

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR
(MEMBER)

APPELLANT: PHILIP EVANS

APPLICATION NO: A30/08/421

DATE OF HEARING 11 MARCH 1999

DATE OF DETERMINATION: 21 JUNE 1999

IN THE MATTER OF an appeal by Mr P Evans against the determinations made by the Stewards of the Western Australian Greyhound Racing Association on 5 May 1998 warning off Mr Evans concurrently for six months and for two years under Rule 234 (16)(i) and Rule 234(11) respectively of the Rules Governing Greyhound Racing in Western Australian.

The appellant was not represented.

Mr D Borovica appeared for the West Australian Greyhound Racing Authority Stewards.

Background

Mr Evans was disqualified for a period of two years on 7 March 1997 for breach of Rule 234(23) of the Rules Governing Greyhound Racing in Western Australia. On 12 May 1997 this Tribunal dismissed the appeal as to conviction and allowed the appeal as to penalty. The penalty was varied to a period of disqualification for 12 months.

In March 1997 Ms Carolyn Wheeler, who resided with Mr Evans, made application for a licence as an Owner/Trainer. By letter dated 3 April 1997 the Western Australian Greyhound Racing Association advised Ms Wheeler that the licence had been granted subject to certain conditions. One of those conditions was that:

"... you not permit any person residing with you, namely Mr Philip Evans, whilst disqualified, to have any connection or association with greyhounds registered to your care and control and that any breach or non-observance of this condition will be deemed to be a breach of the Rules. This will result in appropriate action being taken."

On 17 December 1997, the Chairman of Stewards, Mr C Martins in the company of two officers from the CIB Racing Squad carried out surveillance at Lot 105 Nicolas Drive, Casuarina, the residence of Ms Wheeler and Mr Evans. Mr Martins observed Mr Evans leading and exercising various greyhounds.

As a result of a report from the Chairman of Stewards of the incidents that occurred on that day, the Stewards commenced an inquiry on 14 January 1997. The Stewards heard evidence from Mr Martins, Mr Evans, Ms Wheeler, Mr M Green, a licensed Owner/Trainer who was at the property at the time of the surveillance, and the two CIB Racing Squad officers. By letter dated 18 February 1997 the Stewards advised Mr Evans that the following charges had been laid. Firstly, for breach of Rule 234(16)(i) of the Rules Governing Greyhound Racing in Western Australia:

"... that on the morning of 17 December 1997 at Lot 105 Nicolas Drive, Casuarina you called Chief Stewards, Mr C Martins, a 'low life' whilst he was conducting an official investigation. Words which in the opinion of the Stewards are improper and insulting."

secondly, for breach of Rule 234(11) of the Rules:

"... that on the morning of 17 December 1997 at Lot 105 Nicolas Drive, Casuarina whilst Chief Steward, Mr C Martins was conducting an official investigation you deliberately interfered, on two occasions, with the conduct of his investigation by firstly, refusing his request to allow him to speak to Owner/Trainer, Ms C J Wheeler, before you did; and secondly, by calling out an answer for Mr M Green before he responded to the questions being put to him by Mr Martins relating to whether you had been walking greyhounds, when you were aware that Mr Martins wished to keep Mr M Green and yourself separated."

Rule 234(16)(i) of the Rules 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 –
uses improper or insulting words or behaviour towards ... a Steward"*

Sub-rule (11) of Rule 234 states:

"prevents, or attempts to prevent, or interferes with or attempts to interfere with the carrying out of any identification, examination, test, autopsy, analysis, inquiry or investigation under these Rules"

The inquiry continued on 25 February 1998. At the resumption of the inquiry on 5 May 1998 Mr Evans pleaded not guilty to both charges. After hearing further submissions from the appellant, the Stewards found both charges made out. The Stewards announced their findings in the following terms:

"Mr Evans, with ... regard to the charge under Rule 234(16)(i) the Stewards have had ample opportunity to consider all the evidence and find as follows:

