APPEAL 477

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**MAXWELL JOHN JULIEN**
APPLICATION NO:	**A30/08/477**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MS P HOGAN (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**24 JULY 1999**
DATE OF DETERMINATION:	**24 JULY 2000**

IN THE MATTER OF an appeal by Mr M J Julien against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on the 28 October 1999 imposing a penalty of 9 months disqualification for breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr S Davies, on instructions from D G Price & Co, solicitors, appeared for the appellant.

Mr R J Davies QC, assisted by Mr J Woodhouse, appeared for the Western Australian Greyhound Racing Authority Stewards.

On 12 July 2000 the Tribunal by a unanimous decision dismissed the appeal against conviction. Both parties were invited to contact the Registrar to arrange a date to present submissions in respect of the penalty. The suspension of operation of the penalty was extended until midnight, 27 July 2000 or as otherwise ordered.

This is a unanimous decision of the Tribunal.

We are not persuaded that the Stewards have fallen into error in imposing the penalty of 9 months disqualification. As the Tribunal has already decided the appropriate Rule in force at the relevant time was the 1973 Rule. The Stewards were required to deal with the penalty provisions in force at that time and to do otherwise would be logically inconsistent.

The Tribunal has already made reference to the range of penalties for this type of offence. We are not persuaded that the penalty imposed is outside the range for caffeine related offences.

Mr S Davies raised five separate issues in support of his submission that the penalty was manifestly excessive. As to the first regarding Mr Julien's excellent longstanding record the Stewards did make express reference to that fact in handing down the penalty. It cannot be said that the Stewards did not take it into account. It would have been inappropriate for the Stewards to take into account the costs and it is not correct to liken the payment of costs to being equivalent to a fine. The length of disqualification already served must be adjusted from the penalty. Proof of actual administration by Mr Julien is not the actual offence. The penalty is disqualification and we agree with senior counsel's submission that the effect of the disqualification in this particular case is not relevant.

Accordingly the appeal as to penalty is dismissed. The suspension of operation of penalty automatically ceases.

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**MAXWELL JOHN JULIEN**
APPLICATION NO:	**A30/08/477**
DATE OF HEARING:	**25 NOVEMBER 1999**
DATE OF DETERMINATION:	**12 JULY 2000**

IN THE MATTER of an appeal by Mr MJ Julien against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on the 28 October 1999 imposing a penalty of 9 months disqualification for breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr RE Birmingham QC, on instructions from DG Price & Co, solicitors, appeared for the appellant.

Mr RJ Davies QC, assisted by Mr J Woodhouse, appeared for the Western Australian Greyhound Racing Authority Stewards.

First Appeal

Mr Julien is registered as an owner/trainer with the Western Australian Greyhound Racing Authority. On 23 November 1998 the Stewards opened an inquiry into a report received from the Australian Racing Forensic Laboratory confirming the presence of caffeine, theophylline and theobromine which was detected in a urine sample taken from the greyhound PROMENADE after competing in Race 8 at Cannington Greyhounds on 13 October 1998. The inquiry was a protracted affair. On the 23 November 1998 Mr Julien was charged with a breach of Rule 234(7) of the Rules of Greyhound Racing 1973. That rule specifies:

> '234 *A person may be found to be guilty of the breach of any provision of these Rules not specified in this rule, but without prejudice to the generality of that liability a person who-*
>
> ...
>
> *(7) had at any relevant time the charge or control of a greyhound brought to compete in a race or a qualifying trial which is found by the Stewards to have had any apparatus used upon it, or any drug, stimulant or deleterious substance administered to it, for any improper purpose;*
>
> ...
>
> *commits a breach of these Rules.'*

After further deliberations eventually Mr Julien was convicted in January 1999 and was disqualified for a period of 9 months. He appealed to this Tribunal (Appeal No 444) in April 1999. The Tribunal unanimously allowed the appeal, quashed the conviction and remitted the matter to the Stewards for further determination in accordance with the reasons. In upholding the appeal the Tribunal directed the Stewards to redetermine the matter in the light of the fresh evidence before the Tribunal and all other fresh material which the Stewards may elicit or which Mr & Mrs Julien may wish to present.

