RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 23 NOVEMBER 2022

APPELLANT ROBERT HOARE

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULES 106(1)(d) and 106(2)

DECISION:

1. **Appeal dismissed**
2. **Appeal against severity of penalties upheld**
3. **Charges 1 and 2 – Penalty of 6 months disqualification imposed on each charge to be served concurrently**
4. **50 percent of appeal deposit refunded**

1. The appellant, licensed trainer Mr Robert Hoare, appeals against the decision of GWIC of 28 January 2022 to impose upon him two periods of disqualification of 10 months, to be served concurrently, for breaches of Rule 106(1)(d) and 106(2).

2. The relevant parts of those charges and their particulars are as follows.

" Charge 1: Rule 106(1)(d), Rules
(1) A registered person must ensure that greyhounds, which are in the person's care or custody, are provided at all times with-

…
(d) veterinary attention when necessary.
…
(5) An owner or person responsible at the relevant time who fails to comply with any provision of this rule shall be guilty of an offence and liable to a penalty in accordance with Rule 95.

Particulars:
That you, as a registered Public Trainer and Breeder, between 12 January 2021 and 15 January 2021 failed to provide veterinary attention to a greyhound, with the circumstances being:
(a) Between 12 January 2021 and 15 January 2021, the greyhound 'Robby's Boy' (microchip: 956000005708265) ("**Greyhound**") was registered as being owned by you and in your custody;
(b) On 12 January 2021 the Greyhound sustained an injury to his leg during a trial held at the Gunnedah Greyhound Racing Club;

(c) The injury sustained by the Greyhound was a radius and ulna fracture of the leg;

(d) You failed to provide veterinary attention to the Greyhound from the time that the injury was sustained until 15 January 2021;

(e) The Greyhound was euthanased on 20 January 2021 as a result of the injury sustained.

Charge 2: Rule 106(2), Rules
(2) A registered person must exercise such reasonable care and supervision as may be necessary to prevent greyhounds pursuant to the person's care or custody from being subjected to unnecessary pain or suffering.

Particulars:
That you, as a registered Public Trainer and Breeder, between 12 January 2021 and 15 January 2021 failed to seek medical treatment or appropriate pain relief for an injury sustained by a greyhound which inflicted undue suffering on that greyhound, with the circumstances being:
(a) Between 12 January 2021 and 15 January 2021, the greyhound 'Robby's Boy' (microchip: 956000005708265) ("**Greyhound**") was registered as being owned by you and in your custody;

(b) On 12 January 2021 the Greyhound sustained an injury to his leg during a trial held at the Gunnedah Greyhound Racing Club;

(c) The injury sustained by the Greyhound was a radius and ulna fracture of the leg;

(d) You failed to exercise reasonable care and supervision that was necessary to prevent the Greyhound from being subjected to unnecessary pain or suffering in accordance with Rule 106(2), in circumstances where:

(i) You provided the Greyhound previcox tablets and anti-inflammatories as pain relief for the injuries sustained;

(ii) Upon assessment the Greyhound was administered methadone and then meloxicam as appropriate immediate pain relief by the treating veterinarian. "

3. The appellant pleaded not guilty before the Integrity Hearing Panel and has maintained that denial of the breach of the rule on appeal.

4. The evidence has comprised a bundle from each party, but essentially the key documents to be found are the transcript of two days' hearing of 12 November 2021 and 20 January 2022, the notice of proposed disciplinary action to which was attached a statement by GWIC veterinarian Dr Gilchrist, a report of Dr Webber, a patient history and report of Dr Roach, the interview of the appellant with an inspector on 27 January 2021, the appellant's licensing history, an email from admin@saleyardsvet to Kasia Hunter and an email from Dr Yore to GWIC of 25 November 2021. Before the Tribunal today there was admitted further evidence of a report of Dr Karamatic, regulatory vet, of 18 July 2022, and a report of practising veterinarian Dr Peter Yore of 4 July 2022. In addition, oral evidence was given by Dr Karamatic, Dr Yore, Dr Roach and submissions were made in writing prior to the hearing by both parties and supplemented by oral submissions at the hearing.

5. Some matters are not in issue and are established. That the appellant, a licensed trainer of some 30 years' standing with no prior disciplinary matters, was the trainer of the subject greyhound on 12 January 2021. He was accompanied by Ms Russell to a trial at the Gunnedah club.

6. In the course of that trial, the greyhound caught up with the lure and collided with the lure arm. There was an immediate reaction from the greyhound, which yelped, and there was immediate response from the appellant, who ran over and apparently became distressed. It was quite apparent to both the appellant and Ms Russell that the greyhound had injured itself.

