

IN THE RACING APPEALS TRIBUNAL

CHLOE BILAL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION OF AN APPLICATION BY THE APPELLANT PURSUANT TO CL. 14(1)(a) OF THE RACING APPEALS TRIBUNAL REGULATION 2015

INTRODUCTION

1. By a Notice of Appeal dated 4 June 2024, Chloe Bilal (the Appellant) has appealed against a determination of the Respondent made on 28 May 2024 to impose an interim suspension pursuant to r 169(5) of the *Greyhound Racing Rules* (the Rules). The Appellant has also sought an order pursuant to cl 14(1)(a) of the *Racing Appeals Tribunal Regulation 2015* (NSW) for a stay of that determination. These reasons deal with that application, which is opposed by the Respondent.

2. For the purposes of considering the application, I have been provided with:
 - (a) correspondence between the Appellant and the Respondent;
 - (b) the determination which is the subject of the Appeal;
 - (c) the Notice of Appeal and accompanying application for a stay;
 - (d) submissions of the Appellant;
 - (e) submissions of the Respondent;
 - (f) submissions of the Appellant in reply; and
 - (g) the transcript of an interview between the Appellant and Kristin Teece, a Senior Investigator employed by the Respondent which took place on 6 May 2024.

THE CASE AGAINST THE APPELLANT

3. The case against the Appellant is apparent from the interview with Ms Teece, the content of which is set out below:

Q1 *Okay. So, my name is Kris Teece, and I am a senior investigator with GWIC. I'm here today with Jordan Hughes, who is also an investigator with GWIC. The time is 3:35PM. It's the 6th of the 5th 2024, and we are speaking with Miss Chloe Bilal. Do you just want to introduce yourself for the tape?*

A1 *Do I just – yep. Chloe Bilal.*

Q2 *Yep. What sort of license – what sort of license do you currently have at the minute?*

A2 *I have an owner/trainer.*

Q3 *Okay. Thanks for that. So, look, we've had some – I'm wondering if you can just talk me through, right now, who has a license to have the Greyhounds kennelled at your property, at 128 Collector?*

A3 *Just Sophie Bilal.*

Q4 *Okay. So, yourself, obviously, as well?*

A4 *Yes. And, myself.*

Q5 *Yep. And, how many Greyhounds has Sophie got there at the moment?*

A5 *She doesn't have any at the moment.*

Q6 *Okay. Right. So, are you aware that there's to be no involvement with anyone who has been De-Q'd from GWIC, on your property?*

A6 *Yes.*

Q7 *Okay. So, the information that we have, is that – just before I move on – apologies. I just want to clarify that under the legislation for Greyhound racing, under Section 82, Part II, there is – it is actually a breach of the legislation to provide false, or misleading, information. **So, I want to ask you about some information that we have, that a Mr Nathan Lazarus, who's currently De-Q'd, and a Mr Ali Bilal, also known as Mr Tony Soprano, were both seen going into a pet food – or a pet shop. And, I believe in Goulburn, or perhaps – either way, there's evidence they went into a pet shop and bought some bags – large bags of dog food, and then proceeded to drive back to your property, where they were seen entering the property with the said dog food. Can you tell me anything about that?***

A7 *Well, we've got all the other bullies here.*

Q8 *Which - - -*

A8 *Like – we've got all the other bullies. So – like – the French Bulldogs, all the bullies that you've seen when you came to the property. I'm just looking after them for Ali at the moment, while he's in between houses, trying to find a property for them.*

