

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL - MR D B Armati

FRIDAY, 19 OCTOBER 2018

EX TEMPORE DECISION

LICENSEE MR J. MAGRI

GREYHOUND RACING RULES

DECISION

1. Appeal dismissed
2. Appeal deposit forfeited

1.Mr Jason Magri appeals in respect of a decision of the stewards of Greyhound Racing NSW to impose a marring breach suspension on the greyhound Zipping Manuella.

2. The matter has come on with substantial urgency. The breach is said to have happened on 12 October, and there are racing interests for this greyhound on 20 October. A stay application had been lodged. It is apparent to the Tribunal that the issues in the stay application were essentially those to be dealt with at the hearing, but the factual scenario is a narrow one and this matter could be brought on for hearing without prejudice to either party without having had any transcript or material from the stewards' inquiry.

3. The actual written allegation of breach is not available, nor any particulars of it. The rule in question is 69(1), which says, relevantly:

"Where in the opinion of the stewards a greyhound is found to have marred another greyhound during an event the stewards shall impose a suspension in respect of the greyhound pursuant to Subrule (2)."

4. The definition rule – which is Rule 1 - defines "marr or marring" as:

"The act of a greyhound which turns the head and makes head or muzzle contact with another greyhound."

5. As specified this is said to have occurred in Race 3 at Wentworth Park on 12 October 2018.

6. The evidence has comprised that of the Chairman of Stewards on the night, Mr Hynes, and a viewing of the presently available CCTV of the race. Mr Hynes was cross-examined. In addition, the Tribunal has the decision of the stewards, which they subsequently produced in a Stewards Report. It is brief. It says:

"Zipping Manuella outwardly marred Poco Dorado near the winning post. From a viewing of the home straight here on replay, and with the benefit of the photo-finish lights, it was evident that the head contact between Zipping Manuella and Poco Dorado had occurred prior to the finish line, and then referred to the issue of penalty."

7. The issue of penalty has been stood aside. The matter of breach of the rule must first be determined.

8. The race in question had Poco Dorado as the favourite. It led quite clearly throughout most of the 720 metres of the race. As the greyhounds reached the final straight for last time, the incident of marring is said to have occurred, and it is said to have occurred right upon the finishing line.

9. This is an opinion-of-the-stewards' case as provided for in Rule 69(1). As the Tribunal said in the harness racing case of McCarthy some years ago, in such a case it is necessary for the respondent to this appeal – the Regulator – to establish that the opinion of the stewards, after fresh evidence is given, is maintained, and for the Tribunal to determine whether that opinion is reasonably held.

10. The substantial evidence before the Tribunal on CCTV is fairly criticised by the appellant on the basis of the quality of the vision. It is to be noted that this appeal has been brought on very quickly, that it is being heard at the premises of Racing NSW and not at a GWIC premises, and that therefore criticisms that flow from an inability in those circumstances to produce better vision must be tempered.

11. It is fair to say consistent with the submission for the appellant that the stewards carry the onus - and the Tribunal will return to that - and that if they can't produce better CCTV to the Tribunal, then they can't meet the burden of proof upon them. This case does not turn upon solely the quality of the CCTV and the conclusions to be drawn from it.

12. This is a civil disciplinary matter and the burden of proof is that in Briginshaw. The Tribunal has to be comfortably satisfied of the matters to be established.

13. The matters to be established are very brief. They are: that during an event – and that need not be more closely analysed - it was an event - and the facts relied upon by the respondent were during that event; the subject greyhound, Zipping Manuella, was required to have done 2 things. Firstly, to have turned its head, and, secondly, made head or muzzle contact with another greyhound. The point of contact of that head or muzzle contact is on any part of another greyhound.

14. As Chairman of the meeting on the night, Mr Hynes has given evidence to the Tribunal that he was in the Chairman's tower opposite the winning post. He therefore had a lateral vision. The lateral vision was played to the Tribunal.

15. Based upon his vision of the race he immediately formed a suspicion that something occurred right on the winning post. He immediately spoke to another steward on duty, Mr Degan. As a result of that the stewards convened. Mr Magri was called in. Video footage was shown and discussion took place.

16. Mr Hynes fairly gives evidence of his knowledge of the importance of the decision to be made by the stewards on the facts of this case, and importantly of their knowledge that in making their decision greater care was needed because the impact of a second marring breach by this greyhound was an

automatic 3 month suspension. The stewards deliberated with that basis of that knowledge and of a need for them to be of the utmost caution in forming the conclusions required of them.

17. Mr Hynes gave evidence that the CCTV able to be viewed by them in the presence of Mr Magri and on the night had a facility to what is described as jog the video. As a result of the use of that facility, and of a better quality reproduction, the stewards were able as a panel – and it wasn't just Mr Hynes' opinion – to conclude that each of the 2 factual matters had occurred at or about the finishing line.

18. They concluded therefore that Zipping Manuela had turned its head and the head had made contact with the greyhound Poco Dorado. That was the opinion they had formed. Additional evidence has been given. Can the Tribunal be satisfied that that opinion remains a reasonable one?

19. Some of the conclusions reached by the stewards on the evening – or in particular by Mr Hynes – are difficult to discern from the quality of the CCTV available to the Tribunal. Poco Dorado may have reacted in a number of ways, but Mr Hynes narrowed his evidence down to a recollection of a shying away and a change of stride. He maintained that he was able to discern those from the CCTV played to the Tribunal. He was able to describe by viewing the CCTV before the Tribunal and there were 2 frozen frames of CCTV on which he gave evidence. In the first of those he said he could quite clearly see a head contact. In the second – and it was fractionally later in actual time before the frame was freezed again – the quality was not such, in his opinion, that he could say it showed contact.

20. He fairly conceded that if there was a contact it was fleeting. He fairly conceded that it was difficult to state from the CCTV available to the Tribunal that there wasn't one millionth of a gap between the two. However, he relied upon other evidence to remain of the opinion that a marring occurred with the two factual ingredients established.

21. The Tribunal is the trier of fact. It has to be satisfied, as it is described, to a level of comfortable satisfaction that the breach has occurred. The critical factor becomes not just the evidence available to the Tribunal, but the evidence upon which the stewards formed their original opinion, as it was described, one hundred percent certainty in the panel members. The other panel members were not identified but presumably included Mr Degan. The numbers of them are not known and there was no evidence of their opinions before the Tribunal, but Mr Hynes has given evidence of the conclusion that they otherwise reached.

22. Accepting the difficulty viewing the CCTV available to the Tribunal, the Tribunal itself is comfortably satisfied that the opinion formed by Mr Hynes,

expressed in his evidence today, was reasonably formed. In other words, the Tribunal does not come to a conclusion that it fails to reach the necessary level of comfortable satisfaction based upon the fact that it cannot accept Mr Hynes' assessment of the CCTV played today as demonstrating the head contact to which he made reference. To the contrary, the Tribunal is of the opinion that if it was itself that had to form an opinion that that CCTV does in fact show the necessary head contact by the subject greyhound to Poco Dorado.

23. In those circumstances, the Tribunal finds that the marring alleged in Rule 69(1), as set out by the stewards and consistent with the definition of marring, occurred.

24. The appeal against the finding of the breach of the rule is dismissed.

25. I note that the formal order, subject to any other submissions, appears to be that the appeal against a finding of the breach of the rule by Zipping Manuela instituted by Mr Magri on the greyhound's behalf is dismissed.

26. The Tribunal notes that the automatic penalty imposed by the stewards is the penalty to apply from the date that they imposed it, there having been no stay.

27. I order the appeal deposit forfeited.