7. The impact was of such a degree that it was apparent to the appellant and Ms Russell that veterinary attention should be obtained.

8. Approximately 30 minutes after the injury, they drove to a veterinary practice in Gunnedah. They did so because there was no veterinarian present at the Gunnedah Club because it was a trial. So, within 30 minutes they are at a veterinary practice.

9. The evidence of Mr Ranald Dawes, the appellant and Ms Russell is that the veterinarian on duty refused to assess the dog unless a fee of $200 was paid. The evidence establishes that the greyhound had been taken into the practice, but there is no evidence of the vet having conducted a cursory or other examination such that that veterinarian could conclude the injuries were minor. It is not for the Tribunal to judge the professional response by that veterinarian to the presentation other than to express amazement.

10. The appellant gave evidence, supported by Ms Russell and consistent with all of his evidence in this matter, that he simply could not pay that fee on the spot. Accordingly, they left.

11. They then drove to a different veterinary clinic in Gunnedah, which was unstaffed, and the veterinarian not able to be contacted.

12. They then telephoned Quirindi Veterinary Clinic and had a conversation and indicated that they would be there within some 30 minutes. The Tribunal notes that it is probably longer to drive from Gunnedah to Quirindi, but that is the evidence.

13. The veterinarian there expressed that he was not experienced with greyhounds but dogs in general, but was willing to treat the greyhound. A short time later, the appellant telephoned that practice and cancelled the appointment. The evidence establishes that in doing so the appellant said he would take the greyhound to be assessed at the Belmont Vet Clinic that day. The Tribunal notes in passing that it is some four hours' drive to Belmont. The appellant also said he cancelled that appointment because it was some two and a half hours away.

14. The appellant attempted to contact a vet with whom he was familiar, Dr Peter Yore, who has otherwise given evidence. Dr Yore was not available and on holidays. The Tribunal determined during the submissions that it was not prepared to find as a fact that the appellant had discussed the injury with Dr Yore at that time and that Dr Yore had advised for the animal to be rested and given Previcox.

15. Dr Yore said that conversation did not take place and his first involvement was later – three days or so later – when he was given copies of x-rays. The Tribunal notes that the email to which it made reference from Dr Yore to GWIC of 25 November 2021 was a little difficult to comprehend in that it refers to the messaging with some x-rays and then goes on to say, as he had some Previcox 227 available, he advised him to administer these until the problem was resolved. That could be said to be consistent with the appellant's evidence, but Dr Yore's unambiguous evidence today does not enable the Tribunal to determine that Dr Yore advised, although he did not prescribe, Previcox.

16. The appellant and Ms Russell gave evidence that they had dogs at their premises which required attention and feeding. Accordingly, they determined to go home and attend to that.

17. Mr Ranald Dawes assessed the greyhound when he saw it as not in pain but with a very bad leg, eating and drinking normally, and not in too much distress.

18. The evidence of Ms Russell, in addition to that described, was that she, having undertaken a greyhound first aid course, formed an opinion that swelling was starting to become apparent, so she wrapped the limb up. She said they did not hear anything from the dog, he was fed, he was given the Previcox and he seemed quite comfortable. He was not making any noise. They checked on him later and he toileted, he was hopping around. He could not put the leg on the ground, but he was hopping around.

19. The appellant in his interview with the inspector gave certain evidence about the injury. In relation to the immediate observations, he said, “He just smashed his leg. He did the big bone plus the little bone and ripped all the tissue off.” He then described how he had Previcox at his kennels, which had been prescribed by other vets on other occasions for other greyhounds, and determined that that was appropriate for pain and inflammation and commenced to administer it. There is a contest about how much and when, but nothing turns upon that.

20. He also described that when he put the greyhound at his kennels on painkillers he was in no pain, eating and drinking, going to the toilet properly. He also said, in relation to why he did not take the dog to Quirindi Vet Clinic, that he, firstly, could not afford it but, secondly, he knew he had medication for the dog which were painkillers. But he did say this: “I was sort of lost and I was panicking and I was a bit worried and I didn’t know what to do for the dog. Tried to get it on its feet.”

21. The appellant’s evidence before the integrity hearing panel was much the same. In addition to the bandaging by Ms Russell and the Previcox from the appellant, ice was administered to the leg on and on-and-off basis and that had some assistance with the swelling. But the swelling was returning.

