

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

FRIDAY 2 DECEMBER 2022

APPELLANT DARRYL THOMAS

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULES 86(o) x 2

DECISION:

- 1. Appeal upheld**
- 2. Charges dismissed**
- 3. Appeal deposit refunded**

1. The appellant, Darryl Thomas, appeals against a decision of the Greyhound Welfare Integrity Commission of 19 May 2022 to impose upon him a period of disqualification of 4 months for Charge 1 and 7 months for Charge 2, each to be served concurrently. The charges and their particulars are as follows:

CHARGE 1

Rule 86(o): A person (including an official) shall be guilty of an offence if the person (o), relevantly, has, in relation to greyhound racing, done a thing which, in the opinion of the Stewards or the Controlling Body, is improper, or constitutes misconduct.

Particulars

Mr Thomas as a registered person acted improperly and misconducted himself at The Gardens Greyhound Club on 25 April 2022, with the circumstances being he used abusive language towards Ms Burnett, who was acting in an official capacity, by telling her to “fuck off” on multiple occasions.

CHARGE 2

Rule 86(o): A person (including an official) shall be guilty of an offence if the person (o), relevantly, has, in relation to greyhound racing, done a thing which, in the opinion of the Stewards or the Controlling Body, is improper, or constitutes misconduct.

Particulars

Approaching Ms Burnett and saying words to the effect of “give me the fucking phone” and trying to grab a mobile phone from Ms Burnett’s hand.

2. At the stewards’ inquiry the appellant pleaded not guilty to each of those charges and has maintained a denial of the breaches of the rule on appeal.
3. The evidence has essentially comprised the brief of the respondent, a CCTV of an incident of 4 December 2021, with three still images from that CCTV.
4. The critical parts of the brief of evidence are an email of the appellant of 26 April 2022, a statement of Shannon Boyd, a statement of Allan Ivers, a statement of Dale Millard, a statement of John Gidas, a statement of Matthew Soames, a statement of Michelle Sultana, a statement of the appellant, an email of Lisa Hutton, an email of Andrew Bell. In addition, Mr Adams, a senior steward, has given evidence at the hearing panel inquiry

and before the Tribunal. Oral evidence is contained in the transcript from a number of those witnesses and they shall be referred to at the appropriate time. In addition, in this case the respondent called steward Ms Warren and, as stated, Mr Adams was cross-examined. In addition, the complainant, Ms Burnett, was cross-examined.

5. The first issue for determination is whether the respondent, the regulator, satisfies the Tribunal to the Briginshaw standard that each of the acts of conduct alleged took place and, secondly, that in each case, that constitutes improper conduct or a misconducting of oneself.

6. Interestingly, neither party has made any submission on the issue of improperly and misconducted. The implication to be drawn from the evidence and submissions, of course, is that if the conduct is found in the circumstances in which it occurred, that would be an inevitable conclusion.

7. The Briginshaw standard does not require an analysis on the facts of this case nor the submissions made. Simply put, the position of the respondent is that its decision was correct and its decision to disqualify was the appropriate outcome. That is relevant at this point because it is not an issue that a disqualification, the loss of a privilege of a licence and all that goes with it, is the most severe penalty that can be imposed under the rules. Whilst a warning off has the same connotations, that does not require analysis here.

8. The point being that it is required under the Briginshaw test that the gravity of the conduct and the likely result of an adverse finding of that conduct means so much more astute must be the analysis of the evidence to give the level of comfortable satisfaction that is required under the Briginshaw standard. No other case law requires consideration.

9. The facts are put in this context: the appellant is a public trainer and was present at The Gardens on 25 April 2022. Ms Burnett is an employee of various clubs that conduct race meetings and also has official functions as a starter, swabbing steward and the like. It is not in issue that she was, as particularised, a person in an official capacity.

10. It is necessary to determine, because that is the pure issue in this case, whether the appellant uttered the two sets of words particularised against him and engaged in the conduct of attempting to grab the phone alleged against him in respect of the second charge. The appellant denies each of those aspects of conduct.

11. There is substantial evidence. Ms Burnett made a statement by email on 26 April 2022. At the outset, it is necessary to have regard to the contemporaneous nature of that statement. That statement and her

evidence refers to her complaint, again, a contemporaneous act at the time of the conduct to various people and officials.

