APPEAL 500

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**ENZO CRUDELI**
APPLICATION NO:	**A30/08/500**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MR A MONISSE (MEMBER)**
DATE OF HEARING:	**28 JUNE 2000**
DATE OF DETERMINATION:	**29 SEPTEMBER 2000**

IN THE MATTER OF an appeal by Mr E Crudeli against the determination made by the Western Australian Greyhound Racing Authority Stewards on 9 May 2000 imposing 6 months disqualification for breach of Rule AR106 of the Rules of Greyhound Racing.

Mr P Harris, instructed by Nicholson Clement, solicitors, appeared for the Appellant.

Mr C Martins appeared for the Western Australian Greyhound Racing Authority Stewards.

This is a unanimous decision of the Tribunal.

For the reasons published the appeal against penalty is dismissed.

The suspension of operation of the penalty automatically ceases.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**ENZO CRUDELI**
APPLICATION NO:	**A30/08/500**
DATE OF HEARING:	**28 JUNE 2000**
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IN THE MATTER OF an appeal by Mr E Crudeli against the determination made by the Western Australian Greyhound Racing Authority Stewards on 9 May 2000 imposing 6 months disqualification for breach of Rule AR106 of the Rules of Greyhound Racing.

Mr P Harris, instructed by Nicholson Clement, solicitors, appeared for the Appellant.

Mr C Martins appeared for the Western Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with those reasons and conclusions and have nothing to add.

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A MONISSE (MEMBER)

APPELLANT:	**ENZO CRUDELI**
APPLICATION NO:	**A30/08/500**
DATE OF HEARING:	**28 JUNE 2000**
DATE OF DETERMINATION:	**29 SEPTEMBER 2000**

IN THE MATTER OF an appeal by Mr E Crudeli against the determination made by the Western Australian Greyhound Racing Authority Stewards on 9 May 2000 imposing 6 months disqualification for breach of Rule AR106 of the Rules of Greyhound Racing.

Mr P Harris, instructed by Nicholson Clement, solicitors, appeared for the Appellant.

Mr C Martins appeared for the Western Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with those reasons and conclusions and have nothing to add.

Seal of the Racing Penalties Appeal Tribunal of W.A.

A E Monisse

ANDREW MONISSE, MEMBER

APPEAL 500

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT:	**ENZO CRUDELI**
APPLICATION NO:	**A30/08/500**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MR A MONISSE (MEMBER)**
DATE OF HEARING:	**28 JUNE 2000**
DATE OF DETERMINATION:	**29 SEPTEMBER 2000**

IN THE MATTER OF an appeal by Mr E Crudeli against the determination made by the Western Australian Greyhound Racing Authority Stewards on 9 May 2000 imposing 6 months disqualification for breach of Rule AR106 of the Rules of Greyhound Racing.

Mr P Harris, instructed by Nicholson Clement, solicitors, appeared for the Appellant.

Mr C Martins appeared for the Western Australian Greyhound Racing Authority Stewards.

This is as an appeal by Enzo Crudeli, a licensed trainer, against the penalty of disqualification for six months by the Stewards of the Western Australian Greyhound Racing Authority for breach of Rule AR106 of the Rules of Greyhound Racing.

Rule AR106 states:

> *"The owner, trainer or person in charge of a greyhound nominated to compete in an event, shall produce the greyhound for the event free of any drug."*

Mr Crudeli was the trainer of the greyhound TAWA'S RETURN which competed in Race 5 at Cannington on 25 March 2000. TAWA'S RETURN was placed first. Following the running of the race, a urine sample taken from the greyhound disclosed the presence of the drug *Theobromine*.

At a Stewards' inquiry held on 27 April 2000 Mr Crudeli pleaded guilty to a charge under Rule AR 106.

The Stewards then heard submissions from the Appellant in respect of penalty. By letter dated 9 May 2000 the Stewards advised Mr Crudeli of their decision as follows:

"... Mr Crudeli, you have put forward to the Stewards a series of possibilities as to how the Theobromine came to be found in the urine sample taken from your greyhound TAWA'S RETURN after winning Race 5 at Cannington on 25 March, 2000. By your own admission, they were just possibilities and you were not able to offer a conclusive explanation to the Stewards of how the Theobromine appeared in the urine sample taken from TAWA'S RETURN.