Stewards' Rehearing

The Stewards' rehearing began on the 26 August 1999. The proceedings that day were lengthy, occupying over 180 pages of transcript. At the conclusion of it Mr Julien was told *'We're going to deliberate and we going to consider all the evidence and ...we will let you know as soon as we have a decision and I don't know when that is. ...that is our intention at the moment, is to get a transcript completed so we can study the evidence very carefully and very thoroughly'*. By letter dated the 14 October 1999 the Stewards communicated their findings as follows:

> *'This inquiry was initially commenced on 23 November, 1998 and after several sittings, adverse findings were made against you and a penalty was subsequently issued. You exercised your right of appeal and the determination of the Appeals Tribunal resulted in this matter being now re-determined in light of fresh evidence before the Tribunal; all other fresh material which the stewards may elicit; and all other fresh material which yourself and Mrs Julien wished to present. We have taken into consideration all the evidence that has been presented to this inquiry very carefully and thoroughly. This evidence includes the previous inquiry (pages 1-222); Mrs Julien's evidence given under oath before the Racing Penalties Appeal Tribunal (Exhibit No. 15) and the evidence taken during the inquiry on 26 August, 1999. It also includes the letter from Mr Bates*

forwarded to us after the stewards had adjourned to deliberate, which is of no assistance in determining this matter.

There are several important aspects of the explanation offered by you, with the assistance of Mrs Julien, which this experienced panel of stewards, who have heard virtually all cases of this nature for the last six years, have great difficulty in accepting.

Firstly, it is at best difficult to accept that you, as a trainer with 20 years experience, set in place a procedure to prevent bags with beans from leaving the "bag shed" and entering the kennels and is then the person who contravenes your own critical safety measure. You had in fact employed and instructed Mr Choules to ensure no bags left the bag shed before being cleaned of beans. Yet you completely disregarded your own security measures and took approximately 25 contaminated bags into a shed where racing greyhounds are kennelled and incredibly did not warn Mrs Julien or anyone else. It is hard to reconcile that you had the foresight and intelligence to instigate an effective procedure to prevent a racing greyhound from being contaminated with coffee beans but then decided to ignore your own precautions and take the risk that you say you did. What makes this even more disturbing is that according to you you actually instructed Mrs Julien to put more bags into PROMENADE's kennel after she had moved it there and still did not warn her of what you had done. Given that you have told us that all the bags would have been put into some use within two days of you placing them in the shed, this would mean that your instruction must have been issued within this period of time if Mrs Julien placed bags from the contaminated pile into the kennel, which you claim she did. This being the case, there is no rational explanation for you not to warn her about the contaminated bags.

Our second area of concern is that Mrs Julien moved the greyhound PROMENADE to the bottom kennel shed and in the process kennelled the greyhound there and placed at least four bags into its kennel from the contaminated pile left there by you and did not notice any beans. The rattling of the beans was an issue of concern during the appeal hearing and has been further examined during this re-determination. It has been disputed whether the beans could be heard during the demonstration at the original inquiry. Mrs Julien further denies hearing the beans before the Racing Penalties Appeal Tribunal. This panel who witnessed the demonstration are unanimous that it was easy for us to hear the beans during the demonstration. This is not an extraordinary observation because even Mr Noonan and Mr Warren state that it is possible to hear the beans in certain circumstances. The point here is not whether Mrs Julien heard the beans when placing the bags into the kennel, for indeed she may not have for the reasons outlined by her but rather than having seen the bags at the original inquiry, during the course of the appeal hearing and now, it remains a mystery to us how she placed four such bags into a kennel and not a single bean was noticed.

Thirdly, we find the description of events given by Mrs Julien as to what occurred in PROMENADE'S kennel in early October when she discovered the beans incomprehensible. Mrs Julien a trainer in her own right, with some 15 years experience, was fully aware of the coffee bags and the lengths to which you had gone to address the problem. Given that, she appeared to be remarkably unconcerned by the presence of the beans in

