

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 6 JULY 2022

APPELLANT RODNEY NEWELL

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 83(2)(a)

DECISION:

- 1. Ruling made in respect of “present” component of Rule 83(2)(a)**
- 2. Appeal upheld**
- 3. No order made in respect of appeal deposit**

1. The appellant Rodney Newell appeals against the decision of GWIC of 10 March 2022 to disqualify him for a period of four months for a breach of Rule 83(2)(a).
2. During the course of the initial hearing on 18 May 2022, the Tribunal noting that at that stage the appellant had lodged a plea of guilty, a plea which he had sought to enter to GWIC during their inquiry, he was advised by the Tribunal there may be a legal issue and an obligation on the Tribunal to consider whether that plea should be rejected.
3. The Tribunal notes that the appellant subsequently indicated to the Tribunal in writing on 4 July 2022 that he was changing his plea to not guilty.
4. A preliminary issue has arisen as to whether in the circumstances the rule in relation to the word “present” and in conjunction with the definition of “presentation” in Rule 1 can be established against the appellant on the facts of his case. This legal determination is upon the meaning and the application of the two rules just mentioned. Its formal application to the facts of this case remain to be determined.
5. The giving of a preliminary ruling will enable the parties to determine how the appeal itself should continue, the Tribunal noting that evidence for both parties is available and the matter listed for hearing today.
6. To give context to the legal interpretation, a brief statement of the facts of this case is necessary. The Tribunal emphasises that these are not final factual determinations but merely used as an example of the factual scenario in which this legal interpretation can have meaning. The precise facts which took place and which will require determination are a matter for the hearing itself.
7. With that qualification in mind, and to put the interpretation in context, the Tribunal notes that there is no issue in relation to Rule 83(2)(a) and it is not enlivened in this matter by any plea of not guilty, incidentally. It will not be in issue – and, again, to provide factual context – that the appellant was a trainer, that the subject greyhound was nominated to compete in an event and that subsequently, after all the facts took place, the greyhound tested positive for a prohibited substance, being caffeine and its metabolites.
8. The further factual scenario to inform a legal interpretation is that under the definition of presentation, to which the Tribunal will return, the appointed scratching time of the particular event had passed, and that being for the event to which the greyhound was nominated. That the appellant took the greyhound to the subject racecourse and presented it to the weighing steward. The weighing steward gave the appellant a pre-race swab notification. Discussions took place. As a result of those discussions, the greyhound was scratched from the event. The appellant, before he left the

course, administered a substance to the greyhound, left the course with the greyhound, under direction returned to the course, and under direction the greyhound was swabbed and the subsequent positive was determined.

9. The key part of those facts is that, it is not going to be in issue, for the purposes of interpretation, that the greyhound was scratched.

10. The issue becomes was the greyhound presented. That requires a consideration of the rules.

11. As a preliminary point, the The Tribunal notes that it is dealing with the rules that existed on 1 October 2021, the date of the event, and not the rules as they are written now with effect from 1 May 2022. In relation to these matters, there is no substantial difference, however.

12. As stated, the contents of Rule 83(2)(a) do not require further consideration, it is only the word present within that rule that needs consideration.

13. Rule 1 of the rules defines presentation. The Tribunal will first set it out in full and then break it down into its components. The definition is as follows:

“‘presentation’ or ‘presented’ a greyhound is presented for an Event from the time commencing at the appointed scratching time of the Event for which the greyhound is nominated, and continues to be presented until the time it is removed from the racecourse after the completion of that Event with the permission of the Stewards pursuant to Rule 42(2) or is scratched with the permission of the Stewards.”

14. The various components, as stated above – presentation for an event, appointed scratching time and nominated for that event – are not in issue. They do not require further consideration.

15. The rule can be broken down into an introductory requirement and then two parts.

16. The introductory requirement which activates the two parts is as follows: “continues to be presented until the time it”. Then there is the first breakdown: “is removed from the racecourse after the completion of that Event with the permission of the Stewards pursuant to Rule 42(2)”. The second component is: “or is scratched with the permission of the Stewards.”

