

IN THE RACING APPEALS TRIBUNAL

NATHAN LAZARUS

Appellant

THE GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DECISION

TRIBUNAL: The Honourable G J Bellew SC

DATE OF HEARING: 28 February 2024

DATE OF DECISION: 1 March 2024

APPEARANCES: Mr D Cleverley for the Appellant

Ms A Summerson-Hingston for the Respondent

ORDERS:

- 1 The appeal is dismissed.**
- 2 The appeal deposit is forfeited.**

BACKGROUND

1. On 27 September 2023 Mitchell Clark, an officer of the NSW Police, forwarded an email to the Greyhound Welfare and Integrity Commission (the Respondent)¹ in which he advised that on 20 September 2023 he had attended certain premises for the purposes of conducting what he described as an “FPO check”² on the occupant, Ali Bilal. Mr Clark further advised that Nathan Lazarus, the Appellant, was at the premises when police arrived, before stating:

During the execution of the search, [the Appellant] was charged with two offences being assault police officer in execution of duty and hinder or resist police officer. ... [The Appellant] is a confirmed FINKS OMCG member.

2. There followed lengthy dialogue between the Respondent and the Appellant’s solicitor, Mr Cleverley, in the course of which the Appellant was made aware of the fact that the Respondent had commenced an investigation. The Appellant was provided, through Mr Cleverley, with the opportunity to make submissions in writing.
3. On the morning of 10 October 2023, the Respondent advised Mr Cleverley as follows:³

The decision-makers have determined that the charges your client is facing, together with the allegation by NSW Police that he is a member of the FINKS OMCG, are a sufficient basis to consider your client not to be a fit and proper person to hold a registration.

4. The Respondent confirmed its decision in a further document dated 10 October which was in the following terms:⁴

[The Respondent] is investigating allegation [sic] of misconduct by registered participant Mr Nathan Lazarus.

¹ AB 150.

² It is evident that Mr Bilal had been issued with a Firearms Prohibition Order, and the police had attended his premises for the purposes of confirming his compliance with such order.

³ AB 5.

⁴ AB 4.

After considering the evidence currently before [the Respondent] and submissions made by [the Respondent's] representative, the Commission imposed an interim suspension upon [the Respondent] pending the finalisation of the enquiry into this matter, pursuant to Rule 169(5)(c) of the Greyhound Racing Rules.

The investigation into this matter is ongoing.

[The Respondent] was advised of his internal review and appeal rights.

5. On 11 October, the Respondent wrote to Mr Cleverley in the following terms:⁵

In accordance with section 58(1) of the Greyhound Racing Act 2017 (NSW) (Act) you are hereby notified that [the Respondent] has made a determination that disciplinary action should be implemented against your client.

...

- 1. Interim suspension of your registrations under Rule 169(5)(c) of the Greyhound Racing Rules.*

This disciplinary action takes effect on 11 October 2023 and will remain in place until either:

- revoked by GWIC; or*
- stayed or overturned on appeal or an internal review; or*
- replaced by final disciplinary action imposed by GWIC.*

6. It is evident that the decision of the Respondent to impose an interim suspension upon the Appellant was based on:

- (i) the charges brought against him; and
- (ii) the assertion that he is a “confirmed FINKS OMCG member”.

7. In the course of the hearing of the appeal, it was effectively conceded by Ms Summerson-Hingston who appeared for the Respondent that there was no evidence which independently corroborated Mr Clark’s assertion as to the Applicant’s membership of the FINKS OMCG.⁶ In these circumstances, I propose to ignore the Respondent’s reliance on that matter, and will proceed on the basis

⁵ AB 13.

⁶ T 16.10 – T 16.30.

that the only evidence upon which the decision is based is the fact of the charges brought against the Appellant.

8. By a Notice of Appeal dated 12 October 2023⁷ the Appellant appealed against the Respondent's determination to impose an interim suspension. An application for a stay of the determination was refused.

