

Appeal decision

Hearing Date: 26 August 2015, 26 November 2015 & 15 December 2015

Decision Date: 3 March 2016

Code of racing: Greyhounds

Appeal panel: Mr B Miller (Chair) Mr G Casey and Mr D Kays

Appearances: Mr A Boe Counsel instructed by Nyst Legal appeared on behalf of Mr Ron Ball
Mr J Murdoch QC instructed by Clayton Utz Lawyers appeared on behalf of Racing Queensland

Decision being appealed: Warning off for life

Appeal result: **Decision varied. The new penalty of ten (10) years warning off**

Ronald Ball (the Appellant) was warned off for life by a decision of the Queensland All Codes Racing Industry Board (Racing Queensland) on 26 May 2016 pursuant to its powers under Rule (3A) of the Local Rules of Racing (Greyhounds).

Racing Queensland's decision followed upon a 'show cause' hearing initiated by letter to the Appellant on 15 April 2015; in that letter the potential grounds for his 'warning off' as well as other relevant matters concerning his legal rights were outlined.

The 'show cause' hearing was preceded by an Inquiry conducted by Racing Queensland stewards on 18 March 2015.

Stewards were impelled to investigate circumstances of grave concern to them as a result of viewing the ABC Four Corners programme on 16 February 2015; therein were images of live-baiting of greyhounds using animals, and individuals recognizable by them at a property situated at 9 Wotan Road Churchable Qld. The depictions were found to have been recorded on 22 August 2014.

All of the evidence before the stewards and Racing Queensland to arrive at their respective decisions was tendered before this Board (Racing Disciplinary Board) (RDB); the appeal was heard de novo in accordance with Section 149ZE(3) of the Racing Act 2002.

The Appellant has appealed both the finding of guilt and the penalty imposed by Racing Queensland.

In view of the nature of the allegations relied upon by Racing Queensland to found breaches of the Greyhound Australasia Rules (GAR) and then consequently to invoke its powers under Rule(3A) of Local Rules (LR) the Board is mindful of the standard of proof required when making its determination viz., *Briginshaw –v Briginshaw* (1938) 60 CLR 336.

Mr Neaves of Counsel for the Appellant before the 'show cause' hearing essentially based his grounds for success on the basis of unreliable video evidence relied upon by the Stewards, submitting that the video recordings of 22 August 2014 from the two covertly installed cameras at different locations at 9 Wotan Road Churchable, were unsynchronised and incapable of providing cogent and probative evidence. This submission was ultimately rejected by Racing Queensland.

Mr Boe of Counsel for the Appellant before the (RDB) submitted in effect that the stewards Inquiry was flawed as the Appellant had been denied procedural fairness and natural justice which in turn resulted in the hearing before Racing Queensland being tainted as a result of its reliance upon evidence obtained at the Inquiry. The (RDB) was urged to disregard the evidence taken at the stewards Inquiry and its use by Racing Queensland at the 'show cause' hearing. The former premised principally on failure of the stewards to permit legal representation at their Inquiry.

Additionally Mr Boe urged the Board to disregard any evidence obtained by the two covert video cameras and other electronic recordings derived from them as their provenance had never been satisfactorily established. He also submitted that evidence provided orally by Mr Torpey (Manager Integrity Regulatory Unit for Racing Queensland) and supplemented by documentation (Ex.7 – Chronological Time Line Schedule) prepared by him to augment the case against the Appellant should be disregarded by the (RDB). He submitted that the placement of cameras at the Churchable property was illegal and a contravention of the Invasion of Privacy Act 1977 rendering any evidence obtained inadmissible.

The broad powers available to (RDB) when hearing an appeal are contained in S.149ZE of the Racing Act 2002. It can therefore consider all material before the stewards and Racing Queensland and determine which of it, if any, it deems relevant, together with additional evidence received at the appeal.

