

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PHILLIP EVANS

APPLICATION NO: A30/08/350

PANEL: MR D MOSSENSON (CHAIRPERSON)
MS P HOGAN (MEMBER)
MR J HEALY (MEMBER)

DATE OF HEARING: 5 JUNE 1997

DATE OF DETERMINATION: 5 JUNE 1997

IN THE MATTER OF an appeal by Mr P Evans against the determination made by Western Australian Greyhound Racing Association Stewards on 7 March 1997 imposing a 2 year disqualification under Rule 234(23) of the Rules Governing Greyhound Racing in Western Australia.

Mr A Beech, instructed by Clairs Keeley, represented the appellant.

Mr R J Davies QC, instructed by Minter Ellison, represented the Western Australian Greyhound Association Stewards.

This is a unanimous decision of the Tribunal.

Mr Evans is a registered Public Trainer and Owner. On 10 February 1997 the Stewards of the Western Australian Greyhound Racing Association opened an inquiry into a report received from the Chemistry Centre of Western Australia confirming the presence of Methylprednisolone after analysing a urine sample taken from the greyhound *SILK LINEN* after competing in Race 5 at Cannington Greyhounds on 21 December 1996.

Mr Evans was requested to be present because of his connection with the subject matter of the inquiry and because the Stewards wished to question him about it. At the outset of the inquiry, the Stewards explained to Mr Evans his rights under the rules and the procedures involved. As the inquiry proceeded, Mr Evans' attention was also drawn to the provisions of Rule 234 (23) and the Stewards put to him notice of the fact that he did not appear to be complying with that rule. The Stewards decided to adjourn the matter after Mr Evans maintained that he would only answer questions if an allegation was made against him.

Mr Evans was advised in writing of the proposed resumption of the inquiry on 17 February 1997. In the letter he was told to attend, was advised he may bring witnesses and informed that the inquiry

could proceed in his absence. At the hearing he was asked if he had any evidence which would explain the presence of the drug in the greyhound. The only response which Mr Evans would give was that he would not answer unless an allegation was made. The Stewards adjourned the inquiry, and after deliberating laid a charge against him under Rule 234 (23) and advised that the hearing of the charge would be conducted on 24 February 1997. This fact was confirmed by a letter dated 17 February 1997 in which the Stewards stated the specifics of the charge to be that:

"...you being a public trainer have failed to give evidence at an inquiry conducted on the 10 and 17 of February 1997 into a report received from the Chemistry Centre of Western Australia confirming the presence of Methylprednisolone after analysing a urine sample taken from the greyhound SILK LINEN after competing in Race 5 at Cannington Greyhounds on the 21 December 1996, when requested to do so by the Stewards."

Mr Evans acknowledged at the inquiry that he understood the nature of the charge after the letter which had been written to him was read out to him by the Stewards. A written outline of submissions was then presented by Mr Evans and he submitted that he had no case to answer. The no-case submission was rejected. Eventually a plea of not guilty to the charge was entered. At the same time Mr Evans informed the Stewards that he had received legal advice. Mr Evans was then invited to make submissions as to his guilt or innocence. In the ensuing exchange Mr Evans maintained his position. There being nothing further forthcoming the Stewards proceeded to determine the matter.

In announcing their decision the Stewards indicated that they took into account Mr Evans' outline of submissions. The Stewards came to the conclusion that Mr Evans failed to give evidence at the inquiry conducted on 10 and 17 February 1997 when requested to do so by him and therefore they found him guilty of the charge.

The appellant has raised two grounds of appeal against this conviction:

1. *Rule 234 (23) does not require me to answer questions which may tend to incriminate me.*
2. *The Stewards proceeded to deliberate on whether I was guilty or not, without advising me that I had a case to answer, which again denied me natural justice."*

As to the first ground, Mr Beech argues that only after an allegation is made can the Stewards require a person to reply. The Rules should not be read to require a person to incriminate himself. The Stewards operations are entirely workable without requiring a person the subject of an investigation to answer questions until an allegation is made. The Stewards' finding of guilt was based on a misinterpretation of the scope and operation of the relevant rule.

The Tribunal is not persuaded by these submissions. It is clear that the operation of the rules is contractually based and those rules are not part of the Western Australian Statute Law - see Maynard v Racing Penalties Appeal Tribunal of Western Australia (1994) 11 WAR 1 and Harper v Racing Penalties Appeal Tribunal of Western Australia & Anor (1995) 12 WAR 337. Rule 3 of the Rules Governing Greyhound Racing in Western Australia, read with Mr Evans' application for registration as a trainer, binds Mr Evans to the Rules and obliges him to comply with any direction given by the Stewards. The Tribunal is satisfied that Rule 234 (23) clearly requires a person such as Mr Evans to attend, to give evidence, and to produce any document at any inquiry when requested to do so by the Board, the Stewards or a Committee of a Club. Clearly the Stewards requested Mr Evans to give evidence. His failure to do so constituted a breach of the Rules. Ground 1 therefore fails.