a racing greyhound's kennel. She readily stated that she simply swept the beans out, made no further check of the kennels and then completely forgot about the incident and said nothing to you. This is difficult to accept given the discussions you eventually admitted having had with her regarding the coffee bags. Much of this lack of concern on the part of Mrs Julien at that time has been attributed to the state of her health, which is said to have been very poor. Whilst we accept that she was of ill health we find it hard to reconcile that this ill health was such that it prevented her from remembering or telling you of her significant discovery in the kennels. Furthermore, it is significant to note that during the initial inquiry of 23 November, 1998 neither Mrs Julien nor yourself explained that this ill health was a contributing factor to her not telling you about the alleged discovery. Even when asked directly at that time how was it that when she found the beans in the kennel it did not trigger or worry her enough to tell you about it, no mention of illness is made. It was only when you returned for the second sitting of the inquiry on 14 December, 1998 that it emerged that the illness was a primary factor in Mrs Julien forgetting to tell you of her discovery. If Mrs Julien's ill health was so significant in her failure to advise you of the beans at the relevant time then we would have expected this information to have been forthcoming from Mrs Julien in the previous 93 pages of transcript. The fact that it was not forthcoming, despite direct questioning, detracts from the suggestion that her state of health was such that it prevented her from advising you of her discovery as she freely admits she should have. It is also ... It is further hard to understand that Mrs Julien was so ill of health and yet by her own admission on the day in question she was clearly responsible for administering to the greyhounds in your kennels. She had in fact already attended to nine greyhounds in the top kennel and had seven more to go. She was clearly capable of attending to her duties and we therefore can see no reason why she was not able to recognise the seriousness of the alleged discovery of the beans. The reasons for her failure to inform you of what is said to have occurred are difficult to accept. Mrs Julien's claim that she was not even thinking of the dangers of caffeine at the time that she saw the beans in PROMENADE's kennel and therefore did not tell you is inconsistent with her actions at this time. She was clearly alert to the danger the coffee beans represented in PROMENADE's kennel as according to her she made an assessment of whether the greyhound had eaten any beans or whether any beans looked to be wet or chewed. If she found the beans as has been stated then at that time she was also fully aware that this was the last thing you would have wanted given your discussions and procedures. Everything you had set in place in regard to the coffee bags was to prevent this situation from happening and Mrs Julien knew this. When it eventually happened she is suggesting that she was not concerned at the time and thought nothing of it. This is simply unacceptable. There would be no rational explanation for her to be thinking about whether the greyhound had eaten any beans if she was not also thinking about the danger they represented. It is blatantly obvious that she would have been fully aware of the danger of caffeine both previously and at the time it is said she discovered them. There has simply been no explanation offered which satisfies us why she did not tell you.

Fourthly, we cannot accept that if this scenario regarding the bags had in fact occurred why this information was not forthcoming at the time of the stewards' visit to you on 4 November, 1998. You have accepted that the

stewards spent a considerable amount of time at your premises and the only explanation offered at that time was that an intruder must have interfered with the greyhound. Mrs Julien, the person who allegedly saw the beans in the kennel was also in attendance and it is difficult to accept that she did not remember the incident at that time. This is especially so given that she was the person who it is said found coffee beans in the kennel of the very greyhound that had now returned an abnormality. It is difficult to accept that the return of the abnormality did not jog her memory of what had transpired previously especially when she well knew that despite your procedures the greyhound had had access to the coffee beans. It is also difficult to accept that you did not advise the stewards of the presence of the thousands of coffee bags on your property. More so, it is difficult to accept that you made no mention of the one and only time you breached your own security procedure and took a pile of bags into a shed containing the greyhound which had now returned an abnormality. Had the events as described by you occurred, a reasonable person would expect that at some stage of the one-hour kennel inspection at least some mention of coffee beans in bags would have been made by either you or especially Mrs Julien. That it was not mentioned is difficult to comprehend in view of what we are now being asked to accept as fact.

Fifthly, the explanation offered by you in regard to the scratching of the greyhounds CATCH CRY and CLOSED CIRCUIT and the failure to scratch PROMENADE remains unsatisfactory and illogical and is further compounded in view of further evidence received in this respect. In simplest terms, if you went to two greyhounds' kennels, found coffee beans in them and proceeded to scratch one and not the other this would be senseless. Yet this is what essentially occurred with PROMENADE and CATCH CRY. The further scratching of CLOSED CIRCUIT several days later for the same reason serves only to further confuse the matter. This unsatisfactory explanation places serious doubt over the validity of the submissions of the accidental administration. Given the cleaning procedures, which shall be addressed in due course, and the fact that you have failed to provide a satisfactory explanation for the unusual scratching activity, indicates to us that this was an attempt by you to reinforce your submissions that there were coffee beans present up until 5 November, 1998.

For the reasons already outlined, these events thus far are in themselves at best difficult to accept as truth. The stewards have, however, elicited critical evidence in respect to the cleaning of the kennels, which casts serious and overwhelming doubt on the validity of the explanation offered by you. We have heard several accounts of how and when your kennels are cleaned and it would appear they are cleaned on a very regular basis. For certain, at least once a week the racing kennels and the bedding in them at your property were thoroughly cleaned. If you took 25 bags before 20 September 1998 into the bottom kennels which, according to you, all would have been put into some use within two days, given the cleaning procedures described to us, we find it difficult to accept that some time in early October there would still be coffee beans in the kennel. This is even allowing for the suggestion that there were only 20 small beans. It certainly would not appear possible that seven weeks later on 5 November, 1998 there would still be coffee beans in CATCH CRY, CLOSED CIRCUIT and PROMENADE's kennels. Yet you have vehemently stated that you discovered beans in those greyhounds kennels in November, albeit