22. The next day, they observed the greyhound to be hopping around still, although otherwise not concerned greatly by its other external appearance and actions.

23. They contacted a veterinary surgery in Branxton, but that did not have any available appointments. They then contacted a veterinary clinic in Singleton. And the appellant in his interview said that he told the secretary in the clinic: “I think the dog has broken its leg. Isn’t there something you can do to get me in?” Regrettably, no appointments were available until 28 January.

24. It was then that the appellant and Ms Russell discussed telephoning GWIC and GWIC then came to their aid. And that was the evidence of Mr Gillespie and others. And, as a result of that, an immediate appointment was made with Dr Roach and the greyhound was taken to Dr Roach on 15 January.

25. On initial examination, Dr Roach has stated she was not able to determine precisely what was wrong, but her observations were that the greyhound could not walk, it had substantial swelling in its leg and significant bruising. It was not crying out in pain, but it could not put weight on the leg. And therefore she concluded it was in some degree of pain. She determined to take x-rays. And those x-rays show the catastrophic nature of the injury in fact.

26. The determination was “a fractured distal ulna, dislocation of radius from carpal bones, looks to have fractured part of the distal radius as well. Fragmented”. The dog, however, still remained relatively responsive.

27. Discussions took place about costs of surgical repair. Dr Roach obtained a second opinion from Dr Staines on the x-ray and he confirmed the substantial nature of the injury.

28. The effect of that was that after discussions with Dr Yore and Dr Roach, a determination was made to subsequently euthanase the greyhound, and it was. Prior to euthanasing the greyhound, more substantial painkillers than Previcox had been administered and a Robert Jones Bandage applied.

29. Those then are the key aspects of evidence.

30. The issue is whether the respondent establishes that the appellant failed to provide at all times veterinary attention when necessary. The Tribunal emphasises “provide” and “when necessary”. And, secondly, that the appellant failed to provide veterinary attention by not giving such reasonable care and supervision as was necessary to avoid unnecessary pain or suffering.

31. It is not that the appellant can escape liability by taking some steps, but must take all of the steps necessary to meet those two tests, and they are the particulars of the charge against him.

32. The expert evidence of Dr Yore – and he is accepted from his 42 years of experience in treating greyhounds and regulatory work – is that the Previcox provided by the appellant to the greyhound was a good anti-inflammatory and one which he uses and would recommend, provided it is combined with immobilisation with a Robert Jones Bandage or splint and is caged. If that treatment was properly done, he would not expect undue distress. If, in addition, it was appropriately immobilised and kept comfortable, he did not think waiting two days for assessment would be a welfare issue.

33. In his oral evidence, he repeated his belief that Previcox was an appropriate anti-inflammatory, much more powerful than the alternative evidence of Dr Karamatic, to which the Tribunal will return. But he did opine

to the Tribunal, with the type of injury that was subsequently determined, it should have been taken to a vet within 24 hours. And just to pause to note the 24-hour timeclock, which on submissions was indicated to be one which commenced after hours and therefore something less than 24 hours, had transpired.

34. It is important to note the reference to immobilisation with the Robert Jones Bandage and being kept comfortable and administered the Previcox. On behalf of the appellant, two of those three ingredients, to satisfy Dr Yore, were administered.

35. Dr Karamatic in his report said that Previcox was not a suitable anti-inflammatory drug alone because it did not have sufficient analgesic or pain relief when taken alone. For certain conditions, it is sufficient. Having referred to standard doses, he remained of the opinion that in the case of a severe fracture, it would not alone provide sufficient pain relief. Rather, appropriate analgesia would require opioid-type drugs such as methadone or fentanyl.

36. Dr Webber, regulatory vet, also gave evidence to the inquiry that Previcox alone was insufficient.

37. Dr Karamatic did not see the greyhound and his report is based upon the x-rays and viewing the reports of the other practitioners to whom reference has been made.

38. Suffice it to say, the greyhound had a catastrophic injury and required effective pain relief and external coaptation. Coaptation means the application of a Robert Jones Bandage, which is a special type of bandage designed to immobilise the site of the injury and thus deal with the issues of swelling and pain relief.

39. Ms Russell did not apply a Robert Jones Bandage but, using her greyhound first aid training, did apply a bandage. It was an effort to try and help. But it was not a professionally applied splint bandage. Therefore, the type of pain relief by the bandaging effected by Ms Russell was not adequate.

40. Therefore, Dr Karamatic opined that the failure to provide appropriate support with stabilisation resulted in significant swelling and bruising and resulted in further damage to the initial injury. Therefore, all of these actions caused the greyhound unnecessary pain and suffering from the time of injury until presented to Dr Roach.

