

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

DECISION

THURSDAY 12 NOVEMBER 2020

APPELLANT KELLIE FOGARTY

GREYHOUND RACING RULE 83(4)

JURISDICTION TO APPEAL

DECISION:

- 1. Determination of no jurisdiction**
- 2. Appeal deposit refunded**

1. On 9 September 2020 Ms Fogarty lodged an appeal in respect of the disqualification of a greyhound owned by her.
2. The greyhound was disqualified at a time that its trainer was disqualified for a prohibited substance matter.
3. GWIC, the respondent, has submitted that the Tribunal has no jurisdiction to deal with the appeal.
4. The Tribunal is created by statute and can only exercise the specific powers given in the Racing Appeals Tribunal Act and the Racing Appeals Tribunal Regulation.
5. The Act permits an appeal by any person from a GWIC decision but the Regulation limits the cases that can be appealed.
6. Clause 9 of the Regulation relevantly states:

“An appeal may be made to the Tribunal ... only in respect of a **decision**:

(e) to disqualify a greyhound, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person...”
7. Each of the words of (e) apply to this appellant.
8. The issue is whether there was a “decision” to disqualify so as to activate (e).
9. The facts now put to the Tribunal by GWIC are that no decision to disqualify was made.
10. The decision against the trainer was under GRR 83(2)(a) which relevantly required the trainer to present the greyhound to race free of a prohibited substance. He did not. 83(3) provides for the trainer to be guilty of an offence. He was penalised. GWIC then used 83(4).
11. 83(4) states that:

“A greyhound presented for an Event contrary to sub-rules ... (2) shall be disqualified from the Event ...”
12. It is the position of GWIC that (4) is mandatory if (2) is breached and no decision to disqualify is made. The facts establish that that sub-rule was used.

13. Correspondence from GWIC has been produced that seems to indicate that a decision was made rather than the use of a mandatory provision. That correspondence is accepted by GWIC as wrongly stating the correct position. That does not mean that GWIC is bound by that error.
14. The appellant has submitted that the provision is not mandatory and that shall as used in (4) does not mean must. Other rules are cited that deal with different provisions and do not relate to the rule here or the decision to be made.
15. No submissions have been made on the meaning of the word "decision" in the sub-rule, in the rule or the rules generally. A purposive interpretation is required.
16. Many definitions could be quoted for "decision". The Tribunal is satisfied that in the sub-rule it means that there must have been a conclusion after consideration. That is something must have been taken into account before a discretion to use the rule was implemented. That requires more than an automatic application of the power in the rule. The action of GWIC in disqualifying the greyhound was not deliberative.
17. Such a conclusion is consistent with the facts that there was no hearing on the issue of disqualification that has been advised to the Tribunal but a mere notification of the application of the rule.
18. There was no decision made.
19. Accordingly the appellant does not satisfy the Tribunal that cl 9 of the Regulation has been activated.
20. The Tribunal has no jurisdiction to hear this appeal.
21. The appeal papers will be marked "no jurisdiction".
22. The appeal is finalised.
23. Consistent with precedent, the papers being marked no jurisdiction, there is nothing against which an appeal deposit is required.
24. The appeal deposit is to be refunded.
