

DETERMINATION AND REASONS FOR DETERMINATION

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: MICHAEL ROBERT GREEN

APPLICATION NO: A 30/08/408

PANEL: MR D MOSSENSON (CHAIRPERSON)
MS K FARLEY (MEMBER)
MR J HEALY (MEMBER)

DATE OF HEARING: 8 APRIL 1998

DATE OF DETERMINATION: 8 APRIL 1998

IN THE MATTER of an appeal by Michael Robert Green against the determination of the Western Australian Greyhounds Racing Association Stewards on 25 February 1998 imposing a disqualification for a period of 6 months for breach of Rule 234 of the Rules Governing Greyhound Racing in Western Australia.

Mr C Harrison was granted leave to appear for Mr Green.

Mr D Borovica appeared on behalf of the Stewards.

After conducting an extensive inquiry on the 14 January 1998 the Stewards of the Western Australian Greyhound Racing Associates decided to lay the charge against Mr Green '*...that on the morning of the 17 December 1997 at Lot 105 Nicolas Drive, Casuarina you made a deliberately misleading statement to Chief Steward, Mr C Martins, by answering 'No' to his question of whether you had seen Mr Evans walking greyhounds that morning*' in breach of Rule

234(24) of the Rules Governing Greyhound Racing in Western Australia. That rule specifies that:

'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 -

(24) *being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or deliberately misleading statement in relation to any investigation, examination test or inquiry, or makes or causes to be made any falsification in any document in connection with greyhound racing or the registration of a greyhound;*

commits a breach of these Rules.'

The Stewards took further evidence and then after deliberating advised Mr Green:

'The Stewards during deliberation have considered your submissions questioning the fairness of this Inquiry given that Mr Martins is the Chief Steward and your claims that Mr Martins has had a vendetta against you.

In support of this you have submitted a letter from a previous Stipendiary Steward. Whilst Mr Dawud is entitled to his opinions, there has been nothing presented to validate Mr Dawud's claims. Furthermore, Mr Dawud's letter was not written specifically for you or this Inquiry and as such it remains out of context with the issue at hand. There has been nothing presented to suggest that you've been treated unfairly during this Inquiry, or the course of this Inquiry, which is something you have also acknowledged.

The Stewards have considered all the evidence presented by you in defence of the charge and quite frankly are astonished that you would expect us to accept the variety of explanations you have offered during the course of this Inquiry as to why you answered 'No' to the question of whether you had seen Mr Evans walking greyhounds on the morning in question.

In support of your plea of not guilty you have today argued that according to you the term 'greyhound' only applies to those dogs which contest in races and does not apply to pups, brood bitches and retired dogs, which is why you answered 'No'. The Rules Governing Greyhound Racing in Western Australia and this panel does not share this definition of a greyhound offered by you. It is clear that Mr Martins quite specifically mentioned greyhounds and did not mention anything about racing

greyhounds only, a fact which you have acknowledged on Page 123 ... (In any case) ... of the transcript. In any case, you have acknowledged that the pups concerned are approximately 18 months old, so there can be no confusion that they were small puppies when in fact they were greyhounds of adult size.

At the initial inquiry you have also explained that the reason you answered "No" was that Mr Martins' question only referred to whether you had seen Mr Evans handling greyhounds, rather than 'a' greyhound. We do not accept that you could interpret Mr Martins' question in any other way other than it being a request for you to tell him whether you had seen Mr Evans handling any greyhounds regardless whether it was one or more. When questioned on this matter through the course of the Inquiry, a contradiction emerged when you freely admitted that you eventually answered Mr Evans by stating ... yes you only walked ARGY BARGY and some other pups. You attempted to explain this contradiction on Page 123 of the transcript, however, this explanation is less than convincing. It also strikes us as strange that you have not mentioned this initial explanation in defence of the charge today.

In would appear to us that the various explanations offered by you are more convenient rather than truthful. They have failed to convince us of anything other than that you were deliberately misleading Mr Martins when you answered 'No' to his question. We therefore have absolutely no doubt that you made a deliberately misleading statement to Mr Martins when you answered 'No' to his question, as appears in the charge and we have therefore found you guilty as charged.'