As to the second ground relied upon, the Tribunal is satisfied in all the circumstances that there was no breach of the rules of natural justice. Mr Evans was informed of the charge, entered a plea of not guilty and was invited to make submissions. For these reasons this ground also fails and the appeal as to conviction is dismissed.

At the continuation of the inquiry on 7 March 1997 the Stewards imposed a 2 year disqualification on Mr Evans. Mr Evans also appeals against the penalty which was imposed. The grounds of appeal against penalty are:

“The penalty was grossly excessive, having regard to:

- (A) The fact that I was honestly attempting to exercise a legal right, rather than deliberately obstruct the Stewards.*
- (B) The fact that any refusal on my part to give evidence at that stage did not impede the progress of the inquiry.*
- (C) My lengthy good record in the industry.*
- (D) The serious consequences for myself and my family of any disqualification.”*

The Stewards made the following determination after hearing submissions from Mr Evans in relation to the penalty:

“Mr Evans, in relation to penalty, the Stewards have taken into account the following:-

- 1. The extent of your involvement in greyhound racing, including your level of investment and return.*
- 2. The number of greyhounds trained by you.*
- 3. That greyhound racing is your livelihood.*
- 4. Your length of involvement in the industry and your record with the Association.*
- 5. The stress that you've been under; and finally*
- 6. The Stewards place no emphasis on a warning issued to you on 26 December, 1994.*

However, the subject of the Inquiry on 10 and 17 February, 1997 was one of very grave concern involving as it did the existence of a drug in a winning greyhound. Consequently, there was a serious obligation on the Stewards to inquire into this matter. There was a corresponding onerous obligation on you, being a registered person with the Western Australian Greyhound Racing Association, to respond appropriately and comply with the Rules as per the conditions set out on your Application for Registration as a Public Trainer. This was an undertaking that you voluntarily accepted. As a result of your non-cooperation in this matter we simply do not know whether any one or more persons may be implicated in the administration of a drug to the greyhound in breach of the Rules or whether there is a proper explanation for its existence in the greyhound. Your failure to give evidence when requested to do so by the Stewards at a formal Inquiry strikes at the very heart of the control and regulation of greyhound racing in Western Australia and is totally unacceptable.

In considering an appropriate penalty, the Stewards have also taken into account the need for this penalty to serve as a deterrent. Therefore, we cannot regard your failure to give evidence as anything other than a very serious breach of the Rules and accordingly, the Stewards have decided to disqualify you for a period of two (2) years."

The Tribunal is satisfied that the Stewards did take into account the relevant personal circumstances of Mr Evans in arriving at the penalty. The Tribunal agrees with the Stewards that the Rules do impose onerous obligations on registered persons to comply with conditions set out in their applications for registration. Mr Evans' lack of cooperation did put the Stewards to a considerable amount of effort and time to deal with a matter which was a serious one involving a drug offence. The Stewards were prevented from conducting an orderly inquiry. The description given by the Stewards of the failure to give evidence when requested to do so at the Stewards' inquiry as striking "at the heart of the control and regulation" of the industry does not exaggerate the seriousness of Mr Evans' conduct.

We are also satisfied that this offence does warrant a penalty which will have a deterrent effect and it should reflect the serious nature of the breach. This Tribunal has previously dealt with an appeal in relation to an equivalent offence under the Rules of Trotting in Lavin Appeal No 211 when a 6 month disqualification was confirmed by the Tribunal. In that matter however, the offence occurred on a property during a time when a preliminary investigation was being conducted. In Mr Evans' case, the offence occurred during an official inquiry and after he had been informed of his obligations to give evidence and following an adjournment which was afforded to enable him to go away and defend the charge.

The Tribunal has also considered the penalties which have been imposed in relation to a number of drug offences where the range was 2 months to 9 months disqualification. The Tribunal is persuaded by the submission made by Mr Beech at the end of the proceedings that the Stewards failed to take into account the fact that the appellant was acting genuinely on legal advice. This fact was not mentioned by the Stewards in their relatively lengthy reasons.

In a Greyhound Racing Association Appeal earlier this year of Simpson Appeal No 345, the Tribunal stated that, from the information provided to date, the maximum penalty handed down for this type of offence is a 12 month disqualification. Mr Simpson's offence was a breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr Evans was not afforded the opportunity of appreciating the contractual nature of the rules and the underlying basis for the obligation to answer questions presented by the Stewards until after the penalty was imposed by the Stewards.

For these reasons the Tribunal is satisfied that the Stewards have made an error and that the appropriate penalty should be a 12 month disqualification. The appeal as to penalty is therefore upheld and the penalty is quashed and replaced by a 12 month disqualification.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson



DAN MOSSENSON, CHAIRPERSON