

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

**APPELLANT:** GRAHAM BERRY

**APPLICATION NO:** A30/08/744

**PANEL:** MR D MOSSENSON (CHAIRPERSON)

**DATE OF HEARING:** 9 MAY 2012

**DATE OF DETERMINATION:** 9 MAY 2012

**DATE OF REASONS:** 16 MAY 2012

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IN THE MATTER OF an appeal by Mr Graham BERRY against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 26 April 2012 imposing a disqualification of three months pursuant to Rule 86(o) of the Racing and Wagering Western Australia Rules of Greyhound Racing.

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Mr G Berry represented himself.

Mr D Boravica represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

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**BACKGROUND**

On 26 March 2012 the Racing and Wagering Western Australia (**RWWA**) Stewards of Greyhound Racing held an inquiry into a report received from RWWA Steward C Courtland regarding the circumstances surrounding the late scratching of GEMMA GIRL at

Greyhounds WA Mandurah and the subsequent telephone conversation between the Steward and Mr Berry. Mr Berry was registered as a public trainer. Mr Berry trained GEMMA GIRL which had been brought to Mandurah to race. On inspection prior to the race GEMMA GIRL was found to have fleas. As Mr Berry was not at the course the Steward contacted the trainer by phone to explain what had happened. The report of the phone conversation was in these terms:

*Mr Berry became quite enraged by the scratching. Shouting into the phone, I tell you what, you are fools and idiots, you are the worse Stewards in Australia, do you want us to race or what? I mentioned that the course Veterinarian reported that the greyhound had an infestation and we couldn't allow the greyhound to be kennelled or race in such a state. Which he replied, infested this is an absolute disgrace, I got the greyhound now and we've counted them 15 fleas how is that an infestation? After he said this, I asked him to stop and cautioned him, and that I didn't appreciate being called a fool that if his conduct continued that it might lead to a Steward's inquiry. He responded, oh you would like that wouldn't you? The Stewards love their Stewards inquiries. My caution only seemed to anger Mr Berry who began yelling into the phone, abuses towards myself, the Stewards department and the course Vet, that we were a disgrace, fools and incompetent idiots to which he repeated himself numerous times. This tirade lasted about a minute before I could get a word in, I told him that I had to stop him there, that I didn't like his tone. I was further interrupted by Mr Berry, saying I didn't like people who speak their voice and I should run off to Carlos, after which he hung up the phone. I couldn't give Mr Berry all the information regarding the scratching but I thought another phone call would only aggravate the situation further. I will also note the only time Mr Berry had sworn was when he muttered these fucking Stewards. I called Mr Martins before Race 1 and informed him of the scratching and Mr Berry's conduct. I also made notes after the phone call which I had finished at 7.10pm on the night, which I attached to this report. Also as for Mr Berry's conduct I found his behaviour was completely unacceptable. This tirade of abuse was completely unjustified, as we followed the standard procedures when dealing with a greyhound with parasites. I am obliged to inform Trainers as to the details of the scratching so they can know how and when the greyhound can be cleared. Mrs Berry, Mr Berry's behaviour was, had been one of the most disrespectful, rude and improper I've*

*had dealt with to date.*

Mr Berry was charged both with negligence, for presenting his greyhound to race with fleas, and with offensive and abusive language towards Steward Mr Courtland during the telephone conversation in relation to the late scratching. Although Mr Berry pleaded not guilty to the charges he was convicted on both counts. In handing down the penalty in relation to the telephone conversation, Mr Martins stated:

*In relation to the 2<sup>nd</sup> charge, your conduct towards Mr Courtland by yelling offensive and abusive language over the telephone was not only disgraceful but totally unjustifiable. All Mr Courtland was doing was simply performing his duties. Your greyhound GEMMA GIRL had been presented to race and upon examination by Dr Gradwell was found to be infested with fleas, in accordance with the rules the greyhound was withdrawn. There was no other option under the circumstances. The provisions of Rule 37(4) are crystal clear, the greyhound had to be withdrawn. It is standard operating procedure. You were not there, as you have stated, in your own acceptable standards is 5 fleas, therefore we are absolutely astonished you became so upset as a result of the greyhound being withdrawn on account of having at least 10 fleas. In the midst of resolving this matter because of your absence, Mr Courtland attempted to call you in an entirely appropriate manner and inform you of what had transpired and requirements for you to present a veterinary clearance certificate.*

*You then engaged in a verbal tirade of offensive and abusive language, when talking to Mr Courtland. Whilst the conversation took place over the phone, it was totally unnecessary and you have no right whatsoever to conduct yourself the way you did towards Mr Courtland.*

