APPLICATION 284

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **JOHN SCERRI**

APPLICATION NO: **A30/08/284**

PANEL: **MS P HOGAN (PRESIDING MEMBER)**

DATE OF HEARING: **5 DECEMBER 1995**

IN THE MATTER OF an application for leave to appeal by Mr J Scerri under Section 13(1) of the Racing Penalties (Appeals) Act against the determination made by Western Australian Greyhound Racing Association Stewards on 5 July 1995 imposing nine months disqualification under Rule 234(7).

Mr A Kinnish was granted leave to represent the appellant.

Mr C Martins represented the WA Greyhound Racing Association Stewards.

The primary question is whether the Tribunal has jurisdiction to hear an appeal from the Greyhound Racing Control Board. Rule 242(8) of the Rules Governing Greyhound Racing in Western Australia stipulates that the determination of the Board is final and shall be given effect to by all persons and Clubs, but then it goes on to outline circumstances in which the hearing may be re-opened.

That Rule has not been amended since the Rules Governing Greyhound Racing come into effect on the 1 August 1973. On the 15 April 1991, the Racing Penalties (Appeals) Act was proclaimed. The Act constitutes this Tribunal and confirms jurisdiction upon it with respect to appeals against penalties imposed in disciplinary proceedings arising from or in relation to the conduct of greyhound racing, horse racing and harness racing. Section 13(1) of the Act enables a person aggrieved by certain determinations made by an appropriate controlling authority or a racing club or of any committee or stewards, to appeal to this Tribunal within 14 days after the making of the determination by which he or she is so aggrieved.

Section 12 of the Act excludes from the Tribunal's jurisdiction the hearing of certain appeals where the prospective appellant has the right to appeal to the relevant controlling authority with respect to the relevant determination. Appeals which are not to be heard by the Tribunal are restricted to (a) any protest or objection against a placed runner arising out of any incident occurring during the running of a race, (b) the eligibility of a runner to take part in, or the conditions under which a runner takes part in, any race; or (c) any question or dispute as to a bet. They are the only matters that are excluded from the Tribunal's jurisdiction (so long as the appellant has the right to appeal to an appropriate controlling authority).

There is no provision in the Act excluding a right of appeal with respect to the imposition of a disqualification in a case such as Mr Scerri's.

In the Tribunal's opinion, the Act overrides the pre-existing Rule 242(8) which states that the Board's determination is final. It is the Tribunal's opinion that the Act does allow an appeal to this Tribunal from the Board or the WA Greyhound Racing Association Committee which, I am informed by Mr Martins, is one and the same thing.

The second issue to be determined is that of delay. Section 13 of the Act requires the lodging of an appeal within 14 days of the relevant determination. Mr Kinnish has referred to Mr Scerri's letter addressed to the Tribunal and dated 14 November 1995. That letter clearly outlines what has happened since the initial decision was made on the 5 July 1995. There was that initial decision and then the decision of the WAGRA Committee on the 17 July 1995. It then came to Mr Scerri's attention that there had been, at some point, an amendment to the swab card and as a result he entered into correspondence with the Committee. He then requested a transcript of his appeal which was eventually supplied on 12 October 1995 and in which he noticed an error in that one of the members referred to an incorrect Rule.

At the same time, back in September 1995, Mr Scerri entered into correspondence with the Committee where he attempted to put fresh evidence before the Committee with respect to the parent drug found in the dog. That drug apparently metabolises at, to use Mr Scerri's words, *"a fairly quick rate"*. On the 6 November 1995, Mr Scerri received notification that his appeal would not be considered further by the Committee and he was again referred to this Tribunal. I say again because he was also referred to his right to appeal to this Tribunal at the end of the initial inquiry.

Mr Kinnish submitted that Mr Scerri believed that he could not appeal to this Tribunal until the matter before the WAGRA Committee had been finally disposed of.

In all the circumstances, the Tribunal is of the opinion that the reasons for the delay are understandable and that it would be unjust to refuse to grant leave to appeal.

However, there is one further question to be considered and that is whether sufficient material has been put before the Tribunal to establish that there are arguable grounds of appeal.

There is, in this Tribunal's opinion, no merit in the first ground of appeal about the amendment to the swab card. However, Mr Scerri may have an arguable case with respect to the rate of the metabolisation of the drug and the associated question of whether the dog was under his control at the time of the administration of the drug. Those questions simply cannot be determined at a hearing of this nature and in this Tribunal's opinion there may be an arguable case that should be heard by a full Tribunal.

The Tribunal advises Mr Scerri to liaise with the WAGRA Committee with respect to the Committee's attitude as to his wish to produce new evidence. Mr Scerri should ascertain whether the Committee will object to that. Also, should this Tribunal permit fresh evidence to be adduced, serious thought needs to be given to the manner in which it is to be presented.

Leave to appeal is granted.

PAMELA HOGAN PRESIDING MEMBER
20/12/95