After further evidence was presented on the question of the appropriate penalty to be imposed Mr Green was advised of the outcome of the Stewards' determination in these terms:

'The Stewards have taken into account your financial position, the number of greyhounds you are involved with and the fact that although currently you have only one greyhound eligible for racing, we have also noted that your plans include an expansion in this regard. We have also taken into account that although your overall record with WAGRA is not one to be proud of, you have successfully returned from the Warned Off List and have served a long period of probation without blemish and have held an unconditional licence for approximately 12 months.

The offence which you have been found guilty of is a serious one. The investigation which Mr Martins was conducting was important as Ms Wheeler had obtained her licence on the basis that Mr Evans was not involved in the training of her greyhounds. It is vital to the confidence of the greyhound

racing industry that the Stewards ensure that disqualified persons are no longer involved in the training of greyhounds. Mr Martins therefore had an obligation to ensure that this was the case.

The policing of conditional licences such as this is difficult, a fact that is made apparent by the method which Mr Martins was forced to adopt to conduct this investigation. It is clear that for these investigations to be effective the Stewards rely heavily on the element of surprise and the honesty of those persons involved. Your attempt to mislead Mr Martins has seriously compromised the conduct of his investigation. As a witness to the incidents on the morning in question, your evidence was vital in determining what had transpired. By providing Mr Martins with misleading information both Mr Martins and this panel have been met with difficulties in determining the factual events that morning. We therefore cannot view this as anything other than a serious offence.

The range of penalties for an offence under this Rule since 1990 has been from three months to six months. We therefore feel that the appropriate penalty in consideration of all the circumstances is a disqualification for a period of six months.'

Mr Green appeals both on the grounds that he was not guilty 'of the specifics or rule' and also against the severity of the penalty.

The Tribunal after hearing submissions on behalf of both parties was not persuaded that the Stewards were in error in convicting Mr Green. The evidence clearly demonstrated that the Stewards were entitled to conclude that Mr Green had committed the offence. The conviction is therefore confirmed.

In support of the penalty which was imposed the Tribunal was informed of the three matters which were taken into account in setting an appropriate penalty:

- Campbell, Appeal 234 on whom a 6 month disqualification was imposed for misleading evidence presented at an inquiry,
- G Graham who pleaded not guilty to the charge of making a false statement associated with a transfer, on whom a 3 month disqualification was imposed, and
- P Mills who pleaded guilty for having forged a signature on a nomination form on whom a 4 month disqualification was imposed.

Unlike Mr Green who does not have a good record these 3 cases each related to first offenders. The Stewards did take into account Mr Green's record but properly acknowledged that he had been rehabilitated and that this offence was in a completely different area from his previous offences.

It is clear from what Mr Green was told by the Stewards that they were influenced by the fact that they considered that the attempt to mislead Mr Martins *'has seriously compromised the conduct of his investigation'*. But Mr Green changed his attitude within minutes of stating 'No' and clarified the position for Mr Martins. In those circumstances the Tribunal is of the opinion that any attempt to mislead which may have had the potential to compromise the conduct of the investigation was quickly rectified. The Stewards have given undue weight to a factor which is not a valid consideration. The Stewards failed to take into account the fact that Mr Green quickly recanted.

The Tribunal is also satisfied that insufficient weight was given to the circumstances in which this particular offence was committed. The argument put forward on behalf of Mr Green is credible, namely that he was confused by his understanding of the meaning of the term *'greyhound'*. These various factors all reveal that Mr Green had nothing personal to gain and appears to have been influenced by his loyalties. Mr Green's offence is not as serious as was Mr Campbell's offence. The Tribunal considers that the imposition of the upper range of penalty on Mr Green is inappropriate.

In all of those circumstances the Tribunal is satisfied that the appropriate penalty is a 3 month disqualification. Accordingly the penalty imposed by the Stewards is quashed and a 3 month disqualification is substituted. The lodgment fee is forfeited.



DAN MOSSENSON, CHAIRPERSON

