RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

FRIDAY 8 OCTOBER 2021

APPELLANT SHANNON BOYD

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 86(x) and (d)

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
2. **Penalties varied –**
   Charge 2: 2 months disqualification
   Charge 3: 5 months disqualification
   Penalties to be served concurrently
3. **Appeal deposit refunded**

1. The appellant appeals against a decision of GWIC of 2 September 2021 to impose upon him a period of disqualification.

2. The charge history needs to be addressed.

3. The appellant initially faced three charges. The first was withdrawn. The second and third were the subject of pleas of guilty. A fourth charge was preferred and a plea of guilty entered.

4. In respect of the charge 2, a disqualification of 5 months; charge 3, a disqualification of 8 months; charge 4, a disqualification of 5 months, each to be served concurrently.

5. The appellant appealed on severity grounds on each of charges 2, 3 and 4. During the course of the appeal hearing, charge 4 was withdrawn.

6. The issues for determination now are severity appeals in respect of charges 2 and 3.

7. Charge 2 is in the terms contrary to Rule 86(x), which relevantly is as follows:

> "A person shall be guilty of an offence if the person (x) makes any false statement to a member of the Controlling Body."

The summarised particulars are that a false statement was made to an officer of the Controlling Body acting in the execution of his duties during a phone conversation on 26 August 2021 when the appellant informed the officer that the greyhound Raining Vodka had been examined by Dr John Newell when the appellant knew that statement was false.

8. Charge 3 was under 86(d), which relevantly provided:

> "A person shall be guilty of an offence if the person, being a trainer, makes a false statement in relation to an investigation."

The summarised particulars are that in an interview with GWIC officers on 30 August 2021 during an investigation into the scratching of that greyhound, the appellant informed the stewards in that interview that he had presented the greyhound to Dr Newell for examination on 26 August 2021, when in the knowledge this statement was false.

9. Being pleas of guilty, the necessity to examine the evidence in greater detail falls away. The evidence has comprised the brief of evidence tendered by the respondent, which critically contains the transcript of the disciplinary hearing, a report of Dr Newell of 31 August 2021, an interview with Dr Webber, a regulatory vet, on 30 August 2021, and the interview by stewards with the appellant on 30 August 2021. The appellant gave oral evidence.

10. The first issue for determination is objective seriousness.

11. The remaining facts for consideration, as many have fallen away, are that the appellant, being a trainer since 1994 with no prior relevant matters and being the recipient of a disability pension and at the time having seven greyhounds in work, had experience of assessing injuries of greyhounds and decisions whether to nominate, scratch or take veterinary treatment.

12. He nominated the subject greyhound to race and on the same day withdrew that nomination, but after the draw had taken place. He did so because he had taken the dog for a run and during the course of that run he observed the greyhound to pull up after some 200 metres of a normal 350 metre run. He subsequently checked the dog and felt that it had a chest muscle problem and was not fit to race. The scratching was effected.

13. The stewards contacted him and the first act of misconduct as particularised in charge 2 occurred when he stated to the officer that he had taken the greyhound to Dr Newell. It is the fact that he had not done so.

14. He was required to present the greyhound for examination and Dr Webber, as an on-course vet on duty on the day of the presentation, could find nothing wrong with the dog, to paraphrase his statement. That was 30 August.

15. It is noted that on 31 August Dr Newell determined that the greyhound did in fact have an injury, and that was the injury consistent with the assessment of the appellant and described by Dr Newell as a “tear to the nearside superficial pectoral where it attaches to the breastbone; the muscle is tender and swollen”, and he recommended the dog not run for 10 days.

16. The Tribunal finds, consistent with the submissions on the appellant’s behalf, that the reason for the scratching was the appellant’s observations of the unfitness of the greyhound.

17. The welfare issues which are identified from those facts are that the Tribunal accepts the decision was made to scratch based on welfare of the greyhound and its unfitness. There is no evidence to establish any financial motive or any other specific integrity issue that might arise from that decision.

18. This appellant has a long and satisfactory history. It has been a family interest. He has a strong interest within his family for greyhound racing, consistent with so many trainers and participants in this industry.