that some contradictions exist as to where you found them which does not assist your cause. It has also been stated that no beans were seen at any other times apart from Mrs Julien's initial discovery and your discovery seven weeks later. This is despite the fact that there were numerous bags throughout the kennels that were contaminated with coffee beans. There is no explanation for how you and Mrs Julien did not find any beans during the seven weeks of cleaning. It is clear that if Mrs Julien had placed contaminated bags into PROMENADE' s kennel when she said she did the beans would in all likelihood have been removed within a week and certainly be well and truly gone before November. At the very least you should have found some beans during this period in the course of your cleaning and we can not reconcile that you did not. The fact that you have been insistent that beans were discovered by you in November, when it is clear that they could not have been given what we have heard, discredits your submission of an accidental administration and casts serious doubt on whether there were ever any bags containing coffee beans in PROMENADE's kennel.

This inquiry has been punctuated with inconsistencies, contradictions and concerns too numerous to list in their entirety. On several occasions when you were pressed on areas of concern Mrs Julien continually interjected with answers to questions directed to you. This is despite the fact that she had been repeatedly warned to refrain from such activity. Noteworthy inconsistencies are, for example, the fact that before the Racing Penalties Appeal Tribunal, Mrs Julien gave specific evidence confirming the presence of a procedure that was designed by you ensuring that contaminated bags did not leave the bag shed unless they had been cleaned. You, however, at the latest inquiry completely contradicted this until pressed by the stewards and then you eventually acknowledged this procedure. Furthermore, we are concerned at the manner in which you attempted to deny the discussions you had had with Mrs Julien regarding the dangers of a greyhound consuming coffee beans. You adamantly stated on page 43 (of 26 August, 1999) that no discussions were had and then after Mrs Julien stated you had, you recanted and confirmed that discussions of this nature were had. The lengths that we have had to go through to extract simple answers to simple questions, like this one, from you concerns us, as does the contradictory answers that you provide. This does little to assist your cause or validate your submissions concerning the accidental administration.

In your submission on page 154 (of 26 August, 1999) you stated that the race concerned was a minor maiden race and when questioned about this on page 164 you were very coy about acknowledging that the race was in fact a heat of the Golden Maiden Series. Yet on page 90 (of 26 August, 1999) you had no problems confirming the nature of the race when Mrs Julien stated that the race was a heat. Why you were painting the picture that the race in question was of little significance or value is not entirely clear. In fact, the race was a heat of a lucrative final restricted to maiden greyhounds and therefore a greyhound usually has only one chance to compete in it in its career. Your submission on page 155 (of 26 August, 1999) that there is no motive for improper activities because of the nature of the race is incorrect and clearly a motive exists for such activities to occur.

The majority of the evidence in support of the submission concerning the accidental administration has come forth from Mrs Julien. Her submissions in isolation, concerning only what she may have discovered on the day in question, could possibly have been seen as a credible account of events. Mrs Julien's account of events, however, is doubtful in view of all the circumstances that we have now become aware of. On page 93 (of 26 August, 1999) Mrs Julien herself stated "that was... that may have been my view at the time, but that doesn't mean I was correct either" and further "um... I'm saying it's what I believed to be true at the time, but it doesn't necessarily mean it couldn't have happened." This was in response to questions being put to her concerning the likelihood of beans surfacing from within the bags in light of her earlier statement that PROMENADE did not disturb the bedding to any great extent and therefore in all probability the beans would remain unseen in the bags. When it became apparent that if this was the case the greyhound may not have even been in a position to consume any beans even if they were in the bags then Mrs Julien became far less adamant and made the statement quoted. Events such as this do little to add credence to her submissions. In considering what is essentially her eyewitness account it is necessary to also take into account the overwhelming doubt that exists in many crucial areas as has already been annunciated by us.

The chain of events described by you as an unfortunate set of coincidences stretches the bounds of belief to unacceptable levels. The amount of inconsistencies and contradictions has further detracted from the validity of your explanation. There is an obvious explanation why we have found many areas of this explanation difficult to accept. That is because there were never any beans in PROMENADE's kennel at the relevant time. If there had been, we are certain that Mrs Julien would have told you, or failing that, you would have scratched your greyhounds in a sensible manner, or the information would have come out at the time of the notification of abnormality. It is logical that the reason these areas of concern exist and why your explanations fail to satisfy us, is because there were never any beans in PROMENADE's kennel and therefore no rational explanation exists to these areas of concern. It is therefore not surprising that we have had difficulty in accepting your explanations to our concerns.