Exhibit 3 of the Inquiry clearly indicated the reason Mr Martins was conducting an Inquiry on the morning in question. Quite apart from his usual obligations under the Rules Governing Greyhound Racing in Western Australia he was also under an obligation as the Chief Steward to ensure that the WAGRA Committee conditions on Ms Wheeler's licence were being adhered to. You do no (sic) dispute the fact (refer Page 90) that you called Mr Martins a 'low life' during the course of his investigation. On that same page it is clear that Mr Martins felt that this was abusive and says he could see no reason why you would have a go at him. Clearly he felt that this term was not used for any other reason other than to insult him. You have, however, attempted to justify the use of this term by suggesting Mr Martins lied to you about why he was there. Even in the circumstances were (sic) officials have erred in some manner, it is our view that this does not give any person the

right or a justifiable reason to use improper and/or insulting language towards them. That is not to say that we find that Mr Martins or Detective Dabelstein lied to you. Whilst you may have been stressed on the morning in question we do not accept that you had a justifiable reason to call Mr Martins a 'low life'. Stewards who are conducting investigations of this nature should not be expected to tolerate improper and insulting language such as this. We cannot see how the term 'low life' can be seen as anything other than improper and insulting. We therefore find you guilty as charged.

With regard to the second charge under Rule 234(11) the Stewards have considered all the evidence presented by you in defence of the charge and find as follows:

On the morning of 17 December 1997 at Lot 105 Nicolas Drive, Casuarina a conversation was held between Mr Martins, Detective Dabelstein and yourself in the doorway of your home. During the conversation Mr Martins made you aware that his intention was to speak to the registered trainer at the property, namely Ms Wheeler prior to you speaking with her. Given the nature of the investigation, it would have been unusual to do anything else as Detective Dabelstein pointed out on Page 167. Although you claim to us that Mr Martins did not make this request known to you, the evidence given by Detective Dabelstein corroborates the evidence given by Mr Martins in this regard. Also, on Page 84 of the transcript you stated to us that you were not aware of the fact that Mr Martins '... wanted to grab Carolyn quick'. We cannot see how you would have come to that ... come to the conclusion that Mr Martins '... wanted to grab Carolyn quick' if he had not made mention of his intention to speak to her before you did. Furthermore, on Page 183 of the transcript you admit that it was obvious that Mr Martins was trying to keep you apart. We therefore prefer the evidence of Mr Martins and Mr Dabelstein to the evidence given by you in this regard. By your own admission (Page 167 and 168) you closed the door to your house and had a private conversation with your wife before Mr Martins was able to speak to her. Although you claim that this conversation was simply to reassure your wife because you had been spied upon, video taped and had your privacy invaded, we do not accept that this was a valid reason to close the door. Given that Mr Martins was some 100 metres away from your house he would have only been able to observe what anybody else passing in the street would have. Once arriving at your property in the company of a Detective Sergeant we cannot accept that Mr Martins would be doing anything other than conducting his investigation in a proper manner. Furthermore, Mr Martins is a person who is known to you and he was not there to spy on your wife or child or for any other reason other than to conduct an investigation. It was clearly crucial to his investigation that he spoke to Ms Wheeler before you did. It also strikes us as significant that the evidence we have heard, which includes your own submission does not indicate that at any stage on the day in question did you explain to Mr Martins or Detective Sergeant Dabelstein that the reason why you closed the door was for the reasons you are now submitting to us. Mr Martins, Detective Sergeant Dabelstein and this panel will never know what was said behind the closed door. What is apparent is that by refusing to allow Mr Martins to speak with Ms Wheeler prior to you speaking to her, by deliberately closing the door and speaking privately with her, every element of surprise was gone and you both had ample opportunity to agree on a story. If that was to be the case. We are now left in the position that we will never know what Ms Wheeler may have said if Mr Martins had spoken to her first, which is precisely the reason he made the request that he did. Given that Ms Wheeler is a registered trainer bound by the Rules and you are a formerly registered person bound by the Rules, this panel would expect Mr Martins' investigation would have been done without interference. This is clearly not the case in this instance. Furthermore, the evidence clearly shows that you were aware that Mr Martins wanted to keep Mr Green and yourself apart whilst he interviewed Mr Green (Pages 88 and 183). It is also clear that, from the evidence that Mr Green was not responding in any way to Martins' questions until such time as you ... yelled to him ... 'They're trying to set you up, they've got me on video walking ARGY

