

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

THURSDAY 27 FEBRUARY 2020

APPELLANT IAN SMYTH

**Appeal against stewards' decision to
impose an interim suspension of
licence pursuant to GAR 92(5)(c)**

DECISION: 1. Appeal dismissed

1. The appeal before the Tribunal by licensed trainer Mr Smyth is an appeal against an interim suspension imposed pursuant to Rule 92(5)(c), which, paraphrased and in summary, is pending the finalisation of the inquiry whether there should be a suspension of the appellant's licence to handle and train greyhounds.

2. The Act is silent as to what other tests have to be applied, as are the rules. The issue then becomes what is an appropriate outcome on the facts that the Tribunal has?

3. Firstly, the Tribunal notes that there is no issue put at this stage that the appellant was not the licensed trainer nor that the greyhound had the prohibited substance in it, nor that the greyhound was presented to race at The Gardens as was particularised to him. The matters about that, of course, are for a final hearing, not for an interim suspension determination.

4. Suffice it to say that what has been detected to date with two certificates by two accredited laboratories is amphetamine and various associated drugs with amphetamine.

5. The industry in New South Wales operates under the penalty table which, while not binding on the Tribunal, is one which the Tribunal has used as guidance in the past when it is required to determine penalty. It is certainly used by the regulator to determine penalty. And there are five categories of drug. The worst category is 1, the second category is 2. Amphetamines fall within category 2. And the likely starting point for any penalty is a disqualification of three years. There are many reasons why three years might not be imposed, that does not have to be considered on this matter, it merely puts the gravity of the presence of the particular substance in the racing greyhound in context.

6. In addition, it is a permanently banned prohibited substance and indeed its possession and use in the State of New South Wales is a criminal offence. The drug therefore falls within one of the most serious of possible categories, it being 2 not 1, of course.

6. The issue of integrity of the industry is paramount. The issue of welfare of a greyhound in which there is a permanently banned prohibited substance is a matter which will be the subject of issues at an inquiry and not matters for determination on an interim suspension application. The key matter is integrity.

7. It needs to be expressed that the Tribunal does a number of appeals on interim suspensions; it is familiar with the attitude adopted by this regulator and, indeed, now by the other two regulators – harness racing and thoroughbred racing – that where these facts arise there is a necessity to consider an interim suspension. That does not mean it has to be applied,

because critically under the subject rule it is a discretionary matter in the stewards, who have exercised that discretion against the appellant. It is also a discretionary matter for the Tribunal.

8. What facts then would warrant the key factor of integrity of the industry with the presence of such a serious drug in a racing greyhound which would enable this appellant to continue to train pending the stewards' inquiry?

9. Firstly, the Tribunal notes that an inquiry will in all probability, depending on how the appellant reacts to the notice to him, be disposed of possibly in the first week of April, if there is a hearing. That is not an inordinate delay against which any factor falls in favour of the appellant.

10. He submits that he will not admit the breach of any rule, that is a matter for him. It is noted at the moment that it reflects his comments to the Tribunal that as a hobby trainer who had moved the greyhounds for various reasons to another property, where he trained, fed and watered them or the like, and then took them to the races, raises an issue whether there was a possibility of contamination or untoward conduct unrelated to the appellant which took place on that other property. There are many matters that arise from those types of facts such as the adequacy of the supervision or the considerations which the appellant, having moved dogs from his own direct care to somewhere else, has given. They are not matters which are able to be ventilated at this stage.

11. He expresses to the Tribunal, and consistent with his indicated intention to plead not guilty, that he has no idea how the drugs came to be there, and there is nothing, as it were, that would arise from any conduct in which he has engaged, that is, direct conduct relating to amphetamine and drugs rather than direct conduct relating to his responsibilities as a trainer.

12. He expresses the financial hardship that will befall him should he not be able to continue to train. The proceeds from his hobby training are his sole source of income. The aspect of hardship is indeed one which the Tribunal does consider, but having regard to the totality of the facts that are available to the Tribunal on this interim suspension appeal, the Tribunal is not persuaded that that factor alone warrants the integrity issues which are of such import to be paramount.

13. The Tribunal has considered the matters that the appellant set out in his submission to the regulator when it was considering the suspension, which is set out in his notice of stay application and which he has now set out in support of his appeal.

14. The Tribunal comes to the conclusion that those matters do not outweigh, having regard to a category 2 drug of such seriousness, being a permanently banned prohibited substance, that the matters he has

advanced outweigh the integrity of the industry consideration which the Tribunal considers to be the more paramount consideration on a discretionary decision.

15. In those circumstances the appellant's appeal against the interim suspension under 92(5)(c) is dismissed.
