

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: KYLE GOODWIN

APPLICATION NO: 21/3275

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR A E MONISSE (MEMBER)
MS J OVERMARS (MEMBER)

DATE OF HEARING: 14 SEPTEMBER 2021

DATE OF ORAL DETERMINATION: 14 SEPTEMBER 2021

IN THE MATTER OF an appeal by Kyle GOODWIN the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 10 August 2021 imposing a fine of \$1000.00 and a disqualification of 18 months for breach of Rules GAR 86(o) and GAR 86(d) of Greyhounds Australasia Rules.

Mr N van Hattem appeared for the Appellant

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

VERBATIM REASONS FOR DETERMINATION ON THE DAY OF HEARING:

1. It is the intention of the Tribunal to deal with the appeal against conviction first and separately from the appeal against penalty, it's the unanimous decision of the Tribunal that the appeal against conviction be dismissed. I'll proceed now to give the reasons for that decision and the parties will be entitled to transcript of these reasons free of charge.
2. This appeal arises out of an incident that occurred that at the Cannington Greyhounds on 22 May of this year. The particular incident, which was part of the background, was an

assault on a steward of a fairly minor nature in terms of the physical nature of it but a serious nature because any touching of a steward is a serious thing of itself.

3. There was a person later identified to be Mr Whiteshoes, I say that just for consistency purposes. Mr Whiteshoes was seen by at least one eye witness to take hold of the steward in a way that wasn't with consent, it wasn't to say hello. The appellant in this case was nearby in sufficient proximity to be able to bring an end to that assault on the steward by letting Mr Whiteshoes know, "You can't do that, that's a steward," and even took him away physically from continuing the assault. So that is the incident on the night which led to the investigation inquiry and the appeal that we're doing today.

4. The stewards obviously had an interest in finding out who Mr Whiteshoes was. So, on 22 May they spoke to the appellant here, Mr Goodwin, because he was the person who had brought the assault to an end and they spoke to Mr Goodwin as part of the inquiry and at page 14 of the transcript off 22 May the Chairman said to the appellant –

Do you know this person?" and Mr Goodwin said, "No, I've had a beer with him up there. Like I'm not from Perth, I don't know him, he was having a beer with me up there and I sort of said I had a dog running in the cup, that was basically it and I had a couple of beers with him and like I, as I said, I wouldn't know him if I tripped over him."

5. By way of further background, and I interrupt again and remind myself that Mr Goodwin comes from Victoria, he's a Victorian trainer and he was here for that purpose.

6. So having got that answer, the steward gave a warning to the appellant, at page 15, about giving misleading information and returned to the questioning, and got the answer –

No, sorry, I don't know his name. So you don't know this person?---No. Is there anything else you'd like to say in that matter?---No.

7. Over again on page 16, said –

As I said, he was up there, I was talking to him, had a beer with him. I said that my dog's running, I don't know, it might have been a straggler coming in for a local or whatever and I said – but yes, he was talking to me and I said like no-one, the handler was down here so we were having a beer together and I said like I don't know him so.

8. So a number of ways Mr Goodwin said that he didn't know Mr Whiteshoes. By using the phrase, as he did initially, by Mr Goodwin using the phrase, "I wouldn't know him I tripped over him," Mr Goodwin was obviously talking about knowing Mr Whiteshoes and knowing the name before 22 May. By the time the stewards of course were asking the questions, Mr Goodwin had spent two-and-a-half hours with Mr Whiteshoes but the questions and the answer and the context, and particularly the answer, "I wouldn't know him if I tripped

over him," obviously referred to before 22 May and obviously referred to name as well as knowing in the broader sense.

