

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

FRIDAY 17 DECEMBER 2021

APPELLANT ANDREW MULRINE

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 86(o)

SEVERITY APPEAL

DECISION:

- 1. Appeal upheld**
- 2. Penalty of 3 months suspension of licence imposed, conditionally suspended for 12 months**
- 3. Appeal deposit refunded**

1. The appellant, licensed public trainer Andrew Mulrine, appeals against the decision of GWIC of 14 October 2021 to impose upon him a period of suspension of four months.

2. The rule said to be breached was 86(o) and, relevantly, it was in the following terms:

“A person shall be guilty of an offence if the person –

(o) has, in relation to greyhound racing, done a thing, which, in the opinion of the stewards, is misconduct.”

That was particularised as follows:

“That as a registered public trainer at all material times, on 18 December 2020 did a thing at the Goulburn Greyhound Racing Club that in the opinion of the Controlling Body was improper or constituted misconduct in relation to greyhound racing by using his stomach to push Mr Frederick Malone, causing Mr Malone to fall onto Mr Bell who was seated directly behind him.”

3. The appellant pleaded guilty to the IHP hearing and has maintained that admission of the breach of the rule on appeal. This is a severity appeal only and the evidence to be canvassed is therefore reduced.

4. The evidence has comprised the brief and, in addition, the appellant has given evidence.

5. The brief contains the transcript of the IHP hearing, the Certificate of Conviction for Queanbeyan Local Court of 21 June 2021, statements, relevantly, of witnesses Hazlett, Malone and Maum, as well as Inspector Hitchcock, and the references tendered to the Local Court.

6. The facts, briefly stated, are that the appellant and Mr Malone and others are known to each other. That the appellant has given evidence to the IHP and on appeal of incidents taking place in his life in relation to greyhound racing involving himself, his wife and family.

7. The background need not be examined in detail. The Tribunal accepts from what the appellant has said to the IHP and on oath that he was under duress at the time and acted on a belief of provocation because of those matters. As stated, it is not necessary to more closely examine that. It provides a reason for the actions of the appellant on the incident.

8. Mr Malone, who is 80 years of age, had been called to and attended a room with officers of the regulator and in that room made certain remarks to Mrs Mulrine which she subsequently reported to the appellant. Indeed, Mrs

Mulrine herself, being the subject of adverse conduct towards her, had on other occasions made complaints, as had the appellant, and, indeed, reported this conduct to the police but the evidence is that no action was taken in respect of it.

9. The Tribunal does not have to determine the correctness or otherwise of Mr Malone's stated words. They were, firstly, highly offensive and will not be read into the record. But he then continued in talking to Mrs Mulrine by saying: "And you deserve a smack in the mouth for the lies you tell." And he went on and said: "Just shows how dumb you are that you were the secretary there for years and you were too dumb to pick up that money was missing."

10. These matters, being reported to the appellant, added to the concerns that had developed in his own mind over a period of time.

11. He then went down to the general area of the racing club where Mr Malone was seated with Mr Bell. Other people have made statements who were present in that room.

12. The appellant has elected not to cross-examine the statement authors in respect of the correctness or otherwise of their statements. He has sought to challenge some of the correctness of those statements. But in the absence of cross-examination, a decision he has made upon advice from the Tribunal that he should call them and upon reflection, he now has the difficult position that the Tribunal has that evidence and uses it. The reason for that is, of course, relevant, and he does not want to continue the concerns that he had and about which he gave evidence of ongoing concerns and fears. The Tribunal understands that. But it is what might be called a forensic decision he has made and he is fully aware of the disadvantages that occasions to him on this severity appeal.

13. The Tribunal has the benefit of a small CCTV image of the incident itself. It is to be put in the context, clearly, that the appellant was, and the Tribunal accepts, acting in the protection of his wife's good name.

14. The appellant has approached Mr Malone, who was seated. Mr Malone has stood up. Mr Bell remained seated, essentially, although their positions varied, behind Mr Malone at the relevant point of impact. There is no doubt that there was a conversation of some strength between the appellant and Mr Malone. There was much finger-pointing. Mr Malone engaged in waving a race book. It is obvious words were being exchanged. Various descriptions have been given. The appellant says he was merely asking Mr Malone to apologise to his wife. Mr Malone put it in more strong terms. And it is said – and he was corroborated by others – that the appellant said: "You just assaulted my wife."

