

RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON  
(CHAIRPERSON)

APPELLANT: BARRY M MCPHERSON

APPLICATION NO: A30/08/782

PANEL: MR D MOSSENSON  
(CHAIRPERSON)

DATE OF HEARING: 21 SEPTEMBER 2015

DATE OF DETERMINATION: 21 SEPTEMBER 2015

DATE OF REASONS FOR  
DETERMINATION: 19 JANUARY 2016

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IN THE MATTER OF an appeal by BARRY M MCPHERSON against a determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 1 September 2015 that greyhound SPLITSET had marred in breach of Greyhound Rule of Racing AR 69.

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Mr B M MCPHERSON represented himself as the trainer of the greyhound SPLITSET.

Mr G O'DEA represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

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1. On 1 September 2015, the Racing and Wagering Western Australia (RWWA) Stewards of Greyhound Racing conducted an inquiry at Greyhounds WA Mandurah

into a report that greyhound SPLITSET had marred when approaching the finishing line in Race 9 which was run that evening.

2. After a short hearing the Stewards concluded that SPLITSET had in fact marred.
3. Deputy Chief Steward Paul Searle gave evidence to the inquiry in his capacity as the Steward overlooking the winning post and as the Steward in-charge of the meeting. Mr Searle stated in the inquiry:

*"As the greyhounds raced towards the finishing line, so probably ... between ten and twenty metres out from the finishing line, I observed the number eight greyhound SPLITSET shift in or veer in, deliberately turns its head and make muzzle contact on the number one greyhound, which I think is called YGRITTE MONELLI..."*

4. In the course of viewing the video of the race during the inquiry Mr Searle added that he thought the greyhound was *"... lunging kind of in"*.
5. By way of contrast, Mr Barry McPherson, SPLITSET's trainer, argued before the Stewards that although SPLITSET had bumped, his greyhound did not turn its head which had remained straight all the way. However, Mr McPherson also acknowledged that he was not in a position to observe the incident in the race live.
6. The Stewards came to the conclusion that the greyhound had in fact marred. They preferred the evidence of Mr Searle, *"...mainly because he was in an advantageous position, watching and looking down on the greyhound. And also, we do believe that Mr Searle's evidence does corroborate video footage that we've seen tonight. Albeit we do think ... it's on the minor side of things, but we do believe that there was some element of muzzle contact there and unfortunately the law states it doesn't matter how much, how little or how much muzzle contact..."*.
7. The Rule in question is strict in its application. The Rule reads:

*"R69 Marring*

- (1) *Where, in the opinion of the Stewards, a greyhound is found to have marred another greyhound during an Event, the Stewards shall impose a period of suspension in respect of the greyhound pursuant to sub-rule (2), and the specifics shall be recorded in the relevant Controlling Body Register, or where applicable, the Certificate of Registration or Weight Card of the greyhound.*
- (2) *The period of suspension imposed pursuant to sub-rule (1) shall be -*
  - (a) *in the case of a first offence, at the track where the offence occurred, 28 days and until the completion of a satisfactory trial;*  
*or*
  - (b) *subject to R70, in the case of a second offence, at all tracks, 3 months, and until the completion of a satisfactory trial; or*
  - (c) *in the case of a third or subsequent offence, at all tracks, 12 months and until the completion of a satisfactory trial."*

8. Mr McPherson appealed the decision on the grounds that the greyhound had not deliberately turned its head and marred, at no time whilst the bumping occurred with the other greyhound involved was SPLITSET's head turned towards the other dog and on the basis that no muzzle contact was made. Further, the penalty was too severe.
9. Mr McPherson, who has been a greyhound trainer for a long time, was described by Mr O'Dea as one of the most experienced trainers in the industry. This was the first time Mr McPherson had appealed against a decision of the Stewards.
10. I had the opportunity of watching a video of the race whilst I listened to both parties present their interpretations of the incident and invited me to draw conclusions as to what had occurred in the race.

11. Mr McPherson strongly argued that, in his opinion, the Stewards had reached the wrong conclusion in the matter.
12. In response to Mr McPherson's submissions, the Stewards referred me to two early decisions of the Tribunal. One was the case of *Wayne Rose* (Appeal 409) and the other *Darren Rowe* (Appeal 412). In both of these fairly old appeal cases the Tribunal had addressed the application and effect of the then Rule 170 of the Rules Governing Greyhound Racing in Western Australia. This former Rule dealt with the same issue of greyhounds fighting during a race. I understood that both the reference to 'fighting' in the replaced rule is equivalent to the reference to 'marring' in the current rules. This was of no relevance. Importantly, the former rule in question begins with the same phrase as does the current Rule 69, namely "*Where, in the opinion of the Stewards...*".

13. In the Rose appeal, Member P. Hogan concluded:

*"In those circumstances, it appears to me that the appellant has to overcome a very heavy onus in order to overturn the decision of the Stewards. It has been said before, so long as there is some evidence upon which the Stewards could reasonably come to that opinion, this Tribunal really will not be in a position to over rule the decision of the Stewards."*

14. In the Rowe appeal I stated:

*"In all of the circumstances we are satisfied that the Stewards were entitled to form the opinion which they did of the incident and that it was reasonably open to them to come to that conclusion. The wording of the Rule prevents us from substituting our own opinion for that of the Stewards. It is certainly not the case that an appellant can succeed in an appeal against a breach of this Rule simply on the basis of an appellant's own opinion of the incident concerning the appellant's greyhound."*

15. These statements reflect the proper approach to interpretation of any rule containing the phrase 'in the opinion of the Stewards'. This fact has been repeated consistently over the years by the Tribunal in relation to various rules of racing in all codes and not just greyhound racing. In all such cases irrespective of the code, there clearly is a heavy and difficult onus on an appellant to overturn the decision of the Stewards. For an appellant to succeed, the Tribunal must be persuaded that the decision of the Stewards in question was so unreasonable that no reasonable body of Stewards could have arrived at the same conclusion to that of the Stewards under consideration.
16. Despite the undoubted experience of Mr McPherson and the sincerity with which he presented his case and expressed his opinion of the incident, I was not persuaded that the Stewards were in error in arriving at the conclusion which they did of the SPLITSET incident in the race. The Stewards were not simply entitled but were in fact virtually duty bound to accept the evidence of Mr Searle who was in the "*perfect vantage point*" to observe the incident. It was appropriate they should accept and apply his experience in evaluating what had occurred. There was no one else who viewed the race live who gave evidence before the Stewards to the contrary.
17. The penalty automatically applies pursuant to the wording of the Rule.
18. For these reasons I dismissed the appeal at the conclusion of the hearing of the matter and did not need to reserve my decision.



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DAN MOSSENSON, CHAIRPERSON

