault offence was "*on the lower end".*[38] If forced to place it on a notional scale, it would be slightly below the mid-range.

35. Whilst the submissions of both parties concentrated, as might be expected, on the assault offence, It is also important not to lose sight of the other matters, particularly the conduct offence. "Inviting" a Steward to settle issues by way of a physical confrontation is unacceptable in any circumstances.

36. What must also be recognised, as was properly conceded by counsel for the Appellant, is that conduct of the kind giving rise to the charges in the present case has the clear capacity to reflect adversely on the integrity of, and public confidence in, the greyhound racing industry as a whole. It follows that general deterrence assumes some significance in determining an appropriate penalty. It is necessary to make it plain to all industry participants that offending of this general nature cannot be tolerated.

37. It is also significant that on 23 February 2023, only 10 months prior to this offending, the Appellant was fined $1,000.00 for an offence contrary to r 156(g) of

[38] Written submissions at [14].

the Rules.[39] That offence was constituted by the Appellant referring to a race official as an "*imbecile*". [40] The present offending is of a not dissimilar nature. However, it represents a significant escalation in seriousness. It follows that personal deterrence has a role to play in determining penalty.

38. In terms of mitigating factors, the Appellant is entitled to a discount of 25% to reflect the plea of guilty in respect of the assault charge.

39. Assessing any discount for the late pleas of guilty to the conduct offence and the failure to comply offence is problematic. To begin with, the pleas of guilty were conveyed to the Appeals Secretary the evening before the hearing. Up to that time, the Respondent had prepared the case on the basis that it would be required to prove both of those offences. Moreover, the Appellant's pleas of not guilty to both of those offences had been maintained for a significant period of time. I find it impossible, in all of those circumstances, to identify any real utilitarian benefit stemming from the late pleas of guilty. If there is any such benefit at all, it is so trifling that it does not warrant any discount being applied .

40. Even if it were the case that a discount could be properly applied, I would find myself unable to accept the submission advanced on behalf of the Appellant that the fact that such discount would have no practical effect (the penalties for these two charges having been served) should somehow be regarded as a mitigating factor. Needless to say, I am not privy to the circumstances which led to the Appellant's change of position. However, initially entering pleas of not guilty to these two charges was obviously his choice, and was maintained over a long period of time. It is also noteworthy that he has been legally represented by the same solicitor for what appears to have been the entirety of the proceedings. The inference is that the Appellant chose, with the benefit of whatever legal advice he may have been given, to enter and maintain pleas of not guilty for a long period of

[39] TB 239.
[40] Transcript 24.18.

time, only to take a different position at, as it were, the eleventh hour. In those circumstances, he can hardly rely on his previous defence of the charges as a mitigating factor. It was he who took that position, not anyone else.

41. Contrary to the submission advanced on behalf of the Respondent, I am satisfied that the Appellant is contrite, at least to some extent. I intend no disrespect when I say that the Appellant does not give the appearance of being a particularly sophisticated man, and I am prepared to accept that his expressions of regret[41] should be construed as some indication of remorse. The Appellant accepted that what he had done was a *"bad image for greyhound racing"*[42] and that he should not have behaved as he did.[43] However, I do accept that these expressions must be balanced against the fact that the Appellant, at times, demonstrated a tendency to ascribe blame to Mr Degan for what had occurred[44], in circumstances where, in my view, Mr Degan was simply doing his job. It must also be recognised that the Appellant gave evidence of meeting Mr Degan at the Casino Post Office after the incident,[45] an occasion which provided the opportunity for him to apologise, an opportunity which he did not take.

42. I am prepared to accept that in acting as he did, the Appellant was agitated. He gave evidence, which I generally accept, that he was concerned that he may have to euthanize the greyhound due to its injury. Common sense dictates that this is something that would reasonably be of concern to any owner or trainer. It may go some small way to explaining why the Appellant acted as he did, but it certainly does not excuse it.

43. Although the parties made no submissions in respect of it, it seems to me that the Appellant's age is a mitigating factor, at least to some degree. Although it is not a principle that advanced age automatically leads to a reduced penalty, it may still

[41] Transcript 20.20 and following.
[42] Transcript 21.27.
[43] Transcript 21.40.
[44] Transcript 21.20 – 21.25.
[45] Transcript 21.6 and following.

be relevant.[46] The Appellant is now 73 years old[47] and whilst I accept that there is no direct evidence of his state of health, and that any health issues were not causative of his conduct, it is clear that he had a medical episode on 2 December 2023 which was sufficient to hospitalise him for a period of time. I am not prepared, in the absence of medical evidence, to accept the submission advanced on the Appellant's behalf that the episode that he suffered continued to have him "*on edge*" at the date of the offending. However, I am prepared to accept, albeit at a level of generality, that the Appellant's state of health is not problem-free.

44. I have had regard to the previous determinations to which I was referred, and have noted the Respondent's particular reliance upon the previous observation of the Tribunal (differently constituted) in *Waterhouse* (supra), namely that in a matter of this kind, an *"outcome … could be anything up to three or four years for the equivalent of poking or pushing"*. In my view, statements of that kind must be viewed with caution. It is one thing to express a view that a particular type of offending is likely to meet with a significant penalty. It is quite another to express a view that a particular type of offending is likely to meet with a penalty falling within a defined range of disqualification. For my part, there is something of a tension between statements of the latter kind, and the fundamental requirement for individualised justice, which demands that each case be determined on its own merits, and according to its own facts and circumstances. It is not (and to my knowledge, it has never been) the Tribunal's function to engage in the making what might be regarded as quasi-guideline, or indicative, judgments. For these reasons, statements of the kind made in *Waterhouse* as to likely ranges of penalty in cases of particular offending should be afforded little weight, be it by the Regulator or by participants. At the risk of being repetitive, each case will be determined according to its own facts.

[46] See generally *Liu v R* [2023] NSWCCA 30 at [39] – [40].
[47] Transcript 38.36.

CONCLUSION AND ORDERS

45. In circumstances where I am asked to impose a penalty in respect of a series of offences, the totality principle is necessarily engaged. Application of that principle requires that the penalty imposed appropriately reflect the entirety of the circumstances. I have already made observations as to the serious nature of the offending, and its general unacceptability. Even when full weight is given to the mitigating factors that I have identified, the overall penalty is, in my view, appropriate. The result may well have been different had the Appellant acknowledged his guilt in respect of the conduct charge and the failure to comply charge far earlier than he did, in which case he would have been able to take advantage substantial discounts which, for the reasons I have explained, are no longer available to him.

46. I make the following orders:

1. The appeal is dismissed.
2. The appeal deposit is forfeited.

THE HONOURABLE G J BELLEW SC

2 December 2024