15. There is no doubt Mr Malone engaged in coarse language in response and further words were exchanged. Mr Malone at one point took a brief movement towards the appellant but in essence the appellant had, at least on one occasion, turned to move away but came back.

16. The appellant then has advanced towards Mr Malone, a very short distance, and with the use of his stomach, projected that into Mr Malone. Mr Malone was then propelled backwards. He was propelled into a table. He rebalanced himself with that table. But in doing so he came forcefully into impact with Mr Bell, knocking Mr Bell backwards, such that his chair tilted backwards and Mr Bell was thrown to the ground. The other evidence indicates that Mr Bell had a coffee that he was holding spilt all over him.

17. Mr Malone rebalanced himself and Mr Bell immediately set about what is apparent in a confrontation. In the meantime, a female, not identified to the Tribunal, stood between them and separated them. Eventually they were taken apart. Others have corroborated that version. It is quite clear from the CCTV image that that is what occurred.

18. The only other relevant fact is ongoing concerns of the appellant in the terms outlined.

19. The Tribunal must assess objective seriousness and then determine what, if any, discount should be given from the starting point for objective seriousness by reason of those subjective factors.

20. This matter involved an assault. The assault was by a man approximately 60 years of age against a man of some 80 years of age. The appellant is indeed fortunate that Mr Malone was not injured and Mr Bell not injured. It would be apparent to the appellant and anyone observing the incident that it could well have ended up very badly for either of those two. For example, striking of a head on a table, hitting one's head forcefully against the ground as Mr Bell went backwards, all of which might have led to, for example, life-threatening injuries. Those things did not happen. It is merely that the Tribunal reflects on the danger occasioned by the appellant's action.

21. The appellant is being dealt with here not for the crime of assault but for a regulatory breach. The Tribunal has to decide what civil disciplinary penalty should be imposed upon the appellant for his failure to comply with the privilege of a licence by not committing an assault on licence-related premises on a race day against another licensed person and, indeed, by consequence, a second licensed person.

22. The Tribunal readily acknowledges that the criminal justice system determined that he should be dealt with in the most lenient fashion possible with a section 10(1)(a) dismissal. On a plea of guilty there could be no

lighter penalty imposed upon him. This Tribunal does not have the benefit of a transcript of the evidence and submissions put to the magistrate, nor does it have the benefit of reasons for decision on sentence. It has only the outcome. It is not for this Tribunal to comment on leniency or otherwise, but it can only reflect that the appellant was given a very lenient sentence. It is to be noted that the character references to which the Tribunal will return are, however, before the Tribunal and they were no doubt matters that His Honour took into account.

23. But the Tribunal is not dealing with the criminal justice system. It is, as stated, dealing with a civil disciplinary appellant. The key factor in respect of that is not to punish but to provide a protective order. That protective order brings up the necessity to determine what message should be given to this appellant and what message should be given to other participants and the public about what the consequences for this type of conduct will be in respect of the privilege of a licence.

24. The Tribunal accepts the remorse when considered on objective seriousness. It accepts the salutary lesson that the criminal justice system proceedings imposed upon him. The Tribunal accepts the duress that he was under but does not accept provocation in any legal sense. It accepts that he was upset by what had occurred, but that is not provocation in any sense at all. He had every opportunity to withdraw from the incident before he engaged in the assault, and he did not.

25. The message, therefore, to him can be diminished. And that is a strong objective seriousness factor. But the message to the industry at large cannot be lessened. The Tribunal cannot determine that a proper message will be sent to the industry at large if no objective seriousness was found for an assault by one licensed person upon another licensed person at a race day meeting.

26. The objective seriousness, therefore, warrants that there be a starting point of consideration of loss of privilege of licence. The Tribunal is not asked to disqualify. And the parity cases given to it all involved more serious conduct which led to disqualifications. The Tribunal is only asked to give consideration to a suspension. Accordingly, further consideration will not be given to a disqualification.

27. The parity cases all involve assaults or threats of assaults on stewards at race meetings in which substantial periods of disqualification were given. Because of those facts, it is not necessary to examine them further.

28. The Tribunal cannot conclude that anything other than a suspension is the appropriate message to be given on objective seriousness. The Tribunal is of the opinion that that objective seriousness would not warrant a fine or lesser penalties.

