

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: WAYNE ROSE
APPLICATION NO: A30/08/553
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 5 FEBRUARY 2002
DATE OF DETERMINATION: 5 FEBRUARY 2002

IN THE MATTER OF an appeal by Wayne Rose against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on 19 December 2001 imposing a fine of \$150 for breach of Rule R109(6)(a) of the Australian Rules of Greyhound Racing.

Mr A Kinnish was granted leave to represent the appellant.

Mr M Kemp appeared for the Stewards of the Western Australian Greyhound Racing Authority.

This is an appeal by Mr Wayne Rose, an owner/trainer licensed with the Western Australian Greyhound Racing Authority, against his conviction for use of improper language against the Authority's Chief Steward, Mr C Martins.

On the 8 December 2001 the Stewards conducted an inquiry into the running of greyhound FRANK'S GRACIE following Race 1 on that night. The Stewards were considering whether the greyhound had pursued the lure with commitment. Mr Rose, the owner and trainer of FRANK'S GRACIE, was called to the inquiry.

Following the inquiry the Chief Steward wrote a letter dated 13 December 2001 to Mr Rose advising him that he had been charged with an offence under AR109(6)(a). An extract of that letter states:

'I refer to the Stewards' inquiry conducted at Cannington on 8 December 2001 and enclose a transcript for your perusal.

After considering this matter, the Stewards have decided to lay a charge against you under AR109(6)(a) which states:

AR109. Offences

Any person (including an official) who:

(6) *uses improper, insulting or offensive language in either the written or spoken form towards, or in relation to:*

(a) *a steward;*

shall be guilty of an offence and liable to a penalty pursuant to rule 111.

The specifics of the charge are that at Cannington on 8 December 2001, during an inquiry, you used improper language towards the Chief Steward Mr C Martins by saying to him ... I'm very disappointed in that Carlos, very disappointed in that after watching what happened two weeks ago when she won the race....She's come from last and the two dogs in front have stopped and didn't even get pulled in ...Very disappointed in that ...Well I feel that you are picking on me but the two big trainers that ...that ...it goes back two starts ago when she won, when she went 31.68...'

The charge was dealt with at a Stewards' inquiry held on 19 December 2001 chaired by Steward Kemp. At the commencement Mr Rose pleaded guilty. During the course of the inquiry he changed his plea to not guilty before finally pleading guilty. The Stewards proceeded and dealt with the matter on the basis of the guilty plea. Following submissions on penalty the Stewards fined Mr Rose \$150. The Chief Steward appeared as a witness before the inquiry.

The Notice of Appeal filed on 2 January 2002 states as the grounds of appeal:

'After seeking legal advice I was advised to appeal this decision. I believe that I had not used improper language or committed an offence.'

After hearing argument from both sides I concluded that the appeal be upheld and quashed the conviction and fine. I now publish my reasons.

The initial proceeding on 8 December was an inquiry *'...into whether the greyhound (FRANK'S GRACIE) should be suspended under AR80(2)'*. Mr Martins participated in that inquiry as one of the witnesses. Early in those proceedings the Chairman of the inquiry, Mr Kemp asked Mr Martins who observed the alleged incident *'to give us his report'*. After Mr Martins did so Mr Kemp then asked Mr Rose:

'Okay Mr Rose we've heard what Mr Martins has said and obviously you've seen a couple of shots of the video replay do you agree with that or would you like to ask him any questions?'

Mr Rose asked regarding replays for the previous weeks to show the dog's propensity 'to run right out'.

An exchange of views on the dog's performance took place between the Chief Steward and Mr Rose. This led to the following:

Mr Martins: As I said I really believe that the greyhound should have gone to the front... and stayed at the front and... won the race and... obviously in my opinion it wasn't pursuing the lure with due commitment. Had it been pursuing the lure with due commitment I would believe that it would have won the race.

...

Mr Rose: I'm very disappointed in that Carlos, very disappointed in that after watching what happened two weeks ago when she won the race.

...

She's come from last and the two dogs in front have stopped and didn't even get pulled in.

...

Very disappointed in that.

Mr Martins: In what sorry?

Mr Rose: Well I feel that you are picking on me but the two big trainers that... it goes back two starts ago when she won, when she went 31.68...?

Mr Martins: Mr Rose I'm going to have to caution you, you say I'm picking on you and is that what your saying.