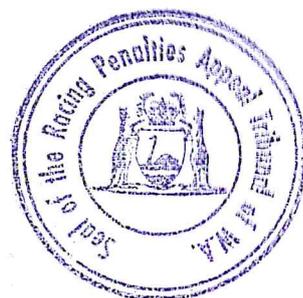
9. Those answers were the ones that form the basis for the charge which was made against the appellant on 15 June and the answers on the charge on 15 June was put to the appellant and particularised at page 10 of the transcript of 15 June. I'll quote the particulars that –
On 22 May 2021, at Greyhounds WA, Cannington, you Mr Kyle Goodwin, being a registered person with Greyhound Racing Victoria made misleading statements during the investigation when you stated you did not know the person that had made physical contact with steward, Mr Matt Pascoe.
10. As I said a moment ago, the particulars of that charge in the context of the evidence clearly refer to before 22 May and refer to knowing Mr Whiteshoes' name and knowing him generally.
11. There are some reasons why the Tribunal says that and comes to that conclusion because the evidence in front of the stewards comprised more than a mere handshake in passing in the bar area of Cannington Greyhounds that night. In deciding whether the appellant had been misleading in his answers, the stewards had a number of pieces of evidence some of which were more significant than the others. The stewards had video of the appellant and Mr Whiteshoes spending a significant amount of time together, particularly in the bar area, and the stewards totalled that up to be 2.25 hours spent together that night and no-one disputes that. The stewards also had evidence from the bar staff of the appellant's partner well prior to the encounter in the walkway going to the meals' area and organising three wristbands for meals, not two, and that was well before Mr Whiteshoes came in and shook hands with the appellant. The stewards said that piece of evidence, the handshake itself and the manner of interaction, in the particular handshake and all through that evening in which stewards also had the piece of evidence of the total two-and-a-half hours.
12. From all of that evidence, the stewards then reached the conclusions that they did in their reasons for conviction, the stewards gave reasons for determination covering 27 paragraphs and some detail within there, over five pages, and the stewards did not factually mistake any of the evidence in their reasons or incorrectly state what they'd seen on the video footage. They went to the particular words that were the subject of the charge of 22 May and the stewards then to all of those facts applied the standard of proof, the Briginshaw standard of proof and therefore found the appellant guilty.
13. So there were no factual mistakes made in the reasons for decision finding the appellant guilty.
14. The appellant here on the appeal seeks to paint a different picture and say the stewards should have drawn a different inference from all of that evidence. The stewards drew the inference, from what they saw, that the appellant knew Mr Whiteshoes before 22 May, ergo he lied on 22 May, and that was misleading.
15. The appellant says that there were competing inferences from all of the evidence and a comment says, "The handshake in the corridor walkthrough area supports an inference

that it was a chance meeting as outlined by the appellant in his evidence in his answers to the stewards on 22 May and again indeed on 15 June.

16. To the extent the appellant says it was open to the stewards to draw a different inference, were, here on the appeal, don't accept that. It is the case that before coming to any decision, the stewards had to turn their minds to any other reasonable inference on the evidence, namely that it was a chance meeting.
17. We have had the benefit of looking at the video from a number of different angles. The position is that the stewards were required to consider carefully any competing inferences which were logically open on the evidence, in this case, the talking about the handshake. It is not logically open to consider that it was a chance meeting, it's fanciful, is the only way it could possibly be put. It's fanciful because it flies in the face of the evidence of the bar staff of ordering three wristbands prior to Mr Whiteshoes even entering the bar, and three is the number of people that was sitting together, whether or not Mr Whiteshoes actually ate anything. And it flies in the face of the fact of spending more than two-and-a-half hours together.
18. There is no competing inference logically open on all of that material. For those reasons, I do dismiss the appeal against conviction and I say to Mr Monisse do you want to add anything?
19. MR MONISSE: Firstly, I agree with the presiding member's ex tempore reasons no the appeal against conviction that he's just delivered and I have nothing further to add.
20. I go to member, Ms Overmars, and ask whether Ms Overmars wants to add anything.
21. MS OVERMARS: I agree with the presiding member's ex tempore reasons and I also have nothing to add.
22. Therefore, the decision of the Tribunal is that the appeal against conviction be dismissed and that is the end of the reasons for determination on the appeal against conviction.



