# RACING APPEALS TRIBUNAL NEW SOUTH WALES

## TRIBUNAL MR D B ARMATI

### EX TEMPORE DECISION

## FRIDAY 28 APRIL 2023

## APPELLANT STEPHEN FAIRBAIRN

## RESPONDENT GWIC

## GREYHOUNDS AUSTRALASIA RULE 156(f)(ii)

## SEVERITY APPEAL

## DECISION:

1. **Appeal upheld**
2. **Monetary penalty of $750 imposed**
3. **Appeal deposit refunded**

1. The appellant, licensed public trainer Stephen Fairbairn, appeals against a decision of the GWIC of 11 March 2023 to impose upon him a three-month suspension, one month of which was conditionally suspended for a period of 12 months, for a breach of Rule 156(f)(ii).

2. Relevantly, that rule provides as follows:

> "An offence is committed if a person (including an official):
> (f) has, in relation to greyhound racing, done something, or omitted to do something, which, in the opinion of the Stewards (ii) constitutes improper conduct."

3. That was particularised, in a summary form, as follows: the appellant, being a public trainer, in the opinion of the stewards, engaged in improper conduct on 27 May 2022 at the Goulburn Greyhound Club by initiating a verbal altercation with fellow greyhound racing participants.

4. The appellant, when separately represented, pleaded not guilty before the inquiry. The offence was found proven and the penalty imposed. By his appeal, he has admitted the breach and this is a severity appeal only.

5. The evidence is relatively brief. It contains, in addition to the decision, interviews of the appellant and the two participants, as they are described, Mr Algie and Mr Warren. In addition, the Tribunal has the benefit of some photographs and the transcript of the hearing conducted on 17 February 2023. No additional evidence was called on appeal, the matter proceeding on the basis of submissions.

6. No legal principles have been identified which require any detailed consideration. Simply put, the Tribunal is required to find a civil disciplinary penalty which provides the appropriate measures of special and general deterrence in the public interest, but not a penalty which is more than the conduct justifies or it otherwise would be oppressive.

7. The facts are relatively brief. At Goulburn generally and about the Goulburn racing facility, the evidence establishes that there have been matters going on between various participants in the industry. It appears there is some civil litigation going on; there are some issues, relatively undefined, about breeding of greyhounds and some of the participants involved in the matter are at loggerheads with each other.

8. The appellant's exact involvement and his reasons for engaging in his improper conduct remain uncertain to the Tribunal. It appears he may have been sticking up for one of those participants and confronting two participants, the two named persons Algie and Warren, who the appellant had some belief were improperly involved in doing something which is unknown.

9. The effect of that was that at the Goulburn facility, a public place, on the day in question the appellant and the other two participants were out of their vehicles. A considerable close analysis of the evidence is not required. The appellant initiated a conversation with the other two who were together. He initiated it by uttering the words, “Fucking old grubs.” Whilst there was some interview material which may have indicated other words were used, according to Algie and Warren, the Tribunal is asked to assess the conduct on the basis of those three words, an agreed fact.

10. The evidence also establishes that subsequent to the uttering of those words a physical altercation occurred between Warren and the appellant, and that is described by the appellant in some detail in his interview, where he says that he was king hit, that he was set upon, that he defended himself, Warren ended up on the ground and was up again, and the matter then eventually petered out.

11. It is interesting to note that the matter came to the attention of the stewards, not by complaint by Warren or Algie, but by the appellant himself immediately going to the stewards and reporting what was patently physical contact between him and Warren. It is also noted that the other participant, Algie, advised in his interview that he had recently undergone medical treatment and was unable to physically defend himself and thus Warren describes how he stepped in and did it.

12. The evidence also establishes on the submissions that Warren and Algie were charged with an unknown charge or charges but no disciplinary action was taken against either of them. They, of course, are not, as it were, on trial here today, it is the appellant and his conduct.

13. The evidence is uncertain as to whether there were other people present who may have seen or heard the altercation. Warren and Algie say yes, the appellant, no. Without hearing from them it is not possible to conclude on the Briginshaw standard that othere were present.