17. In relation to that first component, the removal part, Rule 42(2) is referred to but is not required to be further analysed. It simply enables a

removal of a greyhound from a kennel or a kennel building with the permission of stewards.

18. The word scratched is not defined. The remainder of the words in the first and second components have a plain English meaning, as in fact does the word scratched. There is not an issue in the factual matters that will be enlivened here that the greyhound was scratched. It is noted that the new rule from May 2022 makes it clear that the definition of scratched includes withdrawal. But that does not need further consideration here, it is not a relevant issue for the determination.

19. The appellant is unrepresented. His capacity, with respect to him, to make legal submissions is, understandably, limited. Principally, his submissions on the issue sought to deal with factual matters of concern to him. His key point in his submissions in reply to the GWIC submission was to the effect that in finding an interpretation, no reliance should be placed upon disruption to betting because it was a side product of the actual racing of greyhounds and that there needs to be a concern as to welfare and safety of greyhounds rather than the concern for the betting public. The Tribunal does not disagree with that as being one of the aims of the regulatory body and the conduct of greyhound racing generally. But the rules cannot be so read down.

20. What is required here is a purposive interpretation of the words used by the rule-makers. If those words have a plain and simple English meaning, and a clear and obvious interpretation and application, then it is not necessary to go to additional resources to try and find out what the words mean. Each of the words must be considered in the text in which they are placed – and that is the definition – in the context of the definitions as a whole, and in the context of the rules. In addition, the Greyhound Racing Act itself must be considered. All of which will provide an understanding of what the words mean.

21. It is submitted for the respondent GWIC that a purposive interpretation enables a finding to be made of the two scenarios identified to have application in different circumstances.

22. The Tribunal is satisfied that welfare and integrity, provided as a duty on the regulator, is required and that the point of the definition rule, read in conjunction with Rule 83(2)(a), is designed to provide a level playing field for racing greyhounds so as to give to the participants, the industry generally and the betting public an acceptance that racing will be conducted without the presence of substances which will affect a greyhound positively or negatively.

23. That is, that the subject rule, 83(2)(a), is a racing-based rule. It is designed to provide that level playing field. It is designed to capture greyhounds with impermissible substances that race.

24. The rules when otherwise considered provide for out-of-competition testing and other testing which of themselves can capture impermissible substances in greyhounds, whether they are permanently banned prohibited substances or otherwise, at other than racing events.

25. The effect of the reading of 83(2)(a) in conjunction with the definition of presentation is, therefore, based upon the fact it is a race-based combination of rules. Essentially, it means that from the appointed scratching time the scratching of a greyhound is limited by the operation of the definition, then essentially the level playing field of race-day presentation is enlivened.

26. The way the rule generally has applied has been that a greyhound will be presented to race, it might receive a pre-race swabbing or a post-race swabbing, all of that will be done at the course and then the greyhound can leave. It is, therefore, it can be done pre-race or post-race. But, in any event, the rules are clear that the greyhound remains at the course, if it competes, until the pre- or post-race swabbing is completed.

27. The level playing field purposive consideration the Tribunal applies is that the first part of the rule, until it is removed etc, applies quite clearly to a racing greyhound.

28. The second part of that the rule ceases to expressly mandate a requirement to remain for swabbing once the greyhound is scratched. That is, if it is scratched, patently, it cannot race. To put that in context, a greyhound cannot be scratched after it has competed. That would not, consistent with what the Tribunal said a moment ago, have any common sense application at all. A greyhound could hardly be withdrawn from a race and then compete in it.

29. The available finding, therefore, is that the words of the second provision, "or is scratched" provide a time limitation on the actual fact of presentation. Is it correct, therefore, that the presentation ceases as if a full stop was applied at the moment the greyhound is scratched? Could that possibly be what was intended?

30. As the Tribunal has said, it is much persuaded by the fact that the aim of Rule 83(2), and (a) in particular, read in conjunction with "present" is designed to capture the racing greyhound to ensure the level playing field by testing for prohibited substances.

31. Can that have a practical and purposive meaning if other events could take place?

32. There is a mischief that could be avoided by a trainer presenting a greyhound who is presented with a pre-race swab in the knowledge that the greyhound has in it a substance which would be detectable by a pre-race swab, but not necessarily by a post-race swab, of then immediately seeking to have the greyhound scratched. That would enable an avoidance of the security and integrity issues which drive the industry.

