IN THE RACING APPEALS TRIBUNAL

GARRY PHILLIP GIBSON
Applicant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION OF AN APPLICATION PURSUANT TO CLAUSE 10(6) OF THE RACING APPEALS TRIBUNAL REGULATION 2024 (NSW)

Date of determination: 20 January 2025

ORDERS

1. **Pursuant to cl 10(6) of the *Racing Appeals Tribunal Regulation 2024* (NSW), the time for lodging a Notice of Appeal is extended to 5.00 pm on 11 January 2025.**

2. **The Applicant is to advise the Appeals Secretary, by 27 January 2025, of his current residential address and, until the determination of the appeal, is to advise the Appeals Secretary of any change(s) of address.**

3. **The Respondent is to forward to the Applicant, by pre-paid post to the Applicant's current address as advised, all evidence upon which it relies by 5.00 pm on 30 January 2025.**

4. **The Applicant is to file any evidence and submissions by 5.00 pm on 17 February 2025.**

5. **The Respondent is to file any further evidence and submissions, by 5.00 pm on 27 February 2025.**

6. **The parties are to advise the Appeals Secretary of their available dates for hearing by 28 February 2025.**

INTRODUCTION

1. By a Notice dated 30 December 2024 and filed with the Appeals Secretary on 5 January 2025, Garry Gibson (the Applicant) seeks to appeal against a determination made by the Respondent on 23 April 2024 imposing a total disqualification of 3 years for breaches of rr 21(1)(a), 21(1)(e) and 28 of the *Greyhound Racing Rules* (the Rules). In a separate letter of 10 January 2025, the Applicant seeks an extension of time in which to bring that appeal. I have treated the whole of the material filed by the Applicant (who is self-represented) as an application for an extension of time pursuant to cl 10(6) of the *Racing Appeals Tribunal Regulation 2024* (NSW) (the Regulation). As discussed more fully below, cl 10(6) of the Regulation requires that the Applicant establish special or exceptional circumstances before an extension of time can be granted.

2. In response to the material filed by the Applicant, the Respondent has provided me with written submissions, along with a number of other documents. In doing so, the Respondent has indicated that it considers the determination of whether special or exceptional circumstances have been established is "*a matter for the Tribunal,"* such that its role in the matter is to *"assist the Tribunal to come to the correct and preferable decision based on the information available"*.[1] In other words, the Respondent has not taken a definitive position on the issue. Needless to say, that is a decision for the Respondent. It will, obviously, always be a matter for the Tribunal to resolve the issue(s) which are litigated before it. The fact that this is so does not prevent the Respondent from taking a definitive position and, in the context of the present case, would not have prevented the Respondent, had it wished to do so, from making a positive submission that special or exceptional circumstances had not been established. I simply point out these matters for future reference.

3. The material provided by the Respondent was helpfully assembled in a Tribunal Book (TB).

[1] Submissions at TB 4 [17].

THE FACTS

4. The material facts are as follows.

The fire at the Applicant's premises and the subsequent escape of the greyhounds

5. On 3 November 2023, the premises in which the Applicant was living were destroyed by fire.[2] The Applicant retrieved two greyhounds, *State My Mate* and *All Star State* (collectively, *the greyhounds*), and retreated to the adjoining premises[3] which were owned by a Mr Edward Pomfrett.[4] The Applicant was injured in the fire.[5]

6. On the applicant's account, he secured the greyhounds following the fire. They subsequently escaped, the Applicant asserting that this was due to the act of some other person(s), before entering a private property and killing two guinea pigs.[6]

7. The greyhounds were subsequently impounded by officers of the Warrumbungle Shire Council.[7] They were then removed from the Applicant's custody and control, and transferred to Greyhounds as Pets.[8]

The condition of the greyhounds following impoundment

8. Following their impoundment by the Council, the greyhounds were examined by Dr Margaret Brownlow, Veterinarian, who found that:

    (i) the first had a dull and faded coat, and prominent individual ribs;[9]

    (ii) the second exhibited a wound below the eye involving a laceration with a full thickness loss of skin, along with a second wound on the

[2] TB 22; Q and A 3 – 4.
[3] TB 22; Q and A
[4] TB 22 – 23; Q and A 8.
[5] TB 22; Q and A 5.
[6] TB 23; Q and A 18; TB 30 – 32.
[7] TB 33.
[8] Respondent's submissions at TB 1 [4].
[9] TB 40.

point of the shoulder (that second wound being regarded as relatively inconsequential).[10]

9. Dr Brownlow expressed the opinion[11] that:

    (i) the first greyhound was malnourished; and

    (ii) the wound below the eye exhibited by the second greyhound would have benefited from prompt veterinary treatment (the reasonable conclusion being that such treatment had not been administered).

