RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 8 DECEMBER 2021

APPELLANT HOLLY SPEED

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 86B(1)(a) and (b)

DECISION:

1. **Appeal dismissed**
2. **Severity appeal dismissed**
3. **10 year disqualifications imposed on Charges 1 and 3, to be served concurrently**
4. **Appeal deposit forfeited**

1. The appellant, licensed trainer Ms Holly Speed, appeals against the decision of GWIC of 14 October 2021 to find her in breach of Rule 86B in respect of two charges and to impose upon her in respect of each of those a mandatory minimum period of disqualification of 10 years, concurrent, and in doing so provide no reduction for special circumstances.

2. The charges and particulars are:

> "Charge 1: Rule 86B(1)(b), Rules
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> (1) A person who, in the opinion of the Stewards or Controlling Body-
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> …
>
> (b) attempts to possess, or has possession of, or brings onto, any grounds, premises or within the boundaries of any property where greyhounds are, or are to be trained, kept or raced, any lice animal, animal carcass or any part of an animal for the purpose of being, or which might reasonable be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it…
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> …
>
> shall be disqualified for a period for not less than 10 years and, in addition shall be fined a sum of not exceeding such amount as specified in the relevant Act or Rules, unless there si a finding that a special circumstance exists, where upon a penalty less than the minimum penalty may be imposed.
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> Particulars:
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> 1. That Miss Speed, a registered Public Trainer, had possessed at the property situated at 2483 Freemantle Road, Killongbutta, where greyhounds are trained and kept, any animal orpart of an animal for the purposes of being, or which might reasonable be capable of being,or likely to be, used as a lure to entice or excite or encourage a greyhound to pursue it, in circumstances where:
>
> (a) Two rabbit carcasses were found in the fridge located in the meal preparation area of the kennels on her property situated at 2483 Freemantle Road, Killongbutta on 8 September 2020;
>
> (b) Veterinary pathology examination of the carcasses identified those carcasses as beingof two European rabbits (Oryctolagus cuniculus).
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> Charge 3: Rule 86B(1)(a), Rules
>
> (1) A person who, in the opinion of the Stewards or Controlling Body-
>
> (a) uses in connection with greyhound training, education or preparation to race, orracing, any live animal, animal

carcass or any part of an animal whether as bait,quarry or lure, or to entice, excite or encourage a greyhound to pursue it otherwise…

…

shall be disqualified for a period for not less than 10 years and, in addition shall be fined a sum of not exceeding such amount as specified in the relevant Act or Rules, unless there si a finding that a special circumstance exists, where upon a penalty less than the minimum penalty may be imposed.

[R86C(1): "training" shall include, in addition to those activities otherwise defined as "training" in the Rules, any activities whereby a greyhound is exposed to any item for the purpose or effect, or that would have the likely effect, of enticing, exciting or encouraging it to pursue, entice or excite, or that causes such reaction from a greyhound.

R1: "train" or "training" shall mean the preparation, education or exercise of a greyhound to race or trial.]

Particulars:

1. That Miss Speed, a registered Public trainer, has used in connection with greyhound training, education or preparation to race or racing any part of the animal as a lure to entice or excite a greyhound to pursue it or otherwise, in circumstances where:

   (a) A second rabbit was found in the fridge located in the meal preparation area of the kennels on her property situated at 2483 Freemantle Road, Killongbutta on 8 September 2020 ("rabbit two");

   (b) Veterinary pathology examination of the carcass of rabbit two identified that carcasses as being of a female European rabbit (Oryctolagus cuniculus);

   (c) Veterinary pathology examination of rabbit two identified that the carpal skin on the right forefoot of rabbit two had been degloved and a fracture-dislocation of the right forefoot had occurred;

   (d) Veterinary pathology of rabbit two also identified the right hind limb to be stiffly held in a hyperextended position with a post-mortem skin and laceration down the front of the tibia of this leg and major post-mortem fracture of the right femur had occurred."