33. But there must be a legitimate reason determined by a steward to permit a greyhound to be scratched. A trainer simply could not say, "I wish to scratch my greyhound but I won't say why" if the greyhound is standing on the weighing scales or in the kennel waiting to go out. As a practical effect, therefore, that mischief is not one which interpreted purposively could lead to an alternative interpretation.

34. It is said that unless the interpretation advanced by the respondent GWIC is adopted, then racing will be adversely affected because it could become impractical and that would arise because it could be said that stewards could refuse to allow a scratching if they wished to conduct a swab and therefore that would result in delays of race meetings, with all the consequential flow-on effects that that would engender.

35. The submission for the respondent GWIC is that the definition of presentation is to be read on the basis that the first provision provides for greyhounds that actually attend a racecourse after scratching time, and the second provision is for greyhounds which are not presented at the racecourse. That is, that the scratching would take place before the actual attendance at the racecourse.

36. The Tribunal does not agree. There is a further reason for that, and that is that the purposive interpretation advanced by the respondent GWIC would require a reading into the provision of additional words such as – and there are examples, but this will suffice to demonstrate – that it would read "or be scratched with the permission of the stewards before it attended at the racecourse for the purpose of racing". It does not say that.

37. The intention of the rule, in the Tribunal's opinion, as has been expressed several times, is to capture the racing greyhound. The fact that it can be a pre-race or post-race swab makes no difference.

38. The first of the provisions captures the racing. The second eliminates the capture of the greyhound that was presented to race from the moment it is scratched because it does not race. The fact it has to be scratched with the permission of the stewards merely enlivens satisfaction that there is an

integrity control over the aspects of scratching which would prevent the type of mischief behaviour example the Tribunal gave.

39. And if it was correct, the whole of the definition would leave no words to do for the expression “or is scratched”. Because, essentially, the presentation is once the greyhound is at the track. There would be no need in this particular presentation rule, in the Tribunal’s opinion, to have put that second scenario in. It would have no work to do.

40. It is, therefore, that the types of scenarios that could be advanced are, if a greyhound attends, it either races or it does not race because it is scratched. Alternatively, it does not attend the racecourse but is scratched, or there is some other reason. The rule does not require a reading in of each of those two ranges of possibilities. That is, that it is not to be read into the rule words to the effect of “if the greyhound does not attend the races because it is scratched”.

41. The Tribunal is further reinforced in that conclusion by reading the Rule 1 definition as a whole in the circumstances it outlined above by the use of the expression “continues to be presented until the time”. Therefore, when read in conjunction with the word scratched, it does not continue to be presented.

42. Accordingly, the conclusion the Tribunal reaches is that 83(2)(a), read in conjunction with the definition of present in Rule 1, is such that the greyhound is no longer presented from the time it is scratched with the permission of the stewards.

43. The ruling, therefore, is that the “present” component of 83(2)(a) ceases to have effect if a greyhound is scratched with the permission of the stewards.

SUBMISSIONS MADE IN RELATION TO FACTS

44. It not being objected to by the respondent, the Tribunal notes the brief facts are that the greyhound was presented to race on 1 October 2021, that at 11:04 am it was scratched and, therefore, in the Tribunal’s opinion, it then ceased to be presented. Therefore, at the time of the taking of the sample at 2:30 pm, the greyhound was no longer presented and, accordingly, the subsequent positive sample taken after the presentation had ceased does not lead to a breach of 83(2)(a). As to whether other rules might be breached is not an issue for the Tribunal on this appeal.

45. In those circumstances, it being a plea of not guilty, the Tribunal upholds the appeal.

46. The charge under 83(2)(a) is dismissed.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

47. Application is made that an appeal deposit not be paid. The Tribunal had deferred payment of that for reasons which need not be canvassed. The appellant, who has been successful on the appeal, asks that an order be made that he not be required to pay an appeal deposit, and the Tribunal concurs.

48. There is, therefore, no order in respect of the appeal deposit. It is, simply put, not required.