

“That at Mandurah Greyhounds on 13 November, 1998, during the running of Race 3, you manipulated the left wrist of the greyhound TRIBAL TREATY with excessive force in a deliberate act to produce an injury to the greyhound and therefore eliminate the likelihood of a conviction under Rule 169.”

Relevant to this matter, Rule 169 of the Rules provided¹ that where in the opinion of the Stewards a greyhound fails to pursue the lure in a race because it was injured during the running of the race, then the matter will not be taken further. However if a greyhound is not injured during the running of the race and fails to pursue the lure, then, for a second such offence, it would have attracted an automatic disqualification of 3 months under Rule 172 of the Rules.

Rule 231(1)(d) of the Rules provided -

“A person may be disqualified if he is found on inquiry to be guilty of any negligent, dishonest, corrupt, fraudulent or improper act or practice in connection with greyhound racing or the registration of a greyhound or any act detrimental to the proper control and regulation of greyhound racing or the registration of greyhounds.”

The Stewards informed the Appellant that the offence was one of “any act detrimental to the proper control and regulation of greyhound racing”, to which he pleaded “Not Guilty”. At the end of their inquiry the Stewards found the charge against the Appellant proven, and proceeded to impose a penalty of 9 months disqualification on him. The Appellant’s appeal to this Tribunal is as follows -

“I am not guilty, I was confused at the inquiry, rights violated, penalty excessive, I feel as though I am being victimised, I don’t believe all my evidence was taken into account.”

Appeal against Conviction

The greyhound the subject of the charge, TRIBAL TREATY (“the greyhound”), was given to the Appellant and his wife at no cost to them. The Appellant’s wife is a registered trainer and she became the trainer for the greyhound. At the time the Appellant was informed by its former trainer that the greyhound had previously been disqualified for one month for “easing”, or as the Rules describe it, failing to pursue the lure. After acquiring the greyhound the Appellant and his wife were enjoying success with it on the track.

¹ When referring to the Rules in this decision past tense shall be employed as on 1 January 1999 they were repealed, substituted by the Greyhound Racing Rules 1998.

At the commencement of Race 3 the greyhound quite obviously failed to pursue the lure. It simply walked out of the starting box. This is evident from viewing the video of the race. Upon this occurring, the appellant, who was handling the greyhound, walked onto the track and approached the greyhound. Mr Brendon Sumner, the Steward at the starting boxes for the race in question, gave evidence as to his observations of what the Appellant then did on the track.

Mr Sumner's evidence was that he observed from close proximity the Appellant on two consecutive occasions test the greyhound's left wrist employing the "normal" test. Then, shortly after performing these tests, the Appellant deliberately twisted the greyhound's left wrist causing it to yelp quite loudly. As a result of what he had just observed the Appellant do to the greyhound, Mr Sumner asked him to come to the Stewards' Room.

Dr Peter Thomas was the course veterinary surgeon on 13 November 1998. He gave evidence at the inquiry of his examination of the greyhound before and after the race, and his expert opinion of how the greyhound could have sustained its injury the subject of the charge. I find that both aspects of his evidence corroborated the evidence of Mr Sumner.

In contrast the Appellant gave evidence that the greyhound had already sustained the injury to its left wrist, that on the track he had only conducted tests of the extent of it, and that he did so to determine whether the greyhound had to be carried off the track. The Stewards did not accept his evidence and proceeded to find the charge against the Appellant proven. I am of the view that this decision was not against the weight of the evidence. This is particularly so given the Appellant's motive as suggested by the Stewards.

When a greyhound fails to pursue the lure, Rule 169 works to an owner or trainer's benefit, but only when it is injured during the running of a race. Here, the greyhound was facing a three month disqualification for a second offence of failing to pursue the lure. Thus, the motivation for the Appellant inflicting the injury on the greyhound was that hopefully, within a period of less than three months, it would be racing again for prizemoney.

I also find that the Appellant's evidence of his lack of knowledge of Rule 169 allows an inference of a consciousness of guilt on his part to be drawn. The Appellant in the inquiry first denied knowledge of the injury aspect to Rule 169 of the Rules. Given his circumstances I find this claim at best difficult to accept. The appellant has had some 21 years experience in the greyhound industry. Rule 169 is regarded as one of the most commonly known rules in the industry. Furthermore, previously he had recently handled an appeal for his wife who was the trainer of a greyhound accused of fighting. With the last circumstance the penalties for fighting and failing to pursue the lure are both found in Rule 172 of the Rules.

As to the manner in which the Stewards conducted their inquiry, I find no error on their part. Their inquiry was a fair and comprehensive one.

In conclusion, none of the matters raised by the Appellant in his appeal relating to conviction are made out. For these reasons I would dismiss the appeal against conviction.

Appeal against Penalty

I find no error to have been made by the Stewards in the manner at which they arrived at the penalty. In my view, the Stewards properly considered the aggravating factors in light of any mitigating factors put forward by the Appellant at the inquiry. Further, I do not consider that the Stewards when deciding the penalty took into account any irrelevant factors, or failed to take into account any relevant factors.

I also find no error to have been made by the Stewards with the penalty itself. The Appellant's conduct appears to be the first of its type to be the subject not only of the Stewards' attention, but also this Tribunal. In my view, where there is no benchmark as to penalty for a particular type of conduct, then it is the Stewards who are in the best position to set one. However, that is not say that such a penalty cannot be reviewed by this Tribunal.

The Appellant's injury to the greyhound was deliberate and cruel, and he demonstrated no remorse for his actions. I agree with the Stewards' assessment that his conduct effectively perverted the course of justice under the Rules. Given these matters I am of the view that disqualification for a substantial period of time is the only appropriate disposition available. In imposing the penalty the Stewards informed the Appellant that they had taken into account all of his submissions in relation to the question of penalty, which included his generally good character.

Given all the factors relevant to penalty, in my view one of not less than 9 months disqualification would have been appropriate. Consequently, I do not consider that the penalty the Stewards imposed was so excessive as to manifest an error in the exercise of their discretion under Rule 231(1)(d).

For those reasons I would also dismiss the appeal against sentence.

A E Monisse

ANDREW MONISSE, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR S PYNT
(MEMBER)

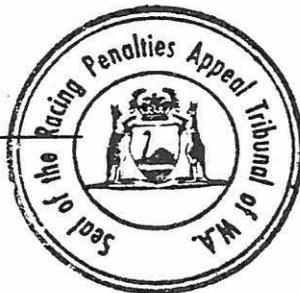
APPELLANT: ROBERT CHARLES AYLING
APPLICATION NO: A30/08/453
DATE OF HEARING 3 MAY 1999
DATE OF DETERMINATION: 3 MAY 1999

IN THE MATTER OF an appeal by Mr R C Ayling against the determination made by the Western Australian Greyhound Racing Authority Stewards on 5 March 1999 imposing a 9 month disqualification for breach of Rule 231(1)(d) of the Greyhound Racing Rules (1973).

Mr C Harrison was granted leave to appear for the appellant.

Mr D Borovica appeared for the Western Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr A Monisse, Member. I agree with the reasons and have nothing to add.



STEVEN PYNT, MEMBER