

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: FRANK ARTHUR MOYLE

APPLICATION NO: A30/08/304

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR F ROBINS (MEMBER)
MR J SYME (MEMBER)

DATE OF HEARING: 2 MAY 1996

IN THE MATTER OF an appeal by Mr F A Moyle against the determination made by Western Australian Greyhound Racing Association Stewards on 3 April 1996 imposing a three month disqualification under Greyhound Racing Rule 234(7) and disqualifying the greyhound RICH GAIRN under Greyhound Racing Rule 235(1)(c).

Mr C Harrison was granted leave to represent the appellant.

Mr C Martins represented the Western Australian Greyhound Racing Association Stewards.

At the Stewards' inquiry held on the 6 March 1996 the appellant was charged with a breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia in that:

".... you as a trainer had control of the greyhound RICH GAIRN when it was bought (sic) to compete in Race 7 run over 530 metres at Cannington Greyhound on 3 February, 1996 which was found by the Stewards upon analysis to contain the metabolite Gamma-hydroxyphenylbutazone, which indicates the drug Phenylbutazone has been administered to it for an improper purpose."

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 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."

At the continuation hearing held on the 3 April 1996 Mr Moyle was convicted and disqualified for three months.

In the appeal notice three grounds of appeal were raised. Two of those have been withdrawn leaving the one matter for determination by this Tribunal as to the severity of the penalty.

In the course of the inquiry before the Stewards, after Mr Moyle was convicted of the offence, Mr Moyle did address in regard to his own personal circumstances and financial position. He did make it known to the Stewards that he would not be able to pay his mortgage in the event of a disqualification and that possibly, he would lose his property.

We have had the benefit of some additional information regarding the financial position of Mr Moyle and his family in the form of an unsigned letter from Mrs Moyle, which is dated the 30 April 1996 and addressed to the Tribunal, as well as the evidence on oath by Mr Moyle.

Based upon the submissions which have been made to us, we are satisfied that the lower range of penalty which is appropriate for this type of offence is a disqualification for a period of two months. Such a disqualification was imposed in the case of Mr K Phillips who had pleaded guilty. We are led to believe that but for that plea, Mr Phillips may well have had a penalty of three months disqualification imposed on him as occurred in the case of Mr Polczynski. The Tribunal earlier this week did confirm the appropriateness of a three month disqualification in relation to Mr Polczynski.

The distinguishing feature of Mr Moyle's appeal is the factor of the adverse financial impact on his family of this disqualification. We are satisfied that in the light of the additional material that has been placed before us that the three month penalty which was imposed is excessive in all of the circumstances. The appropriate penalty is one of a disqualification for a period of two months.

Accordingly the appeal as to penalty is upheld. We substitute a penalty of two months disqualification.

In the light of all of the circumstances and the fact that the appeal has succeeded, the lodgement fee is refunded.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

24/5/96

