

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

APPELLANT: WAYNE ROSE

APPLICATION NO: A30/08/716

DATE OF HEARING: 7 APRIL 2010

DATE OF DETERMINATION: 7 APRIL 2010

IN THE MATTER OF an appeal by Mr W Rose against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 4 February 2010 imposing a \$1,500 fine, \$500 of which was suspended for 12 months, for breach of Rule 86(o) of the Rules of Greyhound Racing.

Mr W Rose represented himself.

Mr C Martins represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

BACKGROUND

Mr Wayne Rose is registered as an owner/trainer with Racing and Wagering Western Australia. Mr Rose was involved in a skirmish with Mr B Cook after a race at Mandurah on 14 January 2010. The incident took place in the kennel area. Following the incident a number of interviews were conducted in the Stewards' office. The interviews were recorded. This resulted in the Stewards opening an inquiry on 28 January 2010 during which the transcripts of the interviews were tendered in evidence. Other evidence was also received at the inquiry. This led to a charge being laid against Mr Rose pursuant to Rule 86(o) of the Rules of Greyhound Racing. The particulars of the charge were:

'... on 14th January 2010, in the kennel area of Greyhounds WA Mandurah, you Mr Wayne Rose, pushed two fingers into Mr Cook's face, a thing which in the opinion of the Stewards, constitutes misconduct'.

Rule 86 states:

'A person (including an official) shall be guilty of an offence if the person-

.....

(o) 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 of the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

...'

After hearing further evidence the Stewards adjourned the inquiry to enable Mr Rose to call witnesses. However, at the resumption on 4 February 2010 no further witnesses were forthcoming. The Stewards were quickly able to determine that the complaint had been made out. The Stewards rejected the various defences that had been raised including provocation and self defence. The Stewards acknowledged that the incident had the potential to escalate, from what had started as a verbal exchange, into a much more physical one than what actually transpired. The Stewards found that Mr Rose instigated physical contact on Mr Cook as alleged. This finding was not difficult to reach or in any way a surprise as Mr Rose had in fact admitted the physicality in the course of making the statement he gave the Stewards shortly after the incident occurred.

In the course of considering the penalty the Stewards took into account Mr Rose's personal circumstances as well as his unhappy record of three prior offences plus a reprimand in relation to similar types of misconduct. The Stewards also looked at penalties imposed on other offenders in what were described as cases similar to this one. The penalties identified were fines between \$600 and \$2,000, and in one case a disqualification of three months. The Stewards resolved to impose a fine of \$1,500 on Mr Rose. Pursuant to Rule 95(3) the Stewards determined to suspend \$500 of the fine for a period of 12 months on the condition that Mr Rose did not incur any further behavioural related offences.

Mr Rose appealed on the basis that the evidence was inconclusive. He also appealed against the severity of the fine. After hearing argument from both parties I determined that the appeal should be dismissed both as to the conviction and the penalty.

REASONS

My reasons for dismissing the appeal are simple. I was not persuaded that there was any merit in the proposition that the evidence was inconclusive. Far from it. Mr Rose had expressly admitted in the course of giving his statement to the Stewards following the race that:

'... I put my two fingers on his cheeks and I pushed him back because I don't like anyone getting in my face like that.'

In addition, both the evidence of this act of physical contact and the surrounding circumstances were corroborated by a number of the other witnesses. The Stewards obviously were entitled to reach the conclusion which they did of the incident.

As to the penalty I was mindful of Mr Rose's poor behaviour record and past indiscretions. Further was the aggravating fact that Mr Rose took matters into his own hands in the kennel area with another licensed person. Additionally the incident occurred in front of others and had the potential to flare up far worse than it did. All of these relevant factors combined to make me satisfied that the fine which was imposed including the remission was more than reasonable in all the circumstances.



DAN MOSSENSON, CHAIRPERSON