It follows that there is no impediment to receiving the evidence collated by stewards at the inquiry of 18 March 2015 and which formed the basis for the Show Cause Notice (dated 15 April 2015). The stewards were justifiably exercising the powers to inquire provided by Greyhound Australasia Rules (GAR 90(1)) and entitled, after due consideration of the circumstances of the Appellant, to refuse him legal representation (GAR S90(5)). Their refusal was justified but in any event, his legal representative Mr Johnson was within the near vicinity of the Inquiry room; the Appellant availed himself of the opportunity to consult with Mr Johnson when he considered it necessary to do so during the Inquiry.

Racing Queensland was empowered by (GAR 90(1) to conduct its own inquiry and entitled to avail itself of the transcript of evidence of the stewards Inquiry of 26 March 2015 and the video recordings used by them (GAR 92(1).

The submission of Mr Boe that his client had been denied procedural fairness cannot succeed as it is evident that the preceding Inquiry and Show Cause Hearing were conducted accordingly to standard practice in compliance with the relevant Statutory provisions pertaining to Inquiries. The record shows that the Appellant was legally represented from the commencement of proceedings by the stewards, and apparent that he was at all times conversant with the issues discussed. In so far as his contention that the reception of video recordings in effect vitiated the preceding Inquiries and could not be relied upon by the RDB, the following Findings are made:

1. The video recordings made from the covertly installed cameras (known as the 'button shot' camera and the 'long shot' camera) were obtained by stewards after viewing the publicly shown images from those recordings on a State-wide television programme;
2. The stewards were not in any way responsible for the installation of the covert cameras nor were they aware of their intended installation;
3. The stewards were not complicit in their installation by subtle suggestion or influence over person/s responsible for doing so;
4. Stewards obtained original videos from an employee of the RSPCA from which Mr Torpey made copies for his subsequent use which were referred to by Queensland Racing prior to making its decision;

In regards to the submission by Mr Boe that the installation of the cameras were in breach of the Invasion of Privacy Act 1971 which rendered the use of them before the RDB as inadmissible the following Findings are made:

- 1) Although the Act (S43) renders inadmissible a 'private conversation' captured by the recording device associated with the 'button camera' it does not in turn render the associated visual images captured inadmissible for the purposes of this Board;
- 2) The stewards had a duty to inquire once they personally became aware or were informed by another of the images displayed on a public television show within their jurisdiction;
- 3) The admission by the Appellant of his attending 9 Wotan Road Churchable as well as identifying himself and others (albeit hesitatingly) at the training track on 22 August 2014 did not render the subsequent decision of the stewards untenable.

This Board is comfortably satisfied that in respect of the four allegations comprising the "Show Cause Notice" outlined below, that the Appellant was guilty as alleged. Those allegations being:

- 1) "You used the live baiting of animals for a purpose connected with greyhound racing that was improper in breach of GAR Rule(86af)including or or about 2 August 2014 at 9 Wotan Road Churchable";
- 2) "You used the live baiting of animals for the purpose of affecting the performance of a greyhound in breach of GAR Rule(86aa), including or on about 22 August 2014 at 9 Wotan Road Churchable";
- 3) "You engaged in conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing inn breach of GAR Rule(86q), including on or about 22nd August 2014 at 9 Wotan Road Churchable";
- 4) "You provided in an interview with Racing Queensland in Deagon on 18 March 2015 evidence that was false and misleading in breach of GAR Rule 86(d)".

The Board (RDB) is satisfied that the Appellant was afforded a full and fair opportunity at both the stewards Inquiry and Racing Queensland's 'Show Cause' hearing to be apprised of the concerns of stewards regarding his suspected involvement in illegal practices at Churchable and the opportunity to give a full and fair response to those concerns. It is evident that he has attempted at every stage of the processes leading up to the appeal before the RDB to deny culpability. He had not been denied procedural fairness or a 'fair go' at the hearings mentioned.