BARGY and a pup.' Mr Green then responded, responded in much the same fashion. As in the previous instance, we are now left in the position that we will never know what Mr Green may have said had you not yelled out to him. You have attempted to justify this interference by claiming you have a belief or right that on your own property you can go anywhere you want ... you want to and that no-one can direct you to go here or there. This, however, fails to recognise that as a person bound by the Rules who was formerly licensed, who was walking greyhounds, one of which we know to be registered, you must comply with the directions of the Stewards. You are clearly a person who is involved in greyhound racing and as such you must be bound by the Rules. The Stewards therefore feel that the evidence clearly shows that on two occasions whilst Mr Martins was conducting an ... an official investigation you interfered with the conduct of his investigation and we therefore find you guilty as charged."

The Stewards then heard submissions from Mr Evans as to penalty. Following deliberation, the Stewards announced the penalties in the following terms:

In respect to the first charge under Rule 234(16)(i), the Stewards have taken into account the circumstances of the offence and the fact that you have shown no remorse or regret for your actions and, in fact, you have failed to acknowledge the offence by pleading not guilty to the charge. Your attempts to justify your actions are a reflection of your total disregard and lack of respect for the Rules Governing Greyhound Racing in Western Australia and the officials who are employed to regulate them. Your previous record whilst registered with this Association is a further example of this. Even today at this Inquiry you have failed to act in an appropriate manner when you left this Inquiry and slammed the door on your way out. We have also noted that you are an unregistered person and as such a disqualification would not be appropriate under those circumstances. We further note that the affect of a disqualification on a registered person must be greater than the affect of a warning-off of an unregistered person. That being the case we are of the opinion that the appropriate penalty is that you be warned-off for a period of six (6) months.

In regard to the second charge under Rule 234(11) the Stewards have taken into account the circumstances of the offence and view it as very serious. It is serious because the investigation that you interfered with was one of importance. Your wife, Ms Wheeler had obtained her licence on the condition that you, being a disqualified person, were not involved in the handling of her greyhounds. It is vital to the confidence of the greyhound racing industry and the public that support it that the Stewards ensure that disqualified persons are no longer involved in the training of greyhounds. This is even more important when one remembers that your period of disqualification involved a drug related offence. Nothing detracts from the clean image of greyhound racing more than persons who are serving penalties for drug related offences still being involved in the training of greyhounds. To compound the seriousness of the offence the policing of conditional licences, such as the one held by Ms Wheeler, is a difficult task. Even detecting instances where people in Ms Wheeler's situation are breaching their conditions is difficult and obtaining evidence of these breaches to a standard which the Stewards can work with is more so. Your interference with the conduct of the investigation has proven to be a major obstacle in determining what occurred at your property on the morning in question. By interfering in the conduct of the investigation on two separate occasions, it is clear that you deliberately intended to, and in fact succeeded in, interfering with the evidence Mr Martins was attempting to obtain. It is also obvious that you had something to gain by interfering with the investigation as any proof of a breach of Ms Wheeler's conditions may have affected your matrimonial income. Given the aforementioned difficulties and the seriousness of the offence the Stewards are conscious of the need to impose a penalty which will have a deterrent value to others. Furthermore, we have taken into account your previous records whilst registered with the WAGRA and the fact that you have shown no remorse or regret

for your actions. Your personal history indicates that you have challenged the Rules and the people who regulate them at almost every opportunity. We have also noted that you are an unregistered person and as such a disqualification would not be appropriate under those circumstances (sic). We further note that the affect of a disqualification on an unregistered (sic) person must be greater than the affect of a warning-off on an unregistered person. That being the case we are of the opinion that you be warned-off for a period of two (2) years.

Both penalties to be served concurrently."

The Appeal

Mr Evans lodged a Notice of Appeal on 18 May 1998. A stay of proceedings was not sought.

The time period between the lodging of the appeal and the matter coming on for hearing deserves some mention. Mr Evans at the outset requested the Registrar of the Tribunal not to set the matter down for hearing until such time as an application under the *Freedom of Information Act 1992* and subsequent complaint to the Information Commissioner had been dealt with. Once the Registrar became aware that the Office of the Information Commissioner was no longer dealing with the matter, on 25 February the appeal was listed to be heard on 11 March 1999.

