

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: COSI DAGOSTINO
APPLICATION NO: A30/08/492
PANEL: MR J PRIOR (PRESIDING MEMBER)
MR J HEALY (MEMBER)
MR R NASH (MEMBER)
DATE OF HEARING: 21 MARCH 2000
DATE OF DETERMINATION: 21 MARCH 2000

IN THE MATTER OF an appeal by Mr C Dagostino against the determination made by the Western Australian Greyhound Racing Authority Stewards on 25 February 2000 imposing six months disqualification for breach of Rule 106 of the Australian Greyhound Racing Rules.

The appellant represented himself.

Mr D Borovica appeared for the Western Australian Greyhound Racing Authority Stewards.

This is a unanimous decision of the Tribunal.

This is as an appeal by Cosi Dagostino, a licensed trainer, against the penalty of disqualification for six months by the Stewards of the Western Australian Greyhound Racing Authority for breach of Rule 106 of the Australian Greyhound Racing Rules.

Rule 106 of the Australian Greyhound Racing Rules states:

"The owner, trainer or person in charge of a greyhound nominated to compete in an event, shall produce the greyhound for the event free of any drug."

Mr Dagostino was the trainer of the greyhound SYDNEY KNIGHT which competed in Race 7 at Cannington on 13 January 2000. SYDNEY KNIGHT was placed first. Following the running of the race, a urine sample taken from the greyhound disclosed the presence of the prohibited substances *Carprofen* and *Hydroxycarprofen*. At a Stewards' inquiry held on 14 February 2000 the appellant pleaded guilty to a charge under AR 106.

The Stewards after hearing submissions as to penalty in a letter addressed to the Appellant dated 25 February 2000 disqualified him for six months.

The reasons for the Stewards imposing that penalty set out in their letter to the Appellant, whilst lengthy, are repeated here.

"The Stewards find that the reasonably light quantity of Carprofen and Hydroxycarprofen reported by the Australian Racing Forensic Laboratory (ARFL) in the urine sample taken from SYDNEY KNIGHT after it had won Race 7 at Cannington on 13 January, 2000, was in all probability caused as a result of you administering Zenecarb in the manner described by you. The evidence of the Analyst, Mr Reilly, and that of the Course Veterinary Surgeon, Dr Thomas, is consistent with your explanation. We have carefully considered all the relevant evidence, including your acknowledgement of the offence, your co-operation throughout the inquiry, the length of your involvement in this industry, the fact that this is your first drug offence and of the consequences on you and on your family in the event that a severe penalty is imposed by the Stewards.

You have offered in mitigation of penalty the explanation that the result of analysis was caused through you acting on veterinary advice which has led you to administer the drug at such time that it was then still present in the urine sample taken from the greyhound after the race. We do find it strange that this explanation was not offered to the Stewards when you were first advised of the result of irregularity even allowing for any stress you were under at that time. The fact is that you were at that time fully aware that you had been administering a substance, which you knew had to be withdrawn at a specific time and that the withdrawal was extremely close to the minimum time you had been advised. Not only did you not advise the Stewards of this you categorically stated that you had not treated the greyhound, which we now find was not a truthful response. That aside, we have thoroughly considered your submission of being led into error as a result of professional veterinary advice. It has become very apparent that whilst you did have some general advice concerning the use of Zenecarb, specifically that the minimum withdrawal time was 72 hours, it is not the case that the administration which you undertook was done as a result of specific veterinary advice. Your Veterinary Surgeon, Dr C Preau had not personally examined SYDNEY KNIGHT, was not aware of its racing commitments and as such had not advised you to specifically act in the manner that you did. You have also stated that the administration of Zenecarb, which you undertook, was through your own knowledge of the drug and assumptions that you made. Dr Preau in fact stated that had he been aware that the greyhound was racing on the Thursday 13th January he would have advised that you allow more time after the final administration of Zenecarb. This answer is not surprising as in our experience a professional greyhound veterinarian would not be likely to advise their clients to instigate withdrawals so close to the minimum withdrawal time. Had you availed yourself of Dr Thomas in regard to the use of Zenecarb or made your Vet fully aware of the greyhound's racing commitments, in all likelihood you would not have taken the risk that you did. What you did was only obtain general advice regarding the use of Zenecarb and then administer the drug in a fashion determined by you whilst fully aware that the greyhound was racing on Thursday and that your last administration was very close to the minimum time you had been told. This seriously detracts from your submission that you were led into error by veterinary advice, as the fact of the matter is that you were not acting on specific veterinary advice.

