RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 7 DECEMBER 2022

APPELLANT CHARMAINE ROBERTS

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 83(2)(a)

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
2. **Penalty of 11 months disqualification imposed**
3. **Appeal deposit refunded**

1. The appellant appeals against the decision of the internal review panel of GWIC of 5 September 2022 to impose upon her a period of disqualification of 12 months for a breach of the old Rule 83(2)(a).

2. That charge was in the standard terms of presenting a greyhound to race with a prohibited substance in it, namely, cobalt, and was particularised as follows:

> "You presented the greyhound Payton Keeping for the purposes of competing in race 8 at the Wentworth Park meeting on 16 April 2022 … with cobalt in excess of the threshold of 100".

3. The appellant, from the moment she obtained advice, has indicated a plea of guilty and maintained that on appeal.

4. An appeal comes to the Tribunal for the first time from that internal review panel.

5. That panel dealt with a review of a decision of the hearing panel of the respondent of 28 July 2022 to impose a period of disqualification of 13 months.

6. With the admission of the breach, this is a severity appeal and the extent that the evidence has been canvassed means that there does not need to be factual findings made which would require a detailed analysis of evidence.

7. The following evidence and findings are sufficient to establish the matters for determination on penalty.

8. The appellant is 54 years of age and has been licensed in various categories since 1990, a total of 32 years. She is in the greyhound business with her long-term partner. She is a professional trainer. The business is a professional business. At the time of the detection of this breach, the business had some 100 greyhounds on the property. The business provides the sole income for the appellant and, therefore, the income with which she can meet her expenses. The impact of the loss of the privilege of a licence is obviously one which carries with it economic hardship. In addition, the appellant advised below that there has been an emotional impact, which is not set out for privacy reasons in the internal review decision and is not examined further but is accepted. The appellant was racing every few days and it is expected that there has been a considerable number of swabs, although that in this case is not in evidence.

9. The Tribunal notes that some exemptions were granted to the appellant for residential purposes and the like.

10. The appellant has no other qualifications in life except those of greyhound training, but apparently an ability to do secretarial-type work as well as numerous other categories of work.

11. She has called in aid four references.

12. The first is by Greg Kenny, barrister-at-law, 2 August 2022, who has a full understanding of the circumstances of the matter before the Tribunal and, acknowledging the rarity with which he is prepared to provide references, describes the appellant as deeply attached to her greyhounds and greatly caring for welfare and the sport in general. He describes how this breach will have a hard impact on her livelihood and general reputation. He describes her as generally respected as a competent but fair person and is sure she will not reoffend.

13. The next is by Troy Harley, Executive Officer of Greyhound Clubs Australia, 2 August 2022. Has known the appellant for some 20 years. He describes her as a person of exemplary character with a genuine heart and good intent and unquestionable dedication to family friends in greyhound racing. He describes how she has devoted significant hours to the benefit of Dubbo Greyhound Racing Club and Greyhound Racing NSW and her volunteer work for the club has ensured its growth and success. He describes her as an integral part of the Dubbo community and she is a key component for the success of greyhound racing in the region, having taken a significant role in the successful fight to save greyhound racing in New South Wales. He says her character is such that she will assist all people and she has a mindset, morals and attitude that is admired.

14. The next is by Courtney Norbury, Secretary of the Dubbo Greyhound Racing, of 30 July 2022, describing the appellant as an active member of the club for decades, who has worked tirelessly to ensure its growth and success and, as a volunteer, dedicated countless hours each week to undertake a range of tasks, and the Tribunal particularly notes those: club committee member, venue cleaning, race day preparation, promotion, selling raffle tickets, club ambassador, assistance with greyhounds as pets, syndication meeting and greeting on race days. It is said that when she was acting as club secretary, she was putting in more than 40 hours per week, on top of her training commitments, as club secretary. She is described as a person who will be of great benefit to the industry, with a passion for it, its care and attention to detail, that is, if she is returned to it.

15. The fourth is by Rob Ingram, Managing Director Orana Veterinary Services, which is said in his reference to be the largest veterinary clinic in Dubbo, and refers to the appellant's willingness at all times and at inconvenience and cost to present greyhounds at all times when others were not necessarily available for the purposes of blood test typing and the

like, leading to the saving of a great number of greyhounds' lives. Her loss to that business would be substantial.

