

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: BRIAN JACOBSON
APPLICATION NO: A30/08/538
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 23 AUGUST 2001
DATE OF DETERMINATION: 23 AUGUST 2001

IN THE MATTER OF an appeal by Brian Jacobson against the determination made by the Steward of the Western Australian Greyhound Racing Authority on 18 July 2001 imposing a \$500 fine for breach of Rule AR109(15).

The appellant represented himself.

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

Mr Jacobson who is a public trainer was called to an inquiry of the Stewards on 13 June 2001 into an allegation of breach of AR109(15) of the Rules of Greyhound Racing. The inquiry proved to be a fairly lengthy affair with numerous witnesses having given evidence both on that day and on its continuation on 27 June 2001.

The Stewards wrote to Mr Jacobson a letter dated 12 July 2001, which became exhibit 4 in the proceedings, setting out their findings. It is a detailed letter. It summarises the proceedings in the fourth paragraph in these terms:

"The inquiry was as a result of a complaint lodged by the Deputy Chief Steward Mr M Kemp, alleging, in essence, that you had done a thing which constituted misconduct. Through the course of the inquiry the charge, which had been laid at the outset, was amended and the component alleging that you had spoken to Mr Kemp in an aggressive manner was deleted. You, however, have denied that you spoke to Mr Kemp in a loud manner on the day in question and hence have pleaded not guilty to the amended charge."

The letter contains the Stewards' findings and their careful examination of the relevant surrounding facts and circumstances of the incident. It analyses and evaluates the

conflicting evidence which was presented. It logically develops a line of reasoning leading ultimately to the conclusion. It is not necessary for me to go into any great detail as to the background facts and circumstances. They are fairly neatly summarised in the bottom paragraph of page 1 of the letter in these terms:

“It has not been disputed by you that on the day in question you were quite upset about the level of injuries which were occurring at the track. You were so upset, in fact, that by your own admission you became involved in a heated argument with another person on course that day, namely Mrs E Langston. According to you, this argument involved loud shouting and yelling to the point that you now freely state that this behaviour was bad enough to warrant further action from the Stewards. From this point you almost immediately proceeded to encounter Mr Kemp. Leaving aside for the moment what is in dispute in regard to the nature of this conversation you were then directed to attend the Stewards’ room by Mr Kemp where at the outset of this conversation Mr Kemp claimed you had spoken to him in an aggressive manner.”

Rule AR109(15) of the Rules of Greyhound Racing states:

“Any person (including an official) who:

(15) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the stewards, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;

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

Because that rule contains the phrase "in the opinion of the Stewards" the burden on Mr Jacobson of proving that an error justifying the Tribunal substituting its opinion of the incident for that of the Stewards is a difficult one to discharge. Mr Jacobson must satisfy me that no reasonable Stewards armed with all of the information which these Stewards considered could not reasonably have come to the conclusion which these Stewards did.

I have carefully considered Mr Jacobson’s propositions. Equally I have weighed up Mr Borovica’s response. It is not disputed that Mr Jacobson’s recollection of the incident is unclear. Further there is an inconsistency in some of the evidence which was presented to the Stewards. Mr Borovica has supported the conclusions and findings of the Stewards by taking me to relevant passages in the transcript. I am satisfied that no error has been demonstrated in the way the Stewards handled this matter and in the conclusions which they have reached. I am not persuaded that the Stewards were not entitled to reach the conclusion which they did on the evidence before them.

For these reasons the appeal fails as to conviction.

As to penalty, Mr Jacobson did not address me with anything plausible to demonstrate that the Stewards were wrong in imposing the penalty of a \$500 fine which they did at the continuation proceedings on 18 July 2001. The Stewards properly took into account Mr Jacobson’s record of convictions for misbehaviour on previous occasions. These involved an offence in Victoria in 1987 of insulting behaviour toward a Veterinary Surgeon, and a multiple number of offences in Tasmania in March 1990 for failing to attend Stewards’ inquiries, failing to produce documents and failing to comply with lawful orders.

The Stewards also referred to a number of relevant cases. Mr L Beckett's matter involved improper behaviour towards a Steward where a disqualification for one month was imposed. Mr G Nelson was charged under Rule 231(1)(d) for an improper act resulting in a disqualification for nine months. Mr C Dagostino was charged under the same rule as Mr Jacobson and for a first offence a fine of \$100 was imposed. Mr Steve Van Styn also charged under the same rule for a third offence had a fine of \$700 imposed.

The penalty provision contained in the rules is AR111. That provision contemplates a wide range of possible penalties including a fine up to \$5,000 and/or suspension and/or disqualification.

The Chairman of Stewards announced the penalty to be imposed in the following terms:

"In considering an appropriate penalty we have considered your extensive involvement in the industry, your history since being registered with WAGRA, your previous record in the eastern states and all aspects of this case. You, yourself have offered very little on the question of penalty and have not attempted to draw our attention to any mitigating circumstances. This may be because there does not appear to be much to mitigate your offence. You have offered no apology or expressed any regret for what has occurred. We consider the manner in which you spoke to Mr Kemp extremely inappropriate in any circumstance, but especially when it is show cased in full view of the general public. The degree in which you chose to speak loudly to Mr Kemp was such that he felt intimidated and fearful of his personal safety. Mr Kemp is an experienced Steward who has dealt with such situations many times before and has stated himself he has not felt this way in his previous ten years of stewarding. This was clearly misconduct of arguably the worst kind. Your actions were well below what we expect from any registered person let alone a public trainer of your standing. The way you went about airing your grievances about the track leaves a lot to be desired and we can see no good reason for your performance on the day. There are proper avenues for people with complaints of this nature to take and airing them loudly in public at a Steward is not the way. It is little wonder Mr Kemp felt embarrassed and humiliated by what occurred. It is a concern to us that although it occurred some time ago this is not your first example of poor behaviour towards officials. Your record was such that a show cause hearing was conducted in order for you to obtain a licence. With a record such as yours you can ill afford to be committing offences of this nature, as your registration will quickly be placed in jeopardy. It is only because these offences happened some time ago that we do not feel it appropriate to compromise your registration status at this time. The offence, however, remains serious and according to Mr Kemp was more serious than the offence of Mr Van Styn that same day. Whilst clearly Mr Kemp felt worse after dealing with you compared to Mr Van Styn, and we are not surprised he did, we do not find that your offence is more serious than his. In contrast to Mr Van Styn's offence yours was not during a formal proceeding and we feel this should also be reflected in penalty. Previous penalties are of little assistance in these matters as the circumstances of each case tend to be unique and we therefore feel each case should be judged on its own merits. In consideration of all the circumstances we have before us here and all of the evidence we feel that the appropriate penalty is a fine of \$500 which is payable to the WAGRA offices within 14 days."

I am satisfied in all the circumstances that it has not been demonstrated that the fine of \$500 is inappropriate.

For these reasons I dismiss the appeal both as to conviction and fine and do confirm the decisions of the Stewards.



DAN MOSSENSON, CHAIRPERSON

