RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WRITTEN REASONS FOR DECISION EDITED TO REMOVE CONFIDENTIAL MEDICAL EVIDENCE

TUESDAY 9 AUGUST 2022

IN THE MATTER OF A STAY APPLICATION BY MARK GATT

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULES 156(f) and 165(c)

DECISION:

1. The decision of GWIC of 2 August 2022 is not to be carried in to effect pending the determination of the appeal on condition that the appellant prosecutes the appeal expeditiously.

1. The appellant, licensed trainer, breeder and studmaster, Mark Gatt, makes application for a stay of the decision of the GWIC of 2 August 2022 to impose upon him in total a seven-month disqualification.

2. The Tribunal has set out the law to be applied to such an application on many occasions. It is not necessary to repeat it.

3. The submissions for the respondent GWIC today incorporate the most recent exposition of those principles to be applied in the case of Gillespie v Harness Racing New South Wales, and they are adopted. They are the statement of principles the Tribunal has been applying for some 11 years, slightly amended about 10 years ago.

4. The issue, therefore, is has the appellant satisfied the Tribunal that the decision should be stayed, and in doing so, has he established to the satisfaction of the Tribunal that he has an arguable case, and, if he does, where does the balance of convenience fall? He must establish balance of convenience in his favour.

5. The facts are of relatively brief compass and do not need detail in this application. Suffice it to say that as a trainer at a race event he has, after being head-butted by his greyhound, struck it with his fist. He has then been called, apparently in relation to other matters, to the stewards' room, where he has engaged in the second set of conduct, which extends to his misbehaviour, through particulars (a) to (m), which it might be described as an appalling set of verbal abuse by the appellant towards stewards.

6. The appellant was charged under 156(f) and 165(c). He received six months on the first matter, five months on the second matter, with partial cumulation that led to the total of seven months.

7. The appellant pleaded guilty before the inquiry and will maintain that admission of the breach of the rules on his appeal to the Tribunal. It is, therefore, that it will be, in due course, a penalty hearing only, and the principles to be applied on that do not need to be addressed on a stay.

8. Suffice it to say that the appellant accepts that the welfare conduct in which he engaged in serious.

9. It might be noted that since January 2022 the regulator has put in place a penalty guideline which provides a starting point for the 156(f) matter of a nine-month disqualification, but of course that can be reduced if special circumstances, as they are defined in the guideline, are established. That is a guideline, not a tramline. The Tribunal, in assessing penalty for itself, in due course, is not bound to follow the guideline. But, as the Tribunal has said on many, many occasions, if a regulator chooses to advise the industry that it is imposing a set of guidelines, then industry participants

must expect that they will be considered for penalty within the ambit of those guidelines. However, each case on its own facts and circumstances.

10. The case for the appellant basically falls into a very narrow compass. Firstly, it is that he says that precedent is in his favour and that a disqualification is not an appropriate outcome for that which he did. He calls in aid a number of cases in which fines or suspensions were imposed and does so in acknowledgement that his conduct was serious.

11. The cases certainly show, where there has been a striking of a greyhound, in the matter of Roberts, a fine was imposed, and in relation to language, the matter of Irwin, for example, a fine was imposed. The case of Wilton, language and other conduct, there were suspensions – he slapped a greyhound – rather than disqualification.

12. Each party argues that the precedent cases that their opponent has put forward today can be distinguished. It is not necessary to determine to finality a comparison between the precedent cases and the conduct here and assess a likely outcome. This is a stay application. Is there something arguable upon which he can hang his hat, so to speak?

13. Therefore, the precedent matters do have some relevance. It is that there will be, in due course, an assessment of his conduct. It is a welfare case. And it is trite to say that the legislation binding the regulator and participants mandates the application of principles of welfare as being paramount. Welfare certainly arises when a greyhound is struck to the head.

14. The integrity of the industry is based, in part, upon a respect for and obedience to stewards by those given the privilege of a licence, as is the appellant here, and that to engage in the conduct which is alleged against him in particulars (a) to (m) is no doubt going to be assessed on a serious basis.

15. There are possibilities, therefore, that there will be disqualifications. There are possibilities, perhaps, it is his case, that there may not. That does not have to be decided.

16. The second limb to his case is that he was not given a fair opportunity, timewise, to present all of his evidence to GWIC. It is that here he received his initial Notice of Proposed Disciplinary Action on 25 July and the decision was imposed on 2 August. He had attended a hearing in the interim. He had sought longer time to prepare but was told that there was a desire for finality. He calls in aid precedent, for example, in other cases, where greater delay occurred between the conduct, the Notice of Disciplinary Action and the final outcome. Irwin was but one example.