16. On the facts of this case, the Tribunal notes that the readings at 134 and 137 – and there is no dispute on the facts in this case – are low readings. It is not necessary to canvass ranges of readings that have been detected in greyhounds.

17. The cause of this positive is unknown. The appellant accepts that.

18. Some matters have been examined to see if they might have been a cause. For example, the property uses tank water supplied from a bore. That water is required to be cleaned and, unbeknownst at the relevant time to the appellant, the service operator placed Aqua Blue blocks in the water, and the evidence establishes they contain cobalt. No other of the appellant's greyhounds were presented at or about the relevant time for the insertion of those blocks into the tanks with a positive for cobalt.

19. The appellant says she does not know why this positive was detected, and agrees she is not able to establish that fact. She did, however, as part of the amendment to her husbandry practices, stop the use of those blocks in her water tanks.

20. There is nothing about this race itself of any concern. The greyhound was expected to and finished last. Therefore, there was no gain. Therefore, essentially, there was no reason for cobalt to be present, regardless of any examination of whether it is performance-enhancing or not, and that is not necessary on the facts of this case.

21. Of course, regardless of where the greyhound finished in the race, there is, and the type of matters such as this to which the Tribunal will return, the public perception that if the greyhounds are racing with a prohibited substance in them, then there is something wrong with the industry.

22. The appellant has priors all with cobalt. They need to be noted in detail.

> Presentation 24 April 2016, determination 12 April 2017, suspended 12 April 2017 to 6 June 2017.
>
> Presentation 8 November 2020, determination 17 March 2021, suspended 17 March 2021 to 22 June 2021.
>
> Presentation 26 November 2020, determination 17 March 2021, suspended 17 March 2021 to 6 July 2021.

23. Some matters about those November 2020 presentations. Firstly, the notation there was partial cumulation. Secondly, the evidence establishes

that between the first presentation and the second presentation on those dates there had been no indication to the appellant of the first positive.

24. The facts also indicate from the determination that when that penalty was determined, it was taken into account that the appellant had many of the attributes to which reference has been made in these proceedings and, in addition, had up until that time carried out a great deal of the voluntary work to which reference has been made.

25. It is, therefore, on those facts, that this is the fourth presentation in a period of six years. The Tribunal does not read down those facts to determine the matter on the basis that there have been three prior presentations. There have been four. It is acknowledged that two of them, the prior two to this, were both dealt with at the same time in the circumstances that have been described.

26. There is no evidence in these proceedings of any husbandry practice changes other than in relation to stopping using the additive to the tank water that the appellant has undertaken to preclude repetition of this conduct or, because it is accepted to be unknown, anything that could be taken to do so.

27. Those then are the key facts.

28. This case has raised substantial issues below, and argued perhaps a little less here, about the use of the penalty guidelines of the respondent dated 20 July 2022 but in force from 1 January 2022. And the issue of parity that must be considered in respect of the application, if any, of those guidelines. In addition, the submissions below and here touch upon the proper principles to be applied by the Tribunal in determining a penalty.

29. The Tribunal notes that it has been asked on a number of recent occasions to embark on a substantial investigation of these issues, and in respect of challenges to the guideline here and to the guideline in harness racing. The Tribunal has expressed in recent decisions in both codes its approach to these matters.

30. Whilst the harness racing guidelines can be distinguished from the GWIC penalty guidelines, they nevertheless are not so dissimilar that the principles that the Tribunal examined in considerable detail in the reserved decision of 30 September 2022 of Turnbull v Harness Racing NSW, a breach of the race day presentation rule but in respect of a different substance, have application here.

31. The challenges there were to the fact that the guidelines there were contrary to the common law and should not be applied at all, but if they were to be, a number of parts of that guideline were not appropriate. For

example, how to deal with priors. It is not necessary to examine that decision in great detail here in relation to that application, suffice it to say that the Tribunal there continued to recognise in that code, as it has done in this code and as recently as Gatt on 28 October 2022, that it will not disregard the guidelines. It will consider them.

32. The decision of Turnbull contained one of the later expressions of approach to civil disciplinary penalties by the Tribunal. Here, that approach has not been the subject of substantial submission and therefore paragraphs 157 to 160 of Turnbull are adopted but not repeated in their entirety.