14. The appellant was a trainer, at the time of the breach, of nine greyhounds, now reduced to four, he being on a stay, and it is his intention to become a full-time trainer, thus engaging in a sole source of income from greyhound racing. He has only been a licensed person since September 2020 when he became an owner, but on 21 July 2022 he became an owner and a public trainer. That is not a long history in the industry upon which he can call in aid a demonstration of his capacity to comply with the rules.

15. The appellant has, however, on the submissions, recently engaged as a volunteer at Thirlmere trial track where he is a curator. That contribution to the industry is entitled to be taken into account and, on the submissions, is a reflection of his desire to be associated one a full-time basis with this

industry. As the Tribunal has said on many occasions, those who assist others in the industry are entitled to have that taken into account when they themselves are subject to some form of discipline.

16. The real aspect of this matter is what is an appropriate penalty for the admitted conduct. Firstly, the words are relatively brief. It cannot be lost sight of the fact that there was a subsequent striking of the appellant and, to some extent, there was an extra-curial punishment imposed upon him.

17. The appellant immediately reported the conduct, which is a reflection of his character. He expresses remorse for it. And the evidence, being very brief, enables the Tribunal to be satisfied that the need for special deterrence in this matter is not great.

18. The issue really is general deterrence. The submissions are that the regulator is concerned about conduct in the industry generally and for that reason the stewards and the regulating officers are seeking to impose more substantial penalties than might have been the case in the past, to paraphrase the submission, as a means of ensuring that the industry is – in the Tribunal's words – cleaned up.

19. The other concern to the regulator is that there have been issues at Goulburn. Reference was made, although details are not here before the Tribunal, of a Tribunal case in Mulrine where there was a physical assault, which is considered to be a more serious act of conduct by Mulrine than by this appellant who uttered words only.

20. That there are no, in fact, parity cases which are pressed to any extent. Although the matter of Mackay, recently analysed by the Tribunal for other reasons, is noted. It was a decision of the stewards of 21 October 2021 for misconduct towards another participant at a racing club, which involved, on the disciplinary decision, "several unsavoury and offensive comments" for some three or four minutes. That is the extent of the report as to what actually occurred. That licensed person had been in the industry for over 35 years and had no prior matters. There are two distinguishing factors. One was misconduct compared to improper conduct. And, secondly, length of time in the industry of some 35 years compared to about three. That short period of time in the industry does not help the appellant but, again, it does not stand against him. The precedent case of Mackay involved a $500 fine for each of two aspects of misconduct, which was wholly and conditionally suspended for 12 months.

21. Nothing has been put, other than the general submissions to which the Tribunal has referred, as to why the stewards considered a three-month suspension was appropriate on the facts and circumstances of this case. Other than the general submission about the need to clean up and the problems with Goulburn, other matters are not advanced which would

indicate why there should be loss of a privilege of a licence for uttering three words, as improper as they were, and the facts and circumstances of this case.

22. The Tribunal assesses the conduct of the appellant at a very low level. The seriousness which concerns the regulator is not shared by the Tribunal. The Tribunal does not see that a general deterrent message requires the loss of a privilege of a licence to indicate to other participants and the public at large that the industry is to be cleaned up and failure to do so will lead to consequences of a loss of privilege of a licence. Words only were uttered. Those words, in the 21st century in which we are, also require somewhat to be read down, as offensive as they were, as improper as they were, and in those circumstances the Tribunal does not accept a suspension is appropriate. Not inconsistently with Mackay, it considers a fine is appropriate.

23. The submissions for the respondent were that the decision of the stewards was correct. The appellant advances that there should be a fine. There is no suggestion of incapacity to pay.

24. Some facts and circumstances on the Mackay penalty need to be distinguished in addition to those remarked upon. Firstly, it was over two years ago. The Tribunal notes the movement by the regulator since that time to try and clean things up more.

25. The subjective facts do not require detailed analysis but are taken in to account.

26. In the circumstances, the Tribunal does not consider the fine of $500, which was considered for improper conduct by Mackay, should be the penalty level at which this conduct is assessed.

27. The Tribunal determines that there be a monetary penalty of $750. The Tribunal declines to suspend that. That, therefore, is the penalty imposed. The penalty was also imposed taking into account that there was no lengthy period of time served on the suspension before a stay was granted.

28. That means the severity appeal is upheld.

29. The appellant applies for refund of the appeal deposit.

30. The appeal was successful.

31. The Tribunal orders the appeal deposit refunded.

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