41. Dr Karamatic continued that in his opinion, on 12 January some or all of the following were required: methadone or a similar opioid; firocoxib or similar non-steroidal anti-inflammatory drug, external coaptation, possibly

surgery and possibly euthanasia. Again, he opined that the failure to properly effect those caused unnecessary pain and suffering, as just set out. He described it as a serious injury and not adequately alleviated by the treatments given.

42. In oral evidence, he was questioned at length about the capacity for a layperson to assess the injury and he was of the opinion that the swelling and the symptoms that were obvious on presentation to Dr Roach later should have been such that the veterinary care and attention was given earlier. That is, if there was swelling, the greyhound should be taken to a vet. Here there was swelling.

43. As to the external indicia of pain, he said some greyhounds are stoic and may not display symptoms of pain. As to whether this greyhound was stoic and thus not displaying symptoms of pain other than those described by Dr Roach, and inferred by her, it simply could not be known.

44. Dr Karamatic in his oral evidence also said that Previcox, again, was insufficient, and again, the insufficient bandaging was apparent, all of which were not enough and much more was needed to relieve pain.

45. Dr Roach gave evidence and her report has been referred to, and the conclusion she reached, and the observations on presentation described. She was questioned at length before the Integrity Hearing Panel and essentially her evidence has not changed. Suffice it to say, the Tribunal will summarise the evidence given before it.

46. As to the extent of pain, it was too difficult to tell. She did describe, as said, the greyhound was bright and responsive on presentation, but the injuries were obvious. It was an obviously injured leg with swelling, unable to put weight-bearing on it and not able to walk.

47. She was also of the opinion that Previcox alone was an insufficient pain relief. In addition, the bandage alone, or in conjunction, that was applied was insufficient to reduce the swelling.

48. She was prepared to agree that, on presentation, without radiology, it was not possible to determine exactly what was wrong. But that was not the point. Again, she emphasised that the degree of swelling and bruising gave a need for attention sooner and that the abnormal movements in the joint when weight-bearing should have been obvious, and obvious to someone even without veterinary training.

49. The conclusions the Tribunal reaches upon those matters are these: the appellant has taken, in the Tribunal's opinion, substantial steps to obtain veterinary treatment. He has done so with eight veterinary attempts.

50. The Tribunal has previously expressed its opinion that the privilege of a greyhound trainer's licence and the privilege of presenting a greyhound to trial or race carries with it the obligation to ensure that, for welfare purposes, if required, a greyhound must receive the appropriate treatment.

51. The Tribunal understands and sympathises very much with the appellant's financial situation as an invalid pensioner to the effect that he could not afford to pay that vet at Gunnedah the $200 she wanted on the spot. The effect of that was that the immediate attention which he had sought for the greyhound could not be provided.

52. There can be no criticism of him for going to a different veterinary clinic, which unfortunately was unattended. He had an appointment with Quirindi Veterinary Clinic. He cancelled it. Bluntly put, the Tribunal says he should not have done so. It was reasonably proximate to him, there was no reason why he could not go there. He elected not to go there because he expressed it would be too far away and he could not afford it.

53. So, twice in the first three attempts money has come up and he is unable to attend to the matters that were required and obvious to him from the injuries which he himself had observed.

54. The Tribunal can understand the need to go home and look after the remaining greyhounds. But that was a welfare balance that the appellant elected to undertake rather than go and seek further attention, even though some distance away, for a patently obvious and subsequently gravely or catastrophically injured greyhound which had to be euthanased for those injuries. That is how serious they were. Regardless of his observations that the greyhound, once he got it home, appeared as has been described, it was up until that point that his steps were insufficient.

55. The next day, the Tribunal recognises, he took steps to try and get into Branxton and Singleton and then is to be recognised for his understanding that perhaps GWIC could help.

56. There is no evidence as to the availability of the GWIC scheme and its publication to trainers. Suffice it to say that at least the appellant and Ms Russell had some knowledge of it, because after their discussions they used it, and they used it for the benefit of the greyhound's welfare by immediately getting to see Dr Roach. It is quite apparent when Dr Roach saw the greyhound that it was continuing to suffer pain by reason of the swelling, the inability to put its paw to the ground and the like.

57. In those circumstances, therefore, it is apparent that despite all of those efforts that the appellant undertook, he is established as having failed to meet the test required of him. The Tribunal does not accept that on an objective basis any other consideration could be found.