- Q9 *And so, Ali's not at the property at – on the Federal Highway, anymore?*
A9 *No. He's not. He's looking for a property. I don't know where he is at the moment.*
- Q10 *Okay. And so, what's – this is somewhat of a personal question, but it does relate to licensing at GWIC. What's your relationship, at the moment, with Mr Bilal/Mr Soprano?*
A10 *We're currently going through a separation.*
- Q11 *Okay. **And, Mr Lazarus was also on that – on your property.** He's currently De-Q'd and cannot be around any Greyhounds. What did that look like **when he was at the property the other day**, with the Greyhound dog food? Sorry. The dog food?*
A11 *I don't know. **He was, obviously, with Ali.** Maybe he was dropping the bags off. I don't know.*
- Q12 *Okay. So, **if we did need to come out and have a look at the cameras**, for that day, can you make sure that that's not deleted, or anything?*
A12 *Yep.*
- Q13 *All right. Do you have any questions for me?*
A13 *No. No. Look, no. No questions.*
- Q14 *All right. You might want to let Ali know, that we – Mr Soprano know, that we have got that information. Or – you know – Mr Lazarus, as well. So, it's – Mr Lazarus, especially, cannot be on any property where Greyhounds are kennelled. That's really important.*
A14 *Yep. I'm aware of that.
(Emphasis added in each case).*

4. In correspondence of 22 May 2024, the Respondent advised the Appellant that it was considering the imposition of an interim suspension based upon the following facts:

- (i) Mr Nathan Lazarus (Lazarus) is currently subject to an interim suspension of his registration;
- (ii) restrictions have been placed upon Lazarus, including that he is not permitted to enter any place where greyhounds are kept;
- (iii) Lazarus attended the Appellant's property during the period of his suspension.

5. The correspondence proceeded to indicate that it was proposed to impose an interim suspension on the Appellant, and gave her an opportunity to make submissions by 27 May 2024.
6. I should again make the same observation made in a recent matter of *Goddard*¹ that in light of the contents of the correspondence of 22 May 2024, the heading “*Notice of Charge*” is a misnomer. The correspondence does not disclose, or bring, any charge against the Appellant at all. Indeed, as matters presently stand, the Appellant has still not been charged with any offence. The charge(s) which may be contemplated are not clear on the evidence.
7. In undated correspondence in reply, the Appellant, through her Solicitor, made a number of submissions, the essence of which mirrored those which are advanced on this application.
8. On 28 May 2024 the Respondent determined that an interim suspension should be imposed. The basis of that suspension was that the Respondent was “*investigating a matter involving registered participant, Chloe Bilal*”. Whilst no further particulars were provided, given the earlier correspondence sent by the Appellant’s solicitor to the Respondent, as well as the terms of the interview, the Appellant could not possibly be in doubt as to the nature of the allegation which the Respondent said was being investigated.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

9. The Appellant’s submissions may be summarised as follows:

- (i) none of the Appellant’s submissions made prior to the imposition of the interim suspension were properly considered;

¹ A decision of 17 June 2024.

- (ii) the “third party” (a reference to Lazarus) had not been charged with a breach of any rule;
- (iii) it was “*concerning*” that the Respondent had “*posited*” an assertion against Lazarus upon the Appellant, who had been placed in the position of being “*accountable*” for the actions of Mr Lazarus through no fault of her own;
- (iv) the Respondent had not provided any particulars underlying any alleged breach, and had not established a prima facie case against the Appellant for a breach of any rule;
- (v) the Respondent had not adduced evidence of the “*proof of service on the Appellant of the conditions of [Lazarus]*”;
- (vi) it was not clear that Lazarus was aware of those conditions;
- (vii) I could not be satisfied, even at a prima facie level, that the Appellant had breached any rule;
- (viii) the Respondent had acted in a way which was not transparent, and was unfair to the Respondent;
- (ix) the evidence did not support a suspension;
- (x) there was a “*lack of clarity*” in the case brought against the Appellant;
- (xi) the interim suspension creates an interference with the Appellant’s ability to earn a living; and
- (xii) there was no prejudice to the Respondent in the event that a stay was granted.

