

THE RACING PENALTIES APPEAL TRIBUNAL
DETERMINATION AND REASONS FOR DETERMINATION
OF MR D MOSSENSON (CHAIRMAN)

APPELLANT: MARTIN STONE

APPLICATION NO: A30/08/768

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 24 February 2014

DATE OF DETERMINATION: 8 April 2014

IN THE MATTER OF an appeal by Martin Stone against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 30 January 2014 imposing both a three month disqualification for breach of Greyhound Racing Rule 86 (f) and a \$500 fine for breach of Rule 86(h).

Mr M Stone appeared in person.

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

BACKGROUND

On 23 January 2014, Racing and Wagering Western Australia Stewards of Greyhound Racing held an inquiry into Mr Martin Stone's conduct during the race meeting which took place at Mandurah Greyhounds on 9 January 2014. Mr Stone was called to the inquiry in his capacity as owner/trainer of OFF TO MANDALAY which was presented to compete at that meeting. At an early stage of the inquiry Mr Stone was advised he had the right not just to be present at the inquiry but to call evidence and cross examine any witnesses called to the proceedings. He was told all oral evidence given would be recorded and was informed that no charges

would be laid against anybody unless the inquiry disclosed evidence of the commission of an offence. Mr Stone acknowledged that he understood his rights.

A report written by Mr S Jones, the officiating Steward at the 9 January meeting, was tendered. The report explained that Mr Stone's greyhound had weighed in 1.4 kilograms under its last start performance which resulted in it being scratched. The report went on to state:

When Mr Stone walked into the Steward's room the first thing I asked him to do was take a seat. Mr Stone refused and told me on several occasions to turn my recorder off. I asked Mr Stone several times to take a seat and said the recorder will not be turned off. I told Mr Stone that if he did not take a seat he could be in serious trouble yet he still refused. I then gave Mr Stone a direct order to take a seat to which again he failed to do. Mr Kerr also told Mr Stone to take a seat and he completely ignored him. Mr Stone then opened the Steward's room door. I told him to please shut the door but shortly after he walked out and left the door wide open.

I was personally disgusted with Mr Stone's behaviour during the whole proceeding of the inquiry. Mr Stone was loud and intimidating not only towards myself but towards Mr Kerr and Mr Gould. Mr Stone failed to give any evidence during any stage of the inquiry and his unwillingness to cooperate made it extremely difficult for me to complete my duties at that point in time. Mr Stone just simply refused anything that was asked of him. I gave Mr Stone what I thought was a reasonable and lawful order on numerous occasions and Mr Stone completely ignored all of them. Mr Stone's behaviour was nothing short of disrespectful and completely uncivil in his approach to the Stewards.

Mr Stone quoted: "You are recording me against my will and that's my legal order." He also quoted "I refuse to be recorded." I refer to R92 in the rules of racing. Conduct, conduct of inquiry: R92(2) and the rule states "The hearing of the inquiry shall as far as practicable be recorded by shorthand or such recording apparatus or such other means as the Controlling body or Steward's determine and the record of any proceedings shall be retained for a period of not less than 12 months after the date on which the proceedings are finished."

Mr Stone's overall conduct was revolting and totally against what is required of a registered person. His complete unwillingness to cooperate with the Stewards really strikes at the integrity of greyhound racing.

Mr Jones elaborated at the inquiry that although Mr Stone had been called to the Steward's Room to talk about the late scratching of his greyhound the proceeding did not even start. Mr Jones went on to explain that:

It was disappointing, you know, as Stewards we, we're there to, to run and control the race meetings and Mr Stone's behaviour made it extremely hard for me to do

that. He just refused anything that was asked of him in that inquiry and I couldn't even start the inquiry, he wouldn't even come and take a seat.

... towards the end of that short interview, he did open the door and the door would have been left open for a good 10 to 15 seconds. And during that point in time, the door was wide open and I was still trying to tell him to shut the door and take a seat and there were people outside parading their greyhounds for the next race. And there was people in the, the little area there watching the replay on the TV. There were, certainly people looking inside and it was and it was quite loud at that point in time, and yeah it certainly, embarrassing toward, to me that people were looking in the Steward's room and there was, it was just an uncivil matter at that point.

During the course of the inquiry, Mr Stone explained to the Stewards that he was suffering from cerebral palsy and dyslexia and took pain killers daily. On the night of the race meeting in question he said his mood was adversely affected as it was the anniversary of the death of his partner. Consequently Mr Stone explained that "... when the pressure got put on me, I felt myself cracking" (T24).