33. Simply put, here, as has been the case, the Tribunal will find objective seriousness on the facts and circumstances of this case to determine a penalty. That penalty is to be protective and not to be by way of punishment. And it requires a consideration of a message for the future. Then, there is a need to consider a reduction for subjective factors.

34. In finding that objective seriousness, the Tribunal for the first time in Turnbull expressed its approach to the High Court decision of Pattinson, briefly described as 2022 HCA 13, where in detail in Turnbull in paragraph 114 it set out the principles it would draw in that case, and are equally applicable here, to determine a civil disciplinary penalty.

35. To draw briefly from the numerous factors identified there relevant to this case, it is that the purpose of a civil disciplinary penalty is primarily for the promotion of the public interest by way of deterrence of others. It is to be that the criminal principles of proportionality, retribution and the like are not to be applied. The principle of the acceptable cost of doing business must be addressed to ensure that that is eliminated. But, importantly, it is necessary to achieve an object only so far as it requires that promotion of the public interest, and as described, otherwise any greater penalty would be oppressive. The High Court and the Tribunal, therefore, recognise that parity can, of course, be one of the analytical tools which is to be considered.

36. The Tribunal briefly touched upon Turnbull when it gave its decision in Gatt 28 October 2022 – Gatt v GWIC – a breach of different rules but requiring an analysis as it did in paragraphs 70 to 74 of that decision of the approach to be taken with the GWIC penalty guidelines.

37. Simply put – and again, the Tribunal adopts but does not set out in detail those paragraphs – the Tribunal noted that they are not mandatory, that they are the code's penalty guidelines and they must be respected. That the principles of those guidelines were referred to and they are not to be disregarded. But the Tribunal itself must determine objective seriousness on the facts and circumstances but will be guided by the penalty guideline.

38. It is important in this case to have an expression of the precise terminology of the penalty guidelines because it is the case for the appellant that they are being applied almost blindly and in a mathematical fashion and that that is wrong in principle on the application of the guidelines, not consistent with parity and wrong in principle on a civil disciplinary penalty.

39. As to that challenge, the Tribunal particularly draws from the exact wording of the guidelines. Under the heading “Purpose”, it states:

> “The purpose of these guidelines is to provide advice to participants about the penalties that may be imposed where a disciplinary action offence is proven.
>
> When the Commission imposes a penalty, it takes into account a number of important considerations including the need to:”.
>
> There are then eight dot points. It then says:
>
> “The penalty ranges suggested in this document are only a guide and are not in any way mandatory. Any aggravating or mitigating circumstances that may exist in each individual case will also be considered.”

40. That then is the purpose. It is quite apparent from that introductory set of words that the regulator does not consider that it can simply apply a mathematical formula, thus must take into account a number of factors.

41. The keywords to be found from those just quoted are “provide advice”, “penalties that may be imposed”, “takes into account a number of important considerations”, that penalty ranges are a guide and not mandatory, aggravating or mitigating circumstances will be considered.

42. Those words could otherwise be extracted and placed in a Tribunal decision on the principles to be applied in determining objective seriousness and a reduction for subjective considerations to determine the ultimate penalty. They do not offend common law principles, and nor is it suggested here that they do, but, as expressed in Turnbull, that it was the same in harness racing, and as also expressed in Turnbull, that this Tribunal is not a supervisory court where it might be empowered to somehow set aside the guidelines as being contrary to common law.

43. The guideline itself then goes on, relevant to prohibited substance presentations, to deal with the relevant category 2 here, and the introductory words simply mean that the subject drug, cobalt, falls within category 2 and there is no suggestion by the parties to the contrary. But there is then a table. The table says “Minimum starting point”. It then says:

> "A reduction of 25% will be applied to the minimum starting point for an early guilty plea."

44. It then describes for a first offence a suspension of 4 months. It then describes a further discount, which need not be considered here, for trainers with longevity and nothing prior. It then says: "one category 2 substance rule breach in previous 3 years, suspension 8 months."

45. Critically, and relevant to this decision, it then says: "Second or subsequent category 2 substance rule breach in previous 5 years, disqualification 18 months."

