

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

APPELLANT: KEVIN WILLIAM PHILLIPS
APPLICATION NO: A30/08/598
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 19 JUNE 2003
DATE OF DETERMINATION: 19 JUNE 2003

IN THE MATTER OF an appeal by Mr K W Phillips against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on 23 May 2003 imposing a 28 day suspension at Mandurah of the greyhound BARELEN WISH for breach of Rule AR80(1) of the Rules of Greyhound Racing.

The Appellant represented himself.

Mr C Martins appeared for the Stewards of the Western Australian Greyhound Racing Authority.

This is an appeal by Mr K W Phillips who is the trainer of BARELEN WISH against the determination of the Stewards of the Western Australian Greyhound Racing Authority following an inquiry on 23 May 2003.

The inquiry related to an incident which occurred at Mandurah Greyhounds on 23 May 2003 during the running of race 8. During the course of the inquiry the Stewards indicated that they were investigating whether or not BARELEN WISH should be suspended under AR80(1) for fighting during a race. The video replay of the race was shown at the inquiry. Evidence was given by Mr Kemp, a Steward who was stationed in the 530 metres box, who observed the two greyhounds in the home straight. He informed the inquiry that BARELEN WISH deliberately turned its head and veered out to the 7 dog on its outside and made muzzle contact with that greyhound. The Stewards also heard evidence from the Appellant and Mr M Hodgson, a Public Trainer.

The Stewards concluded that after taking into account all the evidence they were satisfied that BARELEN WISH deliberately turned its head, veered out and made muzzle contact with the 7 greyhound. They therefore found that the greyhound did fight and imposed a suspension of 28 days at the Mandurah track.

This is an appeal against the conviction.

Australian Rule of Greyhound Racing AR80 states:

"AR80. Fighting – failing to pursue

Where a greyhound, in the opinion of the stewards:

(1) fights with any other greyhound during an event; or

...

the stewards may, except in the case where the greyhound is found to have been injured pursuant to rule 82, impose a period of suspension in respect of the greyhound pursuant to rule 81 or 82 as the case may be."

"Fighting" is defined in Rule 3 as follows:

"'fighting' means the act of a greyhound which deliberately turns the head and makes head or muzzle contact with another greyhound."

The relevant rule of which BARELEN WISH was found to have breached is couched in terms of "in the opinion of the stewards". As to the significance of these words I have been referred to Appeal Numbers 303 - Thompson and 412 - Rowe. I also refer to the following extract from Appeal 409 in the matter of Rose heard by Presiding Member, Mr Hogan:

"In those circumstances, it appears to me that the appellant has to overcome a very heavy onus in order to overturn the decision of the Stewards. It has been said before, so long as there is some evidence upon which the Stewards could reasonably come to that opinion, this Tribunal really will not be in a position to over rule the decision of the Stewards."

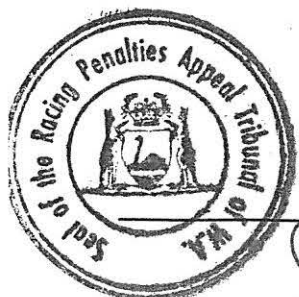
The Appellant in this matter submits if there is doubt he should get the benefit of the doubt and the Stewards in coming to an opinion on a charge should give him this benefit.

As has been said many times in this jurisdiction the standard of proof is not the standard in criminal law, beyond reasonable doubt. The standard of proof for the Stewards to consider if a charge has been proved is the civil standard of balance of probabilities or more likely than not, but consideration should also be given to the principle enunciated in Briginshaw v Briginshaw (1938) 60 CLR 336.

In this case, the Stewards had the evidence of the Appellant's interpretation of the video as he had not seen the incident in question, their own interpretation of the video, the eye witness evidence of the Steward Mr Kemp and the Appellant's witness Mr Hodgson. They also had the circumstances in which the two eye witnesses viewed the incident.

Given the onus on the Appellant, the standard of proof which applied to the Stewards considering the evidence and the fact the rule states it is breached if the elements are proved "in the opinion of the stewards" I am not satisfied that there has been demonstrated by the Appellant there was no reasonable basis for the Stewards forming the opinion that the greyhound fought.

For those reasons the appeal is dismissed.



John Prior

JOHN PRIOR, PRESIDING MEMBER