

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **JOHN CARLO POLCZYNSKI**

APPLICATION NO: **A30/08/301**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
MR F ROBINS (MEMBER)
MR T MULLIGAN (MEMBER)

DATE OF HEARING: **29 APRIL 1996**

IN THE MATTER OF an appeal by Mr J Polczynski against the determinations made by Western Australian Greyhound Racing Association Stewards on 26 March 1996 imposing a three month disqualification under Greyhound Racing Rule 234(7) and disqualifying the greyhound **JUMP FOR ABBY** under Greyhound Racing Rule 235(1)(c).

Mr C Harrison was granted leave to represent Mr Polczynski.

Mr C Martins represented the WA Greyhound Racing Association Stewards.

This is an appeal by Mr John Carlo Polczynski against the decision of the Western Australian Greyhound Racing Association Stewards, following an inquiry which was held on the 27 February 1996, which continued on the 26 March 1996 arising out of the detection of a metabolite in a urine sample taken from the greyhound **JUMP FOR ABBY** after the running of Race 6 at Cannington Greyhound Racetrack on the 27 January 1996.

Mr Polczynski was charged and convicted of a breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia. The specifics of the charge are as follows:

*"...that you as the trainer had control of the greyhound **JUMP FOR ABBY** when it was brought to compete in Race 6 run over 530 metres at Cannington Greyhounds on 27 January, 1996, which was found by the Stewards upon analysis to contain the metabolite Gamma-hydroxyphenylbutazone which indicates that the drug Phenylbutazone has been administered to it for an improper purpose...."*

As a result Mr Polczynski was disqualified for three months under Rule 234(7) and the greyhound was disqualified from winning the race under Rule 235(1)(c).

Rule 234 of the Rules Governing Greyhound Racing in Western Australia states:

“A person may be found to be guilty of the breach of any provision of these Rules not specified in this rule, but without prejudice to the generality of that liability a person who -

...

(7) *had at any relevant time the charge or control of a greyhound brought to compete in a race or a qualifying trial which is found by the Stewards to have had any apparatus used upon it, or any drug, stimulant or deleterious substance administered to it, for any improper purpose*

....

commits a breach of these Rules.”

Rule 235(1) states:

“A greyhound may be excluded from participation in greyhound racing or may be disqualified if-

...

(c) for an improper purpose any apparatus, or any drug, stimulant or deleterious substance has been used on or administered to it;...”

The appeal notice raises three separate grounds of appeal:

1. that the appellant was not guilty of any breach of Rule 234(7);
2. that the greyhound should not have been disqualified from winning the race; and
3. the severity of the penalty.

Mr Martins in his submissions on behalf of the Stewards analysed the different components of Rule 234(7) and submitted that on the evidence all of the elements were satisfied. The Tribunal is satisfied that there was nothing untoward in regard to the swabbing procedures which were adopted. The thrust of the argument on behalf of Mr Polczynski is that the metabolite, rather than the parent drug, was detected in the swab. The relevant Rule prohibits the bringing of a greyhound to compete when it has had a drug, stimulant or deleterious substance administered to it. We are satisfied that the detection of the metabolite was proof of the administration of the drug Phenylbutazone.

Another argument which was pressed upon us was that there was no improper purpose established. In the case of Williams v Western Australian Greyhound Racing Association, the decision of the Full Court of the Supreme Court of Western Australia, Mr Justice Wallace at page 11 dealing with the same Rule concludes that:

“the relevant rule speaks in terms of strict liability. ... The Stewards were certainly not obliged to ascertain as a separate fact the purpose of the person who administered the drug, or whether it may have been administered for any purpose other than improper purpose.”

Applying that decision, the Tribunal concludes that this appeal fails as to ground number one. Accordingly, the conviction is confirmed.

As to ground two regarding the disqualification of the greyhound, the Tribunal is satisfied that the Stewards did properly exercise their powers to disqualify in all of the circumstances of this matter and that ground is also dismissed.

In regard to the penalty, having considered the submissions, we are not satisfied that the Stewards failed to take into account any relevant matter or improperly took into account any consideration.

Mr Polczynski's record and long involvement in the industry were considered by the Stewards. Bearing in mind the other penalties which have been imposed for this type of offence, it has not been shown that the three months disqualification was outside the range and it cannot be said to be excessive in all of the circumstances. The penalty is therefore confirmed.

The appeal is dismissed and the fee paid on lodgement is forfeited.

Dan Mossenson

DAN MOSSONSON, CHAIRPERSON

24/5/96

