

**DETERMINATION AND REASONS FOR DETERMINATION OF**  
**THE RACING PENALTIES APPEAL TRIBUNAL**

**APPELLANT:** JACK FLEMING

**APPLICATION NO:** A30/08/643

**PANEL:** MR D MOSSENSON (CHAIRPERSON)

**DATE OF HEARING:** 21 NOVEMBER 2005

**DATE OF DETERMINATION:** 23 DECEMBER 2005

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IN THE MATTER OF an appeal by Jack Fleming against the determination made by the Racing and Wagering Western Australian Stewards of Greyhound Racing on 6 September 2005 imposing a \$2,000 fine for breach of Rule 122 of the RWWA Greyhound Racing Rules 2005.

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The appellant represented himself.

Mr M J Skipper appeared for the Racing and Wagering Stewards of Greyhound Racing.

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The appellant was the trainer of the greyhound WINDY JACK which was placed third in Race 4 at Mandurah on 21 July 2005. A race day urine sample taken from the greyhound was reported by the Racing Chemistry Laboratory in Perth to contain the prohibited substance lignocaine.

On 6 September 2005 the Stewards opened an inquiry into the finding of lignocaine in the sample. The appellant admitted using a product known as Band-Aid on WINDY JACK on the morning of the race. Band-Aid is a product for use by humans for the treatment, prevention of infection and relief of pain in minor cuts, wounds and abrasions, insect bites and minor burns. The label clearly stated that lignocaine was an active ingredient.

Mr Fleming pleaded guilty to a breach of Rule 122 of the Australian RWWA Greyhound Racing Rules. That Rule is headed 'Drugs' and states:

**'R122** *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.'*

The Chairman of the inquiry announced the Stewards' finding on penalty in these terms:

*'Mr Fleming, the Stewards have carefully considered all relevant matters regarding penalty and your submission. For good and obvious reasons, the Rules provide a strict liability on a trainer to present his greyhounds to race free of drugs. When you seek to be registered as a greyhound trainer with Racing and Wagering WA you agree to be bound and abide by those Rules. It's been said many times before in cases involving the detection of drugs, such circumstances represent a significant threat to the necessary confidence the betting public must have in greyhound and horses competing in races that there is a level playing field. The financial viability of the racing industry is irrevocably tied to the continued support of the betting public therefore it is of the utmost importance that their support is maintained. Races must be decided by honest means where no competitor has an unfair advantage over another. The presence of drugs in competing greyhounds or horses has the potential to significantly undermine the necessary confidence of the betting public. Therefore, any penalty must not only provide a deterrent to the offender, it must also be a general deterrent to others so as to ensure the necessary compliance with the Rules. Notwithstanding the offence in 2001 involving the drug caffeine, we acknowledge the relatively good record you have maintained over the long period that you've been involved in greyhound racing. You've acknowledged this offence and have cooperated with the inquiry. Your level of involvement in the industry can be best described as a hobby and you are not dependent on greyhound racing for an income. Further, as an owner trainer, you only train a small number of greyhounds at any time. It is only in exceptional circumstances that a period of disqualification should not be imposed on drug related offences. Notwithstanding your negligence in using the wash containing lignocaine, in our view exceptional circumstances are present in this particular case justifying a consideration of a penalty other than disqualification. However, in the circumstances, require more, sorry, however the circumstances require more than a period of suspension which in our view would provide little or not deterrent factor in your circumstances. In all the circumstances before us, noting that the maximum fine allowed under the Rules of Racing is \$100,000 and we impose a fine of \$2,000.'*

The appellant in his submissions simply pleaded for leniency based on his personal financial position as a pensioner, his age, his decades of experience in the industry, the fact that he was not trying to gain any advantage, his efforts in presenting his dogs for racing in pristine condition and the fact he had put up with three months of anguish over the matter. He acknowledged his negligence in not reading the label of the new product he used on WINDY JACK prior to it competing in the race.

Mr Skipper on behalf of the Stewards submitted that Mr Fleming's conduct amounted to an act of gross negligence, particularly as he had employed a new product which had been manufactured for use by humans. The penalty meted out not only reflected that this was Mr Fleming's second drug offence but also the punishment needed to have a deterrent

value. The first offence by Mr Fleming was in 2001 and was said to have been a feed mix up involving caffeine.

It was argued that Mr Fleming should have acted much more carefully in dealing with the new Band-Aid product. Mr Fleming should have been much more responsible. He should have consulted a vet before using the product.

Mr Skipper also submitted that at the Stewards' inquiry Mr Fleming stated that he would prefer a fine to any other penalty. As to Mr Fleming's difficulties in paying I was told it was possible to seek approval from Racing and Wagering Western Australia for time to pay the impost over a period.

Mr Skipper explained a wide range of penalties has been imposed in drug cases. A table of cases involving use of lignocaine in horse racing was presented. In passing Mr Skipper mentioned the question of equality of penalties between the codes. He then pointed out the Rules of Thoroughbred Racing impose a maximum fine of \$75,000. In harness racing and greyhound racing no maximum is specified in the respective rules, however the Racing and Wagering Western Australia Act 2003 specifies \$100,000. I continue to have my reservations as to the appropriateness of and need to apply equal penalties from one code of racing to another and the relevance of taking into consideration penalties imposed by the horse racing codes in determining penalties for greyhound racing offences. As these questions were not addressed and no particular approach pressed in argument little more can or needs to be said of this issue in this appeal.

The following are examples of penalties involving greyhounds, although different drugs than lignocaine were involved. This fact makes the use of these cases also problematic.

<b>Trainer</b>	<b>Date of Conviction</b>	<b>Penalty</b>	<b>Remarks</b>
Daryl Jeffreys	5 August 1994	6 months disqualification	no appeal
Daryl Jeffreys	5 January 2000	\$2,000 fine	2 <sup>nd</sup> offence - no appeal
Frank Moyle	3 April 1996	3 months disqualification	varied on 2 May 1996 (Appeal 304) to 2 months disqualification
John Polczynski	26 March 1996	3 months disqualification	penalty confirmed on 29 April 1996 (Appeal 301)
Karl Jovanovic	29 July 2005	\$2,000 fine	1 <sup>st</sup> offence - no appeal

Despite my preceding comments generally on penalties I am satisfied the reasons enunciated by the Stewards on penalty in this case are all fair and reasonable in the circumstances of this case. It has not been demonstrated the Stewards have fallen into any error. In arriving at this conclusion I have in particular being influenced by the following range of factors. Firstly, that this is Mr Fleming's second conviction for a drug offence. Secondly, Mr Fleming was negligent in using the product in question. Thirdly, it is important that the penalty sends a message to all trainers to exercise extreme care when using any products and particularly those new to the market. Fourthly, there clearly is the

need to protect the image and integrity of greyhound racing. Finally a fine of \$2,000 is within the range of penalties reasonably open to the Stewards for this type of offence.

The appeal is therefore dismissed. The \$2,000 fine is confirmed.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