46. Some points to be taken from that table. A minimum starting point, recognition of a particular type of mitigating circumstance, then a differentiation between when a suspension is appropriate and how long it should be, and then, not surprisingly, when a person continues to breach the rule, that it jumps from a suspension to a disqualification. There is nothing inherently wrong in that approach.

47. One of the issues taken by the appellant is that prior parity cases should apply because the previous table, which was the GRNSW penalty table adopted by GWIC before it published its own table, was that in essence the categories and penalties relating to cobalt, for example, were much the same.

48. But the way the Tribunal approaches that is this: that it was the case before the internal review panel that the gravamen of the new guideline to the regulator and the industry was emphasised by Mr Birch, who has appeared before the Tribunal today, and is the Director Race Day Operations and Integrity for the respondent, on the history of the consultation that took place by the regulator, the respondent, with various industry groups, and it was Mr Birch's very strong emphasis to the internal review panel that it was the industry that wished to have the guidelines in the terms that they were there for the benefit of the industry.

49. The benefit of the industry was subject to Mr Birch's submissions today and they drew upon s 11 of the Greyhound Racing Act, which in simple terms requires, as an object of the regulator, the necessity to promote and protect the welfare of greyhounds, to safeguard the integrity of greyhound racing and betting and to maintain public confidence in the greyhound racing industry.

50. He says that the guidelines have been formulated, consulted upon and applied with that object in mind. That is accepted.

51. On s 11, just briefly, the submission for the respondent was that a fourth breach in six years is a most serious matter and strikes at the heart of the integrity of the industry and therefore would infringe section 11 in two ways.

52. The next area of submission of considerable weight at all three levels for the appellant relates to parity. The Tribunal deals with parity in this case in this way. The regulator has determined that there will be a change in the penalty regime that it considers appropriate for matters such as those covered by the guidelines. It might be said that it is a change in the law.

53. The Tribunal draws an analogy where, for example, in prescribed concentration of alcohol cases in the criminal jurisdiction, a particular minimum type of penalty may be appropriate for certain conduct and then at some time later the legislator determines that that minimum penalty it previously thought fit was no longer adequate for its purposes and an increased mandatory minimum penalty – or, even, indeed, maximum penalty – is put in place. The effect of that would be that all of the parity cases that were dealt with under the prior regime would become otiose under the new regime. The Tribunal sees no reason to approach the guidelines dated July 2022, in effect from 1 January 2022, not to have the same effect. That is the goalposts have been moved by the regulator.

54.This is a licensing regime. It carries with it the privilege of a licence and the necessity for not only compliance with the rules but acceptance of the policies and procedures of the regulator that go with the privilege of a licence and the necessity for compliance. Here, the appellant has continued to exercise the privilege of a licence up until its loss on an implied acceptance that if there is a breach, new rules apply, new penalties apply, a new regime is in existence.

55. The necessity, therefore, to focus clearly on the precedent cases of Newell, GWIC, 10 March 2022, Northfield, Tribunal, 4 April 2018, and Oldfield, Tribunal, 18 June 2021, as to the ultimate decision based on parity are much lessened in importance. They retain a small level of relevance because it was under the old penalty guidelines that a disqualification was expressed, but inevitably a suspension was imposed.

56. That was reflected upon at length in particular in Northfield and in other cases since. That is, the Tribunal has often expressed that leniency has been extended by the regulator in only imposing a suspension when a disqualification could have been imposed.

57. Now, it is to be clearly noted when a presenter comes with a history of prior matters that the level of penalty increases. It does so in the first two stages the Tribunal has referred to in the table, in increasing the level of suspension time from 4 months to 8 months, and then, if a presenter falls

into the third category, as is the case here, it moves from a suspension to a disqualification.

58. That was not previously expressed. It is, however, that the various principles that the Tribunal referred to in Northfield in particular cannot be disregarded and nor, critically, the ascertainment of what happens with priors as they were assessed in Northfield. There, some 21 prior cases – and that was 2018, apparently there have been very few, if any, since – reflected upon the fact that of those 21 priors in the period up to Northfield, that there were three with priors. Two of those had one prior and one had two priors. Notwithstanding that, in respect of the latter with two priors, the suspension was only of 20 weeks, and again it is noted to have been a suspension, and for the others, a maximum suspension with priors was 24 weeks.

59. Those, of course, were under a regime which provided, potentially, up to 36 weeks with the particular priors that existed.

