RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

TUESDAY 27 OCTOBER 2020

APPELLANT TREVOR LEONARD RICE

GREYHOUNDS AUSTRALASIA RULE 92(5)(c)

APPEAL AGAINST INTERIM SUSPENSION

DECISION:

1. **Appeal dismissed**
2. **Appeal deposit forfeited**

1. This is an appeal against a decision of GWIC under Rule 92(5)(c). That rule provides as follows:

> "Pending the decision or outcome of an inquiry, the Controlling Body or Stewards may direct that-
>
> > (c) a licence or other type of authority or permission be suspended."

2. On 28 September 2020 GWIC suspended the appellant's licence under that rule.

3. The appellant appealed on 12 October 2020. On 12 October 2020 the Tribunal granted a stay of that interim suspension pending the hearing of this appeal against the imposition of that interim suspension.

4. A preliminary legal point is taken that 92(5)(c) cannot be satisfied because there is no inquiry that has either started or upon which there is a termination possibility.

5. The answer to that is that the position of GWIC in this matter is that it has – and quite obvious, in the Tribunal's opinion – commenced an inquiry because that is what the inspectors have been addressing in respect of the matter.

6. The issue is whether it has to have an end date. No end date as such is required in the rule. What has to be found is whether or not there is an inquiry on foot. If there is an inquiry on foot, is it pending? The answer to that is yes.

7. That is determined notwithstanding that in the first instance GWIC propose to deal with this matter by way of prosecution under criminal sanctions for cruelty issues, and depending on the outcome of that prosecution, if it is successful, it has been indicated to the Tribunal that the stewards will use Rule 95(8), which provides power to take into account a conviction of an offence and then deal with licence capacities, and failing any such conviction, it is the position of the Tribunal, advised today, that it will resume its inquiry under the Greyhound Racing Rules in respect of the conduct the subject of this matter.

8. There is, therefore, jurisdiction in the Tribunal to deal with the issue of an appeal against the interim suspension.

9. There are a considerable number of facts. The history of the matter can be distilled down to a few key events. The preliminary to those key events is the character of the appellant and its relevance to the arguable case test. And they are that he has been a trainer for either 37 or 40 years –

but that does not have to be more accurately determined – that he has some 50 dogs in his care, and that he has in the past had one four-week suspension earlier this year for a positive drug-related matter in a greyhound. Other than that, he is a person of good-standing in the greyhound industry. That is relevant to the issues that are on foot.

10. As a breeder, he took possession of the subject greyhound Miss Lynbra and on 1 September that greyhound underwent a caesarean procedure and whelped a number of pups. It appears that soon after that Miss Lynbra ate or otherwise killed her pups.

11. Subsequent to all of this, the owner of the greyhound had made an application by way of email to GWIC in respect of permission to euthanise the greyhound. The appellant had paid $2000 for that caesarean section and not sought to recoup that money from the owner.

12. The treating vet for the caesarean prescribed penicillin for the recovery process and Betadine for wounds. There was some opinion evidence of the appellant here that it may be from injections given for the purposes of the caesarean that two heat sores or sweat sores became present on the neck of the greyhound. There is no evidence to substantiate that.

13. There is no evidence of what a heat sore is, nor of what a sweat sore is. Suffice it to say that this experienced trainer describes that two days prior to 16 September, the day on which inspectors arrived at his property, he had observed on the neck of the dog two 20 centimetre-size sweat sores.

14. It was not apparent to him, on his statements that are before the Tribunal and by way of submissions and the like, and comments to the inspectors, that beneath those sweat sores some subcutaneous activity was taking place. There is no direct evidence it should have been.

15. The greyhound had been on penicillin until 13 September. He determined to continue that for the purposes of this sweat sore observation. He had no veterinary advice to do so. He elected to treat it with Betadine, an antiseptic. He had no veterinary advice to do so.