*We fully concur Mr Courtland's remarks that your conduct was completely unacceptable. This is not the first or second time that you have been found guilty of inappropriate behaviour, as previously read out your track record is appalling and its obvious that monetary punishment is not having the desired effect. It is in fact your 5<sup>th</sup> behavioural offence. We certainly acknowledge that three of these offences emminated [sic] from*

*telephone conversations with RWWA officials and dealt with at a single inquiry. It is unfortunate you have ignored and not adhered to the Stewards caution issued to you at the latest inquiry which was just over 12 months ago. The fact that this is now your 5<sup>th</sup> offence, coupled with the fact that your reactions on this occasion were totally unjustified and unprovoked, alone demand serious actions by the Stewards.*

*Of further concern to the Stewards is you appear to have some difficulty in dealing with officials as all of your previous offences have resulted from the way you have behaved towards them in the past. As pointed out to you there is a clear obligation for Registered persons to conduct themselves in a professional and proper manner at all times. In accordance with the conditions that are set out in the application form when you first came into the industry. You have already agreed to be bound by these conditions. Your disgraceful conduct towards Mr Courtland cannot be tolerated and a clear message must be sent that serial offenders will be dealt with accordingly.*

*The Stewards [sic] or the persons charged with the responsibility controlling and regulating race meetings and it simply cannot perform their duties satisfactory when they are subject to the type of behaviour and interference that Mr Courtland had to endure during the telephone conversation on the 1<sup>st</sup> March 2012. They should be able to carry out their duties with confidence without any fear of abuse. The Stewards are familiar with the circumstances of the Selenza matter, in his case it was his 3<sup>rd</sup> behavioural offence, his misconduct was in relation to the Stewards in a Public area, he was otherwise employed This is now your 5<sup>th</sup> offence it was a private conversation, directed towards a Stewards and greyhound racing is your only source of income. In comparing both cases we are of the view that they balance out equally.*

*Taking into account all of the circumstances, including the impact of a disqualification may have on you, we feel the appropriate penalty is a disqualification of 3 months which will take immediate effect, and will expire on the 25<sup>th</sup> July 2012.*

Mr Berry appealed against both the conviction and the penalty. I granted him a limited suspension of the operation of the penalty to enable him to whelp an impending litter and mate any of his greyhounds in season.

In essence the case presented by Mr Berry on appeal was simply that it was wrong of the Stewards to accept Mr Courtland's uncorroborated word against the word of the witnesses called on behalf of the appellant. The appellant's witnesses were to be preferred and the Stewards should not have accepted the evidence from one of their own colleagues.

It was further alleged by Mr Berry that Mr Courtland had used the word 'liar' to describe Mr Berry's witnesses although that word had not been reproduced in the transcript of the inquiry. This allegation was supported by a statutory declaration from one of the appellant's witnesses. It was implied something sinister was involved and the seriousness of this uncalled for description by Steward Courtland had been covered up. This unusual situation arguably had consequences for the outcome of the appeal. I therefore called for the tape recording of the inquiry proceedings to be played to clarify matters. The tape revealed that the words that had actually been used before the inquiry were in fact accurately and faithfully recorded in the typed up version of the transcript. The word 'liar' had not been used at the inquiry as Mr Berry alleged. As a consequence, Mr Berry was left with no alternative but to express his regret at having raised the matter and he then withdrew his allegation.

The odd episode regarding the challenge to the transcript served only to highlight the fact that neither the evidence presented on behalf of Mr Berry nor Mr Berry's own version could be relied on. The Stewards were perfectly entitled to accept the evidence of Mr Courtland which had been objectively and fairly presented. Nothing was advanced by Mr Berry to justify me reaching a conclusion that there had been any error in the determination process of the Stewards. I therefore found the disqualification to be the appropriate outcome. I dismissed the appeal, confirmed the conviction and then entertained argument regarding the severity of the penalty.

The case advanced by Mr Berry on penalty had no merit. Rather, I was readily persuaded by the propositions presented by Mr Boravica as to the gravity of the offence. The situation was aggravated by virtue of the fact that Mr Berry was a repeat offender who had neither

learnt from his previous convictions and penalties nor in any way corrected or curtailed his errant ways. The reasons advanced by the Stewards had addressed all relevant factors appropriately and fairly. Mr Berry's unpardonable reaction to a Steward performing his normal duties cannot be tolerated. The only treatment of him that was appropriate in this particular case was the imposition of a severe penalty. The three month disqualification was such a penalty. In those circumstances I dismissed the appeal as to penalty and confirmed the fact that the qualified suspension of operation of the penalty which I had earlier granted automatically ceased to operate.



**DAN MOSSENSON, CHAIRPERSON**

