

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : ALEX JAMES LINDSAY
APPLICATION NO. : A30/08/262
PANEL : MR D MOSSENSON (CHAIRPERSON)
MR T MULLIGAN (MEMBER)
MR F ROBINS (MEMBER)
DATE OF HEARING : 16 AUGUST 1995

IN THE MATTER OF an appeal by Mr A Lindsay against the decisions of the Western Australian Greyhound Racing Association Stewards on 25 July 1995 imposing:

1. a disqualification of 6 months for a breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia, and
2. a disqualification of 3 months under Rule 42(2), to be served concurrently.

Mr F Maller was granted leave to represent the appellant.

Mr C Martins represented WAGRA Stewards.

Rule 234 states:

"A person may be found to be guilty of the breach of any provision of these Rules not specified in this rule, but without prejudice to the generality of that liability a person who - ...

- (7) *had at any relevant time the charge or control of a greyhound brought to compete in a race or a qualifying trial which is found by the Stewards to have had any apparatus used upon it, or any drug, stimulant or deleterious substance administered to it, for any improper purpose..."*

The specifics of the first charge were:

"... that you as the Trainer had control of the greyhound SEA JEWEL when it was brought to compete in Race 1 run over 530 metres at Mandurah Raceway on 8 May 1995 which was found by the Stewards upon analysis to contain the drug Diisopropylamine administered to it for no proper purpose."

Rule 42(2) states:

"The accommodation shall be established and maintained to the approval of the Board and shall be open to inspection by the Stewards, officers and employees of the Board at all times."

The specifics of the second charge were:

"... that you being the Trainer of greyhound SEA JEWEL did not allow Stewards Marriott and Poole to inspect the accommodation for the greyhounds under your control at 9.00 am on the 13 June 1995 at Lot 60 Windfire Grove, Nambellup Park."

Pursuant to Rule 231(b), a person may be disqualified for failure to comply with a requirement of the Rules.

Mr Lindsay pleaded not guilty to both charges but was convicted and disqualified for 6 months and 3 months respectively, to be served concurrently.

In the one Notice of Appeal Mr Lindsay appealed against both convictions on the grounds that:

"I disagree with the Stewards decision in both instances and in my opinion they ignored all evidence I produced to them I appeal against conviction and penalty."

With the permission of the Tribunal Mr Lindsay was allowed to raise other matters at the hearing which bear upon whether or not he should have been convicted.

As to the first conviction, the transcript discloses a discrepancy in the terminology used by the Chairman of Stewards where the specifics of the charge were stated compared with the actual wording of Rule 234(7). The question arises as to whether or not the Stewards understood their role in regard to the words contained in the rule "administered to it, for any improper purpose."

Mr Martins has submitted that the use of the words "for no proper purpose" are supported by the decision of the Tribunal in the appeal of Russell McBride (Appeal 053 determined on 21/1/92), in which the Full Court decision of Western Australian Greyhound Racing Association Inc v. Williams and Williams (Appeal No. 64 of 1987 delivered 17 December 1987) was relied on. In that case, Mr Justice Wallace, in dealing with a charge under Rule 234(7) said:

"the relevant rule speaks in terms of strict liability. ... The Stewards were certainly not obliged to ascertain as a separate fact the purpose of the person who administered the drug, or whether it may have been administered for any purpose other than an improper purpose"

It was Mr Martin's submission that the words "no proper purpose" mean the same as "any improper purpose".

Both the Oxford and Macquarie dictionaries give the general meaning of "improper" as "not proper".

Rule 234(7) was fully and correctly read out to the appellant by the Chairman of Stewards. After stating the specifics of the charge Mr Lindsay was asked by the Chairman whether he understood the nature of the charge. Further discussion and explanation from the Chairman ensued.

The Tribunal is of the opinion that in all of the circumstances nothing turns on the use of the slightly different terminology in the particulars and in the attempt by the Chairman to clarify the elements of the charge.

In the present case there is no evidence that the appellant administered the drug in question (as was also the case in McBride's case) and it would be virtually impossible for the Stewards to "ascertain as a fact the purpose of the person who administered the drug" even if obliged to do so.

The Rule "speaks in terms of strict liability", and the Tribunal is of the view that the use of slightly different words by the Chairman in explaining the charge does not operate to absolve the appellant from that strict liability.