The proceedings against the Applicant

10. On 27 November 2023, the Respondent wrote to the Applicant[12] advising him that a determination had been made that there were reasonable grounds to charge him with:

    (i) an offence contrary to r 21(1)(a) of the Rules of failing to ensure that any greyhound in his care or custody was given proper and sufficient food, drink and protective apparel;

    (ii) an offence contrary to r 21(1)(e) of the Rules of failing to ensure that any greyhound in his care or custody was given appropriate medical treatment; and

    (iii) an offence contrary to r 28 of the Rules of failing to ensure that any greyhound in his care, custody or control did not stray onto any private property without the permission of the owner of that property, or stray into any public place.

11. The correspondence advised the Applicant that a hearing would be held on 4 December 2023 at 3.00 pm at the Gunnedah Greyhound Club. Whether the Applicant ever received that correspondence is not clear, although he did not

[10] TB 41.
[11] TB 42.
[12] TB 16 – 19.

attend on 4 December 2023 in response to it. In any event, it would appear that the hearing did not proceed on that day. I say that, because there is a reference in the material provided to me[13] to the fact that on 10 April 2024, a Brief of Evidence was sent to the Applicant at an address in Leppington, along with advice that a hearing would take place on 23 April 2024. Subsequent enquiries made by the Respondent established that the Applicant was not living at the Leppington address at that time.[14] It follows that there is a reasonable inference that the Applicant did not receive the Brief of Evidence, and was not on notice of the hearing. That inference is fortified by the fact that the Applicant did not appear on 23 April. In his absence, the decision maker(s) found the offences proved and imposed the following penalties:[15]

(i) as to the charge contrary to r 28 – disqualification for 12 months;
(ii) as to the charge contrary to r 21(1)(a) – disqualification for 3 years;
(iii) as to the charge contrary to r 21(1)(e) – disqualification for 3 years.

12. It was determined that the penalties were to be served concurrently, with the total period of disqualification of 3 years ordered to expire on 23 April 2027.

13. The Applicant was advised of the Respondent's determination by a letter dated 3 May 2024[16] sent to the Leppington address at which the Applicant was apparently not residing. It is again reasonable to infer that the Applicant did not receive that correspondence and was thus unaware of the determination which had been made, and the penalties which had been imposed.

Events following the Respondent's determination

14. On 14 June 2024, the Applicant wrote to the Respondent's Chief Steward, Mr Vassallo, advising that he had moved to an address in Hermidale and enquiring as to *"when [his] hearing will be heard"*. On 18 June 2024, Mr Vassallo responded to

[13] TB 7.
[14] TB 7.
[15] TB 9.
[16] TB 12.

the Applicant advising him of the disciplinary proceedings, and their outcome.[17] Whether the Applicant received that correspondence is not clear. If he did, it would appear to constitute the first occasion on which he became aware of the disqualification which had been imposed. In outlining the determination which had been made, Mr Vassallo advised the Applicant that his "*rights of appeal and or application for internal review [had] now expired"*. Whilst that statement was correct in and of itself, its significance lies in the fact that Mr Vassallo did *not* advise the Applicant that it was open to him to make an application pursuant to cl 10(6) of the Regulation for an extension of time in which to bring an appeal.

15. In July 2024, the Applicant wrote to the Minister for Gaming and Racing, the Honourable David Harris MP. Part of the Applicant's complaint to the Minister centred upon the fact that the greyhounds had been removed from his custody. On 13 September 2024, the Applicant wrote to the Minister again asking that his "*case be heard by an independent tribunal*".