Submissions of the Respondent

10. The Respondent’s submissions may be summarised as follows:

- (i) the power under r 169(5)(c) of the Rules is not one that requires the Respondent to particularise any rule(s) of which the Appellant may be in breach;
- (ii) the exercise of the power under r 169(5)(c), far from undermining the functions of the Respondent as was suggested by the Appellant, is

necessary to ensure the integrity of, and public confidence in, the greyhound racing industry;

- (iii) the information made available to the Appellant was such that she was on notice of the allegations against her;
- (iv) the Appellant had made admissions as to her awareness of the breach by Lazarus;
- (v) any financial hardship which might be visited upon the Appellant was not sufficient to support a conclusion that the balance of convenience weighed in favour of the grant of a stay.

The Appellant's submissions in reply

11. The Appellant made a number of submissions in reply, the majority of which centred upon the transcript of the interview set out above.

CONSIDERATION

12. The principles governing an application of this nature were addressed at length in *Marshall v Greyhound Welfare and Integrity Commission*.² Put simply, the Appellant must establish that:

- 1. there is a serious question to be tried; and
- 2. the balance of convenience favours a stay.

13. As a general proposition, the Appellant's submissions appear to proceed upon the fundamental misunderstanding that in order to impose an interim suspension, the Respondent is under an obligation to provide particulars of a proposed charge. Such an interpretation flies in the face of the rationale underlying r 169(5)(c). In a recent decision of *Fairbairn* I made a number of observations regarding the operation of that rule³ which, in large measure,

² A decision of 22 December 2023 at [16].

³ At [29] – [42].

address the Appellant's submissions. Those observations included the following:⁴

[29] In the present case, the Respondent has exercised its discretionary power under r 169(5)(c) of the Rules which is in the following terms:

- (5) Pending the decision or outcome of an inquiry or other disciplinary process, a Controlling Body or the Stewards may direct that:
...
(c) a registration, licence or other type of authority or permission be suspended.*

[30] A number of matters regarding r 169(5)(c) should be noted at this point.

[31] The first, is that r 169 is contained within Part 10 of the Rules which addresses disciplinary processes and penalties.

[32] The second, is that generally speaking, r 169 is directed to matters relevant to the conduct of an inquiry.

*[33] The third, is that r 169(5)(c) does not confer a discretion to impose an interim suspension independently of the conduct of an inquiry or other disciplinary process. Inherent in r 169(5)(c) is the proposition that carrying out the "inquiry or other disciplinary process" to which reference is made is **necessary** for the purposes of the Respondent being in a position to make a determination (amongst other things) as to what, if any further action should be instituted. That view is fortified by the provisions of r 169(3) which are in the following terms:*

- (3) A controlling body or the stewards may do any one or more of the following in relation to an inquiry or other disciplinary process:
...
(b) determine that no charge should be laid;
(c) lay a charge;
(d) dismiss a charge.*

[34] In other words, the discretion to impose an interim suspension is inextricably linked to the necessity for the conduct of some inquiry or process. It is the necessity of that inquiry or process which triggers the discretion to impose an interim suspension.

[35] I do not accept the submission advanced on behalf of the Appellant that r169(5)(c) can only be resorted to in "serious cases". Given that the circumstances of cases can differ markedly, there is nothing whatsoever in the terms of the rule itself, or the Rules generally, which would support that proposition. Moreover, r169(5)(c) recognises that, although there might be a degree of unfairness to a participant in being suspended without any charge, there may be cases in which investigations are complex, and in which an interim

⁴ A decision of 1 June 2024.

suspension is appropriate to protect the integrity of the greyhound racing industry pending the finalisation of such investigation. Needless to say, in any such case the Respondent is under an obligation to conduct any investigation or inquiry efficiently and expeditiously in order to resolve the question of what, if any, further action is to be taken.

[36] I unreservedly acknowledge that decisions taken, and powers exercised, in the course of investigations are, in the first instance, matters for the Respondent. However, they become matters for the Tribunal where the exercise of such powers, and the making of such decisions, are called into question on an application of this kind.