The Tribunal appreciates that there must be flexibility with respect to disciplinary proceedings, and that "considerable latitude has been afforded stewards' inquiries" (Hall v New South Wales Trotting Club Ltd [1977] 1 NSWLR 378; Hargraves v Trotting Authority of New South Wales (1981) 3 ALN N34; Murray v Greyhound Racing Control Board of Queensland [1979] Qd R 111). Nevertheless the charge emerging should be put in a neutral way and the person charged informed of what evidence is to be considered on the adjudication of the inquiry (Gleeson v New South Wales Harness Racing Authority (1990) 2 ALD 515).

It is clear from the authorities that some latitude in the language used in the particulars can be afforded to the Stewards.

Applying the dictum of Wallace J, it seems that the words, "for any improper purpose", may open the way for a trainer to escape the strict liability encompassed in the Rule by producing evidence that the drug was administered for a proper purpose, for example, by a veterinary surgeon under a treatment plan. No such evidence was produced by the appellant in the present case.

The Tribunal therefore confirms the conviction in relation to the first offence.

As to the second offence, namely the breach of Rule 42(2), the Tribunal is satisfied that the explanation that was offered to the Stewards for delaying them access to the kennels does not afford Mr Lindsay any legitimate excuse under the rules. The provisions of the rules were not complied with and the Stewards correctly convicted Mr Lindsay. Accordingly, the Tribunal confirms that conviction.

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the
line*

The Tribunal is not persuaded on ~~that~~ the basis of the submissions that have been made and from the material before it, the Stewards have erred in arriving at the penalty of three months disqualification for breach of Rule 42(2).

The Tribunal takes into account all the relevant facts and circumstances including the fact that the kennel inspection took place at around the same time as the Stewards were concerned with the finding of a drug in one of Mr Lindsay's greyhounds which had been presented for racing. The Tribunal is satisfied that the 3 month disqualification is an appropriate one in all the circumstances including Mr Lindsay's record.

The penalty that has been imposed in relation to the second offence is confirmed.

The Tribunal will hear submissions as to the penalty which was imposed in relation to the first offence.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Fred Robins

FRED ROBINS, MEMBER

Ted Mulligan

TED MULLIGAN, MEMBER

20/10/1995



DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : ALEX JAMES LINDSAY

APPLICATION NO. : A30/08/262

PANEL : - MR D MOSSENSON (CHAIRPERSON)
MR T MULLIGAN (MEMBER)

DATE OF HEARING : 20 OCTOBER 1995

IN THE MATTER OF an appeal by Mr A Lindsay against the severity of the determination of the Western Australian Greyhound Racing Association Stewards on 25 July 1995 imposing a disqualification of 6 months for a breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr F Maller was granted leave to represent the appellant.

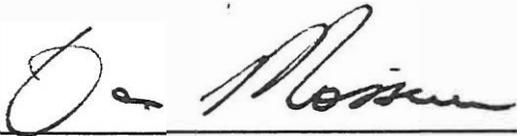
Mr C Martins represented WAGRA Stewards.

The Tribunal is not persuaded by anything that has been presented on behalf of Mr Lindsay which leads to a conclusion that the Stewards were in error imposing the penalty of six months disqualification for the breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia. The Tribunal has taken into account the evidence presented by Dr Reid, which appears at page fourteen of the transcript of the 20 June 1995, in relation to the nature of the drug and its effect on the dog. Nothing has been presented which convinces us that the financial impact of the disqualification on Mr Lindsay is such that the Stewards erred in imposing this particular period of disqualification.

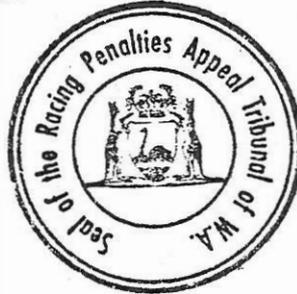
It is clear from what has been told to us and from the transcript that this length of disqualification is not out of kilter with other periods of disqualification which are imposed for breach of this drug Rule. Indeed on the previous occasion Mr Lindsay was disqualified for a period of twelve months.

In all of those circumstances the Tribunal confirms the penalty which was imposed for this particular breach of the Rule.

The appeal is dismissed and the lodgement fee is forfeited.



DAN MOSSENSON, CHAIRPERSON



2/11/95