16. It is the evidence of Ms Lowe, Ms Rice and Mr Torrens, by way of statutory declarations, that on 15 September the greyhound otherwise presented to them as well, was observed to be eating and running outside the kennel and displaying no discomfort or pain that was apparent to them. Ms Lowe is an elderly next-door neighbour, Mr Torrens, a part-time employee, and Ms Rice a relative. There has been no cross-examination of them. The Tribunal cannot conclude, as was submitted, that they are potentially conflicted witnesses.

17. Their evidence is unchallenged. The evidence of Mr Rice is corroborated to the effect that the wound that was subsequently observed by the inspectors, and the subject of veterinary attention, was not apparent on 15 September in the evening when the dog was bedded. The dog was on the subject bedding in which it was found for at least five days. The bedding was not covered in blood or other material observed by the inspectors consistent with a weeping wound prior to the dog been bedded on 15 September.

18. There is opinion evidence from Dr Teakle, an experienced regulatory vet and experience with greyhounds vet, that the wound in all probability was apparent some three days prior to her examination of the greyhound on 16 September. That is an opinion which is not supported by the uncontradicted evidence of three witnesses and of the appellant.

19. The appellant observed at 6:30 am on 16 September that the wounds had opened. At about 10:55, inspectors attended the property. Between 8:30 am and 10 am the appellant had taken other greyhounds to trial. He had returned. There is no evidence that upon his return at 10 and prior to the arrival of the inspectors that he had carried out any treatment to the wound.

20. The disturbing point in this matter is that the inspectors were deeply troubled by the welfare observations they made of the greyhound. They are entirely correct in expressing those welfare concerns. Photographs were taken of the greyhound in her kennel on her bedding and immediately outside it in the presence of the appellant. The wound at that point was consistent with that to which Dr Teakle has given evidence. It was obvious. It was frightening. It was large. It was embedded with paper. It was matted. It was, to a lay person such as the Tribunal, a truly frightening scenario for the greyhound. Interestingly, the evidence is that she had eaten well and had displayed no symptoms prior to 6:30 am.

21. At 6:30 am she had eaten well and displayed no pain to Mr Rice. On the other hand, an experienced inspector heard the greyhound whimper when it was removed from the kennel, and whimper when handled for the purposes of photography. It is the opinion of Dr Teakle that when she examined the dog, that earlier it must have been in pain. To a lay observation it is hard to imagine that with this most horrific of wounds the greyhound was not in some way at a level of discomfort which should have been of concern to this appellant.

22. This Tribunal determined, in granting the initial stay, that the matters were not apparent to him until 6:30 am and that the approximate arrival of the inspectors at what had been stated to be 10:30, but on the evidence now, their statements were 10:55, and they were there at the property for some considerable period of time, that they themselves did not require of the

appellant that immediately on their observations, which Mr Hitchcock, inspector, said was at 11:30 and the greyhound was not removed by way of seizure until 1 pm, that they themselves did not insist that Mr Rice immediately take the greyhound to a vet or they themselves do so. They continued about their inspection. That was a substantial balancing factor on an arguable case.

23. There is, however, new evidence which the Tribunal has seen, and that is from inspector Hitchcock and his discussions with the appellant referred to in his statement, it being borne in mind that there had been discussion about the wound only opening that morning, that there had been an attempt to provide care and attention to the greyhound by the appellant, that it had "only just busted open", and that having observed it in the form in which it was observed by the inspectors at or about 11:30, when he observed it at 6:30, that the appellant thought it was a good thing that the subcutaneous event, whatever it was – it is only known to be a sore which opened up – had opened up and it could now start drying out. That is, to quote him, "I thought it was a good thing for her to open up."

24. He was then questioned, and initially the Tribunal was concerned that he was not referring to his intentions from the time he saw the wound, but it is apparent from reading a totality of the evidence that in fact what he was going to do was to continue to treat it with penicillin and Betadine and not to obtain veterinary attention, bearing in mind that he had had no veterinary advice to use the penicillin or the Betadine in respect of the sores themselves, nor, critically, and most compellingly, in respect of the now opened-up wound.