PATRICK HOGAN, PRESIDING MEMBER



APPEAL NO. 847

RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION

APPELLANT: KYLE GOODWIN

APPLICATION NO: 21/3275

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR A E MONISSE (MEMBER)
MS J OVERMARS (MEMBER)

DATE OF HEARING: 14 SEPTEMBER and 8 NOVEMBER
2021

DATE OF DETERMINATION: 23 DECEMBER 2021

IN THE MATTER OF an appeal by Kyle GOODWIN against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 10 August 2021 imposing a disqualification of 18 months for breach of Rule 86(d) of the Rules of Greyhound Racing

Mr N Van Hattem appeared for the Appellant

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

Introduction

1. The Appellant is a greyhound trainer, licensed in Victoria and normally resident in that State. On 22 May 2021 he was in Western Australia where he presented a greyhound to race at the Cannington track.
2. Following that race there was an incident in the vicinity of the kennel area. The Appellant acted in an intimidatory manner by shouting and swearing in the presence of other people. This ultimately led to a misconduct charge under Rule 86(o) of the Rules of Greyhound Racing ("the Rules"). The Appellant pleaded guilty before the Stewards to that charge. He was fined \$1,000 and did not appeal against that penalty.

3. After that incident at the kennels a more serious incident occurred at the same race meeting where an unknown person assaulted a Steward by taking hold of their arm in a hostile manner. That assault was immediately brought to an end by the Appellant. The Stewards commenced an inquiry on the same day, dealing with both the misconduct and the assault on the Steward. The Appellant was the person who had committed the earlier misconduct, but in relation to the assault on the Steward he was a witness.
4. The Stewards wanted to establish the identity of the offender of the above assault. To that end they questioned the Appellant as to whether he knew who that person was. The basis for that questioning was that the Appellant had been in company with the offender for a considerable period of time in the bar and restaurant area that same day.
5. The Appellant said that he did not know the offender. The Stewards did not believe this to be the case and charged him with making misleading statements, an offence against rule 86(d) of the Rules. The Appellant pleaded not guilty to the charge, but the Stewards found him guilty of it and disqualified him for 18 months.
6. The Appellant appealed against conviction and penalty. On 14 September 2021 this Tribunal dismissed the appeal against conviction. These are the reasons for the appeal against penalty.

The assault on the Steward

7. The Steward who had been assaulted was Mr Pascoe. He explained that incident to the Stewards' inquiry as follows:

Chairman: Just (indistinct) all right. So, Mr Goodwin, there was another matter which I did speak to you briefly outside and that was in relation to Mr Pascoe who is sitting on my left and I do understand that someone made contact with him and this was a gentleman that was with you. So we now, sort of, going on to that matter now and what I'm going to ask to do is Mr Pascoe just to tell the Stewards what occurred.

Mr Pascoe: Yes. After the running of Race 7 I had come back down from the main Stewards Tower for the box draw. It would have been -

Chairman: Yes.

Mr Pascoe: -about 10 past 9. Right about at where the return gate is, on the outside of the track on the footpath there was a gentleman walking away from me and then he suddenly turned round and starting walking towards me. At that point in time I thought he was actually going to walk past me and then he's grabbed my arm and then I've grabbed his arm, telling him I'm the Steward. He's shaken my arm and then Mr Goodwin has seen it from probably four metres away and he's actually walked up and told the guy to let me go. "He's a Steward, he's a Steward. Let him go," and pretty much defused the situation from the then on. That gentleman has pretty much turned around and carried on towards the restaurant area. I didn't see which way he went, whether he went off course or into the restaurant but that's the way he went.

Mr Goodwin's account

8. As stated above, the Stewards wanted to know who the person was who assaulted Steward Pascoe. In their inquiry the following exchange took place:

Chairman: Do you know this person?

Mr Goodwin: No. I've had a beer with him up there. Like he-like I'm not from Perth. I don't know him. He was having a beer with me up there and I sort of said that I had a dog running in the cup and that was basically it and he – we - I had a couple of beers with him and like I-as I said I wouldn't know him if I tripped over him.

Chairman: Why were you having a beer with him?

Mr Goodwin: Well as I said – like I come to the track you know

Chairman: So you don't know this person?

Mr Goodwin: No I don't – well I was up there having a beer. I don't know him and-

Chairman: Well I just want to in respect of –

Mr Goodwin: Mate I've made friends with people –

Chairman: All right

Mr Goodwin: In different tracks around the world

Chairman: Just hang on. So under the Rules of Racing which you are bound by - because obviously you've come to WA and taken part in the activities in WA – under the Rules of Racing, Mr Goodwin it is an offence to mislead the Stewards. SO under – I'll read this rule to you which is 86 section D and it states "Being an owner/trainer" – sorry I'll go from the beginning. "A person including officials shall be guilty of an offence if the person and under section D being an owner trainer attendant or person having official duties in relation to Greyhound Racing makes a false or misleading statement in relation to an investigation – which this is – examination test or inquiry or makes or causes to be made a falsification in a document in connection with Greyhound Racing or the registration of a greyhound. So I just want to draw that rule to your attention because you are bound by the rules Mr Goodwin. So are you telling us you don't know this person?"

