RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 15 JULY 2020

APPELLANT SHAYNE STIFF

GREYHOUNDS AUSTRALASIA RULES 86(f)(iv), 86(q) & 86 (f)(i)

SEVERITY APPEAL

DECISION:

1. **Appeal dismissed**

2. Penalty of suspension of bookmaker, trainer and breeder registrations as follows:

> **Charge 1: 9 months with 5 months suspended for 12 months on condition that he does not breach Rule 86(f) or any like Rules within 12 months.**
>
> **Charge 2: 3 months wholly suspended on condition that he does not breach Rule 86(q) or any like Rules within 12 months.**
>
> **Charge 3: 6 months with 2 months suspended for 12 months on condition that he does not breach Rule 86(f) or any like Rules within 12 months.**

3. In addition for charge 1 a fine of $5000

4. Appeal deposit forfeited

1. The appellant, registered owner trainer, breeder, and bookmaker, Shayne Stiff, appeals against a decision of the Commissioners of GWIC of 9 June 2020 to impose upon him penalties for three breaches of the rules.

2. The charges and particulars are:

Charge 1 – Rule 86(f)

> A person shall be guilty of an offence if the person-
> …
> (f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to-
> (i)any other person having official duties in relation to greyhound racing;
>
> Particulars: That the Appellant engaged in the use of contemptuous, unseemly, improper, insulting and offensive language towards official, Aaron Tauraki, in the catching pen area at Bathurst Greyhound Racing Club on 7 September 2019, by screaming 2 to 3 metres away from Mr Tauraki, the following words, in breach of Rule 86(f)(iv) of the Rules: "You are a useless stupid black cunt".

Charge 2 – Rule 86(q), Rules

> A person shall be guilty of an offence if the person-
> …
> (q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing-
>
> Particulars: That the Appellant engaged in conduct which was detrimental and prejudicial to the interest, welfare, image, control and promotion of greyhound racing at the Bathurst Greyhound Racing Club on 7 September 2019 in the following circumstances, in breach of Rule 86(q) of the Rules:
>
> The Appellant was observed and heard after race 7 to:
>
> i. In the catching pen area:
>
> - Shout, "It's a no race you fucking Bathurst idiots you fucking morons";
> - Shout words to the effect of, "It's a no race you idiots, it's a no race";
>
> ii. In the vicinity of the stewards tower:
>
> - 50m away from catching pen, yell words to the effect of, "It's a no fuckin race;

- Yell and swear between the catching pen and stewards tower;
- Yell and scream “It’s a fucking no race ya fuckin’ idiot. The fuckin’ tyres on the track, what the fuck are you doing?”;
- Approaching the stewards room yell, “It’s got to be a fucken no race, the fucking tyres were on the track!”;
- As he walked back from the catching pen area, shout about something and waving his arms around; heard to use the word “Fuck” a number of times.

Charge 3 – R86(f)(i), Rules

> A person shall be guilty of an offence if the person-
> …
> (f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to-
> (i) a Steward;
>
> Particulars: That the Appellant engaged in the use of contemptuous, unseemly, improper, insulting and offensive language towards stewards, Simon Lyne and Michael Tyszyk in the stewards room at Bathurst Greyhound Racing Club on 7 September 2019 by yelling in close proximity to the stewards, the following words, in breach of Rule 86(f)(i) of the Rules:
> i. “[you are a] fucking embarrassment to the industry”;
> ii. “…you GWIC cockheads…”;
> iii. “…you’re a bunch of cunts, you’re fucking disgraceful.”;
> iv. “You fucking idiots, you fucking imbeciles”;
> v. “Cockhead staff”;
> vi. “Fucking cockheads the lot of you.”

3. The appellant, when he received Notice of Proposed Disciplinary Action, immediately admitted a breach of each of the three allegations. He maintained that throughout the process of the Commissioners’ inquiry and the predecessors to the Commissioners, and has maintained that on appeal.

4. This is a severity appeal only. There have been substantial submissions in respect of breaches of other legislative provisions, and they do not have to be determined.

