

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

THURSDAY 12 AUGUST 2021

**IN THE MATTER OF A STAY APPLICATION
BY ANNETTE YARNOLD**

RESPONDENT GWIC

DECISION:

1.Application refused

1. The matter before the Tribunal is an appeal by Ms Yarnold, who is the owner and trainer of the greyhound Chosen One.
2. On 2 August 2021, GWIC, under the provisions of Rule 14(1)(c) of the Greyhound Racing Rules, prohibited the greyhound from competing in any event on the basis that it is necessary for the proper control and regulation of greyhound racing. A written decision was given. Notice of appeal was lodged on 6 August and with it a stay application.
3. The evidence has comprised the decision, the notice of appeal and the supporting documentation on the stay application lodged by the appellant and, in addition, the appellant has given oral evidence.
4. The Tribunal starts by having regard to the Greyhound Racing Act 2017, which, as part of its introductory words, requires the Commission to act for the welfare of the greyhound.
5. Section 11 of that Act provides, in summary terms, three key provisions: (a) to protect the welfare of the greyhound; (b) to safeguard the integrity of the racing industry and (c) to maintain public confidence in the industry. And that is a paraphrase of the provisions.
6. The mischief here which is said to require the Commission to act in accordance with section 11 is that there is said to have been a breach of the Prevention of Cruelty to Animals Act 1979 and, in particular, section 21A of that Act. Section 21A is in terms that, under the heading "Firing prohibited":

"A person who applies a thermal stimulus (such as hot wires) to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg is guilty of an offence."
7. The Tribunal notes that the offence provisions carry with them substantial penalties. It is a reflection of the gravity of that particular breach of that particular Act that is for consideration here so far as it relates back to welfare of the greyhound.
8. The fact is that the Greyhound Racing Rules themselves are silent in respect of this particular provision in section 21A. There is, therefore, no specific rule preventing such a treatment. The overall arch of the rules, however, is of course designed not only for integrity but also for welfare, and that relates back to section 11 of the Greyhound Racing Act. The mandate, therefore, of GWIC is to assess matters such as this, a burden which now falls on the Tribunal, and to determine whether those welfare issues are such that it is appropriate that the endorsement under 14(1)(c) be kept on foot.

9. There are substantial facts about the appellant herself and about the greyhound Chosen One. It is apparent from the appellant's sworn evidence that, as she said to the Commission and in the stay application, she was not aware of the provision in the Prevention of Cruelty to Animals Act, was aware that there was no rule, has since informed herself, and that it is a common ground that there has been no Notice to Industry in relation to this particular type of treatment. It appears that, on information not available to the Tribunal, the Commission became aware of treatments by a particular vet and as a result of that, this particular treatment which was effected in October 2020 came to light.

10. The appellant does not hide from the fact that the particular treatment was recommended by a particular vet and she participated by producing the greyhound on a belief that it was in the best interests of the greyhound and the greyhound's racing and subsequent breeding career and brood bitch potential in the marketplace that the treatment be provided and the greyhound would therefore, from her perspective on a welfare basis, being an improved racing animal. Everything that was required of her was done.

11. On 29 May, the stewards prevented the greyhound from racing in a nominated event and the greyhound has not raced since. The facts otherwise indicate that this greyhound is three years of age, has been out therefore of racing since 29 May and any period of time prior to that because of the injury has not been referred to and is not important.

12. The question then becomes, also – and it is a balance of convenience, not arguable case issue – that there may well be delay before expert evidence, if required, can be put together and replied to and therefore a hearing conducted. The Tribunal is otherwise ready and able to hear this appeal on short notice. Therefore, any extended delay beyond today, whilst it will have, of course, an impact because the greyhound has a limited racing life, is not a substantial one.

13. What then is the arguable case? The appellant puts forward that the issues which have been identified are those which go to it. Some evidence was given about what can only be described as a belief. No expert evidence was led, nor any veterinarian evidence led, about the issue of what precise treatment was given and therefore the issue whether it falls within section 21A. That, therefore, is not established on an arguable case basis that there is any exculpation from the breach of the Prevention of Cruelty to Animals Act likely to be available. It is simply not established evidentially.

14. The issue then becomes, as this is essentially a welfare and reputation case, what evidence there is to address the concerns of the Commission that it is required, in the interests of the industry generally, to have in place this endorsement on the registration of the greyhound. It needs to be stated, although it is a plain fact, that the appellant is not, as it were, on trial here.

Her actions are not those which are of concern, it is a concern and focus upon welfare and reputation.

15. The appellant in fact adduces no evidence which goes to an arguable case in respect of health and welfare and reputation other than those matters of ignorance to which she has made reference. The Tribunal accepts for the purposes of this stay application that prior notice to the industry was not one which could be embarked upon because on the current indications and evidence given here, the knowledge of the industry is limited to three matters, each of which is subject now to appeals in recent weeks because GWIC has just made decisions on three of these matters, and that is from thousands of greyhounds for which the Commission has responsibility for welfare.

16. The Commission quite fairly is sympathetic to the impact that this will have when it comes to the balance of convenience. But in essence there is not that aspect of persuasiveness on the appellant's case which goes to address what in essence is the key point of the present state of the evidence, and that is that the Commission, in exercising its functions under section 11 for the welfare of the greyhound, could not be seen and, therefore, nor could the Tribunal be seen to itself – and this is subject to final evidence and matters of that nature – on a stay application to be endorsing a greyhound to race upon which a potentially criminal procedure has been carried out. There is nothing here that goes to a level playing field in a race, but that well could be one of the matters to be dealt with in the future; at the moment it is not in evidence.

17. In those circumstances, the appellant does not satisfy the Tribunal that there is an arguable case. In any event, if the appellant had succeeded on that, on the issues of balance of convenience, despite all the matters in relation to the subjective facts of the appellant – and they are all favourable with this one exception to her in a 50-year career – a greyhound that otherwise is not adversely noted, is one which would not outweigh those welfare concerns and reputational concerns on which the Tribunal has touched.

18. The Tribunal emphasises that this is not a final determination of the appeal; it is simply a determination on the evidence currently before it.

19. In those circumstances, the application for a stay of the decision is refused.