19. At the end of the day, it is difficult to ascertain precisely why the appellant engaged in this wrongful conduct.

20. The appellant has given sworn evidence to the Tribunal generally consistent with his statements at the inquiry. The Tribunal has determined that it will not read into this decision, for confidentiality purposes and the emotional nature of them, those various things that were in the mind of the appellant. They are recorded in the transcript of the hearing and there for the present time they shall remain.

21. It is the fact that the appellant describes the impact of those various matters as placing him under the pump. It might be paraphrased in many ways. There was no medical evidence called to support the various factual matters which the appellant described, but having regard to the Tribunal's observations of him in evidence and the way he gave that evidence, and there being quite fairly no suggestion to the contrary by the respondent, the Tribunal accepts that in the mind of the appellant at the time he engaged in that first wrongful conduct that he was not acting as he should have done.

22. The appellant accepts when it comes to assess objective seriousness that his conduct was serious and warrants that he be the subject of an adverse order. He is correct in that approach.

23. The next mischief, however, must be found to have less favourable findings, because it was some four days later that the inquiry took place and, most fairly, the inquiry officers did not seek to entrap him but right at the outset put it clearly in the mind of the appellant that Dr Newell had been spoken to and was quite unambiguous on the basis that he had not seen the appellant or the greyhound as the appellant had told him.

24. Notwithstanding the fact that he was armed with that knowledge, the appellant maintained the fiction that he had first engaged in on 26 August when he again on 30 August stated that he had taken the dog to Dr Newell.

25. Those findings comprises the ingredients of the two matters.

26. In assessing objective seriousness, it not being in issue that it is objectively serious, it is necessary to reflect, but only briefly, upon the importance of integrity of the industry and the necessity for licensed people who have the privilege of a licence and, subject to rules which mandate their honesty and a requirement to answer any question asked of them effectively by a steward, to do so honestly.

27. The industry relies on integrity. Its regulatory regime is founded on welfare and integrity. Welfare here falls in favour of the appellant for the reasons expressed. Integrity does not, for the reasons also just expressed.

28. There have been many cases over the years in which tribunals as variously constituted, stewards and appeal panels have expressed the absolute fundamental nature of the necessity of a licensed person with that privilege, and the absolutely unqualified privilege, having to be honest and forthright. Because the failure to do so will undermine public trust and public confidence in the industry and lead to its breakdown. This is particularly relevant in the greyhound industry with its recent history, which does not need further analysis in this decision.

29. The Tribunal considers that the circumstances of the first improper statement could be viewed less seriously than the second and does so on an objective assessment because of those things in the appellant's mind at the time he first did them. There is nothing to indicate that those internal pressures were not continuing

at the time of the second wrongful conduct and, whilst there was that break opportunity given to the appellant by the stewards to reflect, he nevertheless continued to act improperly. It was four days, and four days was long enough for the appellant as a licensed person with all the knowledge of the consequences of improper conduct to have reflected on his ways and to have recanted his first lie when armed as he was with the knowledge that he had been caught out in that lie, but he nevertheless continued in it.

30. It must be a reflection because this appellant otherwise has a good and satisfactory record and at the end of the day there was nothing to be gained for him by engaging in it. Those remarks are made to give the Tribunal's finding that objective seriousness is to be reduced by those subjective factors, which have not been set out in detail for confidentiality reasons, to reduce the necessity for the message to be given to this individual trainer and if others in the community were armed with the knowledge the Tribunal now has, would expect that the message to be given to the public at large, to other licensed trainers and for integrity purposes must of itself be diminished.

31. In relation to objective seriousness, it is submitted for the appellant that there are no parity cases that even touch upon the starting point that the stewards thought to be appropriate. Precise cases are not given. Reference has been made to the thoroughbred case of Lundholm but the decision is not before the Tribunal. Accepting that Mr O'Sullivan for the appellant was in that case, that there are considerable details about it. There he received a four-month disqualification for telling falsehoods to the stewards in respect of the discovery of a paste in his float on race day in Sydney. It is difficult for the Tribunal to compare Lundholm in the thoroughbred code and its different penalty regime to that in this code. The Tribunal is not here to re-try Lundholm and does not have enough about it before it to see that that provides any form of precedent here. Other cases are said not to exist, on behalf of the appellant. The Tribunal has not found it necessary for it to delay a decision in this matter while it goes to conduct its own research.