Mr Goodwin: No only met him tonight.

Chairman: Ok so you don't know his name? Sorry is that a yes or no

Mr Goodwin: No sorry I don't know his name

Chairman: So you don't know this person

Mr Goodwin: No.

The merits of Mr Goodwin's account

9. The Appellant maintained that position of not knowing who the offender was at the further hearings of the Stewards' inquiry.
10. On 14 September 2021, this Tribunal dismissed the Appellant's appeal against conviction from the Stewards' decision to find him guilty of making misleading statements in the Stewards' inquiry as to not knowing who the person was who assaulted Mr Pascoe. Our reasons for doing so included that it was fanciful for the Appellant to assert that he only had a chance meeting with the offender based on evidence that included the CCTV footage of their interaction that day.

Mr Goodwin's motive

11. Motive is not an element of the offence, but it is relevant to penalty. The Appellant is not able to explain his motive because he maintains that he did not mislead. On the other hand, there is no suggestion that the Appellant had any motive of personal gain to himself, whether financial or otherwise, to mislead. However, the obvious inference from all the interactions between the Appellant and the offender on 22 May 2021 and the Appellant's subsequent misleading statements in the Stewards' inquiry was that the Appellant did not want to inform on or "dob in" who that person was.

Disposition of the appeal

12. The Stewards considered the following Tribunal decisions to determine their penalty for the Appellant's misleading statements:

Trainer M. Julien (Appeal No. 554, 2002). Mr Julien submitted a false statutory declaration concerning arrival dates for greyhounds to enable them to meet eligibility criteria. The Stewards imposed 18 months disqualification. The Tribunal dismissed his appeal against sentence.

Trainer B. Cook (Appeal No. 764, 2012). Mr Cook made a misleading statement to Stewards by stating that he had made a payment to an owner, which in fact he had not. He was disqualified for 12 months. Mr Cook's appeal was dismissed. The misleading evidence in this case was protracted and Mr Cook's motive for the misleading evidence was financial gain.

13. In these two cases the appellants had something to actually gain by making their misleading statements. However, the case which is most analogous to the circumstances of this appeal is that of *Trainer M. Green* (Appeal No. 408, 1998). The appellant in that case told Stewards that he had not seen a Mr Evans walking greyhounds on the morning in question. The Stewards' inquiry in that case concerned whether another party, a Ms Wheeler, had obtained a licence on the basis that Mr Evans was not involved in training her greyhounds. On appeal the appellant's penalty of 6 months disqualification was reduced to 3 months.
14. The appellant in *Green* had nothing to gain by providing his misleading evidence. Nor did he give that evidence so as to distance himself from any personal wrongdoing. Likewise, in this appeal, there was no evidence of this nature against the Appellant.

15. Given this distinguishing feature of there being no benefit to the person who makes the misleading statement, in our opinion the penalty of 18 months disqualification imposed on the Appellant is manifestly excessive in all the circumstances.
16. In proceeding to now determine the appropriate penalty, it is a relevant factor that the Appellant intervened to stop the above assault which resulted in him later making his misleading statements. Had he not intervened then that assault could have escalated into one far worse than the one which the Appellant swiftly ended. Accordingly, in mitigation of his penalty, the Appellant should receive a substantial discount for his intervention.
17. The Appellant's other main mitigation was that he had operated in the greyhound racing industry for about 9 years with no prior offences either in Western Australian or in Victoria. At the time of the Stewards' inquiry he had only one greyhound registered in his name although he would normally train five. The Appellant was also living at home with his parents and receiving Newstart Allowance payments of \$300 per week.

Conclusion

18. For these reasons we would allow the appeal against penalty and in lieu of the 18 months disqualification impose 9 months disqualification.


_____ PATRICK HOGAN, PRESIDING MEMBER


_____ ANDREW MONISSE, MEMBER


_____ JOHANNA OVERMARS, MEMBER