Mr C Kerr, the Cadet Steward on duty at the 9 January meeting, gave evidence to the inquiry of the incident. He described Mr Stone as having become agitated when he observed the recorder was on. Mr Kerr told the Stewards that Mr Stone refused to take a seat despite having been ordered to do so. The incident continued for roughly 40-45 seconds during which time Mr Stone refused to sit down. The Steward's Room door was open and people could hear the commotion in the Steward's Room before Mr Stone walked out. Mr Kerr went on to describe the situation in these terms "it was completely unacceptable for a Registered Person. I think at first we were in shock. It's not something that I've seen, it was disgusting" (T27).

Mr Kerr subsequently had "an encounter with Mr Stone in the kennels as well" (T28). Mr Kerr, having noticed Mr Stone was in the kennel area watching the television, advised Mr Stone that he was subject to inquiry, his licence was currently suspended and he wasn't allowed in the kennel area. Mr Stone responded by stating that this was incorrect. Mr Stone was given the message repeatedly by Mr Kerr to which Mr Stone responded that he wanted it in writing and refused to move on. People were coming in from the previous race and there were trainers lining up for the next race. It was necessary to call security. Mr Stone continued to stay on in the kennel area for another 90 seconds before moving on.

By way of response to these allegations of improper conduct, Mr Stone explained to the Stewards (T33) problems that he had suffered with his health from a young age including coordination difficulties and operations on his ears for drains and grommets. He added that sometimes when he raised his voice he did not appreciate he was doing it.

The Stewards reminded Mr Stone that he had joined the industry voluntarily. In his application to be licensed he acknowledged that he "... shall at all times conduct and present ... in a professional and proper manner and comply with RWWA's rules of greyhound racing, officials instructions and the powers afforded to them and in failing to do so can place ... his current and future involvement in the industry in jeopardy". The Stewards then proceeded to lay two charges as follows:

"The first one is under 86(f), section 1 and that reads:

A person (including an official) shall be guilty of an offence if the person-

...

engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to-

(i) Steward;

Now the particulars of the charge are that on the 9th of January 2014, at Greyhounds WA Mandurah whilst in the Stewards' Room, you Mr Martin Stone a registered Owner / Trainer engaged in improper conduct towards the Stewards by acting in an intimidating manner towards the Stewards, refusing to sit down, demanding that the Stewards turn the recorder off and leaving the Steward's Room without consent, whilst Stewards attempted to conduct an inquiry.

... the second charge is under 86(p), which reads:

A person (including an official) shall be guilty of an offence if the person-

...

disobeys or fails to comply with the lawful order of a Steward or other person or body having official duties in relation to greyhound racing;

The particulars of the charge are that, at Greyhounds WA Mandurah on the 9th January 2014, you Mr Martin Stone failed to comply with a lawful order of Cadet Steward Mr Cameron Kerr in that you did not leave the kennels when directed to do so.

Mr Stone pleaded not guilty to both charges. In his defence he argued that the law in relation to surveillance and electronic devices applied (T40). Mr Stone claimed he had the legal right

to refuse to be recorded because he could not get a copy of the recording (T41). Further, because of his disability, there had been a breach of the Equal Opportunity Act.

STEWARDS' FINDINGS ON THE CHARGES

The Stewards gave the following reasons in their decision on the outcome of the charges:

... The Stewards have carefully considered all of the evidence in relation to the question of guilt including the documentation you presented today. The Stewards are fully aware of the Briginshaw principle and consider these to be serious matters and we have therefore worked to the higher level.

Further, the Stewards have been made aware through your submissions of a range of health and disability issues and these have been taken into consideration during our deliberations on the question of guilt to both charges.

In relation to the first charge under GAR86(f)(i) we find that on the 9th January 2014, you presented the greyhound OFF TO MANDALAY to compete in an event at Greyhounds WA Mandurah. The greyhound was weighed in at 1.4kgs below its last start weight and in accordance with GAR 39, the greyhound was withdrawn. The Stewards then requested to see you where an inquiry into the scratching of OFF TO MANDALAY would be conducted after the running of race three.

The Stewards have carefully examined the transcript of proceedings from the moment you entered the Stewards (sic) room after the race three, as well as the recording from which the transcript was completed. The evidence from the transcript is easily understood and is in, and is unquestionable.