For all these reasons, we do not accept your explanation of the accidental ingestion of coffee beans. We are therefore left with no explanation as to how the stimulant appeared in the greyhound. That being the case we find that in all of the circumstances you, Mr Julien, had control of the greyhound PROMENADE when it was brought to compete in Race 8 run over 530 metres at Cannington Greyhounds on 13 October, 1998 and upon analysis was found by the Stewards to contain the stimulant caffeine, theophylline and theobromine having been administered to it for an improper purpose. We therefore find you guilty as charged.

The inquiry will now resume at Cannington Greyhounds on 20 October, 1999 commencing at 10.00am which you are directed to attend. The stewards will then proceed to consider the question of penalty as the result of the guilty findings made by us. You are entitled to call any evidence, produce any witnesses or documents or make any submissions on the question of penalty. Should you not attend this inquiry the stewards may proceed in your absence in accordance with Rule 169.

If you have any difficulties, you may contact the writer.

Yours faithfully
(sgd) C Martins
Chief Steward'

At the resumption of the hearing, after receiving further submissions on the penalty, the Stewards amended the placings, ordered the stake money be returned and then concluded their deliberations in these terms:

'We have considered all your submissions on penalty which includes your previous submissions in this matter and your additional submissions made today. Dealing with your submissions today, namely Exhibit 20, expenses and stress incurred whilst sympathetic to your circumstances we are of the view that there is no mitigatory value. Regarding your submissions concerning penalties issued to Ms Britton, the substances concerned were entirely different and we cannot see any comparative value. Your previous submissions have also been considered and they include:

1. *Your record whilst registered with WAGRA for approximately 20 years.*
2. *That this is your first drug related offence.*
3. *The extent of your involvement in the industry.*
4. *The financial loss in stakemoney as a result of the disqualification of PROMENADE from the race.*
5. *The likely impact a period of disqualification would have on your livelihood.*

However, the detection of a stimulant in a racing greyhound is viewed by the stewards as an extremely serious offence, one that no doubt brings the industry into disrepute. In imposing a penalty the stewards are conscious of the range of penalties as mentioned previously for caffeine related offences. In all of the circumstances we feel that the appropriate penalty is a disqualification of nine months. You have the right of appeal against our decision by lodging an application with the Racing Penalties Appeal Tribunal within 14 days.'

Second Appeal

Mr Julien exercised his right of appeal against the Stewards' second determination. At the same time he sought a suspension of operation of the penalty. This was granted partly because of the complexity of the matter. Another reason was the fact that the appeal could not be determined prior to the resolution of proceedings which were pending before the Full Court in *Stampalia v The Racing Penalties Appeal Tribunal of Western Australia & Ors*[2000] WASCA 24.

The *Stampalia* case raised an issue of bias which was also relevant in Mr Julien's appeal.

There are 12 separate grounds of appeal. Except for ground 11 all of the other grounds deal with the conviction. Ground 11 asserts the penalty was excessive. At the end of my published reasons in respect of Mr Julien's first appeal in this matter (Appeal 444) I commented that *'...if the Stewards do decide to convict precisely where, within the wide range, or for that matter whether a lesser penalty should be imposed will depend on the impact of all the fresh evidence'*. As ground 11 was not directly argued when the matter was heard by the Tribunal on this second occasion I do not address the penalty ground.

It is very clear from what the Stewards wrote in their letter of the 14 October 1999 (quoted above) giving their reasons for convicting Mr Julien that they reached their conclusions only after first exercising great care and attention to the complicated facts associated with this matter. They had foreshadowed that they would do so at the time they reserved their decision on 26 August 1999. It is appropriate to acknowledge that the reasons for the decision are far more detailed and incisive than one usually has come to expect from Stewards following an inquiry. On this occasion these Stewards have made a particularly thorough analysis of the evidence. It is weighed up carefully and methodically from a credibility perspective. The Stewards have gone to great care and given close attention to detail in explaining how they evaluated the testimony and the basis on which they have reached their adverse findings regarding the plausibility of the Juliens' explanations and conduct.

After having studied the reasons in the light of all of the other relevant material I have concluded nothing presented on behalf of Mr Julien persuades me that any error has been demonstrated regarding the approach of the Stewards including their line of reasoning and the basis on which they have handled the matter. Second time around the Stewards handled the matter with considerable thoroughness and far more than the usual attention to detail. The Stewards have reached conclusions which are open to them. I now deal with each of the grounds relating to conviction in turn.