12. The club had recently introduced a new system for trials. There is no doubt that the evidence establishes that there was dissatisfaction with everything associated with that system. The evidence establishes that the appellant had been dissatisfied with that system on prior occasions and appears to have had some element of dissatisfaction with the running of greyhound racing generally and in particular in relation to trials. The respondent says, therefore, that he was appropriately motivated to engage in the conduct that he did. There is no doubt he was unhappy on the day and many of the witnesses refer to that.

13. Ms Burnett says that the genesis for all of this was the fact that the system had changed as to the way in which trainers could present their greyhounds to run in a trial. The new system, which was operating on the day in question, was that the appellant could not trial each of his greyhounds one after the other. Other trainers were interposed between his particular greyhounds. He was dissatisfied with that. Conversations took place between Ms Burnett and the appellant in respect of that.

14. Ms Burnett opens in her email by stating a general reaction from the appellant as: "What the fuck? Who says that?" To which she replied: "It's about the paperwork." Again, he stated he wanted to do all of his trials and Ms Burnett insisted that he had to follow the system which was printed on her sheet.

15. The appellant went away. Ms Burnett observed him speaking to Mr Dale Millard, at the time a director of the subject club. Ms Burnett approached them. It is then that the first incident is said to have taken place. It is at this point that the evidence diverges. Ms Burnett said, in an endeavour, in her opinion, to try and sort things out, and explaining to Mr Millard what was going on, that the appellant yelled out the words: "Fuck off. Fuck off. Fuck off. You have a big mouth. Wish I never knew you and I and I'm sick of you." To which Ms Burnett says: "I don't need to be abused. I will not be trialling your dogs." To which he is said to have replied: "I will be fucking trialling because the dogs are in Michelle's name." The Tribunal will return to Michelle's status in the matter.

16. That is said to comprise the first incident as particularised.

17. They then separated. They then went to an area which is near the office. There is much description from various witnesses about the location, suffice it to say that a description of "near the office" will suffice. Ms Burnett says that she was on the phone to an official, Mike, about the situation. She walked around the corner and she describes the appellant as coming up to her and yelling: "Give me the fucking phone. Let me speak to them." At the

same time, he was trying to grab the phone from her hand. To which Ms Burnett said she said, "Can you stop and let me explain what is on the paperwork?" She says in her email "he continued yelling and calling me a moll". The Tribunal pauses to note that the reference to being called a "moll" was originally particularised, but the regulator did not proceed with that. Ms Burnett sets out in her statement a number of witnesses to this set of facts.

18. That is said to comprise the second incident as particularised.

19. That then comprises the case which the respondent advances to indicate an establishment of each of the particulars pleaded.

20. Ms Burnett gave evidence to the hearing panel and to the Tribunal, and the latter on oath.

21. To the hearing panel, having described the booking system and its problems and the initial exchange with the appellant, she describes, as she said in her email "going down towards Dale Millard" and then repeats the words that she said were uttered and the conversation that took place. She then repeated the issues that took place in respect of the second incident.

22. She was then questioned about an incident of 4 December 2021. That needs to be put in context as to what consequences flow to the credibility of the evidence of Ms Burnett because of her answers to the cross-examination at the hearing panel.

23. The evidence is this: that Ms Burnett was an official on duty; Ms Michelle Sultana, the partner of the appellant, was present. It is Ms Sultana's evidence that Ms Burnett walked past her in a Santa suit and said, "You fucking moll." In addition, later, she walked past her and coughed at her. The Tribunal merely pauses to note that December 2021 was during the period of the pandemic, law had been introduced in this State to make coughing towards a person a criminal offence. It was quite apparent to everyone in the community that coughing towards someone during the pandemic was a gravely serious piece of conduct.

24. Ms Sultana complained to two officials on duty, one of whom could not be found to give evidence on short notice today, the other was a steward, Ms Warren. Ms Warren was told about the complaint. She reported it to the senior steward on duty at that meeting, Mr Adams, and gave evidence of subsequently requiring Ms Burnett to attend the stewards after the last race. She did so. As required by protocols in place for Ms Burnett, she was accompanied by the race day manager as a support person.

