

Appeal decision

Decision date: 6 November 2015

Hearing date: 26 August 2015

Code of racing: Greyhounds

Appeal panel: Brock Miller (Chair), Mr Gary Casey and Mr Daryl Kays

Appearances: Mr Scott Neaves appeared on behalf of the Appellant – Mr Russell Druery
Mr J E Murdoch QC appeared on behalf of the Respondent – Racing Queensland

Decision being appealed: Breach of GAR Rule 86(q) and GAR Rule 86(d) – Warned off for life.

Appeal result: Appeal against penalty allowed and period of 8 years warning off substituted in lieu of life penalty.

Russell James DRUERY appeals against the decision of the Queensland All Codes Racing Industry Board to invoke its powers to warn him off all Queensland greyhound racecourses for life pursuant to Rule 3A of the Local Rules of Racing (Greyhound Racing).

That decision was made on 28 April 2015 at the conclusion of a Show Cause hearing that emanated from investigations by Greyhound Racing stewards as a result of the ABC Four Corners program broadcast on 16 February 2015 involving the live baiting of animals in the greyhound racing Industry.

The Appellant was found guilty of two charges:

1. He engaged in conducted which was prejudicial to the interest, welfare, image, control or promotion of greyhound racing in breach of GAR, Rule(86(q) , including on or about 20 August 2014 at 9 Wotan Road, Churchable;
2. He provided, in an interview with Racing Queensland in Deagon, Brisbane on 23 March 2015, evidence that was false and misleading in breach of GAR, Rule 86(d).

Mr Neaves of Counsel for the Appellant at the appeal hearing informed this Board that the basis for the appeal was against penalty only, and that the he was no longer challenging the conviction.

In his submission on behalf of the Appellant he urged this Board to not regard his client as a 'live baiter' per se but as an observer who failed to report his observations to authorities and should be treated more leniently than those penalised by the Board for 'live baiting'. He claimed that his client had a history of compliance with the Rules.

He submitted on behalf of the Appellant a number of character references which indicated the high regard with which he was held by the referees in relation to both his character and his professionalism within the Greyhound Industry.

Mr Neaves also raised the financial consequences to the Appellant from the prohibition upon him to refrain from any involvement in the Greyhound Industry and has had to accept less than market value for his racing and breeding stock. He was no longer employed and was intending to sell his property.

Mr Murdoch Q.C. for the Respondent (Queensland All Codes Racing Industry Board) submitted that the Appellant was not entitled to any lenience and should be treated on a par with the persons who were convicted of 'live baiting'. He had been given the opportunity to co-operate with Stewards but failed to do so. His reliance upon previous compliance with the Rules to justify leniency was in sharp contrast to the choice to cover up what Mr Murdoch described as the "iniquitous practice" that the Appellant had witnessed. In respect to the submissions made on behalf of the Appellant with regards to character and financial loss as mitigating factors Mr Murdoch urged the Board to treat them with circumspection. There was for example, no reliable documentation to support his approximation of financial loss, and similarly there was little weight to be given to character testimonials where it appears that the providers knew nothing of the offences with which he had been charged. A strong deterrent sentence was warranted.

The Board has given careful consideration to all of the evidence before it and what is glaringly apparent is that the Appellant has persistently maintained an attitude of denial. He has failed to acknowledge the seriousness of the charges of which he has belatedly pleaded guilty to. It was not until the morning of the appeal before this Board that all parties were informed of his intention not to proceed with challenging his conviction. He was given numerous opportunities before the Stewards at their Inquiry on 23 March 2015 to fully co-operate, as well as the interval prior to the Show Cause hearing before the Board of Queensland All Codes Racing Industry and at its hearing on the 28 April 2015. The character testimonials submitted to this Board in general contained minimal reference to any knowledge by the providers, of the Appellant's association with persons conducting 'live baiting', and of him effectively condoning the barbarous activity. The closest any referee made to the issue was from a Capalaba Greyhound Racing Club official who offered the following "*Russell having been present at the time of the "live baiting" at unlicensed track, has really impacted him as a person, and he feels ashamed that he has been implicated in wrong doing at the time. Russell is extremely remorseful, and wishes he could have changed his position on attending the track, had he known it was unlicensed*". In the context of the Appellant's whole approach to the seriousness of his convictions it can be gleaned from

those comments that he has not taken responsibility for his position. Mr Murdoch's submission is apposite.

Succinctly put the Appellant's attitude can be best described by reference to Paragraphs (27) and (28) of the Board of Queensland All Codes Racing Industry: "...Mr Druery's conduct is the type of behaviour that can put the entire regulation of the greyhound racing industry at risk....because of its seriousness, had brought the greyhound racing industry into disrepute and had an adverse and detrimental effect on the integrity and image of the greyhound racing industry in Queensland:..".

It is incumbent on this Board to impose a sentence which will act as a general deterrent to all participants in the Industry and to reinforce the principle that any behaviour involving barbaric treatment of animals in any way that reflects negatively on the integrity of the Industry will result in serious consequences to licensed perpetrators'.

In the Appeal of Julie Edmondson 22.9.2015 this Board stated..."It is accepted that the practice of live baiting must be completely stamped out from the industry however the idea of someone being visited with a warning off for life for merely being an observer of the activity or of failing to give truthful evidence of what has previously been seen by her is not, in the opinion of this Board, an offence warranting a life penalty. This Board has consistently identified that a period of 10 years is tantamount to exactly that a life penalty because there will be a necessity for an application to be made to the relevant Authority at the expiration of the ten years and it will then be for that authority to identify whether the person is a fit and proper person".

In Edmondson's case although she was initially uncooperative with Racing Officials she ultimately co-operated with Queensland Police in relation to criminal proceedings of others involved in the 'live baiting' investigations. She was afforded leniency for the reasons outlined in the Decision.

On the other hand this Appellant has maintained an un-cooperative attitude of denial of responsibility and should be treated accordingly. An appropriate sentence in all of the circumstances is a period of 8 years Disqualification.

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