Ground 1. *The Stewards were wrong in law in proceeding to find the charge of breaching Rule 234(7) proved insofar as such Rule was repealed on 1st January 1999.*

As stated at the outset Mr Julien was convicted under the 1973 Greyhound Racing Rules. The 1973 Rules were made pursuant to the provisions of the *Greyhound Racing Control Act* 1972. The 1972 Act was repealed by the *Western Australian Greyhound Racing Association Act* 1981 (now the *Western Australian Greyhound Racing Authority Act* 1981). However, Schedule 2 of the 1981 Act dealt with the 1973 Rules and continued them in force and deemed them to be *'... made by the Association with the approval of the Minister under Part V of this Act'* (clause 6). S24 of Part V sets out the power to make rules *'with respect to control, supervision, promotion, conduct and regulation of greyhound racing'*. The 1981 Act was amended by *the Western Australian Greyhound Racing Association Amendment Act* 1998 which, by s6, introduced a new s7B which gave the Authority power to make rules of racing. Those rules were stated to*'...come into operation on the day of publication of the notice referred to in subsection (5) or such later date as is provided for in the rules'* (s7B(7)).

The 1973 Rules were replaced and repealed by the Greyhound Racing Rules 1998 which came into operation on 1 January 1999. This occurred some 2½ months after the race in question which involved Mr Julien. Despite having been repealed subsequently the 1973 Rules were the relevant ones at the time PROMENADE competed on 13 October 1998. As mentioned at the outset on 23 November 1998 the charge was laid against Mr Julien. The charge alleged a breach of the then current Rule, namely Rule 234(7) of the 1973 Rules. Although these Rules were repealed with the coming into operation of the 1998 Rules on 1 January 1999, the 1973 Rules were the relevant Rules to apply in respect of the charge laid against Mr Julien. Although the inquiry process took some considerable time to complete the 1973 Rules remained the relevant ones in respect of which Mr Julien was ultimately convicted.

Ground 2. *The Stewards were wrong in law in finding the charge proved insofar as there was no evidence that the caffeine had been administered to the greyhound Promenade within the meaning of Rule 234(7) of the Rules. The Stewards should have found on the evidence that the ingestion of*

caffeine by Promenade was accidental – there being no other explanation or evidence offered.

and

Ground 3. *The Stewards were wrong in finding that the only inference open was that the caffeine had been administered for an improper purpose. The Stewards, having made no finding as to the circumstances in which the caffeine was found in the urine sample of the greyhound Promenade or how it had been administered, could not draw the inference contended on the face of the evidence before it.*

These 2 grounds can be dealt with together. As has been said so often in relation to drug offences under all of the 3 racing codes it is rare that Stewards are supplied with or obtain evidence which establishes the circumstances of the actual administration of the drug to the animal in question. Consequently the rules have been drafted to come to the assistance of Stewards in this regard to enable them to convict in appropriate cases where animals have been presented to race with drugs inside them.

In a greyhound racing context the Tribunal has had to consider the interpretation of Rule 234(7) on a number of occasions. In *Kaltsis* (Appeal 342) I referred in some detail to the interpretation placed on the provision in *Western Australia Greyhound Racing Association Inc v Williams* (F. Ct S. Ct App No 64/84, unreported, Lib No 6930). On the authority of *Williams* case I am satisfied that the Stewards properly dealt with the relevant evidence, drew appropriate inferences and ultimately came to the finding to convict which was open to them on the evidence. It is not a requirement under the Rule for the Stewards to have evidence before them of an actual administration. I disagree with the assertion that the Stewards should have returned a finding of accidental ingestion in this case. Both these grounds fail.

Ground 4. *The Stewards did not afford the Appellant natural justice or procedural fairness in that:-*

(A) *they:-*

(i) *cross-examined the Appellant and Mrs Julien excessively in an effort to support conclusions then made by them rather than in the conduct of a fair and open enquiry;*

(ii) pre-judged the guilt of the accused without first waiting to hear all of the evidence and submissions to be adduced; and

(iii) declined the Appellant's request to have tests conducted to demonstrate that the ingestion of coffee beans could produce the result as found by the Stewards and thereby support the Appellant's explanation;

(B) There was a reasonable apprehension of bias on the part of the Stewards insofar as the enquiry was conducted by the same Stewards who had previously conducted the enquiry and made findings adverse to the credibility of the Appellant and his witnesses. The enquiry should have been conducted before a different panel of Stewards.