On 10 March 1999 the Tribunal received a five page submission from the appellant stating, firstly, that due to work commitments, he was unable to attend the hearing and secondly, his arguments against the convictions and penalty.

Section 16(3)(b) and (c) of the *Racing Penalties (Appeals) Act* states:

"On the lodgement with the Registrar of a notice of appeal, the Registrar shall-

- (b) fix a time and place for the hearing of the appeal, which shall be heard and determined as soon as is practicable after the lodging of the notice of appeal;*
- (c) give reasonable notice of that time and place to the appellant ... "*

Section 16(5) of the Act states:

"If a person served with notice of a hearing under subsection (3) does not attend at the time and place fixed by the notice, the Tribunal may conduct proceedings in the absence of that person."

The Tribunal having been satisfied that notice had been served on the appellant acceded to the request made on behalf of the Stewards to proceed with the hearing of the appeal in the Appellant's absence after taking into account his written submissions filed on 10 March 1999.

Appeal Against Conviction – Breach of Rule 234(16)(i)

The Appellant in his written submission and at the inquiry accepted that he did call Mr Martins the Chairman of the Stewards a "*low life*". He submits generally that he was justified in making the comment in the circumstances.

I am unable to find the words uttered by the Appellant to be anything other than words which are insulting or improper in the circumstances. The Chief Steward was clearly carrying out his official duties under the Rules at the time. This would have been clear to the Appellant. If the Appellant took exception to the Chief Steward's behaviour at the time an insult was an improper response. In

those circumstances and given his admission that such words referred to were uttered I consider the only option available to the Stewards was to convict the Appellant as charged.

For these reasons I would dismiss this Appeal against conviction.

Appeal Against Penalty – Breach of Rule 234(16)(i)

The Appellant at the time the penalty was imposed was an unregistered person. As a result disqualification was one form of penalty unavailable. Previous penalties for breach of this rule had ranged from a \$50 fine to six months disqualification. The Stewards advised at the Appeal hearing that warning off was a common penalty for unregistered persons. The Stewards referred the Tribunal to Appeal 439 A J Lindsay and other unregistered persons (R Taylor and R C Ayling) where appeals were not pursued. In this case, Mr Evans had a record of previous convictions including breaching this rule.

I am satisfied upon considering the factual circumstances of the breach of the rule, the Appellant's previous record and his personal antecedents that a fine would have been a manifestly inadequate penalty.

An analysis of the Stewards reasons for imposing a six months warning off penalty does not indicate the Stewards fell into any error nor was the period of six months manifestly excessive in the circumstances. I am satisfied that periods of disqualifications imposed for breaches of this rule cannot be compared when considering a warning off period. The effect of a disqualification on a registered person must be much greater than the effect of warning off on an unregistered person.

For these reasons I would dismiss this Appeal against penalty.

Appeal Against Conviction – Breach of Rule 234(11)

The Appellant in his Appeal against conviction essentially disputes the evidence of Chief Steward Martins and Detective Dabelstein. The Stewards presiding at the inquiry had an issue of credibility to decide. The Stewards presiding at first instance preferred the evidence of these two witnesses mentioned to the Appellant and Ms Wheeler. Which evidence the Stewards preferred was totally at their discretion. There has been nothing demonstrated by the Appellant that indicates the Stewards fell into error in accepting such evidence.

It is common for investigating Stewards to testify as witnesses before Stewards' inquiries. It is often a necessary consequence of the Stewards carrying out their duties in the three racing codes. The fact that the investigating Stewards work with the Stewards presiding at an inquiry is not in itself an indicator the Stewards are biased if they prefer the evidence of the investigating Stewards. In any event in this case the corroborating witness, Detective Dabelstein, was not a Steward.

On the evidence of the witnesses Martins and Dabelstein the Appellant had clearly engaged in acts of interference with Mr Martins' official investigation. The presiding Stewards were only obliged to be satisfied that a breach of the rule as charged had occurred on the balance of probabilities in accordance with the Briginshaw v Briginshaw principle.

