

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI**

**EX TEMPORE DECISION**

**TUESDAY 30 NOVEMBER 2021**

**APPELLANT ANTHONY MABBOTT**

**RESPONDENT GWIC**

**SEVERITY APPEAL**

**GREYHOUNDS AUSTRALASIA RULE 86(x)**

**SEVERITY APPEAL**

**DECISION:**

- 1. Appeal dismissed**
- 2. 4 month disqualification imposed**
- 3. Appeal deposit forfeited**
- 4. Order made in respect of GAR 99(3)**

1. The appellant, registered owner Anthony Mabbott, appeals against the decision of the hearing panel of GWIC of 19 October 2021 to impose upon him a period of disqualification of four months for a breach of Rule 86(x).

2. Rule 86(x), relevantly for the purposes of this case, is in the following terms:

“A person shall be guilty of an offence if the person (x) makes any statement which to his or her knowledge is false in writing to a member of the Controlling Body.”

3. The particulars, as they ultimately are to be dealt with on appeal, are in the following terms:

“That on or about 18 April 2021 Mr Mabbott made a false statement in a registration renewal application in circumstances where –

(a) on 18 April 2021, he completed an application via the online portal to renew his owner’s registration with GWIC;

(b) in that application he stated that –

(ii) he had never been charged with any offence in the past 10 years;

(iii) he had never been convicted with any offence in the past 10 years;

(c) at the time of lodging the application –

(i) he was subject to an interim suspension by Harness Racing NSW;

(ii) he had been charged and convicted by the Downing Centre District Court of two charges of facilitating conduct that corrupts the betting outcome of an event, being Race 1 of the Tamworth harness racing meeting on 7 April 2013 and Race 7 at the Muswellbrook harness racing meeting on 21 April 2013.

4. The appeal, as it ultimately has been dealt with by the Tribunal, is a severity appeal only in respect of that charge.

5. The evidence has comprised the standard brief of evidence, which contains the various decisions, submissions made in respect of the matter, a transcript of the hearing, which importantly contains a number of evidential matters as well as factual matters which do not require summary. The

additional evidence for the appellant has been a stated fact that the appellant's owner's registration has continued and that arose as a result of a stay being granted by the Tribunal by consent.

6. The first matter to determine is objective seriousness and then a consideration of whether any reduction is to be applied by reason of subjective factors in favour of the appellant.

7. The Greyhound Racing Act mandates welfare and integrity. The rules are written to reflect both of those statutory duties on the Commission.

8. The conduct here involves a false statement in an application for a registration renewal. It implies, of course, obviously, that the appellant had the benefit of a registration and that was as an owner.

9. Integrity of the industry mandates that licences be granted and for a person to receive a licence they must establish that they are entitled to receive that privilege and to demonstrate that they are entitled to retain that privilege if granted to them. The industry simply could not operate at a level of integrity if applicants for, or licensees, are not honest with the regulator.

10. The onus is not a great one. Here, the form required to be completed was in simple terms. There was nothing confusing or about which there might have been any reason to expect that an applicant would not understand the question being asked and the falsehood of the answer given. This is particularly so as Tribunal will turn to the facts in this matter.

11. It is not just in respect of applications but in respect of all ongoing functions of a licensee that that standard required in dealing with the regulator is mandated. It has very broad reach. A person is obliged to answer questions, and to do so truthfully, if approached by a steward, for example. The ongoing nature of the obligation upon a licensee to be honest with the regulator cannot be overemphasised.

12. In determining objective seriousness, therefore, when a person with the privilege of a licence seeks the continuation of that licence by renewal, those standards just outlined must be expected to be met by that applicant. Here they have not been. It is necessary to put the failure in context.

13. This appellant is no stranger to regulatory regimes. He has been an owner. There is a submission made, consistent with what he said in the hearing at first instance before the hearing panel, that he may have not quite complied with the ownership requirements of a greyhound at or about the time he was licensed. The facts are so vague about that that the Tribunal sets those aside and does not further consider them.