5. The evidence has comprised a bundle, which was the material before the Commissioners, and their decision, and that bundle is 337 pages. The additional evidence on these proceedings has been a letter from the appellant’s accountant setting out his income, which will not be disclosed for

privacy reasons, and a confirmation in emails exchanged between the solicitors for the parties as to what that gross income is required to meet by way of expenses. Again, that material, for privacy reasons, will not be set out.

6. The conduct of the appellant has to be seen in the light of his personal circumstances. Before turning to that conduct by way of factual findings, it is appropriate to have regard to his senior position as a licensed person. He has been associated with the industry from age 16. His first registration occurred then. Having regard to his age of about 50, that is 34 years of association with the industry with nothing of a like nature since 2008.

7. He has a relationship, and that relationship partner is his business partner in the business of greyhound racing. Greyhound racing is his sole source of income. He is full-time in it. He has kennels which have up to 100 dogs. 8. Consistent with his long standing in the industry, at the time it was proposed to ban it, he became very active with Greyhound Clubs NSW and Greyhound Clubs Australia, of which he was a Board member, in agitating for the reversal of the proposed NSW Government ban.

8. He has been President of the Dubbo Racing Club. At that facility he has been a track manager. He has also driven the veterinary ambulance. They are volunteer positions. His work in attempting to save the industry was in a voluntary capacity.

9. As is the case with virtually every appellant that this Tribunal deals with, it is confronted with a person who has a passion for the industry. That is not said to lessen the passion this appellant displays, but is a reflection of the way in which the participants consider that the welfare of their greyhounds is to be paramount, that in so many cases they are part of their family, and they have a love and passion for the greyhound.

10. That long association of the appellant with the industry puts his extraordinary conduct in context. That context is this: that on 7 September 2019 at Bathurst Greyhound Racing Club, a major final took place, which was the Million Dollar Chase. It was a very popular event for spectators. Some 300 people were present. People of all ages including, importantly, children were present.

11. As is the normal case between races, the track was graded. The grader driver was Mr Tauraki. In the course of his grading the track, something went wrong, and whilst grading it with the usual cloth material to make the track safe, a metal grate with two tyres on top of it was placed over the cloth material. Whether that is normal or not is not known. Unbeknownst to Mr Tauraki, when he returned the grader to the area near the catching pen, the metal grate and two tyres had become detached and were on the track.

12. Race 7, in which the appellant had a greyhound racing, was about to take place. The stewards in their tower and positions had not observed the items on the track; they were not visible to them. Track staff and catchers and the appellant observed those items on the track.

13. Mr Tauraki went on to the track to attempt to remove the items. The appellant did likewise. The appellant was told to get off the track. He did. Mr Tauraki only had time to remove the two tyres. The metal grate remained on the track. The greyhounds pursuing the lure ran past it. No greyhound was injured.

14. The conduct of the appellant then started. Mr Tauraki is, on the evidence, of Maori descent. The evidence establishes he has a black complexion.

15. Steward Mr Tyszyk gave evidence to the Commissioners that he was performing his duties and he was some distance from the catching pen. He could quite clearly hear a voice shouting, “It’s a no race, you fucking Bathurst idiots, you fucking morons.” And that yelling continued. Mr Tyszyk was of the opinion that the language and the behaviour of the appellant was disgraceful. Because there were a lot of people there, families and children; it made him feel sick; and that it was not a good reflection on the greyhound industry.

16. The range of words that Mr Stiff, the appellant, uttered, in addition to those heard by Mr Tyszyk, included, “Stop the fucking race. This is a no-fucking-race. You’re all fucking idiots.”

17. The appellant, consistent with his duties as a catcher of his greyhound in the race, went to the catching pen. As is the case, a number of other catchers were present. He then continued with his tirade, screaming and yelling, “It’s a fucking no race. There is fucking stuff on the track. It will be a no race. Hold your fucking tickets. Bathurst always fucks with our dogs.”