THE CHARGES AGAINST THE APPELLANT

9. The Appellant has been charged with two offences, namely:
 - (i) assaulting police, contrary to s 60(1) of the *Crimes Act 1900* (NSW), the maximum penalty for which is 5 years' imprisonment; and
 - (ii) hinder/resist police, contrary to s 60(1AA) of the same Act, the maximum penalty for which is 12 months' imprisonment, or a fine of 20 penalty units, or both.
10. The Appellant has pleaded not guilty to those charges. They are listed for hearing before the Goulburn Local Court on 18 July 2024. By that time, the Appellant will have been suspended for a period of approximately 9 months.

THE EVIDENCE

11. The evidence relied upon by the parties for the purposes of the present appeal was contained in an Appeal Book with which I was provided in advance of the hearing. That Appeal Book includes a number of sets of written submissions which were provided by Mr Cleverley to the Respondent prior to the interim suspension being imposed, all of which I have taken into account.

⁷ AB 1 and following.

12. I have also taken into account a number of documents relating to the Appellant's background which establish that, generally speaking, he is a person of prior good character.⁸

13. I was also informed in the course of the hearing that the Appellant has been registered as an Owner/Trainer of Greyhounds for approximately 3 years and has not come under adverse notice during that time.⁹ Accordingly, not only is the Appellant a person of prior good character in a general sense, he is a person of prior good character specifically in the context of his involvement in the greyhound racing industry.

THE RELEVANT LEGISLATION

14. Section 11 of the *Greyhound Racing Act 2017* (NSW) (the Act) sets out the principal objectives of the Respondent, which include to:

- (i) safeguard the integrity of greyhound racing;¹⁰
- (ii) maintain public confidence in the greyhound racing industry.¹¹

15. The functions of the Respondent also include the control, supervision and regulation (subject to the Act) of greyhound racing in New South Wales.¹²

16. The Respondent is given the power, under s. 59(1)(a) of the Act, to impose suspensions on participants. That power must obviously be exercised in a way which is conducive to achieving the objectives, and performing the functions, set out in ss 11 and 12 of the Act.

17. The Respondent is given further powers pursuant to the *Greyhound Racing Rules* (the Rules), the stated aims of which include to:

⁸ AB 79-83.

⁹ T 18.5 – T 18.10.

¹⁰Section 11(a);

¹¹ Section 11(c).

¹² Section 12(a).

- (i) promote, enhance and protect the welfare of greyhounds; and
- (ii) regulate greyhound racing so that public confidence in its integrity is upheld.

18. Part 10 of the Rules addresses disciplinary processes and penalties. Specifically, Rule 169 provides as follows:

169 Conduct of inquiry

- (1) A Controlling Body or the Stewards may regulate their own procedures at an inquiry or other disciplinary process and are not bound by formal rules of evidence. They can inform themselves in any manner they think fit.
- (2) The hearing of an inquiry or other disciplinary process is, to the extent practicable, to be recorded, with a transcript prepared. A record of any proceedings must be retained for a period of not less than 12 months after the date on which the proceedings are finalised.
- (3) ...
- (4) ...
- (5) Pending the decision or outcome of an inquiry or other disciplinary process, a Controlling Body or the Stewards may direct that:
 - (a) ..
 - (b) ..
 - (c) a registration, licence or other type of authority or permission be suspended.

19. In the present case, the Respondent exercised the power conferred by r 169(5)(c). The investigation into the Appellant remains ongoing. In practical terms, the Respondent is awaiting the outcome of the charges brought against the Appellant before finalising that investigation.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

20. The submissions advanced by Mr Cleverley on behalf of the Appellant may be encapsulated in the following propositions:¹³

- (i) the Appellant has not been convicted of any offence;

¹³ T 14.1 and following.