3. The appellant denied the breach of the rules to GWIC and has maintained on this appeal that she did not breach the rules. It might be noted in passing

that there was a third charge, known as Charge 2, which was not found established.

4. The evidence has comprised the standard brief of evidence served upon the appellant. Critically, that contains a number of submissions the appellant made in respect of various notices given to her, and the reports of the relevant inspectors, to which the Tribunal will return, the transcripts of their interview at a kennel inspection, and in addition, a detailed report by veterinary specialist Dr Tong. The appellant's evidence has comprised, as stated, the various submissions she made to GWIC and in addition her grounds of appeal contain a number of factual statements, as does her written submission of 19 October 2021.

5. The two charges raise various matters which are not in dispute and can quickly be dealt with. Firstly, that, as required to be established, the appellant is a person, that there was conducted by the appellant at her premises a training facility for greyhounds where greyhounds were located, and that in a fridge on those registered premises of the appellant the inspectors located two rabbits.

6. The issue for determination in respect of Charge 1 is simply whether the possession was in circumstances where it might be established that the rabbits were reasonably capable of being used as a lure. The remaining ingredients of possession, greyhounds are trained, and the existence of the rabbits – are not in issue.

7. The respondent GWIC relies upon some of the factual matters that founded Charge 3 to be taken into account in satisfying that capability. In essence, it requires an aspect of what in other places might be called judicial notice.

8. That is also supplemented by the fact that the Greyhound Racing Act itself makes a provision which prohibits the possession of certain items on licensed premises. And the purposive intention of that is, of course, directed to the fact that certain animals are notoriously used for the purposes of live baiting or as lures with deceased animals. And classically that has involved, as depicted in various cases, foxes, possums, cats and, critically, rabbits.

9. It is, therefore, based upon the totality of the evidence available to the Tribunal, that it is satisfied that a rabbit is something that is reasonably capable of being used as a lure.

10. The appellant's defence to Charge 1 is, it must be said, difficult to find. It is that she emphasises that during the course of the kennel inspection no ropes or bullrings were found, that she has established by her evidence she uses a synthetic lure, that there was other food on the premises in the

fridges, which the Tribunal accepts was there for the purposes of feeding her pet Ned and not for the purposes of feeding greyhounds.

11. Those matters, however, do not touch upon the matters contained in 86B(1)(b) and those which are particularised. They are straightforward. Here the respondent satisfies the Tribunal that the possession of the rabbits at her licensed premises was in circumstances where those rabbits – or rabbit in particular, “Rabbit Two” – might reasonably be capable of being used as a lure.

12. The Tribunal turns to Charge 3. This requires GWIC to establish not just the possession of the animal carcass – the rabbit – but that it was used for training, education or preparation to race. Again, certain matters are not in issue, namely, that the appellant is a registered trainer and greyhounds are trained on the premises where Rabbit Two was found in a fridge on those premises, nor, indeed, the fact that it is actually a rabbit.

13. The issue is whether, on the expert evidence of Dr Tong and the reports of the inspectors, it can be established that the rabbit was used for the purpose described.

14. The two inspectors attended the premises based upon reports in respect of conditions in which the greyhounds were kept and in relation to breeding of non-greyhounds. They were not there for the purposes which these charges subsequently demonstrated.

15. They conducted a kennel inspection. The appellant cooperated fully throughout that kennel inspection and in the course of that inspection there is some dispute on the facts whether the appellant opened the fridge or the inspectors did, it does not matter. The inspectors establish, both in their recorded evidence and photographs, that located in a fridge were two rabbits, one of which is Rabbit Two. In addition, there was contained in packages mince and other items. It is difficult to discern the presence of chicken feet and duck feet, which it appears on the appellant’s evidence today may well have been in those containers, for Ned’s food, but in some fashion pushed down into them when the lid was applied onto the mince. It is not possible to discern, and in the Tribunal’s opinion that is not a key matter in these proceedings.

16. The appellant stated that the rabbits were there for the purposes of being fed to the domestic dog Ned. That, as described, she did not use them as a lure and she had found them on the road and placed them directly into the fridge for the purposes of feeding to Ned. When asked this by the inspector: “You don’t use them?”, the appellant replied: “No, definitely not.”