18. Mr Tauraki, having attempted to remove the items, had returned to the catching pen. He describes in his statement to the Commissioners, after those other words were heard to be uttered and that the appellant was screaming and yelling at the top of his voice, that he looked straight at Mr Tauraki, waving his arms, and screamed, “You are a useless stupid black cunt.” Mr Tauraki found those words extremely offensive and intimidating. He was very emotional and upset. He in fact yelled out at the appellant and it appears they agreed to engage and sort it out, but Mr Tauraki gave evidence he was talked out of it.

19. Ms Maney was a catcher and in the pen. She corroborated Mr Tauraki’s evidence and she describes her reaction to those words as something she had never experienced before. Whilst she had heard language, she

describes it as “nowhere near as bad as Shayne Stiff’s, it was quite uncalled for”.

20. Ronald Seymour described hearing the appellant yelling and swearing all the way back to the Judge’s box. He describes the people that were present and that the appellant’s behaviour was uncontrollable and embarrassing, extremely offensive.

21. The appellant, as he walked towards the stewards’ box, was heard to utter on numerous occasions, “It’s a fucking no race, you fucking idiot. It’s a no-fucking-race. It’s got to be a fucking no race. The fucking tyres were on the track.” It is quite apparent from the yelling and screaming that he was doing that these words carried substantially about the racecourse. They were certainly heard by the various witnesses who have given statements and were no doubt quite able to be heard by the children, women and others present.

22. The appellant, continuing his tirade, arrived at the stewards’ box. He immediately yelled and swore at the stewards. He stood approximately one metre away from steward Mr Lyne and said to him, “You fucking idiots, you fucking imbeciles, that cunt, cockhead staff members, this club’s a fucking joke”. Something about a bet and losing money on the race, and he continued to yell and scream abuse. He was asked to leave and he uttered certain words to them, including a repetition of some of the language. But, something to the credit of the appellant, he actually did leave the stewards’ room as directed but continued to swear as he did so.

23. The other evidence is that the stewards, having had an opportunity to observe various matters, did in fact declare it a no race. The disciplinary action against the appellant then took place.

24. That is the substantial evidence in respect of the matter. Consistent with that evidence, it establishes each of the aspects of conduct in which the appellant engaged.

25. There has been much made of the words uttered to Mr Tauraki and how they should be assessed. Were the words a racial slur? Did they breach 18C of the Racial Discrimination Act 1975 (Cth) or the Racial Hatred Act 1995 (Cth) (“18C”)? The Tribunal does not have to decide that. What it is deciding, consistent with the admission of the breach, is whether the conduct as particularised took place. There is no dispute that each of those ingredients are established. That is, that the appellant’s conduct was, as the Commissioners found in their decision, offensive and the like.

26. As to whether it may or may not have breached 18C and the others does not have to be decided. But in assessing objective seriousness it is relevant to note that it did take place in public, that objectively assessed it is

obviously offensive, insulting, humiliating and intimidating to Mr Tauraki, and blatantly it was done because he was black. That is an assessment of the conduct itself, not whether he breached some other piece of legislation.

27. To suggest that the word black can be dissociated from the sentence uttered is a submission which is not accepted. Whether he engaged in the word black simply because that was his colour to the Tribunal does not matter one iota. The appellant knew Mr Tauraki from previous meetings. It was patently obvious to the appellant that Mr Tauraki was black. It was patently obvious to the appellant that in using the word black in association with each of the other words he was setting out to insult and humiliate Mr Tauraki.

28. Each of the words must be considered in isolation and each of them is capable, isolated from the others, of meeting the breach of the particular rule. To call someone useless is, in many cases, and in the case of the facts here, of itself capable of meeting the test. To call him stupid – or to call anybody stupid – is equally in breach. To call a person of black colouring black in the circumstances in which it occurred was not only disgraceful but was within the particulars alleged. The use of the word cunt, as frequent as it might be in modern parlance, taken on its own in the circumstances in which it was uttered with yelling and screaming and the like, equally met each of the particulars.

29. When the expression “useless stupid black cunt” is read as a whole, the Tribunal has not the slightest hesitation, consistent with the admission of the breach, that it was a most egregious expression and of the most serious kind that could fall within the particulars and the provision of the rule.