17. There is no doubt here that this case was disposed of with considerable expedition. It is difficult to see, sitting back on the material – and it is not all of the material that is before the Tribunal – why there was a need for such expedition. Welfare is important. It is imperative that those who breach welfare considerations and, indeed, display a lack of respect and obligation to stewards should not expect to continue in the industry, as the respondent would ask the Tribunal to accept today.

18. On the other hand, there is an issue of procedural fairness. It is squarely advanced by the appellant that he was unable to put before the decision-maker material which is relevant. That material, now available to the Tribunal, is in its infancy.

19. It, firstly, comprises a report of Dr Buckingham, which was not available to the decision-maker. The appellant is on medication and he suffers from (edited to remove the names of the conditions) three named conditions. He is not yet able but has put in train measures to obtain psychological assessment to do two things. Firstly, assess whether or not his said-to-be uncharacteristic behaviour on the night can be at all linked back to those three conditions when considered individually or collectively. And, secondly, whether he will require, and is able then to advance to the regulator, that he should be seen to be unlikely to reoffend on the basis of any treatment that is provided for him by that psychologist or other practitioners. Those matters were not available. There is a link in the Dr Buckingham report to the request for delay in decision-making which was refused.

20. That is, in the Tribunal's opinion, the gravamen of the arguable case. It is possible, but the Tribunal is not required to, nor does it, indicate any determination of likely penalty in this matter. It does not do so. It does not by these about-to-be-made remarks seek to hold out to the appellant that he might anticipate a lesser penalty.

21. But the Tribunal is not comfortably satisfied that when the decision-maker acted so promptly over objection with the desire to produce subsequent material, and that subsequent material has raised a possibility of an issue, and it might be said, within the terms of the penalty guidelines, possibly an issue that will go to special circumstances, that the outcome for him might not be a disqualification. The Tribunal puts it no higher, it does not have to. Therefore, the prompt decision – and the Tribunal respects the desire of the regulator to do so – has, in the Tribunal's opinion, placed the appellant at a disadvantage and he has now demonstrated why that disadvantage fell upon him.

22. That, in the Tribunal's opinion, raises an arguable case.

23. It is then an issue whether or not the balance of convenience is in his favour.

24. Welfare is imperative. Compliance with the privilege of a licence and respecting the office of steward is imperative. Welfare and integrity are both alive, each of which is very important. There is no doubt that the regulator cannot be seen to be condoning a licensed person – and with the privilege of a licence – striking a greyhound in his care and control. That is imperative.

25. The appellant advances in his material the fact that he is a professional trainer. Training is his sole source of income. He had some 50 greyhounds in care on behalf of some 10 owners at the time of the conduct. There is no doubt that hardship will be occasioned. As to whether the Thomas principles will fall in his favour or against him, namely, that if a penalty is appropriate, the fact that hardship is a result of the conduct is but a consequence of the conduct and it should not lead to anything other than appropriate penalty on facts and circumstances being imposed simply because there would be hardship. Otherwise, there would never be any protection for welfare and integrity.

26. The appellant has not raised issues that any subsequent success might make his appeal abortive. The Tribunal, however, proposes to consider that. It is suggested on behalf of the regulator today that it is ready for a hearing, and that is accepted. It is quite apparent from the submissions made, and the Tribunal understands the difficulties in obtaining psychological assessment and report, not the least of which, the Tribunal just notes in passing, is attributable to recent disasters in this state involving bushfires, floods, all of which are on top of the other substantial demands on psychologists for treating people with disabilities and providing regimes for general assessment in relation to not only court cases but Tribunal cases and on behalf of other practitioners as well. It is that, therefore, there is unlikely to be a hearing in the immediate short term which would otherwise occur if that possible delay was not likely.

27. Therefore, on a balance of convenience argument, despite the readiness of the respondent to prosecute the appeal, as it must, it is that the appellant, in the Tribunal's opinion, will not be ready in the very short term. That is a balance of convenience factor which, when coupled with the other factors to which the Tribunal has made reference, satisfies the Tribunal that despite the serious welfare and integrity issues that are identified here, it will have the effect of the equivalent of an abortive appeal if there was to be some not insubstantial delay in which he had lost the privilege of a licence, and its exercise.

28. The Tribunal comes to that conclusion notwithstanding that the Internal Review panel, in rejecting an earlier stay application by him to that body, provided a right of residence and a right to continue to care for greyhounds in his care, but they, of course, being important factors, do not go to the

opportunity to provide income against which the appellant's expenses are based.

29. In those circumstances, balance of convenience is found in favour of the appellant.

30. Therefore, the appellant establishes both an arguable case and balance of convenience.

31. The Tribunal will impose a condition– and it will not be subject to a time but will be assessable – that the application for a stay is granted on condition that the appellant prosecutes the appeal expeditiously.

32. The Tribunal orders that the decision of GWIC of 2 August 2022 is not to be carried in to effect pending the determination of the appeal on condition that the appellant prosecutes the appeal expeditiously.