17. In the absence of any admission, the respondent relies upon the report of Dr Tong. The factual evidence established is this: that the appellant went outside her property, for reasons which do not need examination; she saw the two dead rabbits on the road. She carried them by their back legs a distance of some 20 metres over a period of four to five minutes and placed them directly in the fridge where she says they were as placed by her in the condition as found by the inspectors.

18. She describes one of them having a broken leg, consistent, in her opinion, with having been hit by a car. And one of them had its eyes picked out. And as to whether she carried each of the rabbits by both back legs she was not able to say, but definitely carried them by the back legs.

19. The rabbits were seized and placed in evidence bags and later taken to another vet for preliminary assessment. Nothing turns upon that. The appellant has been concerned that something may have happened in the carriage of the Rabbit Two by the inspectors or by that examining vet or, indeed, by Dr Tong in some way, which may have caused the presence of the matters established by Dr Tong in her post-mortem examination.

20. It is noted the evidence establishes the appellant was given every opportunity to go to Dr Tong and to there be given access to the rabbit carcasses, because they are post-mortem, for the purposes of having her own vet conduct an examination. She gave evidence today that she had no time to do that. It is, therefore, that the appellant adduces no evidence to contradict the expert opinion of Dr Tong.

21. The issue is whether Dr Tong has qualified her opinions in such a way that when the totality of the evidence is considered there is room to find that the qualifications to which she made reference do not enable the Tribunal to be satisfied to the Briginshaw standard, that is, comfortably satisfied, to accept the evidence for the respondent. That goes to such matters as the carriage of the rabbit and the absence of other indicia as to why Dr Tong formed her opinion. That is, there was no lure found, for example, and the appellant denies having used Rabbit Two as a lure.

22. Dr Tong's report is lengthy. It contains numerous photographs. In simple terms, photographs depict what is described by Dr Tong. And it might be noted Dr Tong is a highly specialised vet in respect of the work that she carried out on Rabbit Two. Her expertise has not been challenged.

23. Dr Tong is a full-time diagnostic comparative pathologist, expert in forensic pathology. She has numerous degrees consistent with that expertise. She has had 10 years as a full-time diagnostic veterinary pathologist, carrying out some 7000 animal post-mortem examinations. She describes herself as specifically experienced in forensic veterinary pathology and forensic veterinary investigation.

24. There were two rabbits. Rabbit One was examined – and it need not be further looked at because Charge 2 is not present. Examination confirmed the fact that each of the rabbits suffered traumatic injuries as a result of motor vehicle accidents.

25. The evidence in respect of Rabbit Two, which is the critical rabbit for Charge 3, depicts, as stated in photographs and in Dr Tong's report, what she describes on the right forelimb and the left forelimb of Rabbit Two as a degloving injury. In addition, there is a clear photograph of what is described as the hyperextension of the right hind limb.

26. The report clearly distinguishes antemortem injuries, perimortem injuries and post-mortem injuries. As stated, Rabbit Two was undoubtably killed by motor-vehicle trauma. It is necessary to examine what is described as degloving of the foreleg. It is to be remembered that there is no evidence from the appellant that she at any time touched the forefeet of Rabbit Two. There is no evidence of anyone else handling the forefeet of Rabbit Two in such a way that it would cause the degloving injury observed by and recorded by and the subject of the opinion of Dr Tong.

27. The Tribunal could speculate that perhaps with a rabbit as dead as this and the passage of time, that perhaps as a result of disintegration of the rabbit, any handling of it may have caused that type of injury. But that is not the evidence of Dr Tong and that would be speculation. The Tribunal only has that evidence. It says this:

> "There is a particular mechanism of injury. Degloving of near circumferential segments of carpal (wrist) skin on forefeet is an injury that occurs when a focally strong frictional force is applied to the skin. Presence of a fracture dislocation at the same site on the right forefoot is further indication of a strong force in the area. It is highly probable that these injuries to the forefeet were sustained when a force with a small surface area was applied circumferentially around the foot (such as a tether), and a force (such as pulling and/or tightening) was applied to that tether."