30. The second matter involved conduct which is detrimental and prejudicial. Having regard to the people present, the circumstances in which it occurred, the screaming and yelling, the distance over which the words carried, that, in the catching pen area, it was an offence of considerable gravity. In the vicinity of the stewards’ tower, likewise. There is no place for that type of behaviour.

31. As for the third matter, conduct directed towards the stewards, it is hard to imagine worse language when directed and in the circumstances of yelling and screaming in the face of a steward that it could have occurred. It is a worst-case scenario.

32. Objectively, each of the items of conduct are, in the Tribunal’s opinion, to be viewed as most serious. It is necessary to assess what type of penalty as a starting point is necessary for that objective seriousness.

33. The general penalties provided for in the rule are enlivened. They include disqualification. The Tribunal is of the opinion that a starting point for this conduct must be a disqualification.

34. Briefly looking at this stage at matters of parity, it is not out of the question that a disqualification must be the starting point. It was effected by the Commission itself on 2 June 2020 in the matter of Tubinas. Admittedly, slightly different rule breaches, but nevertheless language directed towards stewards and others where in two of the four matters periods of disqualification of 4 and 6 months were considered appropriate, and in two others of the matters periods of suspension, each of which themselves were suspended, were considered appropriate. The Tribunal will return to the issue of parity.

35. The next issue is that should the Tribunal start with a period of disqualification. In that regard, it is not asked to do so. The Commissioners did not disqualify, they suspended. No case for the respondent, the regulator, is advanced that a disqualification should be imposed. Indeed, it is the case for the regulator, on appeal, that the penalties seen fit in each matter by the Commissioners be imposed.

36. It is the case for the appellant that those penalties are excessive, and manifestly so, and that they failed to have regard to parity, objective seriousness, remorse and contrition, and precedent. In addition, it is said in the grounds of appeal that the fine itself was too severe and greater than fines for comparable breaches. Those matters, of course, touch upon the end result rather than the starting point. But it is to be drawn from that that a disqualification is not appropriate.

37. As a result of the decision in Kavanagh, the Tribunal would be engaging in procedural unfairness if it was to consider disqualification, and it does not do so. Despite the view that the objective seriousness warrants it, the Tribunal turns to what other penalties are appropriate.

38. Having regard to the Tribunal's views as to the objective seriousness, it is apparent that the Tribunal will not find, when it turns to analyse subjective factors, that fines alone are appropriate. The Tribunal will return to assessment of the conduct.

39. It is necessary to have regard to subjective factors. And the very strong one is, as the Tribunal opened in assessing the facts, the reasons for the outbursts by the appellant. The Tribunal simply says it understands why the appellant saw fit to react. There is no evidence of other failures at Bathurst to which the appellant referred in his tirades. Likewise, there is no evidence for the respondent, as was said, that this incident is one which could well occur on other tracks. There is simply no evidence that it ever has, and that submission is not accepted.

40. The appellant, with all his history, was entitled to react. The problem for the appellant is that his reaction was totally out of the permissible range of conduct in which he might have engaged. Accepting, therefore, that he was entitled to react, it is a subjective factor that, in other words, his behaviour was not entirely inexplicable.

41. As set out, he has a long and satisfactory association with the industry. His work to save it is to the benefit of all of those who currently participate. His voluntary actions in running the local race club at Dubbo and assisting with the track and with the veterinary ambulance are matters to which he is entitled the credit, and he shall receive it.

42. His long association with the industry has had one prior matter in 2008 when he was suspended for one month for a breach of 86(o), the facts of which are not before the Tribunal. That has put a blemish on his 34-year association with registration, but it is some 11 years or 11½ years prior to this conduct and accordingly, it not being part of the respondent's case that it should lead to any loss of leniency, will not be addressed further.

43. To the appellant's credit, and at the suggestion of his legal advisor, he took himself off at his own expense to see a psychologist. Psychologist Helen Carney has provided a report. There is no need for privacy. The appellant was not assessed as having any psychological conditions which might have accounted for his conduct.

44. The psychologist's report then went on in analysis and conclusion, perhaps more so than would be expected when no psychological problem has been assessed, to attempt to put his conduct in context. She describes his persistent angry and abusive manner as a result of his perception of indifference by stewards and staff.

