

Appeal decision

Date: 27 May 2014

Code of racing: Greyhound

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr P James.

Appearances: Mr Z Bryson appeared on behalf of trainer Stephen Kavanagh.
Mr J Dart, chairman of stewards, appeared on behalf of the stewards.

Decision being appealed: Fine of \$300 – GAR75(2).

Appeal result: Penalty varied to a warning.

Extract of proceedings – in the matter of the Queensland Derby Final over 520 metres at Albion Park on 1 May 2014. Trainer: Stephen Kavanagh

THE CHAIRMAN: The appellant Mr Stephen Kavanagh, a trainer of many years experience, is a registered/licensed trainer of greyhounds who operates out of Murwillumbah. He is currently registered/licensed by the relevant control body in New South Wales. Another licensed trainer Mr McDonald, who operates in and out of Victoria, is the regular trainer, engaged by the owner of the greyhound Keybow. Keybow was sent to Mr Kavanagh by Mr McDonald (we assume with the consent of the owner) to care for, manage and to prepare Keybow for greyhound racing in Queensland, in particular, for a leading Queensland race at the Brisbane Greyhound Racing Club, namely the Queensland Derby Final on 1 May 2014.

As at that date Keybow was at Mr Kavanagh's kennels and had been there for about two weeks.

Keybow, whilst being prepared by Mr Kavanagh, had an earlier race start in Brisbane shortly before 1 May 2014, in which the greyhound had suffered an injury of some concern. Keybow was said to have "cannoned into the catching pen." The greyhound was then under the control of Mr Kavanagh who had taken it to race in the prior Brisbane event.

It appears that the fact of Keybow's injury became known to the relevant racing media and was the subject of media reports – no doubt because Keybow was well fancied for the later race, the Derby Final on 1 May 2014. It also appears from the stewards' inquiry that the media reports were, for the stewards, their first knowledge that the greyhound had suffered injury at its prior start.

After inquiry the greyhound remained in the care of Mr Kavanagh. His evidence at the stewards' inquiry shows that he was aware after the earlier race and prior to 1 May 2014, that Keybow had been injured.

- "I noticed a bit over a day later the dog had a bit of favouring in that shoulder."

- He did not engage veterinary support - "I don't need vets mate."
- "I have done electro-magnetic treatment" and "rubbing it with linament and stuff like that."
- He advised Mr McDonald of the injury. "He left it to me."

Other later media reports advised:

"Steve (the appellant) reports that the dog is 100 per cent following a gallop yesterday. We were never going to be starting the dog (in the Derby Final) unless everything was right, that's for sure."

Prior to the running of the Derby Final on 1 May 2014 stewards opened an inquiry. The concerns of the stewards were as follows:

- No person associated with the preparation of Keybow for the Derby Final had advised stewards of the prior injury.
- Accordingly, the stewards had no opportunity to have the greyhound examined by its veterinary officers and to have the greyhound's treatment and condition independently monitored.
- Keybow was highly favoured for the Derby Final and started favourite in that race.

Given the above facts, the stewards after inquiry charged Mr Kavanagh with a breach of Rule 75 of the Greyhounds Australasia Rules, particularly sub-rule 2, which provides -

"Should anything that might have a bearing on the past or future running of a greyhound come to the notice of the trainer after the greyhound has left the course, it shall be reported to the stewards as soon as practicable."

When questioned at the inquiry in relation to this rule, the appellant replied "I wasn't aware of it" and when charged and asked to plead he replied "I am obviously guilty." The stewards convicted and fined the appellant \$300. We note in passing that by GAR3(2) ignorance of the rules cannot be a valid excuse for non-compliance.

At the hearing of the appeal Mr Cavanagh was assisted by Mr Bryson who at the outset submitted to the board that the appellant could not be validly charged and convicted of any alleged breach of Rule 75(2) because that rule imposes the obligation to report on "the trainer" and Mr Kavanagh was in his submission not "the trainer" of Keybow at any material time. He further submitted that Mr McDonald remained the trainer and that it was his obligation under the rule to report to stewards the fact of Keybow's injury in the event immediately prior to the Derby Final on 1 May 2014.