- (ii) the allegation that the Appellant is a member of an Outlaw Motor Cycle Gang is not established and, in any event, is denied;
- (iii) the Appellant enjoys the presumption of innocence in respect of the charges brought against him;
- (iv) such presumption is at odds with the interim suspension imposed;
- (v) the charges against the Appellant are not serious, as indicated by the fact that:
 - (a) they are to be heard and determined summarily in the Local Court;
 - (b) the Appellant is subject to unconditional bail; and
 - (c) the hearing has an estimate of 2 hours;
- (vi) the case against the Appellant is “weak”;
- (vii) the progress of the charges through the Local Court has been delayed due to defaults on the part of the police, to the point that the case is now “faltering”;
- (viii) there is no guarantee that the matter will be heard to finality when it is listed in July or that, if it does, the Magistrate will not reserve his or her decision;
- (ix) the Appellant is a person of prior good character, both generally and within the greyhound racing industry specifically;
- (x) the Appellant derives his sole income from greyhound racing; and
- (xi) the Appellant has already served a significant suspension, and paid a significant penalty.

21. Mr Cleverley also referred me to a number of previous decisions of the Tribunal in what were said to be similar cases. Cases of this kind are necessarily fact specific, and the facts of cases necessarily differ. Limited assistance is to be gained by engaging in some comparative exercise, for the simple reason that the discretion is to be exercised according to the facts of the case at hand.

Submissions of the Respondent

22. Ms Summerson-Hingston accepted that the Appellant was a person of prior good character specifically within the greyhound racing industry, as well as generally. She also accepted that the Appellant is entitled to the presumption of innocence in respect of the charges brought against him. However, she submitted that it remained the case that the charges faced by the Appellant were properly regarded as serious, and that such seriousness was not diminished by virtue of the fact that they are to be dealt with summarily in the Local Court, nor by any of the other factors relied upon by Mr Cleverley.

23. Ms Summerson-Hingston placed great significance on the statutory obligations imposed on the Respondent to safeguard the integrity of greyhound racing and maintain public confidence in the greyhound racing industry. She submitted that the allegation of serious criminal conduct which is made against the Appellant triggered the need to protect the integrity of the greyhound racing industry by the imposition of the interim suspension.

CONSIDERATION

24. A number of matters should be made clear at the outset.

25. First, this matter proceeds as a hearing *de novo* in which I stand in the shoes of the Respondent.¹⁴ I do so in circumstances where, as I have noted, the sole basis of the decision stems from the charges brought against the Appellant. The unsubstantiated allegation that he is a member of an Outlaw Motor Cycle Gang will not be taken into account.

26. Secondly, it is no part of my role to attempt to determine the guilt of the Appellant on the outstanding charges. I have not been provided with any evidence in relation to those charges and, in any event, determination of whether they are proved is a matter for the Magistrate who hears them.

¹⁴ See *Sohpie Bilal v GWIC* – decision of the Tribunal of 28 February 2024 at [9] – [14].

27. Thirdly, and bearing in mind the fact that the Respondent has imposed an interim suspension, it is not my role to determine whether the Appellant is a fit and proper person to be registered as a participant in the greyhound racing industry. This is so, notwithstanding the terms of the Respondent's correspondence to Mr Cleverley on 10 October 2023 where a reference to fitness and propriety is made.¹⁵
28. Fourthly, in making my determination I must bear firmly in mind the principal statutory objectives of the Respondent, and the need to safeguard, and maintain public confidence in, the greyhound racing industry. Further, and in light of the fact that the Respondent's determination was made in the exercise of a power under the Rules, I must also bear in mind that the stated aims of the Rules include the regulation of greyhound racing so that public confidence in its integrity is upheld.
29. Fifthly, a determination to impose an interim suspension is a discretionary one. The Act and Rules are silent on any specific criteria to be taken into account in that regard. In the absence of any stated criteria, the discretion is a broad-based one to be exercised having regard to such matters as are relevant, and having regard to the statutory provisions to which I have referred. It is also important to point out that when discretionary factors are taken into account they are not then "tallied" in some form of mathematical exercise so as to bring about a determination. Different factors may attract differing degrees of weight.
30. Bearing these matters in mind, and for the reasons that follow, I have come to the conclusion that the appeal must be dismissed.
31. To begin with, I do not accept the submission advanced by Mr Cleverley that the charges laid against the Appellant are not serious. That is particularly so in the case of the charge of assaulting police. The prescribed maximum penalty for that offence, namely 5 years imprisonment, represents (like all maximum penalties)

¹⁵ AB 5.

the Parliament's assessment of the seriousness of the offence.¹⁶ It follows that on any objective view, the charge of assault is a serious one. The fact that it is being dealt with summarily in the Local Court does not, of itself, lead to the opposite conclusion.