28. The Tribunal pauses to note that the photograph does not appear to show degloving of the whole of the forefoot. But there is no evidence to otherwise set aside Dr Tong's opinion.

29. There is, therefore, only one possible piece of evidence upon which the Tribunal can focus to the injuries to the forefeet and that is the evidence of Dr Tong. Dr Tong's opinion is based upon an assessment of high probability. There is nothing to read down that probability to a level at which any other conclusion can be reached as to the damage to the forefeet. The evidence simply does not establish any other alternative hypothesis.

30. The Tribunal turns to the specific findings in the hind limbs described by Dr Tong in her report as follows:

> "Specific findings in the hind limbs were also atypical and not explained by a typical crush trauma event. The right hind limb was found to be stiffly held in a hyperextended position (stiff straightened leg behind the rabbit). This is highly unusual and suggests that either at the time of death or after death, the leg was fixed or held in this position. The holding of a single leg in this manner prior to death due to a natural medical condition is highly unlikely. There was also a post-mortem skin and muscle laceration down the front of the tibia (shin) of the leg and a major post-mortem fracture of the right femur indicating some significant post-mortem trauma to this leg. The most likely cause for this fixed stiff hyperextension of the leg is that the leg was held in an extended position for a period of time after death."

31. The Tribunal notes that the opinion is expressed as "most likely cause". The only evidence to which there might be some other consideration is the appellant's evidence that for five to six minutes over a distance of 20 metres she carried the rabbit by the back legs, and that of course was at a time when the rabbit was dead, so any effect of that would be post-mortem.

32. It is also to be noted that it was described on one leg as being highly unlikely, that simply holding of the leg in this manner before death would cause it. So there has to be a focus on post death. And it had to be fixed or held in this position to give that hyperextension. It does not say for how long it would need to be held in this position, but there is no evidence to the contrary to that of Dr Tong for the opinion she formed which might indicate that holding it for that four to five minutes may have occasioned that hyperextension.

33. It is, therefore, that there may be some room to have aspects of lack of comfortable satisfaction in relation to the hind limb hyperextension, but the Tribunal remains of the opinion that it only really has evidence upon which it can give any weight to being the conclusion of Dr Tong. The Tribunal does not find the evidence of the appellant, just described of carrying it, is, in all the circumstances, of a post-mortem type affectation to be that which would cause the hyperextension which was observed.

34. It is noted that the conclusion of Dr Tong is this:

> "Based on my examination, expertise, and experience of pathology associated with lure use, I find that these above described limb injuries are highly consistent with those that may be sustained when a rabbit has been tethered by the foot and dragged and/or suspended

> by that tether (such as may occur when a rabbit is being used as a lure)."

35. The Tribunal fully understands that the appellant has been at pains to point out the contrary facts which the Tribunal must take into account. The Tribunal repeats them: that there was a major traumatic event, that these injuries are post-mortem, that the appellant was not found to have any ropes, lures, bullrings or the type which would be consistent with the demonstrated findings of Dr Tong, and the appellant did in fact herself carry the rabbit as described.

36. But the case for the respondent, in the Tribunal's opinion, being based upon that of a highly experienced veterinarian and in essence not contradicted, is overwhelming. It is that the Tribunal forms that level of comfortable satisfaction that it has to do, that it has no other evidence upon which it can reach a conclusion which would not enable it to find that that which has to be established under Charge 3 is that there was a use as a lure or otherwise to entice, excite or encourage a greyhound to pursue.

37. In those circumstances, the Tribunal is of the opinion that Charge 3 is also established.

38. On each of the Charges 1 and 3, the appeal against the adverse findings of breaches of the rules is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

39. The Tribunal is required to determine penalty having regard to the provisions of Rule 86B, it being noted that the charges related to 86B(1)(a) and 86B(1)(b). It provides as follows:

> "shall be disqualified for a period of not less than 10 years and, in addition shall be fined a sum not exceeding such amount as specified in the relevant Act or Rules, unless there is a finding that a special circumstance exists, whereupon a penalty less than the minimum penalty may be imposed."