14. He has had the privilege of an owner's licence for a number of years. It is the fact that in this industry he has not come under adverse notice. It is also the fact that in respect of the harness racing industry he has come under adverse notice. That is reflected in the particulars which have been read out.

15. He engaged in corrupt conduct as to betting outcomes of racing events in 2013. He was arrested in 2013. It was many years before that charging process came to an outcome, and on 16 September 2016 he was sentenced in the District Court to two charges of facilitating conduct that corrupts the betting outcome of an event and received two periods of 75 hours community service concurrent.

16. He was subject to disciplinary proceedings by Harness Racing and this Tribunal issued a decision on 4 August 2021 upholding a severity appeal in respect of breaches of the rules reflected in that same conduct which was embraced by the criminal charges. It is not necessary to read into this decision the reasons for the decision of the Tribunal of 4 August 2021. Suffice it to say that he received, effectively, an eight-year disqualification which commenced on 27 May 2013, the time when his privileges were lost to him and therefore he had effectively served this penalty by 27 May 2021.

17. The appellant's licensing history also reflects the fact that he must have been clearly on notice that when making an application he was required to be honest and forthright. He was licensed as an owner in 2011. At that time, of course, he had nothing to disclose of the type required of him here.

18. On 14 July 2015, which it is to be noted is after his arrest but before his sentence in the District Court, he had made application to the former GRNSW as then constituted for registration as an attendant. He provided his criminal history. He made no false declarations. That application happened to have been refused.

19. Then, of course, he was subject to sentence in the District Court.

20. On 11 January 2017, he made a further application to GRNSW, again for an attendant's registration. He provided a positive answer to whether there had been convictions and he also provided further particulars. That application was also refused.

21. Then, on 18 April 2021, he made the subject application where, as particularised, he did not state the he had been charged or convicted.

22. Subsequently, on 16 August 2021, he made further application to GWIC for registration as an attendant. In that application he made no false declarations and answered the questions as required of him "yes". That application was also refused.

23. The facts appear to indicate that as a result of the 16 August 2021 application his conduct for the 18 April 2021 application was visited and the breaches detected.

24. The appellant has not hidden from his failure. He pleaded guilty. He provided an explanation to the hearing panel as to why he engaged in that conduct. In summary terms, he states that he did not deliberately embark upon a false declaration, his actions therefore were not intentional, deliberate, but were careless and completed at a time when he was not concentrating because he was tired.

25. It was not suggested to him by the hearing panel that those answers were false. It is, therefore, that it provides an explanation for his failure. As he also said, page 18 of the hearing panel transcript, "It was a mistake. I wasn't paying much attention. An honest mistake".

26. But he went on to say that there would be no point in seeking to deceive the regulator because there was nothing in it for him to lie to them, and the reason for that is he does not own any dogs. He conceded he did not double check and triple check his answers and the evidence therefore is, despite that past history, the number of occasions upon which he has completed forms, his knowledge of the fact that he should have said "yes", because he knew he been charged, he knew he had been convicted, simple questions, simple answers required. All he had to do was put "yes".

27. It might be noted that in respect of that subject application of April 2021 a National Police Certificate was not required. It is submitted for the respondent here that in respect of the other applications which have been some summarised, a National Police Certificate was required.

28. But at the end of the day the Tribunal is not able to determine, because it has not been the subject of evidence, that he acted to answer "no" on this occasion because he knew there would be no check of a National Police Certificate.

29. The evidence at the end of the day remains absolute carelessness.

30. That does not exculpate him from the problems he faces. Because, as the Tribunal has emphasised, the privilege of a licence and its renewal carries with it a substantial obligation. It must be expected of any reasonable applicant for renewal, such as the Tribunal assesses this appellant, that it is, when a simple question is required to be answered, that it is answered with all the appropriate care and attention that must be expected. He has failed in that regard.

