

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: DENNIS P BARKER

APPLICATION NO: A30/08/333

PANEL: MR J PRIOR (PRESIDING MEMBER)
MR J SYME (MEMBER)
MR T MULLIGAN (MEMBER)

DATE OF HEARING: 18 DECEMBER 1996

IN THE MATTER OF an appeal by Mr D P Barker against the determination made by Western Australian Greyhound Racing Association Stewards on 13 November 1996 imposing two months disqualification under Rule 234(16)(iv) of the Rules Governing Greyhound Racing in Western Australia.

Mr D P Barker represented himself.

Mr M Kemp represented the Western Australian Greyhound Racing Association Stewards.

This is an appeal against penalty for a breach of Rule 234(16)(iv) and this is the unanimous decision of the Tribunal.

The relevant rule reads as follows:

"234 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-

.....

(16) uses improper or insulting words or behaviour towards-

.....

(iv) any other person having official duties in relation to greyhound racing....."

The charge against the appellant by the Stewards was phrased as follows:

"The specifics of the Charge are that at Cannington Greyhounds on the 15 October, 1996 during the rugging of your greyhound ARRIVED whilst Kennel Attendant, Mrs R Fowler, was performing her official duties you used words towards her which the Stewards consider to be improper and insulting."

The appellant pleaded guilty to this charge.

We accept that, in appropriate circumstances, a penalty of disqualification is warranted for behaviour of this nature. We accept that officials carrying out their duties are entitled to be protected from abuse and interference. In this case, we do not consider the maximum penalty of a fine of one hundred dollars to be an adequate penalty.

It is difficult to compare penalties imposed on offenders for similar offences when we are not aware of the particular circumstances of each case. Such penalties have ranged from fines to twelve months disqualification. The majority of these penalties were not subject to scrutiny by this Tribunal.

For an appeal against penalty to succeed, the Tribunal would need to be persuaded that the penalty is outside the range of penalties to be imposed so as to be manifestly excessive, or the Stewards failed to give any weight or sufficient weight to relevant mitigating factors. We are satisfied although in this case, that the Stewards failed to give sufficient weight to the fact that the appellant pleaded guilty or his limited financial circumstances.

In those circumstances, we consider that the Stewards have erred and we substitute a penalty of one months disqualification.

The order which was made on 26 November 1996 directing the suspension of the operation of the penalty automatically ceases to operate.

The fee paid on lodgement of the appeal will be refunded.

John Prior



JOHN PRIOR, PRESIDING MEMBER

31 / 12 / 96