This being the case, given the nature of the drug Theobromine, it is virtually impossible to ascertain how and when it was administered or from where it originated. Whilst we have thoroughly considered your explanations concerning the possible origins of the drug and how it came to be administered to your greyhound, these explanations fail to satisfy us in regard to how the administration occurred. The facts do indicate that a urine sample was taken from TAWA'S RETURN after it had won Race 5 at Cannington on 25 March, 2000 and was found to contain the drug Theobromine. There is no therapeutic reason or indeed purpose for a greyhound to take part in a competitive race with Theobromine in its system. The effects that the drug has are not in dispute. It has several effects, which includes a coronary dilation and cardiac stimulation effect with the potential to increase the speed of the greyhound. Whilst we recognise that the drug does not have the same potency as Caffeine, its actions are none the less similar to Caffeine. Theobromine, in fact, belongs to the same group of drugs as Caffeine, that is the Paraxanthine group.

In determining an appropriate penalty we have taken into account that whilst you have only been involved in the industry for a short period of time compared to some others, you are responsible for a significant number of greyhounds. We have also taken into account your acknowledgment of the offence and the adverse impact that a disqualification could have on your personal circumstances in terms of the prohibitions as set out by the Rules.

The presence of a drug such as Theobromine in a racing greyhound is deemed as a very serious offence by the Stewards and no doubt the industry and the betting public who must be confident that they can only be beaten by greyhounds on their merits and not by greyhounds that compete with drugs in their system. Whilst there has not been any previous cases involving Theobromine in Western Australia, we are assisted to some degree by previous penalties issued for Caffeine. In recognition of Theobromine's lesser potency in comparison to Caffeine we think it proper that this be reflected in any penalty given. Having said that, Theobromine, amongst other things, is a stimulant and as such we believe that disqualification is the appropriate penalty under the circumstances. In view of all the relevant circumstances we believe that the appropriate penalty is a disqualification for a period of six (6) months."

Mr Crudeli originally appealed against both the conviction and the severity of the penalty. At the outset of the hearing the appeal against conviction was abandoned.

The amended grounds of appeal are:

"1. The Stewards erred in assessing the Appellant's penalty by reference to previous penalties issued in respect of the stimulant Caffeine.

PARTICULARS

(i) all previous penalties imposed in relation to the stimulant Caffeine resulted from a conviction under AR 234(7) [now repealed] under which it was necessary for the Stewards to find that the "drug" had been administered for an "improper purpose" whereas AR 106 does not contain this element and

consequently the gravaman (sic) of the offence created by the rule is far less than its predecessor;

(ii) all previous penalties imposed in relation to the stimulant Caffeine resulted from a conviction under AR 234(7) [now repealed] to which AR111 (1) did not apply;

(iii) the Stewards failed to consider that in a normal Caffeine administration case one would find 3 drugs present in the greyhound, ie. Caffeine, Theophylline and Theobromine whereas in the Appellant's case only Theobromine was present;

(iv) in having regard to previous penalties issued in respect to the stimulant Caffeine the Stewards automatically placed the offence into a category of seriousness which was unwarranted by the evidence, in particular the nature of the drug detected; and

(v) in having regard to previous penalties issued in respect to the stimulant Caffeine the Stewards failed to consider the appropriateness of alternative penalties to disqualification such as a fine and/or a period of suspension.

2. *The penalty imposed was manifestly excessive in all the circumstances of the case.*

PARTICULARS

(i) the Stewards failed to attach sufficient weight to the fact that in terms of performance enhancing effect Theobromine was not in the same "league" as Caffeine;

(ii) the Stewards failed to attach adequate weight to the Appellant's early plea of guilty to the charge and to his full co-operation with the Stewards Inquiry;

(iii) *the Stewards erred in failing to consider the appropriateness of alternative penalties such as a fine and/or a period of suspension;*

(iv) *the Stewards erred in failing to place sufficient weight on the fact that this was a 1st offence;*

(v) *the Stewards erred in failing to place sufficient weight on the fact that there was little or no evidence to suggest that Theobromine had been administered for an improper purpose; and*

(vi) *the Stewards erred in failing to give sufficient weight to matters personal to the Appellant in particular the fact that he was a disability pensioner with dependents responsible for the control of 80 to 90 greyhounds on his own property."*

The matters not in issue but of some significance are as follows:

1. Following the adoption of the Australian Greyhound Racing Rules in this State, pursuant to AR111(1) the penalties available to the Stewards upon conviction now are much wider including a fine not exceeding $5,000 for any one offence/and or suspension.

Previously repealed Rules 76 and 232 limited fines to a maximum of $100 and suspension was not an available penalty.

2. Theobromine is a prohibited substance under the rules which could have no legitimate purpose when found in a greyhound other than to act as a form of stimulant.

3. In this State there is no precedent for the Stewards or this Tribunal having dealt with an offender for a finding of Theobromine as the only drug found in a greyhound.