58. On a subjective basis, the Tribunal, recognises some of the beliefs of the appellant as to the nature of the injury not requiring the attention within the short space of time required, but that is not consistent with his original observations and attempts, as valiant as they were, to try and get immediate attention to the greyhound for the extent of his injuries. And it must be remembered he was reporting to people a belief that the greyhound had broken its leg.

59. So, subjectively, he cannot escape capability by the beliefs that he formed. They were misplaced. To the extent that he believed that the provision of Previcox, the bandaging and the icing were sufficient, it is apparent that that subjective belief is misplaced. Those efforts, as admirable as they were and as well-intentioned as they were, were simply insufficient for the nature of the injury that should have been apparent to him.

60. The Tribunal is of the opinion that such a factual determination is not imposing such a burden upon this trainer that it would mean that every minor injury would require a greyhound to be taken to a vet. This was not a minor injury, consistent with the appellant's own assessment of it. Accepting that he attempted to provide reasonable care, it was insufficient. To the extent that he attempts to establish he could not be aware of the extent of the injuries, he fails to do so and, to the contrary, the respondent satisfies the Tribunal he did.

61. It is necessary to look closely at the test, as just described, and that requires an acceptance, as the Tribunal has said, that there must be a provision at all times of necessary veterinary attention. On the ingredients of provided at all times, for the reasons outlined, he has not done so. The period of time between his initial actions and subsequently were insufficient, although recognising that it is quite extraordinary the efforts he did go to.

62. But it was "attention when necessary" that is the gravamen, because he knew of the extent of the injuries, he elected to not go to the first clinic in circumstances where financially – understanding he could not – he should have been in a position to do so, and that falls within "when necessary", and, likewise, when he elected to cancel the third of the appointments at Quirindi Veterinary Clinic, he did not do so because of personal convenience and time and, secondly, again, on the financial side of it. Attention was necessary; it was not provided.

63. The respondent satisfies the Tribunal that the appellant has not ensured that the subject greyhound was provided at all times with veterinary attention when necessary.

64. The second ingredient is whether he has provided such reasonable care as may be necessary to prevent unnecessary pain and suffering. The

Tribunal recognises the care and attention that he and Ms Russell provided to the greyhound. But on the facts and findings that have been made, they were not sufficient, consistent with the evidence that has been set out, to in fact alleviate pain and therefore suffering as well because they were simply not adequate.

65. The Tribunal does not accept that the Previcox alone was adequate. The weight of evidence is to the contrary. The bandage was the inappropriate bandage. The icing was to the benefit of the greyhound. But all of those did not lead to the appropriate reduction in swelling or prevent the substantial oedema which was identified when the greyhound was examined on 15 January.

66. Accordingly, the respondent satisfies the Tribunal that the appellant did not exercise such reasonable care and supervision as was necessary to prevent unnecessary pain and suffering.

67. The Tribunal has reflected in other cases that trainers must be in a position to pay for necessary treatment or they should not be caring for greyhounds and that lay opinions cannot displace professional assessments.

68. In the circumstances, the Tribunal finds both charges 1 and 2 proven.

69. Therefore, on each of the charges 1 and 2, the appeal against the adverse finding of a breach of the rule is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

70. The issue is one of penalty. There is no guideline in respect of this matter, it is the general penalty provisions contained in the rules.

71. The first matter for determination is objective seriousness and then to determine if there should be any reduction in that appropriate starting point for subjective matters.

72. The civil disciplinary penalty regime requires the Tribunal to look to the future and in doing so impose a protective order, not punishment, to ensure that the public interest of greyhound racing is protected by sufficient deterrence. It is only deterrence necessary for that object to be met and nothing more.

73. The appellant's submissions deal with a number of matters with which the Tribunal does not agree. The Tribunal does not have to reflect on whether the respondent is going after people such as this appellant or making this appellant a scapegoat, or only dealing with this appellant

because he was without means. But rather it is that there is a rule, in this case two, they have been breached, on the findings made by the Tribunal.

74. The respondent is mandated to ensure welfare of the greyhound and integrity of the industry. This is a welfare of the greyhound case. The Tribunal finds nothing untoward about the actions of the respondent in quite properly ensuring that, as best as it can, a message of deterrence be provided to ensure the welfare of greyhounds by non-repetition of this type of conduct by this appellant or others.

75. There seems to be a lack of understanding in the appellant's submissions on penalty as to how penalty is determined. It is not for this Tribunal to give a lesson on how it is done. Suffice it to say, the principles just enunciated will be applied.

