

RACING APPEALS TRIBUNAL

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IN THE MATTER OF A STAY APPLICATION BY ANDREW BELL

3 June 2022

1. Mr Bell a licensed trainer has lodged an appeal against the decision of 18 May 2022 of IHP appointed by GWIC, to disqualify him for a period of 16 months for a breach of Greyhound Racing Rule 83(2)(a)- presentation with amphetamine, 4-hydroxyamphetamine and methamphetamine. He appealed on 27 May 2022. He has lodged a Stay Application.
2. The Tribunal has read the Application for a Stay together with the submission, the submission of the respondent ("GWIC") opposing a stay, the reply submissions, the decision, grounds of appeal, the report of Dr Major and the appellant's statement to the IHP.
3. The Tribunal has power to suspend (ie stay) or vary the decision under cl 14 of the Racing Appeals Tribunal Regulation by ordering that the decision not be carried into effect, or be carried into effect to the extent specified and conditions may be imposed. The appellant has lodged the appropriate written application to vest the Tribunal with jurisdiction. Any stay will remain in force until revoked or the appeal is dismissed, determined or withdrawn.
4. The Regulation is otherwise silent as to the tests to be applied for consideration of a stay application.
5. In accordance with established practice this decision is made in the absence of the parties, but after consideration of the documents listed in paragraph 2.
6. The relevant test therefore is that the Tribunal exercise a discretion having regard to the scope and purpose of the legislation and rules of racing considering the material before the Tribunal.
7. The principles that apply therefore are:
 - (a) It is sufficient that the applicant for the stay demonstrate a reason or an appropriate case to warrant favourable exercise of the discretion: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694.
 - (b) The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all parties.
 - (c) The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
 - (d) The Tribunal has a discretion involving the weighing of considerations such as balance of convenience and the competing rights of the parties.
 - (e) Where there is a risk that the appeal will prove abortive if the appellant succeeds and a stay is not granted, the Tribunal should normally exercise its discretion in

favour of granting a stay. It was otherwise expressed in *Kalifaif Pty Ltd v Digi-Tech (Australia Ltd)* (2002) 55 NSWLR 737 at 17 “that there is a real risk that he will suffer prejudice or damage, if a stay is not granted, which will not be redressed by a successful appeal”.

- (f) The Tribunal will not generally speculate upon the appellant’s prospect of success, but may make some preliminary assessment about whether the appellant has an arguable case, in order to exclude an appeal lodged without any real prospect of success simply to gain time.
- (g) Therefore if the applicant establishes that the appeal raises real issues and there is a risk of prejudice or damage which will not be redressed then the Tribunal will then consider the balance of convenience (“Kailifair” supra).

8. The appellant’s submission addresses arguable case, subjectives, trace levels, post race contamination, no performance enhancement, no moral culpability, financial and mental affectation, balance of convenience on inability to fund appeal which will affect integrity and no integrity issue for the respondent. Conditions on the stay would be acceptable, eg be of good behaviour.
9. The appellant’s statement sets out his training history and premises, 147 greyhounds financial commitments, sole source of income, 7090 starters since 2015, mental impact, concern of bankruptcy and refers to a prior for arsenic.
10. Dr Major’s report states it highly unlikely there was performance enhancement, the drugs entered the dog by mouth or injection within 1 hour of sampling and there was a contamination of the collection vessel.
11. GWIC’s response opposes the stay. It details the history of the matter, sets out legal principles, states a disqualification is appropriate for seriousness of the allegation, refers to parity decisions on penalty, says the protocol breaches alleged were unidentified but if it is the policies on hydration and hot weather then they are irrelevant and the contamination speculative. The importance of integrity is advanced. It is said hardship cannot be a factor alone and is inevitable.
12. The respondent supports a condition, if a stay, not agreed to, is given, for the appellant’s residence to be the same as now and the respondent would otherwise grant that.
13. In reply the appellant emphasises integrity requires probity of policies, those raised are not irrelevant on swabbing and the samples may not have veracity. It is said a person had access to the swabbing area. He continued in the industry pending the decision so he should pending the appeal. The condition is supported. Hardship is conceded as but one factor.
12. The principles are clear. Appellant to establish an arguable case and if he does the balance of convenience must be in his favour.
13. The tests for a stay mandate against findings of facts that are for the appeal hearing and no conclusions on facts are drawn in this decision.
14. The test requires an arguable case but not a conclusive or overwhelming case etc.

15. The Tribunal notes the decision did not analyse in detail the protocol and contamination issues so the only facts for consideration are those in the stay application. The strength or otherwise of those issues does not have to be determined. The relevance and therefore the arguable nature of the protocol issue is not established. The impact of a contamination on the outcome is critical and it is not necessary to determine if it will be established only that it is arguable.
16. An arguable case is established on the possibility of contamination.
17. The balance of convenience falls in favour of the appellant.
18. As important as integrity of the decision and presentation matters are, the factors outlined for the appellant are accepted. Detailed analysis is not required.
21. The stay is granted.
20. Conditions do not have to be considered.
21. The Tribunal orders that the decision of 18 May 2022 not be carried in to effect pending the determination of the appeal on condition that the appellant prosecutes the appeal expeditiously.