

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAUL ARTHUR GRAY

APPLICATION NO: A30/08/355

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J HEALY (MEMBER)
MR R NASH (MEMBER)

DATE OF HEARING: 23 MAY 1997

DATE OF DETERMINATION: 23 MAY 1997

IN THE MATTER OF an appeal by Mr P A Gray against the determination made by Western Australian Greyhound Racing Association Stewards on 1 April 1997 imposing a nine month disqualification under Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr C Harrison was granted leave to represent the appellant.

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

This is the unanimous decision of the Tribunal.

On the 1 April 1997, the Stewards of the Western Australian Greyhound Racing Association conducted an inquiry into a report received from the Chemistry Centre of Western Australia which confirmed the presence of Heptaminol in a urine sample taken from the greyhound *DOREEN'S DASHER* after it competed in Race 2 at Mandurah Greyhounds on 4 March 1997.

Following a fairly lengthy inquiry the Stewards laid a charge against Mr Gray under Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia. That Rule 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."

The particulars of the charge are as follows:

"...that you Mr Gray as the Trainer had control of the greyhound DOREEN'S DASHER when it was brought to compete in Race 2 run over 410 metres at Mandurah Greyhounds on 4 March, 1997 and upon analysis it was found by the Stewards to contain the stimulant Heptaminol administered to it for an improper purpose."

Mr Gray eventually pleaded not guilty to the charge. The Stewards ultimately concluded as follows:

"...we have taken all the relevant evidence into account, we are not influenced by the drug policies which are being adopted in other States, in fact, WAGRA Kennel Notes dated 27 February, 1997 state that ...

"The Committee of WAGRA takes this opportunity to remind Owners and Trainers of their obligations under the Rules of Racing in Western Australia which requires greyhounds presented for racing to be drug free.

There have been a number of releases issued recently by various State authorities relating to drugs. The advice contained in those documents is specific to those licensees under their jurisdiction. The Committee has instructed me to advise Owners and Trainers that they need to be careful in the use of therapeutics, all antibiotics and some herbal medicines and tonics in a racing greyhound - if in doubt you should contact your veterinarian. The Committee reminds industry participants that the onus is on the person who is in charge or control of the greyhound presented for a race or qualifying trial to ensure that is drug free."

Furthermore, the Rules governing greyhound racing in Western Australia which you are bound by do not indicate in any way that Heptaminol is permissible in a racing greyhound. The evidence given by Dr Thomas shows that Heptaminol is a cardiac stimulant and vasodilator, that the administration in this case was not for a proper purpose. We therefore find you guilty as charged."

After receiving some submissions in relation to the question of the penalty the Stewards stated that:

"... we have taken into consideration your record whilst registered with the WAGRA and the impact that a disqualification may have upon you, however, the Stewards deem the presence of a stimulant in a racing greyhound to be a serious offence and one which brings the greyhound industry into disrepute.

We are of the view that in this particular case the appropriate penalty is a disqualification of nine (9) months."

Mr Gray appeals against the determinations both as to the conviction and the penalty. The substituted grounds of appeal are:

"That the Stewards erred in their interpretation of the Rules of Greyhound Racing in relation to the offence. Severity and consequences of the penalty."

The Tribunal is satisfied that there is no dispute as to each of the elements constituting the offence under Rule 234(7). Mr Harrison on behalf of Mr Gray principally relied on the following matters in support of his argument that the appeal should succeed as to conviction. Firstly, that the Greyhound Racing Control Board of New South Wales is an approved registration authority for the purposes of the Western Australian Rules. Secondly, that in that Board's Special Notice 2 of December 1996, it

specifies that Heptaminol has been moved from a Category B to a Category C drug, that the detection of Category C drugs will not normally result in an inquiry and that Category C drugs are not prohibited under the New South Wales drug policy. Finally, that the application for registration form used in Western Australia requires an applicant to acknowledge that any registration issued is subject to a condition:

“(2) That I shall be bound at all times by the set rules and the rules of the club registered by the Association and the rules of any body declared by the Association to be an approved registration authority.”

The Tribunal is satisfied that the drug policy of the New South Wales Control Board has no status in relation to this particular matter. It is clear that the policies of the various authorities around Australia controlling the conduct of the sport of greyhound racing do vary from state to state. It is also clear that the rules in each state are different. Western Australia has its own set of rules which govern and relate to the control and regulation of the industry in this state. The Stewards in this state in dealing with Mr Gray's matter are not bound by the policy imposed by the Control Board of New South Wales.

The Tribunal has not been persuaded by any arguments which were raised on behalf of Mr Gray in relation to the conviction and is satisfied that all elements of the offence were proven. The Stewards were entitled to convict in all of the circumstances. Accordingly, we dismiss the appeal as to conviction and confirm that determination by the Stewards.

As to the penalty, the Tribunal has had the benefit of the material contained in the transcript as well as some supplementary information which was presented to us which was not presented to the Stewards in the course of their inquiry into the matter. The Tribunal has had the opportunity of carefully considering the various penalties imposed in the other jurisdictions as well as in this state in relation to the various offences described in the sheets produced by Mr Martins. The Kaltsis decision has been taken into account as well as the penalties referred to in that decision.

It is appreciated that it is a difficult task to draw any firm conclusions as to an appropriate range of penalties for this particular substance. It appears that there has been only one other offence of this nature in this state involving Heptaminol. In that case another drug was also involved. Despite the numbers of Heptaminol offences in the other states the Tribunal does not have the benefit of detailed information to be able to draw any comparisons or contrasts with the facts and circumstances that have been presented in considerable detail in relation to Mr Gray's offence.

The Tribunal is mindful of the need to support the drug free racing policy and to ensure that all of those participating in the sport do have that policy in mind in the manner in which they conduct their affairs. The detection of this particular drug in this greyhound is a serious matter which warrants a severe penalty which will help preserve and reinforce the drug free racing policy.

The Tribunal has taken into account all of the relevant circumstances which include:

- the circumstances of the administration of the drug;
- the evidence of Dr Thomas as to the effect of the substance on the greyhound's performance;
- the financial circumstances of Mr Gray and the impact on him of being disqualified;
- the nature of the drug;
- the evidence as to the penalties imposed for other similar offences;
- the state of health of Mr Gray;
- Mr Gray's unblemished record; and

- his long history in the industry.

The Tribunal concludes that it should uphold the submissions made by Mr Harrison that the penalty imposed in all of the circumstances of this particular situation is at the top end of the range for a first offender for this drug and in view of Mr Gray's particular circumstances is too severe.

The appropriate penalty for Mr Gray should be a disqualification for a period of four months.

Accordingly, the appeal is upheld as to penalty and a four month disqualification is substituted for the penalty which was imposed by the Stewards.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

