

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: LENI SALVATORE CELENZA
APPLICATION NO: A30/08/466
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING 15 JUNE 1999
DATE OF DETERMINATION: 15 JUNE 1999

IN THE MATTER OF an appeal by Mr LS Celenza against the determination made by the Western Australian Greyhound Racing Authority Stewards on 19 May 1999 imposing three months disqualification for breach of Australian Rule 109(6)(a) of the Greyhound Racing Rules 1998.

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

Mr M Kemp appeared for the Western Australian Greyhound Racing Authority Stewards.

On the 1 May 1999 the Stewards of the Western Australian Greyhound Racing Authority conducted an inquiry into an allegation revolving around incidents alleged to have occurred immediately after Mr Celenza left the Stewards' room following an inquiry into the greyhound VASTO CITY BOY which competed in Race 9.

The Stewards received evidence from a couple of witnesses to the incident. Their evidence, which was not in identical terms, addressed what they heard Mr Celenza state in a loud fashion following his departure from the Stewards' inquiry. Mr Celenza also gave evidence during the course of the inquiry.

The Stewards then adjourned proceedings and subsequently wrote a letter on the 5 May 1999 to Mr Celenza referring to the inquiry and stating that after considering all the evidence they had decided to lay a charge against him under Australian Rule 109(6)(a).

Australian Rule 109(6) states:

"Any person (including an official) who:

...

uses improper, insulting or offensive language in either the written or spoken form towards, or in relation to:

(a) a steward

...

shall be guilty of an offence and liable to a penalty pursuant to rule 111."

The specifics of the charge were in the following terms:

" ... that you Mr Celenza, used offensive language in the spoken form in relation to the Stewards at Cannington Greyhounds on 1 May 1999 following the stewards issuing of findings in regard to the performance of your greyhound VASTO CITY BOY."

Mr Celenza was told that the inquiry would be conducted or continued on the 13 May 1999. A copy of the transcript of the 1 May 1999 proceedings was supplied and Mr Celenza was advised to bring any witnesses that he thought may help his cause at the ongoing hearing.

When the inquiry was reconvened, a reasonable amount of additional material was introduced which ultimately led to the Stewards coming to the conclusion that the specifics of the charge had been met and accordingly Mr Celenza was found guilty as charged.

The Chairman of Stewards announced the finding of guilt in the following terms:

" This inquiry has been as a result of reports brought to the attention of the stewards by security officers Mr Ross and Mr Porter at Cannington Greyhounds on 1 May, 1999. These persons were in the vicinity of the stewards' room when you emerged following an inquiry into the performance of your greyhound VASTO CITY BOY. By your own admission you were dissatisfied with the stewards' decision regarding this greyhound to the point that you readily admitted to being irate and angry. The security officers reported that you, in a loud manner, proceeded to use offensive language in the spoken form in relation to the stewards. They further reported that this language continued up to the point that you began speaking with some other person in the vicinity of the kennelling area. The evidence of the security officers is only in question in regard to the exact nature of what words you were using. There is no dispute from you that you were loud and that you were irate. It is clear that they had no difficulties in hearing your words as they were said in a manner loud enough for them to hear them. Whilst we have noted your submission that there is some variation in the account of what words were exactly said, the evidence of the two officers is consistent in that they each offer a catalogue of offensive comments which are clearly in relation to the stewards. There is no question in view of their evidence, or indeed in our minds, that your comments about the stewards were anything but offensive. It does not strike us as significant that there may be some small variation in what offensive word was used at what time when it is clear that there was a litany of such words. We do not accept that given your emotional state at the time, which was clearly caused by the decision of the stewards in regard to your greyhound, that your outburst would be concentrated on matters other than the matter at hand. At the initial stages of this inquiry you have vehemently denied ever using any swear words or any words in relation to the stewards. As the inquiry has progressed you have conceded that you have used at least one swear word whilst speaking with Mr Hepple (Page 16) and that although according to you, you can not recall using the language reported by the security officers, you no longer categorically deny the possibility that you may have used some or all the words reported. The presence of the security officers at the relevant time was only by chance and as such there is nothing to suggest that the security officers would report such an incident if in fact it did not occur. We therefore find that the specifics of the charge have been met and accordingly find you guilty as charged."

After entertaining some further evidence regarding Mr Celenza's background, experience, record and involvement in greyhound racing the Stewards considered (at page 54 of the transcript) a range of offenders and offences where, amongst other things, fines and penalties of disqualification ranging from 3 to 9 months had been imposed.

Australian Rule 111 states:

"(1) Any person found guilty of an offence under these rules shall be liable to, in the sole and absolute discretion of the Board/Commission or the stewards:

- (a) a fine not exceeding \$5,000 for any 1 offence; and/or*
- (b) suspension; and/or*
- (c) disqualification; and/or*
- (d) cancellation of registration."*

The Stewards referred to the penalty provisions of Rule 111 and eventually came to the conclusion why, in the circumstances in dealing with this matter on its own merits, it was appropriate to impose a disqualification of three months.