...

Mr Rose: Yeah, but could we...well can we...

Mr Martins: Mr Chairman I take offence at that.

Mr Rose: Couldn't we get the tape out and have a look at it Carlos.

Mr Martins: No I'm sorry. I'm just... this is an inquiry into...

...

Can I just record that I take offence at Mr Rose's comments.

...

Mr Rose: I think we've pretty much said it all. I thought she just had enough. I thought she needed the run myself.'

Mr Kinnish argues that Mr Rose's comments at the initial inquiry were taken out of context. He claims they were not a personal attack on the Chief Steward but rather directed to the issue of defending the dog's performance. Further, the words used do not amount to improper language, were misunderstood and misinterpreted. In summary, the response of the Stewards was that the words employed were a personal slur on the Chief Steward and bad for the industry. Further, that Mr Rose was culpable by virtue of having pleaded guilty.

I agree with the propositions put on Mr Rose's behalf and reject the argument presented for the Stewards. I am satisfied that the statements made by Mr Rose in the context of the Stewards' inquiry which was into the running by Mr Rose's greyhound do not amount to the employment of improper words as embargoed by Rule 109(1). Mr Rose was entitled to explore and expose all plausible or reasonable avenues available to him during the course of the Stewards' inquiry on 8 December 2001 in order to avoid adverse findings being made against his greyhound. The Chairman of that inquiry, Mr Kemp, invited Mr Rose to express his opinion on Mr Martins' evidence. Mr Rose was expressly asked if he agreed with Mr Martins' opinion. At the same time he was invited to ask Mr Martins any questions. The exchange which ensued amounted to no more than a proper exercise of Mr Rose's rights at that inquiry following that invitation. The Chairman of the inquiry did not say or react in any way negatively to Mr Rose's comments until Mr Martins reacted. It was Mr Martins whose opinion was being tested who took umbrage at Mr Rose's expressions of disappointment. Despite being the Chief Steward of the Authority Mr Martins did not have the chair of this particular inquiry. Rather he was appearing in a different capacity, namely as a witness. If any cautioning were called for, and in my assessment it was not, it was not appropriate for that to come from someone other than the Chairman of the inquiry.

In the course of a Stewards' inquiry one might reasonably expect a more direct and robust approach from a participant who personally or whose greyhound potentially may be affected by the outcome than during a conversation with a Steward in the public domain conducted within the earshot of outsiders. The right to defend oneself during the course of a closed inquiry must include the opportunity for robust questioning or testing of any damning evidence and may be conducted on a different plane to ordinary conversation outside such an adjudication process.

I am satisfied in all the circumstances Mr Rose's language was not improper. The expression of disappointment in this case was a legitimate and reasonable type of response which on its own was not so out of order as to be lacking in propriety. In so saying one should examine how and in what circumstances these words were actually used. The transcript reveals the allegation of being picked on was not directly or forcibly made by way of accusation or insult. Rather it was simply a fairly rational, albeit subjective, expression of opinion backed up by some cogently expressed reason. After all Mr Rose sought to support his feeling of being picked on tested by reference to the tape. Mr Martins appears to have overreacted in the heat of the moment. For these reasons, I am satisfied in all the circumstances no offence was committed by Mr Rose at the first inquiry.

At the 19 December 2001 inquiry into the incident Mr Rose displayed humility and servility to the Stewards both in the way he chopped and changed his plea following input from the Chairman of the inquiry. After initially pleading guilty he explained:

'Yeah but I've got reasons for not pleading guilty but, I'll plead guilty anyway.

...

Well, um 'cause I didn't think I was insulting him, I didn't realise it was an offence for what I said. I was just trying to use that as part of my evidence.'

The plea changed to not guilty and, after further interrogation by the Chairman of the inquiry and some strong words from the Chairman of the Stewards, eventually to guilty. The ultimate guilty plea was made under some pressure and did not amount to a full, free and entirely open confession. There is no merit in the argument that a plea of guilty in those circumstances should be binding on Mr Rose. This is not the first case to come before the Tribunal where, after pleas of guilty appeals have been entertained. For example Farrell (Appeal 400), Sestich (Appeal 469), where the appeal succeeded against the conviction, Claite (Appeal 501) and Hawkins (Appeal 522).



DAN MOSSENSON, CHAIRPERSON