40. Several matters to be deduced from that provision. Firstly, the period of 10 years is not a maximum, it is a mandatory minimum. Secondly, there is a requirement for a fine. No fine was referred to in the decision the subject of the appeal. And on submissions it appears that there is no such amount specified in the relevant Act or rules. The Tribunal, therefore, does not further look at the issue of an addition of a fine in respect of a mandatory disqualification.

41. Next, there is a necessity to find special circumstances. And if there are special circumstances, less than the mandatory minimum may be imposed.

42. The first issue to determine is whether the Tribunal considers a penalty greater than 10 years is appropriate. If it does not, then the mandatory minimum applies.. The standard reduction for subjective circumstances cannot apply to a mandatory minimum. It could only apply if there was a starting point greater than 10 years. It is then a matter of determining, if there was to be a mandatory minimum, whether there is any reduction to be given to that and then it is necessary to look at a finding of a special circumstance. It might be noted it does not say “special circumstances”, plural.

43. Firstly, then, looking at objective seriousness and a starting point.

44. The submissions for the respondent, GWIC, invite that the mandatory minimum of 10 years be imposed in respect of each matter, as it was by the Commission.

45. It is also submitted that this matter is not a finding of conduct at the lower end of the scale of seriousness but that, if anything, it would have to be in the mid-range. It is not suggested that it is the highest possible range of gravity of offending because live animals were not involved.

46. The Tribunal cannot lose sight of the fact that section 41 of the Greyhound Racing Act provides that the provisions relating to animals and carcasses have a substantial part to play in the prohibitions that a licensee with the privilege of a licence must meet. Simply put, the rule reflects what is set out in 41(1) and does not require repeating. But any exemption that might be given for the possession of animals capable of being used as lures cannot apply to rabbits under 41(3).

47. Therefore, Rule 86B is one which reflects the legislative intent, which of course is one designed for the integrity of the industry. And that integrity flowed, of course, from substantial matters relating to live baiting and so on. Live baiting is not the issue here, of course.

48. The Tribunal must impose a civil disciplinary penalty providing a message to the appellant and to the industry at large as to the consequences of the type of conduct which has been found. And here it cannot be lost sight of the fact that the determination is use as a lure. Despite the protestations of the appellant, her factual case was not found in her favour that the rabbits were purely there for feeding to her non-greyhound pet Ned.

49. It is, therefore, that the Tribunal assesses that the severity of breach 3 is in the upper end of the scale.

50. The possession in respect of breach 1 is simply that the facts do not indicate a severity beyond that which the particulars demonstrate. It was possession of rabbits capable of being used. It was not chosen to particularise that that is also to be embraced on the finding in respect of Charge 3 that there was a finding of the use as a lure. If it was wished to make it a more serious breach for Charge 1, that should have been particularised. Accordingly, Charge 1 is not found to be at the upper end of the scale but is a mid-range objectively serious matter.

51. The Tribunal reflects in determining objective seriousness in respect of parity. In that respect, a number of cases have been brought to attention and they involve cases mostly in other jurisdictions, but there are some in New South Wales.

52. In the VRT decision of Divirgilio, 4 November 2021, that was possession of two live possums and a lifetime disqualification was imposed. Here it was rabbits, not possums, and, secondly, they were dead.

53. The next matter referred to is the South Australian Racing Appeals Tribunal matter of Schadow, 16 October 2021. Possession and use of a fox tail. A starting point has not been referred to the Tribunal, nor is the appropriate rule. It is not set out in the summary given in the submissions as to whether the starting point was 10 years or otherwise.

54. Next is the GRNSW decision of Stedman of 19 April 2021. Possession of a bag containing rabbit skin and rabbit feet in a fridge in a kennel area. A finding of special circumstances, to which the Tribunal will return, and no advice to what was considered to be a starting point.