The Chairman of Stewards announced the decision as to the penalty in the following terms:

" The stewards have taken into account the following:

Firstly, your length of involvement in the industry. Secondly, the number of greyhounds you are currently training and the fact that most of these are engaged in races this weekend. Thirdly, the fact that greyhound racing is not your livelihood. Fourthly, your current financial situation.

The stewards, however, take a very dim view of the actions you have indulged in on the night in question. A stewards' inquiry was conducted and after hearing all the submissions your greyhound was quite fairly and reasonably afforded the benefit of the doubt and a far lesser penalty was imposed on your greyhound. Rather than be relieved or grateful for the decision, you have responded to the decision in a highly inappropriate and offensive manner. To further compound the seriousness of the offensive (sic) your unsavoury display has occurred in an area where there are members of the public who would in all likelihood also be offended by the nature of the language used by you. The level of language used was clearly offensive in the extreme. In an industry, which relies on the support of the public for it's long term viability, we cannot allow behaviour which has the potential to affect the support of the public. Furthermore, it should be clear to registered persons that it is simply not acceptable to indulge in such behaviour when they are dissatisfied with stewards' decisions. This is not the first time you have reacted inappropriately to a stewards' decision involving your greyhounds and in fact it was only some six months ago that you were fined what was then the maximum amount in similar circumstances. It is clear that this has had little effect in you curtailing your words and emotions when decisions are made which do not satisfy your level of expectation. Whilst we are conscious of previous incidents and penalties, in particular those brought to your attention, we are of the view that in most instances direct comparisons are of little value. The circumstances of each offence and the person concerned should be dealt with on it's own merits.

Given the circumstances of the offence and your personal antecedents we do not feel that a fine would be appropriate. It is our opinion that the appropriate penalty in your circumstances is a disqualification of three months, effective immediately."

Mr Celenza appeals against both the conviction and the penalty. In the notice of appeal the ground of appeal as to the conviction is set out as follows:

" I am not guilty of this charge as to the best of my recollections I did not use improper, insulting or offensive language towards a steward. If I did swear then those words were not directed towards an official."

This has been further particularised subsequently with additional points numbered 1 to 4 as follows:

- "1. Not guilty of the charge.*
- 2. Did not use improper, insulting or offensive language towards or in relation to a steward.*
- 3. To (sic) much inconsistency in witnesses evidence relating to the given cause to be permitted for a conviction.*
- 4. No official report of incident to instigate the inquiry."*

Mr Harrison has argued this appeal along the following lines. He has painted the picture of the special circumstances surrounding the particular incident and identified the fact that Mr Celenza was irate having already attended an inquiry at the end of a long day. Mr Celenza was called to attend the second inquiry where no official report instigating that second inquiry was issued in accordance with various rules which were drawn to my attention. I am satisfied that there is no merit in the argument relating to the convening of the inquiry. The Stewards clearly do have the power to require persons to attend their inquiries without necessarily going through or exercising the procedure of issuing a formal notice along the lines suggested by Mr Harrison.

Mr Harrison also argues that the evidence of the two witnesses, that is Messrs Ross and Porter, was not on all fours both as to content and as to the alleged position of the witnesses and Mr Celenza, should lead the Tribunal to conclude that the evidence is unreliable and does not amount to a breach of the particular rule. Despite my best efforts to seek clarification of the argument on this particular point, Mr Harrison was not able to satisfy me that in all of the circumstances the language of Mr Celenza did not amount to anything but a breach of the rule in question. It doesn't matter in this particular case that there is some discrepancy between the words attributed to Mr Celenza by the two witnesses.

Some of the words in fact have been admitted by Mr Celenza during the course of the inquiry. When one looks at the circumstances and takes into account generally Mr Celenza's behaviour in the public domain at the particular time, I am satisfied that the language which was used in the spoken form was offensive language and was language which was in relation to the Stewards. Furthermore, there is nothing in the argument that has been pressed regarding the alleged eavesdropping by the two witnesses of a private conversation.

Finally the further particularised grounds allege severity of the penalty.

I am also not persuaded by the submission that in the circumstances it would be appropriate to impose a fine or a suspension. Rather, I am satisfied that the Stewards were entitled to impose a penalty of disqualification of three months for the reasons enunciated by Mr Kemp in his submissions.

In those circumstances, the appeal fails both as to conviction and penalty and is dismissed.

The suspension of operation of the penalty which was ordered on the 20 May 1999 now ceases to operate.

Dan Mossen

DAN MOSSENSON, CHAIRPERSON