25. She was questioned by Mr Adams in the presence of Ms Warren. And essentially it was the evidence of Mr Adams, who has little recollection of the matter either at the hearing panel or before the Tribunal, about the

incident itself. Mr Adams was quite clear that he had also received a complaint from Mr Thomas, the appellant, at the window of the stewards' room, but it was a complaint of a nature which indicated that Mr Thomas was merely reporting it and did not want to make it official. Mr Adams' evidence, which the Tribunal accepts, is that it was not, therefore, an official complaint upon which he should conduct a formal inquiry. And noting in passing a formal inquiry would have required not only the presence of the support person but that there be a form of recorded interview. None of it was treated by Mr Adams as having that seriousness and he did not conduct such an inquiry. Ms Warren was of the same opinion. She thought something might flow from it. It was Mr Adams' opinion that all he had to do was speak to Ms Burnett, who as a starter had been the subject of some comment, and he was concerned to ensure that Ms Burnett in effecting starter duties did so as Mr Adams would require them to be done.

26. Nothing official was taken with Ms Burnett in respect of that, even though she was an official on duty and it was said to be conduct in which she engaged which for an official would be contrary to the requirements of her employment, namely, the act of coughing and, secondly, the act of language. It was said to be an incident at its highest by Ms Burnett that took place behind the starting boxes and she entirely denied anything of a coughing or swearing nature and was at pains to point out how well she gets on with Ms Sultana.

27. The evidence establishes from Ms Sultana's statement that on 6 December she sent an email of complaint to The Gardens, which was to the club itself and not to a steward. Therefore, there was no official stewards' inquiry on the basis of a complaint established. The Tribunal accepts that Ms Burnett was spoken to by Mr Adams and Ms Warren and that the conversation contained advice, at the very least, about how she should conduct herself.

28. The relevance of that is – and the Tribunal will return to it – that the appellant alleges Ms Burnett was motivated on 25 April to report conduct on that date to exculpate herself from any wrong findings in relation to Ms Sultana on 4 December 2021. The cross-examination was whether she was aware of any complaint made by Ms Sultana to her workplace. She said she was not. She denied calling Ms Sultana a moll and coughing in her face. And again she was questioned “whether you knew she made a complaint”, the answer is: “No, I did not.” And then again at the hearing panel she repeated that she did not have problems with Michelle. Her evidence to the Tribunal today was consistent.

29. It might be noted that the complaint made to Mr Adams, a GWIC person, was by Mr Thomas and not Ms Sultana, but Ms Sultana did complain to the officials, the two stewards, to which reference has been made.

30. Ms Burnett was then questioned at the hearing panel about the conduct of her brother on 25 April 2022. That can be dealt with briefly. It has only arisen for consideration because the appellant contends a second reason why Ms Burnett should not be accepted is that her complaint was made to divert attention from the conduct of her brother on the same occasion.

31. Briefly put, there is no doubt that her brother apparently was told that the appellant had engaged in adverse conduct with Ms Burnett, his sister, as a result of which the brother confronted in a very strong fashion the appellant and threatened him quite strongly. No action was taken against the brother. There is no doubt that incident took place and it was corroborated by the witness Matthew Soames.

32. Interestingly, Ms Burnett was at pains to tell the Tribunal, as she was the hearing panel, that she wanted to take criminal proceedings against the appellant. She has not done so.

33. She was questioned at the hearing panel in respect of the presence of Mr Millard. She there maintained her evidence as she had set out in her email. Interestingly, she maintained to the hearing panel that she did not swear at the appellant at any time and that she acted professionally at all times. She also emphasised her friendship with Ms Sultana.

34. In relation to Ms Sultana's evidence about the second incident, to which the Tribunal will return, it being that Ms Sultana said she saw and heard the second incident, that Ms Burnett said she was not even present in a position where she could have done that and was in the car park at all times.

35. To the Tribunal, essentially, her evidence, being relatively brief, was to the effect that she again was not aware of any complaint by Ms Sultana, and that evidence has been covered. She denied the conduct alleged against her on 4 December. She maintained to the Tribunal's questions that she did not swear on 25 April 2022 but she was, as she has maintained at all times and corroborated by numerous witnesses, upset, crying and scared on 25 April, but she also told the Tribunal she did not yell and she was simply trying to explain her conduct. Again, she denied the motives that are said to be the threefold ones identified by the appellant.

36. The next piece of evidence is the interview by the Chief Inspector of Mr Boyd on 12 May 2022. In that interview, Mr Boyd sought to give evidence about the second incident. He heard raised voices and he says he heard the appellant say: "Well, give me the effing phone and I will tell them how to run this bloody track." To which he says Ms Burnett stormed off and said, "Leave me alone" and was crying. He consoled her; she was fine.