32. Whilst it is obviously a matter for the Appellant to conduct his case as he sees fit, I was not provided with any evidence (such as a Statement of Facts) which sets out the allegations against relation to the charges, and from which some prima facie assessment could possibly have been made as to the strength of the case against him. There is therefore no evidence whatsoever which supports Mr Cleverley's submission that the case against the Appellant is weak.

33. Even if it is accepted that the police have failed to adhere to timetables set in the Local Court for service of the Brief of Evidence, I do not accept that this leads to a conclusion that the case is "faltering" as Mr Cleverley submitted. I am also unable to accept that the Appellant's release on unconditional bail supports a conclusion that the case against him is weak. The strength of the prosecution case is certainly a relevant factor to be taken into account on the question of bail. However, as I have pointed out, I have not been provided with any information which enables an assessment of the strength of the case to be undertaken. In those circumstances, I take the view that the Appellant's release on unconditional bail means little more than the fact that the Court was satisfied that he was likely to appear if released, and that there was no necessity to impose conditions to address any identified risk(s) associated with such release.

34. I am similarly unable to accept that the hearing estimate of 2 hours supports the proposition that the case against the Appellant is weak. Leaving aside the fact that estimates of hearing times are notoriously unreliable, an estimate of 2 hours indicates little more than the fact that the issues in the case are narrow. It says nothing about the strength or otherwise of the prosecution case. Further,

¹⁶ See for example *Elias v R* (2013) 248 CLR 483 at [13]; *Gilson v R* (1991) 172 CLR 353 at 364.

suggestions that the matter may be further delayed because it may not be heard on the day on which it is listed, because it may not be completed on that day, or because the Magistrate may reserve his or her decision until a later date, are all entirely speculative propositions.

35. It is beyond doubt that the Appellant, as is the case with any person charged with a criminal offence, enjoys a presumption of innocence. However, that presumption does not lead to the conclusion that the interim suspension should be quashed. Preventative action which is taken by an employer in good faith for the purposes of protecting that employer's reputation and integrity does not jeopardise the presumption of innocence in favour of an employee against whom criminal charges have been laid.¹⁷ Whilst I accept that the Appellant is not employed by the Respondent, the circumstances are analogous to the present case. The Respondent has taken the action it has in an effort to protect the integrity of the greyhound racing industry. That does not jeopardise, or put in issue, the presumption of innocence.

36. I accept that the Appellant is a person of prior good character generally. Further, he has been licenced as an Owner/Trainer for a period of approximately 3 years and has not come under adverse notice in that period. I also accept that he has been, and will continue to be for several more months, subject to a significant financial penalty in light of the suspension which has been imposed.

37. However in my view, those factors are outweighed by the clear need to ensure public confidence and integrity in the greyhound racing industry are maintained. There would, in my view, be a risk of such public confidence and integrity being eroded in the event that the interim suspension were quashed. Put simply, allowing a participant in the greyhound industry to continue to participate, in circumstances where it is alleged that he has perpetrated a serious act of

¹⁷ *Industrial Alliance Life Insurance Co v Cabiakman* (2004) 3 SCR 195 cited by Perry J in *De Belin v Australian Rugby League Commission Limited* [2019] FCA 688 at [296]-[297].

violence on a law enforcement officer, the maximum penalty for which is 5 years imprisonment, is entirely at odds with the maintenance of public confidence and integrity in that industry.

38. For these reasons, the appeal must be dismissed.

ORDERS

39. For the reasons given I make the following orders:

1. The appeal is dismissed.
2. The appeal deposit is forfeited.

THE HONOURABLE G J BELLEW SC

1 March 2024