[37] The Rules do not prescribe the criteria which inform the exercise of the discretion contained in r 169(5)(c). An obvious (but certainly not the only) instance in which the exercise of the power under r 169(5)(c) might be appropriate would be in circumstances of there being prima facie evidence of a presentation offence, but where the Respondent is required to await the results of scientific analysis before being able to bring a charge. Another might be where a criminal charge has been laid against a participant, and the Respondent understandably wishes for that charge to be determined by a Court of competent jurisdiction before determining what further action might be taken. The exercise of the discretion to impose an interim suspension in cases of that kind might well be warranted.

[38] However, the present case is quite different. On the information which is available to me, and bearing in mind my interpretation of r 169(5)(c) as set out above, the incident involving the Appellant which is said to warrant further investigation, and which is thus said to justify the imposition of an interim suspension:

- (i) is depicted on CCTV footage available to the Respondent;*
- (ii) was observed by no less than three witnesses; and*
- (iii) is the subject of documented accounts by those witnesses which are also apparently in the possession of the Respondent.*

[39] It was put on behalf of the Respondent that the Appellant “has clearly engaged in a serious physical altercation”. If that is the Respondent’s position, then there is a strong argument that there is presently sufficient evidence in the Respondent’s possession to bring a charge against the Appellant. There is an equally strong argument that in those circumstances, there is little or no warrant for the exercise of the discretion to impose an interim suspension, for the simple reason that there is no identified basis on which any further substantive investigation or inquiry is necessary.

*[40] I accept the Respondent’s submission⁵ that the time taken to carry out an investigation depends on the nature and circumstances of the case. That is self-evident. However, the Respondent’s submissions are silent on why it is, in the circumstances of **this** case, that a further investigation is required before a determination can be made as to whether any action is to be taken, or any charge*

⁵ At [17].

is to be laid. On the Respondent's own case, it has in its possession objective and independent evidence which, it says, establishes the Appellant's involvement in what it has described as "a serious physical altercation". Needless to say, I make no determination on this application as to whether that is, in fact, the case. But if that is the Respondent's position, an obvious question arises: What is it that remains to be investigated so as to justify the imposition of an interim suspension? Other than advancing the proposition (which I accept) that the time taken to investigate a case will depend upon its circumstances, the Respondent's submissions do not provide an answer to that question, in circumstances where the issue was squarely raised by the Appellant. This does not appear, on its face, to be a matter of any real complexity.

[41] It was put on behalf of the Appellant that these circumstances amount to an abuse of process. That is, obviously, a serious allegation, and is not one that should be made absent a proper basis on which to do so. Generally speaking an abuse of process connotes the unjustifiable use of a discretionary power or process in a manner which is unfair.⁶ In circumstances where the Respondent's submissions do not substantively engage with that submission, and in the interests of fairness, I am not prepared to accept what has been put by the Appellant. However, I am prepared to conclude that there is a serious question to be tried. That serious question is whether the Respondent's decision to exercise the discretion to impose an interim suspension on the Appellant under r 169(5)(c) is appropriate in circumstances where:

- (i) the Respondent is in possession of evidence of a physical altercation involving the Appellant;
- (ii) that evidence is in the form of film, and documented eyewitness accounts, of the incident;
- (iii) the Respondent effectively asserts, in submissions made on this application, that such evidence is sufficient to establish a breach of the rules;
- (iv) the Respondent has been in possession of that evidence for at least 2 weeks, and perhaps longer;
- (v) the Respondent has not identified the scope of any further investigation of the Appellant's involvement in that incident which is said to be required; and
- (vi) the scope of such investigation, viewed objectively, is non-existent.

[42] Put simply, the exercise of the power to impose an interim suspension under r 169(5)(c) is predicated upon the necessity for an inquiry. Nothing has been put to me on behalf of the Respondent as to why any further inquiry is necessary in the circumstances of this case.

14. Those passages address the essence of the propositions advanced on the Appellant's behalf.

⁶ See generally *Williams v Spautz* (1992) 174 CLR 509; [1992] HCA 34 at 520 per Mason CJ; Dawson, Toohey and McHugh JJ.