16. On 22 November 2024, the Applicant wrote to the Respondent seeking, in effect, copies of all correspondence in relation to the circumstances regarding the impounding of the greyhounds. Needless to say, that is not a matter over which I have any jurisdiction.

17. On 29 November 2024 Mr Griffin, the Chief Executive Officer of the Respondent, wrote to the Applicant outlining his rights of appeal, including the option of making an application for an extension of time pursuant to cl 10(6) of the Regulation.[18] It is evident that I do not have the entirety of the correspondence which passed between the Applicant and the Minister's office. However, it would appear that it was that correspondence which prompted Mr Griffin's letter. Mr Griffin's letter appears to have been the first occasion on which the Applicant was informed of

[17] TB 7 – 8.
[18] TB 6.

the provisions of cl 10(6) of the Regulation, and was the catalyst for the present application.

Other matters relied upon by the Applicant

18. The Applicant has provided a statement in support of the present application in which he said (in terms of the offence contrary to r 28) that:

    (i) he had secured the greyhounds following the fire,

    (ii) "someone had let them out";

    (iii) he had attempted to report their escape to the police, only to find the police station unattended when he arrived;

    (iv) he was later informed by police that the dogs had been impounded.

19. The Applicant has also provided evidence that in February 2024, he was referred by his General Practitioner, Dr Volceva, for specialist treatment for anxiety, depression and alcohol dependence, all of which (according to the terms of the referral) had arisen following the fire and the subsequent removal of the greyhounds. The nature and duration of any treatment, and its outcome, are not apparent on the evidence before me.

SUBMISSIONS OF THE PARTIES

Submissions of the Applicant

20. In circumstances where the Applicant is self-represented, he has not filed formal submissions. My assessment of the material upon which he relies is incorporated in my conclusions below.

Submissions of the Respondent

21. As I have already noted, the Respondent has taken a neutral approach to the present application. However, in doing so the Respondent has helpfully and fairly drawn attention to the following circumstances which bear on my determination:

(i) whilst all efforts were made by the Respondent to ensure that the Applicant was on notice of the proceedings and the hearing, it remained unclear whether he had received the correspondence which was sent in April 2024;[19]

(ii) the Respondent was aware that the Applicant had changed addresses on more than one occasion as a consequence of the fire;[20]

(iii) although Mr Vassallo had advised the Applicant that the period in which to lodge a Notice of Appeal had expired, he was not advised that he could make an application under cl 10(6) of the Regulation;[21]

(iv) having been advised on 24 November 2024 that he could make such an application, the Applicant filed a Notice of Appeal, dated 30 December, with the Appeals Secretary;[22]

(v) although there was some evidence that the Applicant suffered from depression and alcohol dependence, it remained unclear whether these factors prevented him from engaging with the disciplinary process;[23]

(vi) the decision to find the Applicant guilty of the offences was, from the Respondent's perspective, the correct one;[24]

(vii) although the Applicant had not taken an active part in the disciplinary process, he had not adduced any further evidence on this application regarding the charges against him.[25]

THE REGULATION

22. Clause 10 of the Regulation is in the following terms:

[19] Submissions at TB4 [18].
[20] Submissions at TB 4 [19].
[21] Submissions at TB 4 [20] – [21].
[22] Submissions at TB 5 [22].
[23] Submissions at TB 5 [23].
[24] Submissions at TB 5 [24].
[25] Submissions at TB 5 [25].

10 Lodgement of Notice of Appeal

(1) For the Act, section 18(1)(a), a person may appeal against a decision specified in the Act, section 15A by lodging a notice of appeal with the Secretary within—

(a) 7 days after being notified of the appellable decision, or
(b) a longer period granted by the Tribunal on the application of the person.

(2) The notice of appeal must be in the approved form.

(3) If the decision appealed against was made as a result of a hearing or inquiry, the person may request that the Secretary give the person a transcript of the evidence given at the hearing or inquiry, if available.

(4) The Secretary must comply with a request made under subsection (3) as soon as practicable.

(5) An application for an extension of time for lodging a notice of appeal made under subsection (1)(b) must be—

(a) in the approved form, and
(b) given to the Secretary.

(6) The Tribunal may only grant an extension of time for lodging a notice of appeal under this section if satisfied it is appropriate to do so because special or exceptional circumstances exist (emphasis added).