It's not in dispute that you entered the Stewards (sic) room, you were requested by the Chairman Mr Jones to take a seat and you immediately requested that the official recording be turned off. You were repeatedly requested to sit down and you repeatedly refused. In an attempt at restoring some form of decorum inside the Stewards (sic) room, Mr Jones issued you with a direction to which again you failed to obey despite being warned that you could be in serious trouble if you ignored his directions. You then demanded that the recorder be turned off and by your own volition, you chose to leave the Stewards (sic) room without the consent of the Stewards whilst the Stewards were attempting to conduct an inquiry. The fact remains that the inquiry into the late scratching of OFF TO MANDALAY remains unresolved. Pursuant to the provisions GAR 92, it is a requirement for Stewards inquiries to be recorded. It's routine, all inquiries are recorded for obvious reasons, persons that are affected or aggrieved by decisions made by Stewards do have the right of appeal and it would be farcical if no record existed. When you first joined the Industry, you did so voluntarily and agreed to comply with the RWWA rules of greyhound racing and officials (sic) instructions, you further agreed to be bound at all times by the said rules in force from time to time and any lawful rules, regulations, conditions and directions as may from time to time be formed, made or given by Stewards or officials of RWWA.

The Stewards have also had the benefit of listening to the recording. Clearly you were very uncooperative and confrontational. You would agree with Mr Jones summation that you were loud and intimidating towards the Stewards. ... Mr Kerr who was in the Stewards room at the time, also felt shocked and disgusted with your behaviour.

After careful consideration of all the evidence, we do find that on the 9th January 2014, at Greyhounds WA Mandurah you did engage in improper conduct towards the Stewards by acting in an intimidating manner towards the Stewards, by refusing to sit down, by demanding that the Stewards turn the recorder off and by leaving the Stewards (sic) office without consent whilst Stewards attempted to conduct an inquiry, we therefore find you guilty as charged.

In respect to the second charge for failing to comply under GAR 86 section (p), it's evident from the transcripts that Stewards had decided to make you subject to an inquiry following your conduct early in the night in the Stewards (sic) room. This action would have been taken in to, in accordance with GAR 92 (5), meaning that any licenses or authority held by you was suspended (sic) pending the outcome of the inquiry. You were advised of the Stewards decision and they further clarified that as a person that was placed under inquiry; you cannot handle greyhounds. Despite this advice you decided to enter the kennel building.

After the running of race 10, Mr Kerr quite appropriately, reasonably and lawfully approached you whilst you were in the kennels and directed that you leave the area. Whilst you may not be, been aware that you were not permitted in the kennel area, once Mr Kerr issued you with a direction, you should of complied immediately. Mr Kerr's reasons for his actions being that you had been made subject to an inquiry and the kennel area being a restricted area, you should not be there. Clearly you didn't follow his order as security staff had to be called to ensure that you did leave the kennel area and you yourself have acknowledged that you failed to comply with his order.

Taking into account all of the evidence presented, we do find that on the 9th January 2014, at Greyhounds WA Mandurah, you did fail to comply with the lawful order of Mr Kerr by not leaving the kennel area when directed to do so, we therefore find you guilty as charged.

PENALTY

Although the appeal is confined to the findings of guilt, it is helpful to complete the picture of the inquiry process before the stewards by referring to what transpired in relation to the penalties. Upon being requested to address in relation to the question of sentence, Mr Stone responded by alleging the stewards had disregarded the Surveillance Act and the Equal Opportunities Act. Mr Kerr was accused of lying. The decision was described as discriminatory. Mr Stone claimed he was not seeking special treatment but simply wanted "understanding". He went on to claim that "I've always cooperated with the Stewards". Mr

Stone explained he had been in the industry for some two years and that he owned two greyhounds and a pup. He indirectly relied upon the income from greyhound racing but his main trade was as a mobile mechanic and professional shooter of kangaroos and rabbits.

In the course of discussion which ensued, the stewards referred to a 1995 case of Alex Lindsay who had been found guilty of a breach of an equivalent rule and imposed a three month disqualification arising out of his refusal to allow a kennel inspection. Another earlier case of Mr Caruana was then mentioned. Mr Caruana was involved in removing greyhounds which had been drawn to compete without the Stewards' consent. Mr Caruana was disqualified for three months. Whilst addressing the range of penalties available, Mr Stone admitted he had done wrong technically "under the black and white RWWA rules" but at the same time persisted in his claim to be innocent (T60).