37. He repeated those matters in various ways and, in particular, the fact that he could not hear any of the conversation prior to the key words being

uttered, and he could hear those because the appellant spoke more loudly than Ms Burnett and each of them was speaking basically with raised voices. There is no evidence from Mr Boyd that Ms Burnett herself swore. It is apparent that his friendship with the appellant has ceased. Mr Boyd was questioned at the hearing panel and essentially he repeated the evidence that he gave in his interview about the words required to establish particular 2.

38. It was suggested to him that he was motivated to support Ms Burnett against the interests of the appellant by reason of an incident that took place in 2020 when he engaged in a social media post suggesting that everyone engaged in blaming contaminated meat should be rubbed out. It happened to be a fact at the time that the appellant was one of those people facing such a charge. In relation to that factual issue, there is nothing further and the Tribunal notes that, at its highest, the evidence that has been drawn out does not contain any reference directly to the appellant.

39. The second challenge to Mr Boyd was in respect of the fact that the Tribunal dealt with him not that long ago for making a false statement about undertaking veterinary treatment for which he was subject to a penalty. Therefore, it is said he is not a person whose evidence should be trusted because he was prepared to engage in false statements.

40. The next relevant evidence is the interview of 12 May 2022 with Allan Ivers, one of the people named by Ms Burnett as being a witness to the incident. He gave evidence in respect also of the second matter and, relevantly, that each of Ms Burnett and the appellant were at the back of the office arguing very loudly. He could not understand what they were saying but gleaned it to be about the new system in operation.

41. He was of the opinion, in somewhat unhelpful language, that Ms Burnett apparently told the appellant to “piss off” and at the time was in tears and obviously very upset, even more so, bawling her eyes out. He says he was surprised by that because she is pretty tough skinned. Essentially, his statement does not go any further than that. He did not give evidence to the hearing panel.

42. The next statement is that of Dale Millard, formerly, as described, a director at The Gardens. Mr Millard gives evidence supportive of the appellant. In essence, he said he was having a conversation with the appellant about the issues of trialling and that Ms Burnett came up and said: “I’m fucking sick of being abused by trainers. I’ve been abused by trainers about this system all night before the trials even started.”

43. Corroborative of the appellant’s statement, Mr Millard then said this conversation took place. After those words were uttered by Ms Burnett the appellant is said to have said: “I didn’t abuse you, Kira. Was I one of the

trainers who abused you?” Kira: “No, you weren’t, Darryl. But now here you are fucking whingeing to Dale about me. I have been getting abused by trainers all night and I’m sick of it.” Mr Millard: “I did not abuse you, Kira.” There was then much conversation that continued. Again, a repetition by Ms Burnett about abuse by trainers all night, to which the appellant is said to have said: “I did not abuse you, Kira.” And she replied: “I know you didn’t abuse me, Darryl.” To which he replied: “Well, you’re just here trying to cause me trouble. Leave me alone and leave me out of it.” To which she replied: “Well, guess what, Darryl, you’re not fucking trialling now.” And he replied: “I don’t have any trials booked, Kira.”

44. Mr Millard spoke to Mike Brady about the incident. He was questioned about his witness statement and, in relation to the words “fuck off”, said: “I honestly don’t recall that. It got very heated. Dead set didn’t hear any specific swearing. Specifically didn’t hear anything like that.” Repeating how heated it was and about the trials. There was shouting. And again he said: “It was a slanging match, a shouting match”, but he did not hear any swearing.

45. He was then questioned by the panel about the fact his statement referred to Ms Burnett using the word “fucking” and he said: “If I said that – if I said that in the statement, well, that’s right.” And he was questioned about the subsequent words of Ms Burnett to the appellant about him “fucking whingeing”, to which Mr Millard said to the hearing panel: “Whether I was wrong doing that – if I put it in there, it must have been in there. It wasn’t in any derogatory fashion, like, telling someone to use that word and ‘fuck off’, or whatever.”

46. The next witness was John Gidas and his interview of 28 April 2022 and opens with a statement that Mr Gidas gets on well with both Ms Burnett and the appellant. He gives evidence in respect of the first incident. And, interestingly, it is corroborative of Millard and the appellant. Because he was questioned when Ms Burnett said the words “I’m sick of trainers abusing me”, he says the appellant said: “‘Was I one of the trainers that abused you?’ And she said, ‘No, you weren’t, Darryl’.”