32. The respondent, the regulator, relies upon two matters. Craig, 18 August 2021, with an 86(o) matter for dishonestly nominating a greyhound. That was dealt with by this Tribunal on appeal recently, as just described, and there a disqualification of 9 months, 3 months of which was conditionally suspended, was imposed. The other matter is Grech of 28 July 2021, which was an internal GWIC matter, 86(x), false declarations on registration application, and that related to failure to disclose animal cruelty penalties previously imposed on the applicant, and a period of disqualification of 9 months was imposed on two charges, concurrent.

33. Those two matters are not particularly helpful.

34. The Tribunal considers that when it looks at objective seriousness, for the reasons outlined, it must find a starting point, in its opinion, of what would normally be a period of 12 months.

35. However, reducing that period by reason of the personal circumstances of the appellant, which it takes into account on objective seriousness, it determines a starting point in respect of charge 3 of 10 months.

36. Charge 2 is less serious. The Tribunal has determined in that matter there be a starting point of 4 months.

37. The Tribunal turns to the subjectives. At the outset, it notes that the confidential material not read into this decision has been taken into account in respect of a reduction in objective seriousness. The Tribunal does not consider that it is a wrongful duplication to also take that into account in subjective circumstances.

38. The first and primary subjective reduction is for the admission of the breach in respect of both matters from the outset to which, consistent with precedent, a 25 percent reduction is appropriate, and that will be given.

39. In addition, the Tribunal takes into account, and gives greater weight than the stewards found to be appropriate, the other subjectives.

40. A 27-year record as a trainer, 29 years with owner's licensing, no priors. A good record which he is able to call into account. He has expressed remorse. This is, as is often the case, a family involvement in the industry. The Tribunal does not consider that often-expressed fact should itself lead to any discount, otherwise there would be no penalties imposed because everyone in this industry essentially has a family relationship and a personal and social relationship with others in the industry.

41. There are the financial circumstances of the appellant, noting the impact that any loss of privilege will have upon him. As the Tribunal has said for many years, in appropriate cases the loss of a privilege may well be the outcome for wrong conduct.

42. The Tribunal determines that the total of his other subjective factors are very strong and that they themselves should attract a 25 percent discount. Whilst it is a substantial discount and it is one which is not read down by reason of integrity of industry on this case, or that objective seriousness outweighs subjective factors completely, he should have the benefit of those 50 percent discounts.

43. Therefore, is in respect of charge 2 that the starting point of 4 months is reduced to 2 months.

44. In respect of charge 3, the starting point of 10 months is reduced to 5 months.

45. There is no submission to the contrary that these penalties should not be served concurrently. In that sense, the Tribunal is satisfied, as it was in respect of the objective seriousness of charge 3, that it occurred within a short period of time, that in essence it arose from one course of conduct, as it must be described, that is, that it arose in the course of one lie and he was caught out in that lie and did not extract himself from it, even though he was given every opportunity by the stewards by their most fair warning of him that he had been caught out.

46. Nevertheless, there is that element of continuity, that similarity, it all arose, essentially, from one action, that is the first lie, that in the circumstances each penalty should be served concurrently.

47. The total effect, therefore, of the Tribunal's orders when concurrency is considered is that there is to be a 5 month disqualification.

48. The original penalty was 8 months. The severity appeal in each charge is upheld.

49. The stewards determined a starting point. There was no stay in this matter. The starting point that the stewards determined was 2 September, the date of their decision, which is the starting point that the Tribunal determines to be appropriate.

50. This was a severity appeal. In respect of each matter, the appellant has been successful. There is no submission to the contrary by the respondent.

51. The Tribunal orders the appeal deposit refunded.