31. When viewed objectively, therefore, the Tribunal considers that the integrity of the industry is very much put at risk by the fact that this appellant has failed to do that which is required of him of a most fundamental nature.

32. The Tribunal does not accept the submission on his behalf that he was entitled to expect that because GRNSW had previously had this information that its successor, GWIC, in relation to these type matters, should have been expected to have somehow known what was known to GRNSW. Two reasons. One, they are separate entities, and, secondly, that there was no evidence that the appellant completed the form with any expectation that his answers would be checked against prior applications.

33. It is also submitted that because this was a registration renewal as an owner that this can be treated as a less serious matter. It is acknowledged that an owner's licence is of limited nature as against, say, a trainer. But nevertheless, it does carry with it privileges. It is a licensed activity. And whilst it can be viewed at the lower end of the scale of licensee importance, it nevertheless carries with it that integrity issue to which the Tribunal has made reference. Although, on objective seriousness, his conduct would be less than that of a trainer on objective failure, and perhaps even less than that of an attendant.

34. Parity needs to be considered when objective seriousness starting points are considered. In that regard, other than the case Vanderburg to which reference was just made where the Tribunal, as the submissions for the appellant touched upon, assessed an attendant's licence as less serious than a trainer, there are the cases advanced by the respondent.

35. Firstly, of Boyd – and these are all greyhound-related decisions – Shannon Boyd, Tribunal, 8 October 2021. The Tribunal dealt with a licensed trainer who had a greyhound injured at a race track and was told by the attendant veterinarian to take the greyhound for veterinary treatment immediately and was given written notification to do so. The appellant did not take in the reference to the oral direction and did not have regard to the written direction. That failure led to a starting point of a four-month disqualification. Subsequently, in relation to the second charge, he was questioned by stewards and told that the stewards had spoken to the subject vet and was given different information to the appellant and the appellant repeated that mistake he made on the first occasion by again stating he had taken the dog to a particular vet. That subsequent conduct, with an intervening period and an opportunity to reflect, and to an organisation again driven by both welfare and integrity, was found to have a starting point of 12 months' disqualification. There the Tribunal emphasised the importance of integrity, the privilege of a licence and the duty of a licensee so far as a regulator is concerned, and that there must be public trust and confidence in industry, particularly in relation to welfare.

36. The second matter relied upon is a matter of Robinson, GWIC, 17 November 2021, where a breeder made a false statement as to the location of a litter and was there, after a plea of guilty, 41 years in the industry and no prior history, given a two-month disqualification. It might be anticipated that that starting point might have been, although not expressed in the decision, something like four months, for which with those subjectives there might have been a 50 percent discount to give that two-month disqualification, or it might have been a three-month qualification starting point and discounts of something like 25 percent. The decision does not refer to such mathematics and that is conjecture. But certainly the starting point could not have been much more than four months for that lie to GWIC.

37. The next matter relied upon is Grech, 28 July 2021, an applicant for registration made a false statement in that she failed to disclose that she had been charged with Prevention of Cruelty to Animals Act charges. The simple fact is those charges had been withdrawn and if the there applicant Grech had stated “yes”, it would have been subject of some inquiry and it would have been established the charges were withdrawn. But she said no. That appellant, that licensee, had a substantial history in the industry in relation to the then imposed greyhound industry ban and had also been subject to a nine-week warning off for trialling greyhounds when not registered to do so. She had pleaded guilty and there were two breaches, therefore, and a nine-month disqualification concurrent was imposed. It is difficult to estimate a starting point based on the decision. It might have been as high as 12 months for which a 25 percent discount was given for a plea of guilty to lead to those nine months.

38. Those matters then would provide a range of something between 12 months for Grech, 10 months for the second Boyd, and four months possibly for the first Boyd and the Robinson matter. Specificity is not required. The Tribunal is satisfied that it must find a form of parity. These cases are not all the same. But there is an expectation of a level playing field, as it were, from both the regulator and the Tribunal, as best it can be achieved, by comparing like to like or as close as possible.