After the stewards reserved their decision they wrote a very detailed letter to Mr Stone dated 30 January 2014 setting out their reasons for imposing the disqualification and fine. In those reasons the Stewards made the following comments and reached the following conclusions:

- This was an extremely serious matter being a case of a registered person who had voluntarily agreed to be bound by the rules who had failed to comply with any directions given to him.
- The behaviour was "disgraceful, totally uncooperative, and disrespectful".
- Mr Stone was intimidating towards the Stewards.
- Mr Stone had left the Steward's Room without authority and consequently the question of OFF TO MANDALAY was unresolved.
- Other participants present at the meeting had observed what transpired.
- There was a complete disregard for the Rules, the Steward's and their authority.
- The Stewards were prevented from performing their duties.
- The whole affair "struck at the very heart of the control of greyhound racing".
- Although Mr Stone had a range of health and disability issues and on the night he was saddened by the passing of his partner, his emotional state did not exonerate him from his misconduct and disrespect.

- The public needed to have full confidence that the industry was being controlled appropriately.
- The common thread in the cases which the Stewards had referred to was the fact that there were deliberate actions preventing the Stewards from discharging their duties and the complete disregard for the conditions upon which the licence was issued.
- Appropriate deterrents both specific and general were to be sent out to discourage others from similar conduct.
- The detrimental effect on Mr Stone's ageing father had been taken into account.
- Mr Stone would not be prevented from conducting his other business activities.

As a consequence the Stewards concluded that a disqualification of three months was an appropriate penalty on the first charge. Such a punishment was said to be significantly less than that imposed on Mr Managlio who, had in the first instance been given a 12 month disqualification. The Tribunal on appeal had reduced Mr Managlio's disqualification to a six month disqualification and a six month suspension. As to the second charge of failing to comply with the lawful order which was a direct challenge on the Steward's authority, a \$500 fine was imposed.

THE APPEAL

Mr Stone appealed by notice dated 30 January 2014 only against his convictions. The basis for the appeal was limited to the "law was not followed, I am innocent of these charges".

At the same time, Mr Stone made application for a suspension of operation of the penalties. The stay application was opposed by the Stewards. After receiving input and arguments in writing from both sides, I refused the stay application and listed the appeal for an early hearing.

MR STONE'S APPEAL ARGUMENT

At the appeal hearing Mr Stone asserted that he was not given a fair hearing at the inquiry on 23 January, was denied the opportunity to call his witness and was "bamboozled". Mr Stone

argued at the original proceeding before the Stewards during the race meeting he was abused and shouted at, he could not work out how the Stewards were applying the Rules and the proceedings should not have been recorded without his permission. He stated he "just wanted to be treated decently". He had left the Stewards' Room in order to cool off. Further, according to Mr Stone there is nothing in the Rules regarding being disallowed to go into the kennels. Mr Stone claimed the Stewards "got him stirred up" despite being aware of his disabilities, what had transpired at the hearing "was against the law" and that he had encountered constant harassment. He indicated that he was unaware the 9 January proceedings was an inquiry or hearing and in support of that proposition pointed out that the transcript of the proceedings simply is headed "interview".

THE STEWARD'S RESPONSE

By way of reply Mr Borovica stated the practice adopted by the Stewards in relation to Mr Stone at the relevant time was "standard practice". Every Australian Stewards' Room has recording devices. By virtue of Rule 92, being a matter of a formal nature, the tape recorder was running. The opportunity to explain the proceedings did not eventuate as Mr Stone marched out and completely ignored the Stewards. A debarred person cannot be in the restricted area of the kennel block. Mr Stone was told to leave but still challenged the order. The Surveillance Act was completely irrelevant. The Stewards would lose all control if the propositions presented by Mr Stone were valid.

The Stewards played the recording of the initial proceedings for me to listen to in order to put the transcript into context for me.

OUTCOME

After hearing the arguments presented at the appeal, I reserved my decision. I now set out my reasons for dismissing this appeal against the two convictions.