45. Quite fairly, the psychologist assessed his language as very abusive, insulting and critical. But apparently he was unable or prevented from expressing himself properly. The psychologist also assesses that his conduct continued for a relatively long period of time in a public place. But she does say this, consistent with his evidence, that the appellant knows he overreacted, is disappointed in himself, accepts his inappropriate conduct and is aware that he must take control of his emotions and language in the future. And the Tribunal pauses to note that in this civil disciplinary matter it is required to find a protective order, not a punishment and in doing so, look to the future.

46. The salutary lessons that he has learnt and will take away from this decision, coupled with the psychologist's report, satisfy the Tribunal, in addition to the support of his referees, to which the Tribunal will return, that

the likelihood of reoffending, particularly in the circumstances as occurred here, is exceptionally low.

47. There is comfort in that conclusion by reason of the fact that this conduct occurred on 7 September, he has continued to participate in the industry and no further misconduct has occurred. The Tribunal is comforted in his own expressions of remorse and contrition, both by his admission of the breaches at an early stage, but by the following evidence that he gave in answer to this leading question: “Are you truly contrite and remorseful for your, first of all, the words you used and the embarrassment and upset you caused him?” Answer: “I really, really regret it.” There is therefore comfort that he is contrite and remorseful, and that is relevant to an assessment of penalty.

48. He has in addition, as an expression of acceptance of his wrong conduct, apologised to the GBOTA representative General Manager Mr Noyce, and likewise to Mr Jason Lyne, the track manager at the Bathurst Greyhound Racing Club and relative of the steward Mr Simon Lyne to whom such appalling conduct was directed. He has not apologised, as he stated to the Commissioners, to Mr Tauraki because he has not been able to do so. He has, however, done so through his evidence to the Commissioners.

49. There are therefore strong subjective factors. Each of those is to be taken in conjunction with a 25 percent discount which the Tribunal has consistently said for a number of years now, adopted by the regulator, that a 25 percent discount is appropriate for the immediate admission of the breach and the cooperation with the stewards in respect of their investigations, not cooperation just by attending an inquiry.

50. The other issues that have arisen are the capacity to pay. The appellant told the Commissioners, on a belief he then had an income which was some 25 percent greater than that which he actually enjoys, that he had a capacity to pay. The Tribunal has the benefit now of a precise income figure from his accountant which has, as just stated, been kept private.

51. It is quite apparent that what might have been a past consideration of the Tribunal that a $500 fine equated to one month’s loss of privilege of a licence is no longer a current figure. The Tribunal has always said that that was a figure that was put to it by the regulator, as long ago as 2011, as the perception in the industry. The Tribunal has not examined, interrogated or had evidence to support that. Suffice it to say, it does not apply in this case. Because having regard to the income of the appellant from his participation on a full-time basis in this industry, and without giving that figure because it would breach the privacy, that it is nowhere near $500 a month but considerably more than that before the one month figure can be considered. For privacy, it will not be expressed in this case.

52. Those then are the objective and subjective matters to which the Tribunal now returns to consider whether it receives any benefit in addition to the parity matters referred to which were touched upon in Tubinas in respect of a disqualification. But what has been happening elsewhere? Because for parity reasons this appellant is entitled not to be dealt with, if the facts are the same, more harshly than others.

53. The matters put to the Tribunal on this appeal are the GWIC decision of 29 November 2019 of Mathias who engaged in wilful abusive and insulting language towards a steward and for which he received a 12-month suspension with 6 months suspended for 12 months on good behaviour.

54. There is the Tribunal decision of Gannon where there were a number of matters where language was directed to Board members, the Board itself and to a lawyer, where particularly unpleasant language was used and in which the Tribunal set aside monetary penalties but kept in place a 1-month, a 3-month and a 1-month suspension. It need not be more closely examined on a parity basis.

55. There is the matter of Tubinas to which the Tribunal has already referred.

56. And there is the further matter of GWIC of 3 May 2019, Hannay, where language was used towards a GWIC vet, and that was inappropriate language, it might be described, and a 2-month suspension was imposed.