THE PRINCIPLES APPLICABLE TO AN APPLICATION PURSUANT TO CLAUSE 10(6)

23. In its written submissions, the Respondent cited a previous decision of this Tribunal (differently constituted) in *Pullicino v Harness Racing New South Wales*[26] and invited me to apply it in determining the present application. Without intending any disrespect, there are, in my view, two difficulties with that decision which operate to dilute its precedential value.

24. The first, is that the decision was apparently made by reference to a series of authorities which are unidentified, and which were not the subject of any analysis.[27] I respectfully disagree with the view expressed by the Tribunal that there was no need for it to engage in such analysis because it was not a superior Court. The Tribunal is not a Court, superior or otherwise. However, it is a decision maker. As such, and in circumstances where its decisions are subject to review

[26] 26 August 2022.
[27] See decision at [33].

by the Supreme Court of New South Wales on the grounds of error of law or jurisdictional error, the Tribunal is obliged to give reasons for any determination it makes. Whilst it may not be necessary for the Tribunal's decisions to be as comprehensive as those published by a Court, they must expose the path of reasoning which has led to the conclusion(s) reached. In my view, there is a difficulty in such a path being exposed when it is apparently based upon principles derived from authorities which are not identified.

25. The second, is that reference was made in *Pullicino* to submissions made by the parties which, evidently, reflected certain propositions and principles which each party argued ought be applied. The decision does not make clear whether those submissions were actually accepted. It is therefore unclear whether such propositions, and the principles they sought to encompass, formed part of any reasoning process in which the Tribunal engaged.[28]

26. Recently, in *Phillips v Greyhound Welfare and Integrity Commission*[29] I said the following:

> *[38] In the circumstances I have outlined, I am not required to consider the issue of special or exceptional circumstances by reference to cl 10(6) of the Regulation. However, it is appropriate that I draw attention to the observations I made in respect of that issue in Callaghan v Harness Racing New South Wales.*[30] *Whilst such observations are not necessarily exhaustive, they should be regarded as encapsulating the general principles which will be applied by the Tribunal in determining whether special or exceptional circumstances are made out in cases where that issue arises:*
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> > *[44] I was provided by both parties with references to previous determinations of this Tribunal (differently constituted) in which consideration had been given to the meaning of the term "special or exceptional circumstances." Generally speaking, I agree with the approach previously taken by the Tribunal. However, it is convenient to gather, in the one determination, the principles which can be extracted from the various authorities in which the meaning of the term has received judicial consideration. That approach will hopefully be of assistance in the event that the same issue arises in the future.*

[28] See decision at [35] – [38].
[29] 10 December 2024 at [38].
[30] A decision of 30 July 2024 commencing at [44].

[45] The term "special or exceptional circumstances" is one which is used from time to time in statutes and regulatory provisions to place limits upon the exercise of a power.[31] *The Macquarie Dictionary defines the term "special" as:*

> *...relating or peculiar to a particular person, thing, instance; having a particular function, purpose, of a distinct or particular character; being a particular one; extraordinary or exceptional.*

[46] It defines the term "exceptional" as:

> *... forming an exception or unusual instance; unusual; extraordinary; exceptionally good, as of a performance or product; exceptionally skilled, talented or clever.*

[47] With these matters in mind, the following general principles may be distilled from the authorities:

1. *the use of the word "or" in the term "special or exceptional circumstances" may be indicative of a deliberate differentiation between "special" on the one hand, and "exceptional" on the other;*[32]

2. *that said, and in light of the above definitions, the distinction between "special" and "exceptional" may be more illusory than substantial;*[33]

3. *the words "special" and "exceptional" are ordinary English words describing a circumstance which forms an exception which is out of the ordinary course, unusual, special or uncommon;*[34]

4. *whilst the words "special" or "exceptional" do not mean "unprecedented or very rare", in order to be special or exceptional, the circumstances relied upon must fall outside what is usual or ordinary;*[35]

5. *special or exceptional circumstances may be established by the coincidence or combination of a number of factors;* [36]