I am satisfied there is no merit in any of the assertions in ground 4. As to (A)(i) the Stewards are entitled, indeed are often obliged, to undertake vigorous investigations in an attempt to get at the truth and expose a serious breach of the rules. This is particularly the case in a matter which involves the use of a prohibited substance. The Stewards are expressly empowered by the Rules to inquire into and investigate matters (Rules 76 and 208). I am satisfied, applying the reasoning and approach of *Hall v NSW Trotting Ltd* [1977] NSWLR 379 at 389) that the appellant was in fact afforded natural justice and procedural fairness in this case.

I am not persuaded from anything that is before me that the Stewards pre-judged the matter as alleged in (A)(ii). As to A(iii) the carrying out of the tests which were requested would not throw any light on any aspect not already widely known in the industry (*Hall v NSW Trotting* supra at 386-7).

As to (B) this issue has been addressed by the Full Court in *Stampalia* supra by Owen J at paragraphs 43 and 51-63. The Tribunal in upholding Mr Julien's first appeal (Appeal 444) in fact directed *'the Stewards to redetermine'* the matter. This is exactly what did occur. The same Stewards carried out the Tribunal's directions in an entirely appropriate manner in all of the circumstances.

Ground 5. The Stewards were wrong in law and in fact in failing to have regard to the medical condition of the Appellant's wife

in explanation as to her failure to advise the Appellant of the presence of coffee beans in the kennel of Promenade.

In their reasons the Stewards expressly accept the fact that Mrs Julien *'...was of ill health...'*. They carefully evaluate this aspect in the context of all of the other relevant circumstances. They recognise the relevance of the health aspect. They refer to it in their reasons and put it into an appropriate context. They took it into account in evaluating credibility. Ultimately, the Stewards found against the Juliens. It cannot be said that they *'...failed to have regard to...'* the medical condition as alleged in this ground.

Ground 6. *In finding that they are unable to accept the Appellant's evidence by reason of information not being advised to the Stewards on 4th November 1998, the Stewards misapprehended the evidence and were wrong in fact. It was the evidence that the Appellant was not informed until after the Stewards had left the Appellant's premises of the circumstance giving rise to the presence of coffee beans in the kennel of Promenade, the Appellant contacted the Stewards the next morning and informed them of the circumstances and invited the Stewards to attend to inspect the premises to verify the circumstance outlined by the Appellant.*

The finding referred to in this ground is the fourth reason stated by the Stewards in their letter of 14 October 1999 for doubting the explanation that was offered. I am satisfied the Stewards did not misapprehend the evidence. I am not persuaded they were wrong in reaching this finding.

Ground 7. *The finding of the Stewards that Mrs Julien continually interjected to answers directed to Mr Julien as a ground for not accepting the evidence is wrong in fact and in law. Both the Appellant and Mrs Julien were requested to be in attendance at the enquiry and it was not clear on many occasions as to whom the questions had been directed by the Stewards. Further, the enquiry was conducted on the basis that the Appellant and his wife were both the subject of the enquiry.*

I do not accept the Stewards found Mrs Julien continually interjected as alleged in this ground. Rather, in making the comment regarding the interjections, the Stewards were addressing their finding as to the inconsistencies. Clearly the

Stewards were required to take into account the evidence of both Mr & Mrs Julien and were justified in commenting on how that evidence was presented.

Ground 8. *The Stewards erred in fact and in law in finding that there had been no explanation offered by the Appellant which satisfied the Stewards as to why Mrs Julien did not tell the Appellant of the presence of coffee beans in the kennel of Promenade. Mrs Julien gave uncontradicted evidence that by reason of her ill-health she simply omitted to tell the Appellant and did not remember the occurrence until after the Stewards had advised of the positive swab to Promenade when the Appellant was then considering all possibilities as to the manner in which caffeine could have been administered to Promenade.*

I am satisfied the Stewards were entitled to come to the conclusion which they did in relation to the issues referred to in this ground. The Stewards clearly did not ignore Mrs Julien's state of health in their comprehensive evaluation of the matter. They simply put her medical condition into a particular context. The Stewards were entitled on the evidence to do so.