57. There was then a QCAT decision in which an appeal was dismissed against a Queensland racing disciplinary board decision to impose a 6-month suspension in respect of language directed towards stewards, and it was a broad range of language not dissimilar to the type of conduct engaged in here. That decision in fact led to an effective suspension of 3½ months.

58. It is submitted that the totality of facts means that the penalties considered appropriate by the Commissioners should be imposed. And those penalties comprised in respect of the first matter a 9-month suspension, 5 months of which was suspended on a condition. Effectively a 4-month suspension and a $5000 fine. In respect of charge 2, a 3-month suspension wholly suspended. And in respect of charge 3, a 6-month suspension of which 2 months was suspended. In total this meant an effective suspension of 4 months. And the suspensions in charges 1 and 3 were to be served concurrently. Meaning effectively a penalty that the Commissioners considered appropriate of a total period of suspension of 4 months from 9 June 2020 and a $5000 fine.

59. The Tribunal stated that it considered that the conduct was so egregious that a disqualification was appropriate but has reduced that to a

consideration of a suspension. And that suspension requires consideration, in the Tribunal's opinion, as to whether it also carries with it a monetary penalty, whether in a sum of $5000 or otherwise. It is quite apparent that if a monetary penalty of $5000 is imposed, there is a multiple in respect of the period of loss of licence equivalent. In other words, for charge 1 it is not just a 9-month suspension of which 4 months is to be served, but if a $5000 fine is imposed upon it, then in addition there is a greater period of equivalent loss of privilege.

60. The Tribunal's opinion at the end of all of that is this: that the penalties, contrary to the appellant's submissions, and contrary to the grounds of appeal, and contrary to the suggested matters that come from parity or objective seriousness, but balancing the subjective factors, are that the penalties that the Commissioners considered to be appropriate are in fact possibly lenient.

61. The Tribunal, however, has to make its own decision and it has to make that decision ensuring procedural fairness and not imposing greater penalties. Without giving a flag such as a Parker direction that that might occur or, alternatively, coming to different conclusions which whilst they might have the same effect, according to the Kavanagh decision, cannot be embarked upon without having the parties make direct submissions on it.

62. The conclusion the Tribunal reaches is this: that the appeal in respect of the suspension periods should be dismissed. The Tribunal is of the opinion, as is clear from its remarks, having come down from a disqualification and a lengthy period of suspension, that those suspension periods and their suspension as appropriate is also the order that should be made.

63. It leaves the question of whether the monetary penalty in the sum itself should be in addition in respect of charge 1. Having regard to the Tribunal's expressed views in respect of severity, the starting point as it expressed of the modification, viewed that the suspension should be greater, is of the opinion that that monetary penalty is also appropriate. The Tribunal does not consider the parity matters should lead to lesser penalties.

64. The Tribunal considers, despite all the strong subjective factors, that the most appalling and disgraceful and egregious conduct of this appellant to the welfare and integrity of the industry and looking to the future cannot be less than those penalties which are considered to be appropriate.

65. The appeal against severity is dismissed.

66. The penalties considered appropriate by the Commissioners are imposed by the Tribunal and they are set out in paragraph 58.

67. The Tribunal orders the appeal deposit forfeited.

POSTSCRIPT

68.The Tribunal notes it summarised the references in some of its conclusions and stated it would return to the references. It did not do so in the ex tempore decision. It adds these remarks for completeness.

69. Dr John Keniry AM of 20 December 2019, who was a government taskforce leader on the future of the industry, became acquainted with the appellant and admired the appellant's work for the industry. He reflects on the hours the appellant voluntarily provided and the courage and commitment he displayed.

70. David Simonetta of 17 December 2019 knows the appellant professionally and personally and reflects on his strong commitment to the industry and is honest and straightforward and passionate. He says he is a backbone of the industry.

71. Steve Noyce of NSW GBOTA , general manager, on 24 December 2019 refers to the appellant's leading role in the fight to save the industry and that he has an incredible love and passion for it. He appreciated the apology the appellant gave to him for his conduct.

72. Wayne Billett, general manager racing operations GRNSW of 13 November 2109 confirms the positions held by the appellant.