PRELIMINARY OBSERVATION

By way of preliminary comment, it is appropriate to acknowledge one can feel some initial sympathy for this unrepresented appellant. Mr Stone's personal situation, namely his general health and state of mind on the night in question clearly combined to cause or contribute to his aberrant behaviour. As a consequence it is fair to say that more than the usual degree of tolerance and latitude is appropriate in view of that situation, coupled with the fact that Mr Stone did not have the benefit of any assistance at the hearing and possibly had failed to obtain any independent counsel or advice prior to that. But, the level of misbehaviour was so far from the norm that it seriously impacted on the ability of the Stewards to perform their duties and meant they were prevented from properly controlling and running the race meeting. Consequently the mitigating factors I have just referred to cannot exonerate or excuse the unhappy episode. Mr Stone lost complete control and all perspective. The aberrant behaviour on the night in question disrupted the orderly conduct of a race meeting. I am satisfied at all times when dealing with Mr Stone the Stewards were simply endeavouring to conduct the racing in an entirely appropriate and normal manner in the face of stiff resistance. This opposition or defiance amounted to serious misbehaviour which has adverse consequences for the industry as a whole and needed to be dealt with accordingly. The Stewards had no alternative but to convict both counts.

I agree with all of the comments and conclusions which the Stewards made and reached which are quoted or referred to above. Absolutely nothing was presented by Mr Stone to challenge the findings and conclusions which the Stewards reached in their reasons for conviction. The transcript together with the tape recording, the oral evidence and the report all combine to lead to the one inevitable conclusion in favour of the Stewards.

COMMENTS ON STEWARDS' ROLE AND REASONS

The facts in the case are straight forward. In simplest terms at the relevant time when the problems occurred the Stewards were properly engaging in their normal business of conducting a race meeting (Rule 19(2)). I am satisfied there was absolutely nothing

questionable or inappropriate in anything they said and did in relation to Mr Stone. The Stewards were duty bound in the course of officiating at the race meeting to investigate the weight variation of OFF TO MANDALAY (Rule 20 and 39). Mr Stone was present and in his capacity as a licensed owner/trainer taking part in the meeting (Rule 3(1)). Consequently, by virtue of the application of Rule 3(2), he was deemed both to have knowledge of and to have consented to the Rules. This licensed person over whom the Stewards had jurisdiction and lawful control clearly behaved in a manner which prevented the Stewards from performing their functions. In the course of so doing the owner/trainer challenged the Stewards' authority and behaved totally disrespectfully. His inappropriate course of conduct completely conflicted with a number of Rules. Mr Stone's conduct was completely indefensible. He refused to listen and obey what he was being instructed to do by the Stewards. The Stewards were perfectly entitled to issue those instructions. As a consequence of his actions the proceedings became a shambles and the chaos spread beyond the privacy of the Stewards' Room into the public domain on the course. Mr Stone was obviously out of control at the time of the incident. His appeal and supporting argument presented at the appeal hearing suggests a complete lack of remorse and insight. Had Mr Stone enjoyed the benefit of some independent counsel or representation at the hearing, that situation would most likely have been quite different.

Mr Stone's approach before both the Stewards and the Tribunal unfortunately reflects a fundamental failure to appreciate the respective roles played by the guardians of the integrity of racing on one hand and the relatively subservient position of those persons who enjoy the privilege of being licensed as owners/trainers. The privileges of a licence to train and own greyhounds may only continue to be extended or available to be lawfully exercised provided the licensee continues to behave in conformity with the Rules.

I repeat the proposition that despite the fact Mr Stone was entitled to some latitude due to the state of his health and his personal circumstances those factors alone did not justify the finding which he seeks in pursuing the appeal. The Stewards did not fail to follow with the law in their dealings with Mr Stone as is alleged in the grounds of appeal. Consequently Mr Stone is not innocent of the charges as is also alleged.

It was appropriate and necessary for the Stewards to have inquired into the weight discrepancy of OFF TO MANDALAY. Whilst they were doing so, the Stewards were required under the Rules to record the proceeding. The Surveillance Devices Act simply does not apply to this special situation. The discussion which took place at the inquiry before the Stewards in the Stewards' Room at Mandurah was not a "private conversation" for the purposes of the Act. Mr Stone was given a lawful command to leave the kennel area. He was not discriminated on the ground of impairment.

I am satisfied that at all times in their dealings with Mr Stone the Stewards exercised their authority in conformity with the Rules. There was nothing discriminatory or offensive in the way the Stewards behaved towards Mr Stone.

ORDER

The appeal is dismissed. Both convictions are confirmed. The appeal lodgement fee is forfeited.



DAN MOSSENSON, CHAIRPERSON