55. The next matter is GWIC, Cowling, 30 July 2021. Possession of a lure comprising prepared animal skin. Lower end of seriousness. Special circumstances again.

56. Next is the Commission decision of Kimber, 4 May 2020. Possession of a lure with a combination of animal and synthetic materials which comprised skin and fur of a rabbit and the tail of a brushtail possum. Lower end of seriousness. There again there were special circumstances.

57. It is said that Cowling and Kimber can be distinguished because they comprised lures of animal skin and/or fur as distinct from an animal carcass.

58. The Tribunal does not see from those precedent cases, nor does it see, having examined the facts, nor does it see having regard to penalties imposed for integrity-related and welfare-related cases in recent years, that this matter would warrant a starting point greater than 10 years.

59. The Tribunal therefore determines that the mandatory minimal imposed by Rule 86B in each matter of 10 years' disqualification is appropriate. It is noted that it is a disqualification and that any reduction in that disqualification for a special circumstance is not from a disqualification. Accordingly, whether a disqualification or not is otherwise required does not have to be considered.

60. Because the mandatory minimum has been imposed, there is no reduction provided for in the rule for other subjective circumstances. That can only arise if there is a special circumstance.

61. In that regard, the appellant submits that the matters that comprise a special circumstance are licensed for 10 years with no priors; worked in the industry for five years as a swabbing official; financial hardship from the interim suspension; loss of income as a swabbing official; significant health concerns involving insomnia and high blood pressure; health concerns of her mother during COVID, and the fact that she was feeding her pet dog a raw diet.

62. In relation to the disciplinary history and no priors, that is accepted. The fact that there is time as a swabbing official is also accepted. Financial hardship has, of course, flowed from the interim suspension in respect of training and prize money and the like, obviously, as well as loss of swabbing income.

63. No medical reports are given to support issues of insomnia and high blood pressure. However, she was not cross-examined to the effect that those matters do not exist and the Tribunal is satisfied she has those health concerns. The Tribunal cannot find they were significant because there is no medical evidence to that effect.

64. The Tribunal means no disrespect for the appellant's evidence in respect of her mother, who has had a heart attack during COVID and not been able to be visited, but it does not find that is a special circumstance when considered alone in relation to matters such as this. The fact that the possession, in her opinion, was a special circumstance for feeding her dog Ned a raw diet cannot be a special circumstance in view of the adverse finding made against her on the reasons for possession.

65. The respondent says that there are no special circumstances and that each of those does not comprise a special circumstance.

66. It is necessary to look at precedent. In doing so, it is necessary to have regard to what is a special circumstance. It is noted that the rules and the Act are silent. It is noted also that there has been no delineation of what a special circumstance might be, as was done in the thoroughbred racing code with the introduction of mandatory minimum penalties for such things

as betting and the like where the regulator, Racing New South Wales, in a Local Rule set out a number of matters which might comprise a special circumstance.

67. Here it is necessary to go back to basic principles. In that regard, the Tribunal is satisfied that the words “special” and “circumstance” must be read in conjunction and that it must require something that is not necessarily exceptional or distinguishable but which is not something which is merely a subjective factor or something idiosyncratic to a particular person. It needs something that is unusual or uncommon. It is not just a circumstance, but it must be a special circumstance. It is, of course, important in determining whether there is within 86B a special circumstance, the necessity to consider a combination of factors themselves which might be individually a special circumstance, but it is necessary to have regard to them when considered as a whole.

68. The respondent has put various precedent cases on which special circumstances have been found. The Tribunal, with no disrespect to any of those decision-makers, considers they have been unduly lenient. It forms that conclusion because in each of the matters, when looked at in isolation on the summaries the Tribunal has been given, the individual factors are nothing but standard subjective factors.

69. That is not to say they cannot cumulate – and it is proper that they should – but in essence there is nothing unusual or uncommon about any of them. They are straightforward facts. Not unusual length of time in the industry, a standard subjective factor. No prior matters, standard subjective factor. Hardship, a standard subjective factor. The fact that there are no aggravating circumstances, in the Tribunal’s opinion, is a matter which goes to objective seriousness and is not a special circumstance.