4. Generally when Theobromine is found in a greyhound Caffeine and Theophylline are also found.

5. The Appellant pleaded guilty to the charge and this was his first offence.

6. The greyhound in question in this appeal won the relevant race.

7. There was no clear explanation given or accepted as to how Theobromine came to be found in the greyhound in question.

Ground 1

The Stewards in their reasons for decision in imposing the penalty they did, considered the penalties imposed in this State for Caffeine offences. They acknowledged that Theobromine was not of the same potency as Caffeine yet belonged to the same group of drugs and would have a similar effect on a greyhound. Given there were no precedents in this State for Theobromine offences I am unable to see how the Stewards have fallen into error in using the Caffeine penalties to assist them "to some degree" in setting a relevant penalty whilst acknowledging the difference in the two drugs when ultimately imposing the penalty upon the Appellant.

Although there is a difference in the wording of the repealed Rule 234(7) and AR106 I am satisfied that a conviction for breach of either rule is very serious and the difference between the rules is unlikely to have any significant effect on the penalty. Both rules are clearly aimed at ensuring drug free racing. Both rules effectively apply absolute liability. Although repealed Rule 234(7) does require a finding of an administration for an improper purpose it is difficult to consider any circumstances given the nature of the drug Theobromine where such drug when found could have been administered for a proper purpose in a greyhound presented for racing. I am therefore of the view when dealing with drugs which are of a stimulant nature there is no significant difference between a conviction for breach of repealed Rule 234(7) or Rule AR106 and therefore considering penalties imposed previously for breaches of repealed Rule 234(7) does not demonstrate an error by the Stewards.

As previously acknowledged pursuant to AR111(1) the range of penalties available to the Stewards when this Appellant was convicted was much wider than previously available under Rule 232. It was submitted that given the maximum fine available is now $5,000 and suspensions are now available a fine and/or suspension was an appropriate penalty in the circumstances.

In DAGOSTINO (Appeal 492 delivered 21 March 2000) the Tribunal said the following:

> *"We accept that even with a therapeutic drug, when the use of such a drug affects the ability of a dog to race on its merits, matters of both general and specific deterrence require a period of disqualification in most cases."*

In this matter the drug found was not therapeutic and as the Stewards acknowledged in their reasons was a stimulant. I am therefore satisfied that a disqualification was the only appropriate penalty in this case. I note that in the matter of ROBERTS (Appeal 493 delivered 30 March 2000) for breach of Rule AR106 for Caffeine a penalty of 9 months disqualification was found by the Tribunal not to be manifestly excessive in the circumstances.

As to the question as to whether the Stewards erred pursuant to this ground in imposing 6 months as the length of disqualification I note that the penalties imposed for caffeine offences in this State under both the old and new rule are a 3 month disqualification or more (see JULIEN Appeal 444 and KALTSIS Appeal 342). In recent years 9 months disqualification or more have been imposed (see ROBERTS Appeal 493). It is difficult to ascertain any uniformity in penalties in other States and Territories for this type of offence but nevertheless the penalty imposed does seem to be within a broad national tariff.

Given the Stewards did acknowledge in the reasons for their decision that Theobromine was of a lesser potency in comparison to caffeine before imposing the 6 months disqualification I am satisfied that a significant discount was allowed (probably 3 months) for the actual nature of the drug found. The Appellant was therefore penalised at a lower range than had Caffeine and/or Theophylline also been found in the greyhound.

For these reasons I would dismiss this ground of appeal and its five related particulars.

Ground 2

As to particulars (ii), (iv) and (vi) of this ground I am satisfied that the Stewards in their written reasons for decision have clearly taken into account these matters before they imposed the penalty they did and no error has been demonstrated in the weight they gave to these factors.

As to particular (i), as stated in my reasons for dismissing ground 1 of this appeal the Stewards did not treat this matter in the same "league" as a Caffeine breach and gave a significant discount.

My reasons for dismissing ground 1 of the appeal set out why a disqualification was the only appropriate penalty in the circumstances and a 6 month disqualification was not outside any general range for such penalties which would suggest such penalty is manifestly excessive in the circumstances.

There was no requirement for the substance to have been administered for an improper purpose under Rule 234(7), but in any event as previously stated it is difficult to consider when Theobromine could be in a greyhound for a proper purpose. The rule is effectively one of absolute liability, and therefore how or why the Theobromine was in the greyhound can only have a small effect in mitigating the penalty.

For these reasons I would also dismiss this ground of appeal and its six related particulars.

For all of the above reasons I would dismiss the appeal.

Seal of the Racing Penalties Appeal Tribunal of WA

John Prior

JOHN PRIOR, MEMBER