15. Whilst the facts in this case, and those in *Fairbairn*, are entirely different, the same serious question arises in both, namely whether the Respondent's decision to exercise its discretion to impose an interim suspension on the Appellant under r 169(5)(c) is appropriate in the circumstances. In this regard, the following matters are noteworthy.
16. First, it appears to be common ground that Lazarus is presently the subject of an interim suspension. Even if it was not common ground, that is a fact which could seemingly be proven by the production of the Respondent's own records. In any event, the fact that Lazarus is subject to an interim suspension is a matter of public record as a consequence of a previous decision of this Tribunal.⁷
17. Secondly, given what was put to the Appellant in the course of the interview, it is reasonable to infer that the Respondent is in possession of evidence that Lazarus was on the Appellant's premises. Were that not the case, no such proposition would have been put to the Appellant when she was questioned.
18. Thirdly, the answer given by the Appellant to Q 11 in the interview is capable of sustaining an inference that the Appellant knew that Lazarus was there.
19. Fourthly, the lack of demur by the Appellant to Ms Teece's reference to Lazarus being "*De-Qd*" may be some evidence that the Appellant was aware of the status of Lazarus at the time that he apparently visited. Whilst Lazarus is, as the Appellant has pointed out, suspended rather than disqualified, nothing turns on that error.
20. It is no part of my role to anticipate what charge(s) might be brought against the Appellant based on those facts. However, the objective circumstances with respect to any ongoing inquiry into the Appellant's conduct are not markedly different to those in *Fairbairn*. The Respondent appears to be in possession of

⁷ Decision of 1 March 2024.

evidence to support its principal allegation(s) against the Appellant, yet no charge has been laid against her. Such evidence has been in the Respondent's possession since the interview on 6 May, which is now almost 6 weeks ago. Nothing has been put to me, in terms of either evidence or submissions, as to:

- (i) why no charge has been brought;
- (ii) the nature and extent of any inquiry which is being undertaken;
- (iii) why, in light of the evidence to which I have referred, and which appears to have been in the Respondent's possession for more than six weeks, any further inquiry is necessary in order to determine whether a charge should be laid; and
- (iv) when it might be expected that such inquiry will be completed, and the question of a charge determined one way or the other.

21. Moreover, the Appellant is entitled to procedural fairness. In a case such as the present, which appears to be factually uncomplicated, such fairness requires that the decision as to whether she is to be charged with any offence be made with the appropriate degree of alacrity, and that the power in r 169(5)(c) not be exercised for a purpose for which it was not intended.

22. However, I am not satisfied that the balance of convenience presently favours the grant of a stay. Whilst it has been submitted on behalf of the Appellant that there are financial consequences if a stay is not granted, as I observed in *Fairbairn*,⁸ if a party urges that to be the position there has to be something which supports it, over and above a bald proposition or submission.

23. I should also say that as matters stand at this point, the general nature of the allegation against the Appellant weighs against a stay in terms of the balance of convenience. At the same time, the present state of uncertainty in terms of any charge cannot be permitted to extend ad infinitum.

⁸ At [24].

24. It follows that I am not *presently* satisfied that a stay should be granted. However, I have made orders below facilitating what is, in effect, an adjournment of the present application, pending the Respondent resolving its position.

25. Finally, I note that the Appellant is the subject of separate proceedings in respect of which I have reserved judgment. I have now received final written submissions from the parties in that matter and am in a position to proceed to a determination. However, in circumstances where that matter relates to penalty only, I will not publish my determination until such time as the course of the present matter becomes clearer. The reasons for that will be obvious, and there is no prejudice to the Appellant in taking that course given that she has the benefit of an order for a stay in the other proceedings.

ORDERS

26. I make the following orders:

- (i) The application for a stay is refused.
- (ii) In the event that no charge is brought against the Appellant by 5.00 pm on Monday 1 July 2024, the Appellant has leave to contact the Appeals Secretary with a view to having the matter put back before the Tribunal for the purposes of making any further application she may wish to make.

THE HONOURABLE G J BELLEW SC

19 June 2024