47. Essentially, he did not know a lot of what else happened. He did not hear the words said to comprise the first charge of the repeated words “fuck off”. There might have been the words “you’re causing trouble” or “shut up” but nothing of a threatening nature. He did ponder whether he had misheard what was being said. He denied he had been coached in any fashion in respect of his evidence.

48. He was questioned before the hearing panel and repeated the correctness of the words in his interview. He did say it was a bit heated. He did not recall any swearing. There was a raising of voices. He repeated that on a number of occasions. He corroborated the fact that Ms Burnett was

upset and that she was having a complaint to Millard and seemed to be wanting to vent that complaint.

49. In particular, he did not hear the words “you’re fucking here whingeing to Dale about me”. He agrees it was not cordial. And again he said that he was not involved in any getting together with the appellant to make his statement.

50. The next witness is Matthew Soames. Essentially, he gave evidence about the conduct of Ms Burnett’s brother and nothing turns upon that.

51. The next statement is by the appellant’s partner, Michelle Sultana, of 17 May 2022, and a conversation she had with the appellant to the effect that Ms Burnett was going off at him and then she took herself, she says, near the office building and she saw Ms Burnett storm out of the office, go past Darryl and say the words, “You’re a fucking cunt, Darryl.” And then she suddenly started crying and screaming, “I’m sick of being abused by trainers.”

52. Her statement then deals with the incident on 4 December 2021, which the Tribunal has summarised.

53. She did, however, state that she had heard Ms Burnett on multiple occasions use the words “I have been abused all night by trainers and Darryl Thomas”. She then opined about why Ms Burnett was exaggerating her complaint and she appended her email of 6 December 2021, to which reference has been made.

54. The next witness was Mr Eddie Want. He had made no statement. He was called by the respondent by the hearing panel because Mr Boyd had stated that he was with Mr Want – or, precisely, with Eddie – when the evidence which he has described unfolded. Mr Want was of no assistance to the respondent.

55. He did not know what Ms Burnett and the appellant had to say to each other. He said it was a little bit loud. That Ms Burnett was using obscenities and she was not in a really happy state of mind. She was screaming out, yelling, but he did not hear the appellant yelling out. He said she was a considerable distance away and he could hear the yelling out. Again, he did not know what was being said, and he even described it as ferocious yelling. But, critically, he said he could not remember seeing Mr Boyd at that time.

56. The next evidence is the statement of the appellant himself, he not having given evidence to the Tribunal, and only very briefly to the hearing panel. His evidence exculpates him entirely from any wrongdoing and turns the tables back on Ms Burnett. He describes the initial incident when they

had discussions about the order of trialling in which he says Ms Burnett used the words such as “I don’t fucking care” on more than one occasion. He then walked off and went to speak to Dale Millard and was there when he says Ms Burnett came up to them both, and his evidence is consistent with that of Mr Millard.

57. Whilst the words are slightly different, they are essentially the same. In other words, Ms Burnett saying she was sick of being abused by trainers, he questioning her whether he had abused her and Ms Burnett replying that he had not. But then he said the key words she uttered were: “But now you’re over here fucking whingeing to Dale about me.” And again, later on he says that Ms Burnett conceded again that he had never abused her. He then gave his evidence about her having a big mouth, to which she is said to have replied: “Well, guess what, you’re not fucking trialling now.”

58. He then gave evidence about the incident of 4 December, and that again does not need further recitation. He also gave evidence, which again does not need further consideration, of the brother of Ms Burnett approaching him, abusing and threatening him. He says at all times that Ms Burnett was the aggressor and attacked him and he did nothing wrong.

59. The extent of the appellant’s evidence before the hearing panel is reduced to a few lines and, indeed, did not occur until page 56, essentially during the time when submissions were being made. And the only part of that that has any bearing upon this case was his concession that he did go to the office that night, and that is relevant to the second incident.

60. A statement was made by Ms Lisa Hutton, which simply in five lines says nothing of any substance but that the appellant was arguing and swearing and laughing.

61. The next piece of evidence is by Andrew Bell, who said absolutely nothing happened whatsoever.

62. The Tribunal has referred to the evidence given to the hearing panel by Mr Adams and to the Tribunal and has referred to the evidence given by Ms Warren to the Tribunal.