For these reasons I would dismiss this Appeal against conviction.

Appeal Against Penalty – Breach of Rule 234(11)

In this case the Stewards found that there were two acts of interference by the Appellant. As a consequence of the Appellant's actions the Stewards attempts to determine whether a registered owner/trainer's conditional licence was being complied with were thwarted. It is not surprising in

those circumstances that the Stewards considered the Appellant's acts and the resultant breach of the rule "as very serious".

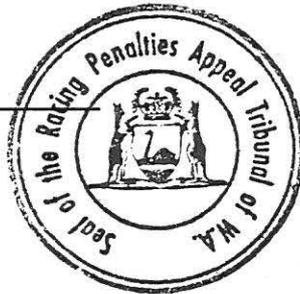
For the reasons I have stated in relation to the Appeal against penalty for breach of Rule 234(16)(i) I consider warning off is an appropriate penalty for the Appellant.

It is incumbent on the Appellant to succeed in his appeal against penalty to satisfy the Tribunal that the Stewards were in error in imposing the length of time of the warning off period by failing to give sufficient weight to relevant considerations, or giving too much or any weight to irrelevant considerations so that the penalty imposed must be in error. Having read the submissions by the Appellant and considering the remarks of the Stewards in imposing the two year warning off period, I am not satisfied that it has been demonstrated that the Stewards fell into error or the penalty was manifestly excessive in the circumstances.

The totality principle was recognised by the Stewards when ordering the two penalties of warning off for breach of each separate rule be served concurrently.

For these reasons I would dismiss this Appeal against penalty.

John Prior



JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)

APPELLANT: PHILIP EVANS

APPLICATION NO: A30/08/421

DATE OF HEARING 11 MARCH 1999

DATE OF DETERMINATION: 21 JUNE 1999

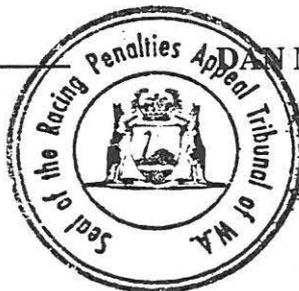
IN THE MATTER OF an appeal by Mr P Evans against the determinations made by the Stewards of the Western Australian Greyhound Racing Association on 5 May 1998 warning off Mr Evans concurrently for six months and for two years under Rule 234 (16)(i) and Rule 234(11) respectively of the Rules Governing Greyhound Racing in Western Australian.

The appellant was not represented.

Mr D Borovica appeared for the West Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with the reasons and having nothing to add.

Dev Mossenson



DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J HEALY
(MEMBER)

APPELLANT: PHILIP EVANS

APPLICATION NO: A30/08/421

DATE OF HEARING 11 MARCH 1999

DATE OF DETERMINATION: 21 JUNE 1999

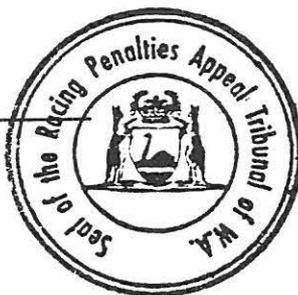
IN THE MATTER OF an appeal by Mr P Evans against the determinations made by the Stewards of the Western Australian Greyhound Racing Association on 5 May 1998 warning off Mr Evans concurrently for six months and for two years under Rule 234 (16)(i) and Rule 234(11) respectively of the Rules Governing Greyhound Racing in Western Australian.

The appellant was not represented.

Mr D Borovica appeared for the West Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with the reasons and having nothing to add.

Healy



JOHN HEALY, MEMBER

CONSENT ORDER
OF THE
RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JOSEPH CHARLES BYRNE
APPLICATION NO: A30/08/420
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE: 30 JULY 1998

IN THE MATTER OF an appeal by Mr J C Byrne against the determination of the Western Australian Turf Club Stewards on 5 May 1998 imposing an 18 month disqualification for breach of Rule 175(h)(ii) of the Australian Rules of Racing.

By consent, leave to withdraw the appeal is granted. /

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson



DAN MOSSENSON, CHAIRPERSON