29. The starting point the Tribunal has determined is that of six months.

30. It is necessary to have regard to subjective circumstances.

31. The appellant is 60 years of age. He has been licensed for some 38 years. He has not had conduct-related matters against him in the past. He did, however, in August 2018 suffer a loss of privilege of licence for a period of 12 weeks in respect of two prohibited substance matters. One was caffeine, the other was cobalt. Those matters are not more closely examined because they are of a different nature.

32. However, this Tribunal has reflected for many years now that a person who comes before it for a severity penalty, or penalty generally, cannot expect to be dealt with as leniently as someone who has had no prior breaches whatsoever. This is an issue of not increasing a penalty because of past matters but a loss of reductions because of past matters.

33. The appellant is strongly supported by his referees.

34. The first is by his wife Mrs Kim Mulrine of 7 June 2021. The Tribunal only pauses to note that it must read down the weight to be given to a relative's reference, which is one that goes to character, and that reference will be assessed on that basis. Mrs Mulrine describes him as a man of good moral character, honest, loyal and extremely considerate and who is very supportive. He is otherwise a very calm and caring person and his conduct was extremely uncharacteristic. She reflects upon the love of the sport that the family enjoys and that he has an abundance of positive qualities.

35. The next is by Gary John Edwards, 2 June 2021. Treasurer of the Nowra Greyhound Club and a past Vice-President of the Wollongong Greyhound Owners Breeders & Trainers Association, and involved with the RSL. The Tribunal pauses to note that a reference by an industry representative must be given more weight than that of a stranger to the industry. Aware of the assault charge – and this is a reference to the Local Court – he describes it as out of character by a loyal and trusting friend who is a man of his word.

36. The third is by Alan Tutt, 27 May 2021. Known him for 15 years. Understanding the charge that he was then facing before the court and reflects how terribly upset the appellant is about his conduct and something he would be unlikely to do again, and who was otherwise a decent, hard-working and trustworthy person, and this was a one-off event.

37. The Tribunal accepts those references. It has not been suggested to it that it should not. It accepts the assessment of each of those three referees

as to the character of the appellant that, critically, this was an out-of-character incident from a person who is otherwise obviously very balanced.

38. That then gives corroboration of the appellant's statements to the IHP and on oath as to the personal impact and duress to which he has been subject.

39. There is also the evidence that he has been a volunteer and an officer in this industry. And, as the Tribunal has reflected for a long time, those who give back to the industry and who then fall into disfavour are entitled to receive the benefit of that assistance to the industry in determining how they should be dealt with.

40. There is then the very important factor that he has at all times admitted the breach. He did it before the Local Court, he did it before the IHP and he has done it before the Tribunal. As the Tribunal has reflected for many years, that entitles him to a 25 percent discount, and he shall receive it.

41. The issue then is what discount should be given from the starting point that the Tribunal referred to. The Tribunal is of the opinion that in addition to the plea of guilty discount of 25 percent there should be a discount for other subjective factors of 25 percent.

42. The discount, therefore, that the Tribunal has determined is that of three months.

43. The Tribunal then turns to give consideration as to how that penalty should be served.

44. The Tribunal has had the benefit of observing the appellant and the consistent story he has expressed about things taking place for him and his family in the industry and which have imposed upon him not only substantial duress at or about the time of his misconduct but of an ongoing nature.

45. The Tribunal notes in particular his very strong belief that other people should have been dealt with by the regulator and were not. The Tribunal has no criticism of the regulator. The oft-used expression by courts and tribunals is that someone who is in a speeding motorcar might be in a column of motorcars, each of which is speeding. It does not mean that the person the police officer pulls over should not be dealt with and that that person should not be dealt with because the others were not. It is a simple fact that sometimes you are called out for your conduct and others are not.

46. It is quite apparent there is ongoing stress.

47. In those circumstances, the Tribunal has determined that this suspension of three months should itself be suspended. The effect of that, therefore, is the following order is made.

48. The Tribunal orders that a period of suspension of three months be served and that suspension be suspended itself for a period of 12 months on condition that the appellant be of good behaviour.

49. This was a severity appeal. He has been successful. The Tribunal upholds the severity appeal.

50. At the conclusion of the matter the appellant makes application for a refund of the appeal deposit. It is not opposed. This was a severity appeal. That severity appeal has been successful.

51. The Tribunal orders the appeal deposit refunded.