Keybow recovered from the injury and was able to race in the Derby Final and at the time of the inquiry on 1 May 2014, it was the pre-post favourite for the race.

We therefore need to determine this preliminary issue because if Mr Bryson's argument is sound, the factual material relating to the offence becomes irrelevant and the appellant is entitled to have the conviction and penalty quashed.

Clearly the GAR impose separate obligations on "the trainer", "the handler" and an "attendant" in respect of any greyhound. The definition of "attendant" specifically excludes

"a registered owner or trainer" in its application and identifies only the person who is authorised to be "physically" in charge of the greyhound when it is on the club's premises for racing. The obligations of the "attendant" are specified in the rules. So too are those of "the handler" who, by definition, is a person responsible for the control of the greyhound "when presented for an event." Whilst Mr Bryson's argument accepts that Mr Kavanagh might satisfy the definition of "handler" at the material time, he submitted that that is of no relevance because the Rule 75(2) obligation is imposed on "the trainer" not "the handler."

Therefore the question remains whether Mr Cavanagh, for the purposes of Rule 75(2), was "the trainer" of Keybow at the material time for the purposes of the rules.

Before dealing with the definition of "trainer" in the GAR, it is necessary to deal firstly with the relationship between the GAR and the Local Rules. The definition of "Rule", "Rules", "these Rules", "Local Rules" in the GAR is of fundamental importance. The GAR provides that these words/phrases "mean 1 or more of the whole of the Greyhounds Australasia Rules of greyhound racing which together with the Local Rules form and are the Rules of greyhound racing for a Controlling Body." In short, the GAR and Local Rules are in relation to each other complementary and together constitute the rules of any control body in Australia, in the governance of greyhound racing in any State. The GAR and the Local Rules have to be read together and construed accordingly. GAR7 needs to be noted – "the Local Rules of a controlling body take precedence over the Greyhound Australia Rules." This rule may become relevant in any case where there appears to be inconsistency between a GAR and a Local Rule. But subject to that, both the GAR and the Local Rules together constitute the rules of greyhound racing which apply to any greyhound racing in Queensland which is controlled by Racing Queensland.

It is our view that Mr Bryson's submissions take no account of this fact.

Furthermore LR25 provides -

"Visiting licensed /registered person

- (1) Any person registered or licensed with an Approved Controlling Authority, whilst such authority remains an Approved Registration Controlling Authority, shall be deemed to be registered/licensed with Racing Queensland for the purposes of these Rules.
- (2) The participation, by any person who is deemed to be registered/licensed with Racing Queensland by virtue of these rules, in any activity in Queensland over which Racing Queensland has control, shall constitute a submission by that person to Racing Queensland to the intent that the person was registered/licensed by Racing Queensland."

Contrary to the submission that Mr Kavanagh was not registered/licensed as a trainer in Queensland by the control body which controlled Mr Kavanagh's participation with Keybow, LR25 clearly deems him a trainer registered/licensed by Racing Queensland and his very participation "in any activity over which Racing Queensland has control", is an acknowledgement by him that he is registered/licensed by Racing Queensland.

We turn then to the definition of "trainer" in the GAR. "Trainer means a person registered by the Controlling Body to train a greyhound for a purpose pursuant to these rules." The

evidence is conclusive that, in fact, for so long as Keybow was transferred to and remained in the care of Mr Kavanagh for the purpose of racing the greyhound in Queensland, he was in fact its trainer and was deemed to be a trainer registered/licensed by the control body in Queensland. His participation in Queensland racing made him clearly subject to the rules which impose obligations on the "trainer" of any greyhound. He was therefore required to comply with GAR75(2) but did not because he was unaware of that rule. He was, in our view, properly charged by the stewards of the control body Racing Queensland.

We would rule against the submissions of Mr Bryson and proceed to consider any other issues which the appellant and/or Mr Bryson wish to put before us.

We have now to consider the question of penalty.

It would seem that there exists within the greyhound code a very significant level of ignorance about this rule. The records do not contain any precedent of a like case and there are no prior recorded penalties.

In the circumstances, therefore, and in view of the fact that it will be publicised to the code that the rule will be enforced, then we think it is appropriate that we quash the penalty of a fine of \$300 and impose a warning.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 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