70. As was said in Stedman, apparently, by the decision-maker, GRNSW, a special circumstance, or one of them in combination, of course, that had to be considered was precedent cases. Well, the Tribunal does not think precedent cases provide special circumstances.

71. Some were considered in the two Commission decisions of Cowling and Kimber. In each case, the possession occurred prior to the introduction of the rule in 2015. Whilst not lessening the gravity of that matter, the Tribunal agrees with the Commission that that is a special circumstance.

72. The case of Dooley, a VCAT decision of 1 October 2019, looked at offending at the lower end of the spectrum; record, character, admissions and cooperation; debilitating medical condition; lack of knowledge or genuine belief held by the then applicant. Again, with no disrespect to the decision-maker. In VCAT it is a high level. Lower end of the spectrum to the Tribunal is an objective seriousness factor and record, character,

admissions and cooperation are all standard subjective factors and nothing uncommon or unusual about them. A debilitating medical condition, about which there are no particulars available to the Tribunal, is and can be a special circumstance. And the knowledge or genuine belief is, of course, capable of being a special circumstance.

73. The other decision was Schadow, to which reference has been made, where a cumulation of factors was considered. That involved offending at the lower end of the scale. Again, the Tribunal considers that as an objective seriousness factor. Forty-five year contribution to the industry, good character and good disciplinary record are all standard subjective factors. Cooperation with the investigation, likewise. Age of the appellant and some restriction of access to social support by losing contact with industry friends is simply a matter that goes to a subjective factor and might otherwise cause a reduction in the appropriate message to be given on objective seriousness. A lack of understanding of a change to the rules can, of course, be a special circumstance when considered alone.

74. The Tribunal, therefore, does not agree and does not propose to adopt as a practice the finding of standard subjective features as being those which when taken in isolation can comprise a special circumstance or when taken in combination. That is not to say in every case those matters might not contain within them a combination of special circumstance, as defined, or special circumstance, as it might otherwise be referred to.

75. The appellant, essentially, has had seven years in the industry with no priors. There has been no admission of the breach of the rules to GWIC or to the Tribunal and the lower end of the scale matter, as I said, goes to objective seriousness.

76. The Tribunal is not of the opinion that any of those comprise a special circumstance when taken alone and does not find they are, when put together, a special circumstance. The Tribunal is not satisfied that they have that character, which it believes is necessary, of being uncommon or unusual and not run-of-the-mill or ordinary. It is not, of course, to say that they have to be exceptional or distinguishable, but they are simply straightforward ordinary factors.

77. The last issue for consideration is whether, because a mandatory minimum is provided, and there is an absence of any possible reduction for ordinary subjective circumstances, there needs to be an elevation of ordinary subjective circumstances to equate to a special circumstance which should lead to a reduction. Otherwise everyone would receive a mandatory minimum. Here there is nothing which in the Tribunal's opinion would require a different conclusion.

78. In the circumstances, therefore, the Tribunal does not find that the appellant establishes a special circumstance as required by Rule 86B. It is incumbent, therefore, as harsh as it is a conclusion, that this case is to be distinguished from all of the other parity cases to which the appellant has taken the Tribunal and, while it might be a first decision of this type that has been applied, it is the conclusion the Tribunal reaches as appropriate on the facts and determination it has made.

79. Accordingly, under 86B, a mandatory minimum penalty of 10 years' disqualification is imposed in respect of each matter.

80. It is not suggested they be considered other than as concurrent and the Tribunal is of the opinion that they arise from the same set of circumstances and they are appropriately dealt with concurrently and they shall be so ordered.

81. There is no fine to be considered, for the reasons previously expressed.

82. The appeal against severity of penalty is also dismissed.

83. Accordingly, the appeal is dismissed.

84. There being no application for a refund of the appeal deposit, the Tribunal orders it forfeited.