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[31] *R v Young* [2006] NSWSC 1499 at [19].
[32] *R Brown* [2013] NSWCCA 178 at [22] per the Court (Rothman, Fullerton and Beech-Jones JJ).
[33] *R v Wright* (Supreme Court of NSW, Rothman J), 7 June 2005 unreported) cited in *Brown* at [23].
[34] *Harvey v Attorney-General Queensland* (2011) 229 A Crim R 186 at [24]; *R v Kelly* (2000) 1 QB 198 at 208; *R v Celeski* [2016] ACTSC 140 at [41].
[35] *R v Watson* [2017] ACTSC 311 at [42]; *Harvey* at [42]; *Groth v Secretary, Department of Social Security* (1995) 40 ALD 541 at 545; *Celeski* at [42].
[36] *Young* (supra) at [20]; *Brown* at [27]; *Grant v R* [2024] NSWCCA 30 at [30]; see also *Watson* at [16] and the authorities cited therein.

6. *the approach to determinising whether special or exceptional circumstances are made out must be a flexible one, and a conclusion reached by reference to the individual circumstances of the case;*[37]

7. *delay is a relevant factor in determining whether circumstances are special or exceptional;*[38]

8. *special or exceptional circumstances may include events which would render compliance with the relevant period (in this case, 7 days) unfair or inappropriate,*[39] *and may also include events which are outside reasonable anticipation or expectation;*[40]

9. *although it will enable a decision maker to understand why a time limitation was not complied with, merely explaining a delay, or a failure to comply with a limitation period, will not, at least of itself, constitute a special circumstance justifying an extension of time.*[41]

27. I have determined the present application in accordance with these principles.

DETERMINATION

28. I am satisfied that special or exceptional circumstances have been established in the present case, and that the application for an extension of time in which to bring an appeal should be granted. I have reached that conclusion for the following reasons.

29. First, the Applicant's overall circumstances must be assessed against the background of the fire which occurred at the premises at which he was living. The trauma associated with such an event will be self-evident. Significantly, the alleged offending against r 28 is said to have occurred only a short time after that.

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[37] *R v Medich* [2010] NSWSC 1488; *R v Pirini* Supreme Court of New South Wales (McClellan CJ at CL), 8 September 2009 unreported; *R v Chehab* (Court of Criminal Appeal New South Wales (Latham, Fullerton, Adamson JJ) unreported; *Grant* at [30] citing *R v Khayat (No. 11)* [2019] NSWSC 1320 at [14].
[38] *Beadle v D-G of Social Security* (1985) 60 ALR 225; [1985] FCA 234 at 674.
[39] *Beadle* at 674.
[40] *R v Steggall* [2005] VSCA 278 at [27], cited with approval in *Burlock v Wellington Street Investments Pty Limited* [2009] VSC 565.
[41] *Connelly v MMI Workers Compensation (Vic) Limited and ors.* [2002] VSC 247.

30. Secondly, it appears to be the Applicant's case (at least in respect of the offence contrary to r 28) that he had done his best to take steps to secure the greyhounds, and that they were released by the act(s) of some other person. Whilst that may not provide the Applicant with a defence to the charge, it may, if it were ultimately accepted, reduce the Applicant's culpability. In saying that, I make it clear that I have made no determination whatsoever as to whether such a proposition ought be accepted and, if so, what is effect upon penalty might be. However, it seems to me that it is at least an arguable issue, and one which, for the reasons that follow, the Applicant has not had the opportunity to litigate.

31. Thirdly, and whilst I make no criticism whatsoever of the Respondent in this respect, it is open to conclude that for a significant period of time, the Applicant was unaware of the outcome of the disciplinary proceedings brought against him, or his rights of appeal. On the material which is available to me, that lack of awareness may be attributable to a number of factors, not the least of which is that the Applicant appears to have been living a somewhat itinerant, if not nomadic, existence following the fire at his premises (and perhaps even before that). Whilst industry participants have an obligation to ensure that their contact details are registered with the Respondent, and that they remain up to date, the Applicant must be afforded some degree of latitude given his circumstances.