60. The fact that in Northfield a suspension of 21 weeks was found to be appropriate on the facts and circumstances of that case can only be noted as prior to the current guidelines and a 2018 matter. Oldfield received a 10-week suspension, 4 weeks of which was conditionally suspended. Whilst that was a 2021 decision, it is again noted to be prior to the present guideline and was based upon the facts and circumstances of that case. Again, a suspension is acknowledged by the Tribunal.

61. Newell, in the Tribunal's opinion, provides less help. Whilst it was a 10 March 2022 determination, it was an October 2021 presentation and therefore under the old rules. And it is noted a length of history there of only six years compared to 37 years here, and he also had three prior breaches – two for caffeine and one for cobalt – and he only received a 4-month disqualification by the regulator. The Tribunal notes that on 6 July 2022 the appellant Newell appealed against the finding of the breach of the rule and that was successful, basically, on the basis that the regulator could not prove that the presentation rule, as broad as it is, could be met. It was not a determination on the adequacy of penalty in any fashion at all as the Tribunal did not consider penalty.

62. Applying then the principles in Pattinson, the principles referred to in this jurisdiction and again adopted in Turnbull, it is necessary to assess the objective seriousness here and determine what is an appropriate penalty.

63. The appellant has no explanation, despite her best efforts, which are acknowledged, to explain how this cobalt positive occurred yet again. Under the McDonough principles, the appellant concedes that she cannot establish blamelessness which might attract a finding of no penalty or a very small penalty, possibly a fine. The appellant falls within category 2 where, at

the end of the day, the Tribunal cannot determine why. And it might be noted in brief passing, the regulator does not have to prove how, when, why or by what route. This was a prima facie breach of the rule with the appropriate certification and a presentation.

64. The appellant concedes in her submissions at all levels the seriousness of the totality of the conduct and the necessity for a disqualification. A suspension is not suggested as appropriate. The plea in mitigation essentially is for a much reduced period of disqualification.

65. The Tribunal has often expressed that presentation matters require a starting point of a disqualification but fully acknowledges the number of occasions on which it itself has seen fit to impose a suspension. That does not arise for consideration here on those submissions. But it is a reflection of the occasions on which the regulator and the Tribunal have determined the facts and circumstances of an individual case and the application of subjective principles to come from a disqualification down to a suspension, and applying those same considerations here, whether there should be a reduction in the disqualification to something less.

66. The Tribunal is keen to avoid a determination being seen to disregard the starting point that the regulator considers appropriate. The Tribunal has the decision of Bilal in which a period of 6 weeks' suspension was imposed for a presentation with lignocaine and its metabolites, and the facts and circumstances, applying a McDonough category 2, for a suspension of 6 weeks on a starting point of 8 weeks. Essentially, the aspect of penalty was not a great issue in respect of that case. The drug itself was a category 3, which the Tribunal notes had a starting point of a 2-month suspension. It can be distinguished from the facts here.

67. Objectively, the Tribunal has to look to specific deterrence and consider its assessment of the appellant in the future. Specific deterrence here is, on an aspect of objective seriousness, exacerbated by the fact that this is a fourth breach. The Tribunal notes at this point that it is not required to consider only the issue of priors under the subjective discount issue, that is, that a person with priors on the subjective factors does not get a higher penalty but simply loses some or all of the leniency that subjective factors might otherwise require.

68. The Tribunal has expressed – and again expresses in this case – that the presenter with priors, particularly three priors, has exposed themselves to a need for more specific deterrence as an objective consideration.

69. There are no other specific deterrence factors the Tribunal considers relevant other than the need to ensure that this appellant understands the necessity to avoid future breaches.

70. On the issue of general deterrence, the Tribunal returns to the issues identified by Mr Birch as to the integrity of the industry and the quite expected reaction of outsiders to the industry, or other participants, that a person with a fourth presentation must expect that a message of general deterrence is appropriate. The Tribunal sees no reason to digress from that.

71. On the principle of general deterrence, whilst there there is no performance-enhancing and nothing specific about the conduct of this race, there is the inevitable concern of the outside observer that a person presenting to race with a positive on a fourth occasion is one which brings the integrity of the industry much into question and therefore requires general deterrence.

