

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI**

**EX TEMPORE DECISION**

**THURSDAY 9 SEPTEMBER 2021**

**APPELLANT GLEN MCKINLEY**

**RESPONDENT GWIC**

**IN THE MATTER OF A STAY APPLICATION  
BY GLEN MCKINLEY**

**DECISION:**

- 1. Stay granted upon conditions**
- 2. Appellant to file and serve evidence by 15 September 2021**
- 3. Respondent to file and serve evidence in reply by 17 September 2021**

1. The appellant, licensed trainer Mr Glen McKinley, appeals against a decision of the stewards of 3 September 2021 to impose upon him, for three breaches of the rules, an effective period of disqualification of four months and three weeks. It will be a severity appeal.
2. Those breaches relate to his attendance at a race meeting, after being told he required a permit, without a permit required by the policies of the New South Wales Government related to COVID and also by policies adopted by the regulator. The gravamen of the behaviour is the attendance without having an actual permit.
3. He has applied for a stay of the decision which is opposed.
4. The legal principles are not in issue, they do not require any detailed consideration. The Tribunal has set them out in numerous prior decisions and simply reflects that. The first issue is whether there is an arguable case and if so whether on the balance of convenience a stay should be granted.
5. The penalties were imposed following an interim suspension. The facts are matters for the final hearing. The determination will be on penalty based upon a severity appeal only. It is apparent from the submissions that the appellant anticipates that some form of penalty will be imposed upon him, but he will invite the final determination to be one which finds that the disqualification at the start is not appropriate and a disqualification of the length imposed upon him is not otherwise appropriate.
6. As is the case, the Tribunal does not determine the appeal on these matters and merely makes comments and determinations on the issue of whether there is an arguable case and not on what might be described as the ultimate issue which will be the subsequent penalty.
7. It is not necessary to canvass all of the facts. It is not necessary to finally determine facts. It is merely to have regard to the facts that are raised for consideration whether there is something arguable on penalty.
8. The first issue, of course, is that there is no dispute on the existence of the various policies, either Government or industry, nor of the fact that he was told he could not attend unless he had a permit. The inevitability of penalty is enlivened on those facts because, despite the fact he knew he did not have a permit, he knew of the rules and regulations relating to it, he elected to attend without it.
9. The aspects of gravity which are so much relied upon by the respondent, the regulator, go to the protection of the industry and, indeed, that is apparent from the need to do so in an industry which is under substantial challenge and to ensure that the industry participants do not lose the privilege of attending race meetings, and of conducting their business

associated with race meetings, by reason of people breaching COVID protocols.

10. The facts here do throw up some matters which will be relevant on penalty. Again, these are not final determinations, they are merely a reflection that some matters may be of importance.

11. They are that he was COVID negative, one of the two requirements that the regulator placed upon him, and that was a proximate test to his attendance.

12. Secondly, that it will be his case, yet to be proved, that the system did not enable him to obtain the permit but he did try, in accordance with the policies, to obtain it.

13. There is a slight further fact, not highly relevant but which appears to have been in the mind of the appellant, that the New South Wales police were apparently not enforcing the permit system on the day that he attended. Those go not to whether he had to have a permit but a reason in his own mind.

14. There are also apparently issues relating to his mental health. As to what impact that had upon the decision he actually made at the time is uncertain.

15. So far as issues subjectively of him are concerned, he has been associated with the racing industry all his life – New Zealand thoroughbreds and eight years, or thereabouts, in this industry – and has no adverse disciplinary history. It will be a factor that indicates he is not one prone to disregard the rules. And, indeed, it will be argued, no doubt, on his behalf that he was not disregarding everything required of him, it was not a blatant disregard, attempts were made.

16. The other issues of concern are that this is for GWIC, the regulator in this industry, the first occasion on which breach of protocol rules has come for determination on penalty. The Tribunal notes that there are other cases imminent for determination and it appears the stewards will turn their minds to two issues tomorrow. The facts of those are not before the Tribunal, nor do they need to be. But it is a reflection that there may well be an undercurrent of non-compliance with these COVID regulations and protocols which may put the industry at some risk.

17. The facts raise, therefore, some issues of an arguable nature as to whether the penalty is, on his facts and circumstances, appropriate. Allowing for the fact that there must be a protective order, there are nevertheless some matters which the Tribunal is satisfied are arguable and

only those have been given any comment, and not all of them, only the key ones.

18. The appellant establishes an arguable case.

19. There is then the issue of balance of convenience.

20. It is apparent from what the Tribunal has said that great weight must be given to the protection of the industry in relation to COVID protocols, both Government and industry-based. It is quite apparent from those matters that a penalty will be an outcome. As to what it is, is a matter for the final appeal.

21. On balance of convenience, this appeal can, in the Tribunal's opinion, be disposed of expeditiously. Expeditiously in the sense that the Tribunal will hear this appeal in the week commencing the 20th, a mere seven or so working days from today. That is a key factor in relation to these matters and may well have some impact upon the determination times needed by the stewards in respect of other related COVID breach type matters.

22. It is apparent also from the facts that, as is always the case, the impact of any loss of the privilege of a licence will be of substantial impact of a hardship nature and the appellant in his statement in evidence sets out the weekly costs that he has, that he is a professional owner and racer and that it is his only significant source of income. Any loss of privilege, therefore, will of course be substantial. The Tribunal accepts that.

23. The short-term nature of the delay enables the Tribunal to have regard to a loss of income against the outgoing expenses, and they are a balance of convenience factor which the Tribunal determines is in his favour.

24. There is also the fact that the disqualification, if it is to remain, will lead to, subject to his capacity to be given an exemption to care for his dogs, a loss of capacity if he determines to dispose of some of them on what is, as he describes it, a fire-sale basis.

25. In those circumstances, the Tribunal is satisfied that there is a balance of convenience in favour of the appellant but it is to be a limited balance of convenience factor.

26. The Tribunal cannot lose sight of the integrity nature, the protection of the industry, the necessary message that must remain in the regulated industry of the consequences that may flow to the industry for a breach of COVID protocols, State and regulatory.

27. In those circumstances, the Tribunal will grant a stay. It is, however, a very limited stay. It is conditional. It effectively – and the Tribunal will set those terms out – will preclude the appellant from gaining an income from

the industry directly by racing by reason of his exclusion from nominating and racing.

28. The Tribunal orders that the determination of the stewards not be carried into effect pending the determination of the appeal on the following conditions: that the appellant prosecutes the appeal expeditiously. That in respect of that expeditious prosecution of the appeal, it will only be in exceptional circumstances that a hearing will be permitted to take place outside the week commencing 20 September 2021.

In addition, the appellant will be subject to the following restrictions:

- He is not to nominate a greyhound for any event.
- He is not to permit a greyhound of which he is the owner or trainer to compete in any event.
- He is not to act as an attendant at a meeting.
- He is not to act as an official at a meeting.
- He is not to be engaged as an employee or agent by any other person in the training of greyhounds.
- He is not to be a member of any committee of a club which is registered pursuant to the Rules of a Controlling Body.

29. And those terms are taken from Rule 99.

30. I direct that the appellant file his evidence with the Appeals Secretary and serve it on Mr Tutt, on behalf of the respondent, by Wednesday, 15 September 2021.

31. I further direct that the respondent file and serve any reply evidence by close of business on Friday, 17 September 2021.

-----