25. He concedes he made a mistake. He thought it was treatable. He had done nothing, from 6:30 to make inquiries of a vet. The Tribunal has touched on that as to the fact that the inspectors made inquiries of their superiors but did not themselves insist on the greyhound being rushed to a vet.

26. It will never be known, but it is open to conclude, that if the inspectors had not attended that the treatment that the appellant advised inspector Hitchcock he was going to use would have meant the dog continued, as assessed by Dr Teakle later, to have remained in pain.

27. Photos in cases can often be more prejudicial than probative. Great caution needs to be taken in looking at photographs, whether they are of the type here or, indeed, often of the human body, of injuries which may make things more grave than they actually are.

28. The Tribunal expresses a lay opinion, supported, however, by the opinions of the various inspectors, including Mr OShannessy and his experiences such that he is able to express that opinion about the

seriousness of it, by what subsequently happened where this greyhound was kept in a veterinary hospital and subject to intensive treatment for a considerable period of time, apparently approximating some 23 days. She required anaesthesia for treatment of her wounds and debriding, removing of skin to enable healing and so on.

29. Returning then to the Tribunal's assessment of the photographs, it can only express them as horrific, and truly so. That the thought that anybody, when confronted with a greyhound in his care not being taken to a vet at 6:30 am, is just incomprehensible.

30. That becomes the balancing factor on the issues here. That is, welfare.

31. There are a number of matters which fall in favour of the appellant and must be addressed. He has 50 greyhounds. The others were not seized. He requires an income to look after them. A suspension would preclude that income and issues of what will then happen to the greyhounds remains troubling. There will be delay. It is quite clearly the case of GWIC that it will prosecute. It is the submission here that that prosecution may have a return date in December 2020, but not likely to lead to a hearing, if defended, until third quarter 2021, and that is about a year away. Is that delay one which is too great in respect of the issue that any success on appeal would be rendered nugatory?

32. GWIC relies on precedent. The precedents they have put up do not need to be examined on an interim suspension matter in great detail. It is noted that in some cases trainers have been disqualified for life. In others – and the Tribunal notes in particular in its appeal decision of Goodwin of 11 October 2017 that it referred there to a number of cases which have not been cited in detail today, in which periods of disqualification of nine months, 12 months and the like were imposed, other than those where life disqualifications were imposed, which are those contained in the submissions made by GWIC today.

33. This is not a time for the Tribunal to embark upon an exercise of determining that there has been a breach of the rules, nor of any likely penalty to flow from any adverse finding. Suffice it to say that the appellant does not satisfy the Tribunal – and the burden is upon him – that a likely delay between any possible decision under 95(8), or 95 generally, when the rules might otherwise be applied, is such that that period of time is so far out of likely consideration that it would render the appeal nugatory.

34. The case has changed somewhat from general failure to care to a focus upon failure to care on the morning of 16 September. The appellant does not satisfy the Tribunal that those 16 September matters should be so discounted by reason of all of the other factors that fall in his favour, that he demonstrates an arguable case. When all of the evidence is taken as

a whole – and it being strongly emphasised that this is an interim suspension issue, not a final determination, and that it is necessary for the appellant to establish an arguable case to justify then a consideration of the balance of convenience, that he is upon that issue successful.

35. Should the Tribunal have been otherwise wrong in that determination and there was an arguable case, the Tribunal reflects upon the issues touching upon the balance of convenience.

36. That raises all of the issues of hardship, other greyhounds under care, delay and the like, all of which fall, as expressed, with an aspect of consideration favourably to the appellant. But balanced against that is welfare, and welfare and integrity. Welfare here is the overriding consideration.

37. On a balance of convenience point the Tribunal would have found against the appellant on the basis that the welfare of the greyhound outweighs his personal and subjective factors on that test.

38. This is an appeal against an interim suspension. That appeal is dismissed.

39. There being no application for a refund, Tribunal orders the appeal deposit forfeited.
