

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

TUESDAY 18 MAY 2021

APPELLANT MATTHEW WALLACE

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 69

DECISION:

- 1. Appeal upheld**
- 2. Appeal deposit refunded**

1. The appellant, licensed greyhound trainer Mr Matthew Wallace, has lodged an appeal to the Tribunal in respect of the placing of an endorsement on the registration certificate of the greyhound Lady Luna for a marring breach, and that endorsement was made at Wagga after race 8 on 9 May 2021.

2. Because the nature of a stewards' determination on a marring matter is such that transcripts of a stewards' inquiry are not taken as no stewards' inquiry is formally convened, there is the evidence in this case of the race image and two stills from it, the evidence of the Steward, Mr Lyne, who observed the matter from the bunker, and, in addition, the evidence of Mr Wallace. Mr Wallace has put in, in support of his stay application and it is before the Tribunal as part of the bundle of material, his 12 May letter to the Commission.

3. Race 8 was conducted, the Steward, Mr Lyne, made his observation from the video, he then determined that there should be an informal inquiry involving the steward Ms White and Mr Wallace, and the three of them engaged in a discussion about the images being shown, and it was then that the endorsement issued.

4. The case is an opinion of the stewards case. As this Tribunal has said in this jurisdiction in Magri and in other jurisdictions as well when such a test is imposed, it requires the Tribunal to be satisfied that the opinion of the stewards is, firstly, given to the Tribunal and that the Tribunal is able to determine whether it is reasonably formed.

5. The difficulty in this case is the quality of the images produced on appeal. When Mr Lyne gave his evidence in response to a question of the Tribunal, he indicated that the images being observed by the Tribunal and upon which the case has been based were not as clear as some he believed he saw on the night in question when he was able to make better observations. Regardless of that, that is the evidence before the Tribunal.

6. The case is this, that the subject greyhound Lady Luna was interfered with by an unrelated greyhound in this race earlier on and subsequently when the greyhounds reached the home straight, the incident is said to have unfolded. The case for GWIC is that on two occasions in the home straight Lady Luna turned its head and on each occasion made head or muzzle contact with the greyhound Spirit of Arlene.

7. The challenge that the appellant has advanced simply is that it is not possible to determine from the images before the Tribunal that that head or muzzle contact took place. That then becomes the issue for consideration.

8. The Tribunal notes that in coming to that conclusion it is required to have regard to Rule 69, which is the rule in question. Relevantly, it applies where

in the opinion of the stewards a greyhound is found to have marred another greyhound during an event, then certain things will happen. The issue then becomes has the rule been breached? Two ingredients of a critical nature: opinion of the stewards, as has been referred to, and, secondly, there is a greyhound that is said to have marred, and that is Lady Luna; and, thirdly, there is another greyhound, and that is Spirit of Arlene; and, lastly, it was during an event. Those last two matters are not in issue.

9. The question is was there a marring. Marring is defined. It is in Rule 1, the Definition rules:

“Means the act of a greyhound which turns the head and makes head or muzzle contact with another greyhound.”

10. Again, the fact of the act of the greyhound Lady Luna being involved and there being, as suggested, another greyhound, Spirit of Arlene, is not in dispute. The first issue is did Lady Luna turn its head. And the evidence is absolutely certain on that: yes, it did. It did so on at least two occasions. Two have been produced as occasions in which still images show that occurring. The race image, when run at speed and in slow motion, clearly indicates in the home straight the two greyhounds were extremely close to each other, that Lady Luna moved out and that, in the course of doing so and during the home straight, it turned its head towards Spirit of Arlene.

11. The second issue is was there contact by the head of Lady Luna with the head or muzzle of Spirit of Arlene. Contact elsewhere between the greyhounds does not constitute marring. It is not suggested to the contrary. It does not need to be examined further. Do the images displayed to the Tribunal, either in full speed, slow motion or by way of image extract from that video, enable the Tribunal to be satisfied on the balance of probabilities, having regard to the seriousness of a three-month suspension and therefore the seriousness with which the Tribunal must view the facts, that that conduct occurred?

12. The opinion of the stewards is the gravamen of the case. The steward Mr Lyne has quite clearly indicated that in his opinion that did occur, it was obviously his opinion and that of steward Ms White on the night, and thus the endorsement the subject of the appeal was issued.

13. The Tribunal has to say that the two images themselves appear to show that the greyhounds were racing level with each other. That is the opinion of Mr Lyne. The still images are not as certain in depicting that. But it is quite apparent from the video run at full speed and in slow motion that if they were not in precise proximity to each other that they were very close. There are two still images. The fast and slow images are not of sufficient quality or size to enable the Tribunal on balance to be satisfied that they depict a head or muzzle contact. The issue is do the two slow images?

14. The second image, in the Tribunal's opinion, shows what appears to be a gap between the heads of the two greyhounds. Mr Wallace has given evidence that the muzzle would extend some 5 to 10 millimetres from the snout and so that it is that contact that has to be depicted, and the rule might have been differently worded "makes head or muzzle contact with the head or muzzle of another greyhound", but it does not say that; it simply says "makes head or muzzle contact".

15. It does require, in the Tribunal's opinion, greater certainty from the images. The Tribunal accepts it is Mr Lyne's opinion – and he has reinforced it in his evidence – that that second image so depicts it. The Tribunal is not of that opinion.

16. In relation to the first image, it is also equally unclear, allowing for the proximity of the greyhounds to each other, that it is quite possible that in fact that image does show head or muzzle contact. The Tribunal, however, cannot be driven by that aspect of balance of probabilities to come to such a conclusion. Whilst the images that were seen on the night may well have depicted the matters in a better way, and the opinion of the stewards is, in their opinion, a properly formed one, the Tribunal is of the opinion that on the evidence available to it that opinion is not reasonably formed.

17. In those circumstances, the Tribunal cannot be satisfied on balance that there was a marring and accordingly the appeal is upheld.

18. The Tribunal orders the appeal deposit refunded.