63. That then is the evidence.

64. If accepted, the case for the respondent establishes each of the particulars and, therefore, the ingredients. As to whether that is improper conduct, the Tribunal will make reference in due course.

65. Each party has made, prior to the hearing, opening submissions, and the Tribunal again is grateful for the time saved by that effort. Each of the parties has made oral submissions.

66. In essence, the submissions identify inconsistencies of evidence both ways and the reasons why, in the respondent's case, there is satisfaction that the case is established, and, in the appellant's case, that it leaves the Tribunal incapable of deciding.

67. The case, essentially, for the appellant is that there is insufficient corroborative evidence of the key facts to enable the case to be found. In addition, the reason why the Tribunal should reject the evidence of Mr Boyd, which has been summarised, was set out. The fact that Mr Want in fact provided support to the appellant's case and not the respondent's. That the 4 December incident did describe conduct which means that the credibility of the evidence of Ms Burnett is cast in doubt. The conduct of the brother is consistent with a need for Ms Burnett to provide protection for him. And then each of the other witnesses who were unhelpful to the respondent were identified and as to why.

68. As stated, the respondent has identified various inconsistencies in witnesses that might otherwise have been favourable to the appellant. They do not need repetition. Each of those inconsistencies has been set out in the evidence to date. Each of the arguments that are said to discredit Ms Burnett are challenged and said not to be established, and there is to be found, in the totality of the evidence, support for the case for the respondent.

69. It can be seen from the summary of evidence which the Tribunal has embarked upon that there is in fact, if accepted without question, evidence which goes to show that the words "fuck off" were uttered and the "give me the effing phone" were uttered and the attempt to grab the phone took place.

70. On the other hand, there is equally evidence of a number of witnesses that those words in relation to the first charge were simply not uttered and the only person swearing was Ms Burnett. And, in relation to the second matter, that after the swearing by Ms Burnett at the appellant, there were none of the words said to have been uttered by the appellant uttered and there is no other evidence to indicate the grabbing of the phone.

71. Each party has set out, as would be expected, to identify the inconsistencies in their opponent's case and witnesses and the reasons why there is not corroboration or there is corroboration. And also, particularly on the part of the respondent, to indicate why Ms Burnett is motivated not to be truthful and Mr Boyd likewise and, in any event, he should not be trusted because he is prepared to give false statements to official-type people.

72. There is weight in each case. The Tribunal has not seen Ms Burnett but has only heard her. She was a forthright witness. It is apparent from reading

the transcript below – and it is important to recognise when an appeal body conducting a de novo hearing does not have the benefit of seeing the witnesses that were seen and heard below, that there be weight given to the acceptance of their evidence, not conclusive weight, but it is a matter that another body has had an opportunity to assess and observe and form opinions. Those opinions formed from what the hearing panel heard are respected.

73. Essentially, there is nothing that the Tribunal can find that gives that substantial tick of satisfaction to either case.

74. There is weight to be given to the respondent's case through the evidence of Ms Burnett and some corroboration from Mr Boyd. There are issues that there are some parts of Ms Burnett's evidence which do not stand with the totality of the evidence. Did she swear or did she not? Did other people swear or not? And so on. And there are aspects where there is doubt cast on that and she was so adamant about her own evidence that it does leave that undermining of it.

75. But, at the end of the day, the Tribunal returns to the Briginshaw test which it described earlier. The Tribunal does not have that comfortable level of satisfaction, having considered the totality of the evidence, that it should find that everything that is in favour of the respondent can be elevated to such a level that that level of comfortable satisfaction is achieved.

76. That is not to reject the respondent's case and it is not to accept the appellant's case. But it is that oft-made remark that at the end of the day, whilst in a criminal case it would be the Tribunal currently appropriately satisfied, in this civil disciplinary matter it is a level of comfortable satisfaction. It is not there.

77. That then requires that the Tribunal indicate that the appeal is upheld as it cannot have that appropriate level of satisfaction.

78. The charges are dismissed.

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

80. The appeal was against both breach of the rule and severity. The Tribunal has only been required to deal with the issue of breach of the rule. The appellant has been successful. No consideration of penalty matters is required.

81. That then means that the appeal deposit should be refunded, and the Tribunal so orders.