39. The Tribunal is not of the opinion – and the respondent does not submit to the contrary – that a starting point of 12 months, which might have been that in Grech, or the 10 months as it was in the Boyd second charge, are appropriate.

40. It is submitted for the respondent that the disqualification of four months found to be appropriate by the hearing panel should be imposed for this conduct. That would necessitate a starting point more than four months and, possibly, on submissions, as high as eight months, to which then discounts for subjectives are imposed.

41. For the appellant it is submitted that this conduct, being at the lower end of the scale of gravity, the ultimate outcome should be a fine, which could mean some lesser penalty as a starting point than a disqualification, and then a reduction from either a low-level disqualification to perhaps a suspension or perhaps a suspension to a fine, or a higher fine then reduced to a lower fine.

42. The Tribunal returns to section 11 of the Act and the necessity for integrity. The Tribunal returns to its oft-stated remarks in this case and others of the importance of integrity which is fundamentally mandated by licensees seeking renewal and applicants for licences being honest, forthright and correct with the regulator.

43. The appellant has failed. The message to be given to him, having regard to his past history, the message that is necessary for the industry at large, including the public, is such that the Tribunal agrees with the regulator, the respondent, that a disqualification is the only possible outcome.

44. The Tribunal determines a starting point of approximately six months is appropriate having regard to this appellant's history and the failures in which he embarked, notwithstanding the fact that it was not found to be a dishonest act.

45. It is a question of whether there are to be any discounts for the subjectives.

46. He has pleaded guilty. He is entitled to a 25 percent discount for that and he shall receive it.

47. His other subjectives are not as strong.

48. Hardship aspects are fully understood. He has continued as an owner and not come under further adverse notice and he is entitled to have recognition for that. His longevity in the industry is not of such weight that it itself would lead to a substantial discount. He has cooperated and that has been reflected in giving him the full 25 percent discount for his plea.

49. Also taken into account is that in this industry he has no prior matters but in the regulatory industry, of course, it must be that the reduction for subjectives has to be slightly reduced by reason of the fact that in another code he has been the subject of disciplinary matters, and, indeed, a substantial penalty of eight years' disqualification in the harness industry.

50. Those matters leave the Tribunal to conclude that in addition to the 25 percent discount he should receive an 8 percent discount. That gives him a total discount of one-third when rounded.

51. The Tribunal then reflects whether, consistent with the submissions, a disqualification of four months, reached for reasons perhaps the same as but expressed directly by the Tribunal of a four-month disqualification, is appropriate for the totality of his conduct. The Tribunal has reflected on that at some length and has determined that it is not a case of conduct, having regard to his total history, on which there should be some further reduction to a suspension of that period of disqualification, a suspension generally, or a fine.

52. The effect of the outcome of that is the Tribunal imposes a period of disqualification of four months.

53. The determination is that which the hearing panel determined to be appropriate and accordingly the severity appeal is dismissed.

54. There being no application the Tribunal orders the appeal deposit forfeited.

55. Application is made pursuant to Rule 99(3) of the rules, which is in terms "unless the Controlling Body in special circumstances otherwise directs", certain default provisions will apply. No issue was taken with the Tribunal's capacity to stand in the shoes of the Controlling Body for the purposes of that rule on this application.

56. No submission is made to the contrary in respect of the special circumstances which, in very brief summary terms, whilst they might apply to many licensed persons who are the subject of a disqualification, are that the appellant wishes to reside with his wife and children at his residential premises as part of a family unit and is prepared to accept limitations.

57. Without analysing those facts and not seen as a precedent which necessarily binds others in similar facts, the Tribunal is prepared to find, having regard to the totality of its findings in this case, that is a special circumstance.

58. Accordingly, the provisions of 99(3) do not apply in the following terms: that the licensed person may continue to reside at his residential premises at 5196 Werris Creek Road, Warral, and on condition (1) that he not enter the kennel area of the premises and (2) that he not interact with any greyhounds present on the premises.

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