Ground 9. *The Stewards erred in fact and misapprehended the evidence in finding that the evidence that the bags in the kennel of Promenade contained caffeine was unacceptable on the basis that the information was not forthcoming at the time the Stewards visited the Appellant's property on 4th November 1998. The Appellant was not aware of the presence of beans in the kennel until after the Stewards had left. Further, the Appellant's evidence was supported by:-*

(i) *the fact that bags containing coffee beans were present in the vicinity of the kennels and on the property;*

(ii) *the evidence that the Appellant had rung Mr Glenny and warned him of the presence of coffee beans in bags obtained from the Appellant upon becoming aware of the incident; and*

(iii) *the fact that a similar occurrence occurred to other trainers, including Victorian trainer, Mr Bates.*

I am satisfied there is no error and misapprehension as alleged in this ground. The Stewards very carefully reviewed and analysed the facts and closely

evaluated the evidence. I believe they quite properly arrived at conclusions that were open to them as to what should be rejected.

Ground 10. *The Stewards erred in fact and in law in determining that the evidence of Mr Bates was of no assistance in determining the enquiry.*

and

Ground 12. *The Stewards refused my request for an adjournment to consider new evidence vital to my case from John and Jane Carruthers and David Simonnette.*

Both these grounds are connected. Neither has any merit. Upon resuming the inquiry on 28 October 1999 the letter of 14 October 1999 setting out the Stewards' findings was read into the transcript. Mr Julien was then asked whether he was happy with the submissions made on penalty at the original hearing. In response Mr Julien sought to make a statement and to introduce fresh evidence. The Stewards indicated a willingness to receive it in relation to penalty only. The transcript (at page 193) reveals Mr Julien sought an adjournment but was clearly told *'If it's on the question of guilt, no we can't we've made our decision'*. After a short adjournment to consider Mr Julien's submissions Mr Martins announced:

> *'The stewards have considered your submissions in relation to the fresh evidence you have made application to present. The stewards have made a determination on the question of guilt and we are of the view that it is not appropriate to return to this matter. If you feel that that evidence would assist your cause on the question of penalty, we are happy to receive it for that purpose only. We're in your hands now Mr Julien if you want to put submissions to us on the question of penalty.'*

Mr Julien had ample opportunity to present evidence at the original Stewards' inquiry, at the first appeal and during the Stewards' rehearing. There was no indication any of the evidence referred to in Grounds 10 and 12 was not available on those occasions and therefore constituted fresh evidence.

An examination of all aspects of this part of the Stewards' inquiry completely satisfies me that the Stewards acted very fairly, patiently and properly. No error of any kind occurred.

Ground 11. *The penalty imposed was, in all the circumstances, excessive having regard to the circumstances of the case and the antecedence of the Appellant.*

As mentioned previously this ground was not addressed at the hearing of the appeal. Mr Julien is now entitled to have this ground fully argued.

Conclusion

I am satisfied the Stewards have not fallen into any error in convicting Mr Julien. The conviction was clearly open to them in the light of all of the evidence. The matter was further determined by the Stewards in a proper manner and in accordance with the Tribunal's reasons in Appeal 444.

For these reasons I would dismiss the appeal as to conviction and invite submissions on Ground 11.

Seal of the Racing Penalties Appeal Tribunal of W.A.

DAN MOSSENSON, CHAIRPERSON

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THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS P HOGAN (MEMBER)

APPELLANT:	**MAXWELL JOHN JULIEN**
APPLICATION NO:	**A30/08/477**
DATE OF HEARING:	**25 NOVEMBER 1999**
DATE OF DETERMINATION:	**12 JULY 2000**

IN THE MATTER OF an appeal by Mr M J Julien against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on the 28 October 1999 imposing a penalty of 9 months disqualification for breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr R E Birmingham QC, on instructions from D G Price & Co, solicitors, appeared for the appellant.

Mr R J Davies QC, assisted by Mr J Woodhouse, appeared for the Western Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with those reasons and conclusions and have nothing to add.

PAMELA HOGAN, MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL 477

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS K FARLEY (MEMBER)

APPELLANT:	**MAXWELL JOHN JULIEN**
APPLICATION NO:	**A30/08/477**
DATE OF HEARING:	**25 NOVEMBER 1999**
DATE OF DETERMINATION:	**12 JULY 2000**

IN THE MATTER OF an appeal by Mr M J Julien against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on the 28 October 1999 imposing a penalty of 9 months disqualification for breach of Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr R E Birmingham QC, on instructions from D G Price & Co, solicitors, appeared for the appellant.

Mr R J Davies QC, assisted by Mr J Woodhouse, appeared for the Western Australian Greyhound Racing Authority Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with those reasons and conclusions and have nothing to add.

Kare Farley.

Seal of the Racing Penalties Appeal Tribunal of W.A.

KAREN FARLEY, MEMBER