Furthermore the Board (RDB) is satisfied that it can be concluded from the whole of the evidence before it that:

- 1) The Appellant attended 9 Wotan Road Churchable on the 22 August 2014 with greyhounds trained by him;
- 2) Those greyhounds were trialled on the training track at that address in the morning of that day; and
- 3) Those greyhounds were trialled when a live piglet was attached to the lure;
- 4) The Appellant was present on the training track in front of the starting pens and with a clear and unobstructed view of the trialling dogs and the lure;
- 5) He unquestionably would have observed (and in fact begrudgingly conceded that he had observed) the live piglet attached to the lure; the admission was made at the stewards Inquiry following consultation with Mr Johnson after he had sought an adjournment when apparently experiencing indecision regarding a question by stewards on the point;
- 6) Any excuse for not identifying the piglet as living because of his hearing impediment was questionable in view of his response to a question regarding the noise it was making as "I can hear something. It sounds more like a duck than a pig";
- 7) The Appellant's denial of involvement in "live baiting" because his dogs trialled in muzzles exemplified his continual refusal to accept responsibility for his actions;
- 8) There was ample identification evidence available to the stewards through viewing the video recordings and the comments made by the Appellant to implicate himself in the matters forming the basis of the "Show Cause Notice".

- 9) By his prevarication and lack of forthright response to questions at the stewards Inquiry which were answerable because they were matters clearly within his knowledge and capability, the inference can be readily drawn that he obfuscated with a view to avoiding the truth. Hence he is guilty of providing false and misleading evidence;
- 10) Furthermore the matter for which he has been found guilty i.e. "live baiting" constituted conduct which was detrimental or prejudicial to the integrity of the greyhound racing industry;

The appeal as to Conviction is dismissed.

PENALTY

The Appellant was one of a number of individuals who were found to be involved in illegal activities involving the 'live baiting' of greyhounds at the property situated at 9 Wotan Road Churchable. The majority of those individuals on appeal were sentenced to a varied term of 10 years disqualification from the original Life ban imposed.

The RDB has said when delivering a decision on relevant issues: **"The integrity of the sport of greyhound racing is very much the subject of public scrutiny and it is essential that the practice of live baiting be stamped out and there must be a precedent set to act as a deterrent in that respect. The sport in question does not need to be associated with persons who engage in such practices"** [RDB decision 11 June 2015 – Craig Wright]. The Board when making similar decisions has stressed the importance that illegal behaviour of the type witnessed at Churchable be eliminated because of the damage to the public's perception of the Industry as a whole (including the welfare of animals) and the incalculable damage to the confidence of those wagering on greyhound racing.

The Appellant has been involved in the Greyhound Industry for a period of approximately 56 years and a number 1 trainer for the majority of them. He is an inductee of the Hall Of Fame presumably awarded to him for his contribution to the Greyhound Industry. He is a professed advocate for professionalism in the Industry and was described by the Chairman of Stewards as "a consultant for the industry" with Racing Queensland. He himself stated that his emphasis was "with the professionalism of presentation of dogs, presentation of the characters themselves". It is obvious that he has invested substantial time and resources into various aspects of Greyhound racing and that a loss of license will have a corresponding impact upon him. Unfortunately his professed commitment to professional standards did not include "public perception and animal welfare per se".

There is a compelling case to increase what has become the standard penalty of 10 years disqualification imposed in these matters, to reflect what was a contradiction in stated principles by the Appellant when it came to the practice of training employed by him away

from public scrutiny, contrasted against the respect and high profile he held within the Industry.

In the matter of Wright (supra) the Board said “Of some assistance to this Board are the recent amendments to the Greyhounds Australasia Rules (GAR) made on 20 April 2015. Those amendments make it mandatory for a period of disqualification of not less than 10 years to be imposed to any person who is involved in the practice of live baiting or is convicted in any Court of an offence in respect to the use of any animal, carcass or part of an animal with greyhound training. That of course is legislation that postdates the commission of this offence and does not take the matter very much further other than to identify that post the offence being committed the minimum penalty that shall be imposed by anybody shall be a minimum 10 years disqualification. In this particular instance, the Board of Racing Queensland has identified that a period of life should be the appropriate penalty imposed. In the opinion of this Disciplinary Board, such a period of life is not likely to have any more of an effect by way of a deterrent nature on a participant that would a period of 10 years as suggested in the relevant legislation.....”.

This Board varies to 10 years disqualification the decision of Racing Queensland to warn him off for life for the reasons outlined in the preceding paragraph.

Each party to bear its own costs.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au