

THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRMAN)

APPELLANT: ALBERT VAN DE KLASHORST

APPLICATION NO: A30/08/660

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

DATE OF HEARING: 1 MAY 2007

DATE OF DETERMINATION: 14 JUNE 2007

IN THE MATTER OF an appeal by Albert Van De Klashorst against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 11 September 2006 imposing a 12 month disqualification for breach of Rule 122 of the RWWA Greyhound Racing Rules 2005.

Mr A Van De Klashorst appeared in person.

Mr D Borovica appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

I have read the draft reasons of Mr J Prior, Member.

I agree with those reasons and conclusions and have nothing further to add.



D Mosson

D MOSSENSON, CHAIRMAN

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT: ALBERT VAN DE KLASHORST

APPLICATION NO: A30/08/660

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

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IN THE MATTER OF an appeal by Albert Van De Klashorst against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 11 September 2006 imposing a 12 month disqualification for breach of Rule 122 of the RWWA Greyhound Racing Rules 2005.

Mr A Van De Klashorst appeared in person.

Mr D Borovica appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

This is an appeal by Mr A Van De Klashorst against the penalty imposed by the Stewards for breach of Rule 122 of the RWWA Greyhound Racing Rules 2005 that as the trainer of a greyhound nominated to compete in an event he produced a greyhound for the event not free of any drug.

At the hearing of this appeal, the Appellant advised that he was not appealing against his conviction, only the penalty, and that he had been discriminated against.

The Stewards had charged Mr Van De Klashorst as follows:

“... you are charged under that Rule for as a trainer in charge of Quicksand you nominated and produced that greyhound to compete in Race 8, the Dolphin Stake (638M) at Mandurah on 21 July 2006 not free of the drugs caffeine, theophylline, theobromine and paraxanthine.”

Mr Van De Klashorst pleaded guilty to the charge and made some brief submissions to the Stewards in relation to the penalty.

The Chairman of the Stewards, on behalf of the Stewards, in stating their reasons for imposing the penalty said the following:

“Firstly the Stewards acknowledge your guilty plea and the forthright manner in which you've dealt with the evidence in relation to the Collovet administration. The Stewards do believe that you've been negligent in not seeking vet advice in regards to the Collovet treatment. We understand that you acted in good faith in treating QUICKSAND and have the welfare of that greyhound as a priority. However, racing greyhounds must be presented to race free of drugs. The finding of drugs in greyhounds is a serious matter. It impacts on the integrity of the industry. Any matter that can adversely affect the financial support of the industry is serious and reflects poorly on the greyhound code. Your record shows that you were disqualified for a period of three years in July 1993 for administering a stimulant to a greyhound. After consideration, the Stewards believe that you should be disqualified for a period of twelve months.”

At the hearing of this appeal and pursuant to the papers filed by the Appellant, in particular the further particulars he provided of his appeal ground, it became apparent to this Tribunal that the Appellant was illiterate.

In this respect, the Appellant's argument of discrimination in the imposition of the penalty by the Stewards arose in that once a disqualification had been imposed as a form of penalty, because of the disability of which the Appellant suffered, he would be required to undergo an oral test, instead of a written test, to regain his trainer's license. It was clear to me from the Appellant's submissions that this requirement of the Stewards was going to cause some embarrassment to the Appellant.

I acknowledge because of the fact that the Appellant was disqualified and the requirements under the rules and the procedures mean that the Appellant is required to carry out an oral test before he recovers his license makes, to some extent, the penalty more severe for him.

I think it is fair to say that it is likely other persons in this industry may **labour** from the same disability as this Appellant and then if they are disqualified, would have to undergo the same requirements, as mentioned above, once the disqualification period is completed.

In that respect, I see no merit in the argument that the Appellant has been discriminated against, or am I persuaded the imposition of a disqualification penalty was an error by the Stewards.

As has been said a number of times in this Tribunal and was said when the Stewards imposed the penalty in this matter, an offence even of presentation of a greyhound with a prohibited substance is a serious offence, because it impacts on the integrity of the industry of greyhound racing.

Although this Appellant had not committed any offences for a substantial period of time, he was not a first offender. At the hearing of this appeal, the representative of the Stewards

confirmed that this Appellant was a hobby trainer, therefore the disqualification penalty imposed would not directly be a termination of the Appellant's means to earn his livelihood.

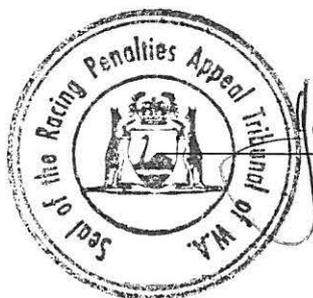
Although the Stewards accepted the error by the Appellant in his use of the Collovet treatment had been made in good faith, I accept the Stewards' finding the error had been caused by the Appellant failing to take proper veterinary advice.

At the hearing of this matter, the Steward's representative provided a table of penalties imposed for offences where presentation or administration offences where caffeine had been found in a greyhound. I am satisfied that the range of penalties for these types of offences, for even a first offence, is 9-12 months disqualification. No penalties such as a suspension or a fine, have been imposed. As I have referred to above, this Appellant was not a first offender.

In those circumstances, given the material provided by the Stewards as to the range of penalties imposed, I am unable to be satisfied that the length of the penalty imposed, 12 months disqualification, could be described as manifestly excessive.

In giving consideration to this matter and the submissions made by the Appellant, I am mindful of the obligation on the Appellant to demonstrate that there was some error in the process of the Stewards in imposing their penalty. Nothing put by the Appellant at the hearing of this Appeal has satisfied me that the penalty of 12 months disqualification was imposed by the Stewards in error.

In those circumstances, I would dismiss the appeal.



John Prior

JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL
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APPELLANT: ALBERT VAN DE KLASHORST

APPLICATION NO: A30/08/660

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

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Mr A Van De Klashorst appeared in person.

Mr D Borovica appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

I have read the draft reasons of Mr J Prior, Member.

I agree with those reasons and conclusions and have nothing further to add.



Kare Farley

KAREN FARLEY, MEMBER