72. Those type of factors which have been summarised are embraced by the guideline. There are no other parity cases post the introduction of the guideline which have any similar facts and circumstances to this case which would cause the Tribunal, for all the reasons it has outlined, to move away from what was seen to be a minimum starting point penalty by the regulator in adopting the table, nor by the regulator at the hearing panel and the internal review stage of considering objective seriousness at a disqualification of 18 months.

73. On all of the facts and circumstances, the Tribunal is like-minded and determines for itself a starting point of a period of disqualification of 18 months.

74. It is then a question what, if any, discounts may be given. Subjective factors can, but do not always, lead to a discount on objective seriousness. The facts and circumstances of a particular case can cause a loss of leniency.

75. With respect to the decision-makers here, the Tribunal is of a view that they have engaged in double counting. They have determined that there will be a general loss of reduction for subjective factors by reason of past history. The problem is that the table is written on the basis that it takes into account that past history. In other words, to then impose objectively a more substantial penalty of a protective nature and then indicate that there should be no reduction for subjectives for those same facts is double counting.

76. The Tribunal proposes to give a discount for subjective facts. The two bodies below did so, in any event, despite their expression they would give no more, essentially, at the hearing panel, but slightly more for subjective facts at the internal review panel.

77. The first discount is in respect of the plea of guilty and her cooperation. The appellant has certainly met that wholeheartedly. It is an agreed fact of a 25 percent discount. On 18 months, that is 4½ months.

78. The appellant is also entitled, in the Tribunal's opinion, to a discount for her subjective circumstances. Whilst hardship has been stated as long ago as Thomas in the harness racing jurisdiction in 2011 in those cases to be an inevitable consequence of conduct, if the appropriate penalty is seen to be needed and if hardship follows, then that is an inevitable consequence.

79. Here, the hardship economically for the appellant is no different from virtually every professional trainer. Secondly, the emotional impact is not at a level here which the Tribunal can be satisfied is of such a level that that of itself becomes a substantial subjective factor. The Tribunal, perhaps heartlessly, states that it rarely deals with a case of a professional trainer with a love of the industry who does not suffer some emotional loss or impact as a result of the inevitable loss of the privilege of a licence.

80. The Tribunal expressed earlier that this appellant had already had discounts in the past for her contribution to industry. The precise nature of that is not known. It is open to the Tribunal to say the appellant has exhausted the benefit of that subjective factor. But the Tribunal does not know. The Tribunal notes in particular that the referees have come out in such a strong fashion – and exceptionally strongly, in the Tribunal's view – in recognising that which she has done.

81. In the absence of any more specific evidence of the extent to which discounts were given in the past, the Tribunal cannot lose sight of the fact of all the things this Tribunal found earlier on the reference of Ms Courtney Norbury, and are not repeated, that this appellant has done for the industry. Like so many, she has, of course, volunteered her time. But here she has done so at an extraordinary level.

82.Here, the referees acknowledge her dedication to the industry and the welfare of greyhounds. That does not distinguish her from the majority of appellants with whom the Tribunal deals, and there is nothing elevated on that line.

83. But there is a further factor here, whilst it may not expressly be said to be so, being an important factor in the determination of the internal review to give a greater discount than the hearing panel, the Tribunal is much persuaded by the reference of Rob Ingram as to the cementing in the Tribunal's mind of the extraordinary steps this appellant takes for the benefit of the industry and the welfare of greyhounds beyond that which others do.

84. The Tribunal concludes that a greater discount should therefore be given for subjective factors, disagreeing, as it has said, with the determination of the hearing panel, respecting as it does the discount given by the internal review panel, but comes to a conclusion that a slightly greater discount is established on the facts and circumstances of this case.

One month over and above those 4½ months was given by the internal review panel.

85. The Tribunal determines that in fact that one month should be 2½ months. That gives a total discount on the two headings of 7 months.

86. The determination, therefore, is a starting point of a disqualification of 18 months, a discount for subjective factors of 7 months, a period of disqualification of 11 months.

87. The Tribunal imposes a disqualification of 11 months.

88. This was a severity appeal. The appeal has been successful. The Tribunal notes, therefore, that the severity appeal is upheld.

89. Application is made for a refund of the appeal deposit.

90. It is not opposed. This was a severity appeal. It has been successful.

91. The Tribunal orders the appeal deposit refunded.