32. Fourthly, and more specifically, it would appear that relevant material, including the Brief of Evidence and the notification of the hearing, was sent to an address at which the Applicant was not residing at the relevant time. It would also appear that the notification of the outcome of the proceedings was sent to the same address. It is therefore open to infer that the Applicant did not receive any of this correspondence. The proposition that a person charged with any offence must be put on notice, provided with the evidence against them, and given an opportunity to be heard, is so fundamental that it requires no elucidation. For the reasons I have canvassed in my analysis of the evidence, I think it more probable than not that in the present case, at least some of these requirements were not met until

relatively recently. Some, including the provision of the Brief of Evidence, may not have been met at all.

33. Fifthly, even if it is accepted that the Applicant received Mr Vassallo's correspondence of 18 June 2024, he was not informed that it was open to him to make an application for an extension of time. The Applicant's response appears to have been to raise the matter with the Minister. Although the Minister was powerless to take any action, making contact with him was not an unreasonable response on the Applicant's part. It is not as if the Applicant did nothing in response to being informed of the penalties which had been imposed.

34. Sixthly, once he was notified on 29 November 2024 that it was open to him to make the present application, the Applicant filed a Notice of Appeal with the Appeals Secretary on 30 December 2024. That was followed by a letter of 10 January 2025 formally seeking an extension of time. The period between 29 November 2024 and 10 January 2025 must be assessed having regard to a number of factors. To begin with, and without intending any disrespect, the Applicant appears to be a largely unsophisticated person. Further, in his correspondence to the Appeals Secretary of 10 January 2025, he explained that his computer skills are limited, and that his only access to a computer is through his local library which is located 50kms from his home. Those circumstances, together with the fact that the Applicant is self-represented, more than adequately explain the period between 29 November 2024 and 10 January 2025.

35. Seventhly, there is evidence that at least for some period following the fire, the Applicant laboured under the burden of diagnosed mental health issues, coupled with alcohol dependence. Whilst I accept the Respondent's submission that the effect of these matters on the Applicant is not entirely clear on the evidence, it is significant that in February 2024, before the Brief of Evidence and notice of the hearing was sent to him in April, such matters were considered by his General Practitioner to be of sufficient gravity to warrant specialist intervention. Even if the Applicant did become aware of the proceedings in April 2024 (which, for the

reasons I have set out, I consider to be highly unlikely), and even if it is accepted that he was advised by Mr Vassallo on 18 June 2024 of the outcome of the proceedings, the medical issues diagnosed by his General Practitioner, at the very least, had the capacity to render it difficult for him to engage in any disciplinary process[42] even if he did know about it.

36. Finally, the evidence of the Applicant's mental health and related issues may also be relevant to penalty, in circumstances where it would appear that those who made the decision at first instance were unaware of such matters.

37. For all of these reasons, I am satisfied that special or exceptional circumstances have been made out, and that the application should be granted. However, I need to make it clear to the Applicant that the appeal before this Tribunal is solely concerned with the charges which have been brought against him, and the penalties which have been imposed. It is not the function of this Tribunal, on the hearing of the appeal, to make any order in relation to the return of the greyhounds, nor is it the function of the Tribunal to make orders regarding access to documents.

38. In the circumstances, and given that the appeal will proceed by way of a hearing *de novo,* I have incorporated orders with a view to ensuring that the Applicant is on notice of all relevant matters prior to the hearing of the appeal.

ORDERS

39. I make the following orders:

1. Pursuant to cl 10(6) of the *Racing Appeals Tribunal Regulation 2024* (NSW), the time for lodging a Notice of Appeal is extended to 5.00 pm on 11 January 2025.

[42] See *Mark Azzopardi v Greyhound Racing New South Wales,* 23 December 2024 at [70].

2. The Applicant is to advise the Appeals Secretary, by 27 January 2025, of his current residential address and, until the determination of the appeal, is to advise the Appeals Secretary of any change(s) of address.

3. The Respondent is to forward to the Applicant, by pre-paid post to the Applicant's current address as advised, all evidence upon which it relies by 5.00 pm on 30 January 2025.

4. The Applicant is to file any evidence and submissions by 5.00 pm on 17 February 2025.

5. The Respondent is to file any further evidence and submissions, by 5.00 pm on 27 February 2025.

6. The parties are to advise the Appeals Secretary of their available dates for hearing by 28 February 2025.

THE HONOURABLE G J BELLEW SC

20 January 2025