76. It is first necessary to determine how objectively serious this is and then, if possible, to find some guidance from parity cases. As is always the case, there is no exact parity to be found in other cases. They do provide a measure of certainty as to what likely outcome will flow from likely facts.

77. The respondent relies upon Cartwright where, briefly put, there was a specific direction given by an on-course vet to take a greyhound to a vet for assessment and treatment, and that was not done for three weeks. In that case, there was a disqualification penalty which took into account subjective factors.

78. Another matter relied upon is Weekes, where there was a starting point of disqualification of 12 months. And that, to explain to the appellant, is a starting point of consideration on objective seriousness and then appropriate reductions applied.

79. The matter of McDonald was referred to as well.

80. They all indicate that where the Tribunal dealt with like matters it was felt a disqualification was appropriate.

81. The respondent also relies upon decisions of it in Kraeft and Prest, in each of which periods of disqualification were found to be appropriate.

82. The objective seriousness here is a failure to do all that was required, not a failure to do anything. That failure was not driven by a lack of consideration for the welfare of the greyhound in its entirety because some treatment was given, as was set out in the decision.

83. The Tribunal accepts that whilst the subjective belief of the appellant was found to be displaced, the appellant at least moved on the basis and

considered what he was doing was of benefit to the greyhound rather than ignoring its needs altogether.

84. The Tribunal found adversely as to the cessation of seeking of treatment but did recognise that efforts were made immediately to try and obtain assessment and treatment of the greyhound. It is, therefore, that he can be distinguished from others when assessing objective seriousness.

85. The welfare of the greyhound is paramount. This is not a case of dealing with the welfare of the appellant.

86. The message to be given by way of specific deterrence to this appellant is that his actions were insufficient, that the Tribunal does not find him blameless, therefore, some message of specific deterrence must be given. And not only that, it is one which the Tribunal is satisfied, having regard to his past history, will not be repeated. Therefore, the necessity for specific deterrence diminishes.

87. In respect of the issue of general deterrence, looking to the welfare of the greyhound and looking to the protection of the integrity of the industry, it is that a clear message must be given to trainers who might be like-minded in actions similar to this appellant that that conduct cannot be in the interests and welfare of a greyhound and must be denounced.

88. The Tribunal is therefore of the opinion that the necessary public interest message of deterrence requires that there be a period of disqualification.

89. The Tribunal looks to the issues of parity and does not find great comfort in them. It is necessary to have regard to the reduction in objective seriousness of this appellant for the matters just outlined. The Tribunal is not of the opinion that a 12-month starting point is appropriate before discounts are considered and does not consider that a substantial period is required for specific and general deterrence, nor for a protective order.

90. The Tribunal determines that there be a starting point of 9 months.

91. As against that, there are the subjectives.

92. There has been no plea of guilty to which a discount shall be applied. It might be noted at this stage that there is a necessity, according to the recent High Court decision in Pattinson, to avoid undue application of mathematical formulae.

93. The appellant, however, has 30 years in the industry and has nothing of any welfare-type nature recorded or anything for which he has been subject to penalties of any relevance. That is a long time. He is entitled to call that in aid. He does not tender any references from industry people or others as to

his good character and his actions in the industry. However, the Tribunal accepts, as it is in his evidence, that he is an invalid pensioner and that monetary issues to him are most important. Not much else is known about him.

94. The key factor in this matter in relation to penalty is that, subjectively, there is to be a further reduction, in the Tribunal's opinion, of the various matters which he did do and which stand in his favour. Not to be by way of double discounting when objective seriousness is concerned, but to reflect the overall message required to be given specifically and generally in deterrence as to the nature of this conduct in all the circumstances in which it occurred.

95. The Tribunal determines that a period of disqualification of 6 months be imposed in respect of each matter.

96. They arose from the same set of circumstances and there is nothing of a separate nature about them. Accordingly, the Tribunal finds that those periods of disqualification should be served concurrently.

97. The final order of the Tribunal is that the appeal against the finding of the breach of each of the two rules is dismissed.

98. The appeal against the severity of penalty is upheld.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

99. Application is made for a refund of the appeal deposit.

100. The appeal involved two components, firstly, appeal against breach. In that, the appellant was unsuccessful. The second component was appeal against severity of penalty. In that respect, the appellant was successful.

101. The substantial nature of the matter was in relation to the breach and not penalty.

102. However, the Tribunal, particularly having regard to the appellant's financial position, orders 50 percent of the appeal deposit refunded.