This is the first Carprofen case in this industry in Western Australia and as a result the Stewards are not in a position to do any direct comparisons with previous cases that may have set a penalty standard. It is, however, fact that Carprofen is a non-steroidal anti-inflammatory drug (NSAID) and as such belongs to the same category as Phenylbutazone, Flunixin and Ketorolac. Whilst debate exists as to whether it is more powerful than other drugs in the same category what is clear after hearing from Dr Thomas and Dr Gannon is that as long as the parent drug is detected then the analgesic and anti-inflammatory effects

of the drug are acting on the greyhound to some degree. The debate over the withdrawal period as published by the ANZGA and Dr Thomas's administration study, we do not see as relevant in this case as you were not aware of the ANZGA guidelines at the time of administration. We have made you aware of several cases dealt with by this Authority involving NSAID's and we do find these of some assistance in determining an appropriate penalty in your circumstances as the drugs are all in the same category. You have passionately offered that the appropriate penalty would be a fine of some description and have mentioned some previous cases where fines were issued. We have carefully considered your submissions in this regard and find that this Authority has never issued a fine in the circumstances of a parent drug being detected in the case of a NSAID and to do so now would mean setting a new precedent which would be out of kilter with all other cases. Having considered your submissions and the circumstances of your case we can not see any reason to dilute our stringent approach to the detection of NSAID's in a racing greyhound by issuing a fine as we simply do not see that as an appropriate penalty under these circumstances. We are also mindful of the difference between cases where only the metabolites of the drug were detected and instances where parent drugs are detected and we feel this is an important distinction. Whilst the amounts of Carprofen/Hydroxycarprofen were "reasonably light" the fact that the parent drug was detected and this is obviously a concern to the Stewards and no doubt industry participants and the public at large, whom the industry relies heavily upon for its success through betting turnover. Not only is the presence of a drug in a racing greyhound detrimental to the image of the industry, but the effect it has on that particular greyhound, giving it an unfair advantage over the other participants, no longer makes it an even playing field. This situation must obviously be avoided wherever possible. We therefore believe that in all the circumstances that the appropriate penalty is a disqualification for a period of six months, effective immediately."

The grounds of appeal as stated on the Notice of Appeal are:

"The penalty is manifestly excessive in the circumstances. Carprofen administered acting on vet's advice. Penalty should have been a fine."

The thrust of this Appellant's appeal is that in the circumstances of this matter a fine for a drug of this nature, which was undisputedly therapeutic, was the appropriate penalty and not a disqualification. Having considered the submissions made and the material before the Tribunal, we can not accept that the Stewards fell into error in disposing of this matter by way of a penalty of disqualification.

We have been referred to the matter of Jeffries where a fine was imposed. We found that matter of limited assistance, because we were not privy to the facts of that case in any detail. In any event, there seems to be differing expert evidence in the two matters.

We accept that even with a therapeutic drug, when the use of such a drug affects the ability of a dog to race on its merits, matters of both general and specific deterrence require a period of disqualification in most cases.

In this matter, although the Appellant relies principally on a submission he was acting on veterinary advice, it was clear on the evidence such advice was best very general in nature. The advising veterinarian was not informed by the Appellant of the following:

1. The amount of the drug it was intended would be administered by the Appellant.
2. When the dog was next to race.

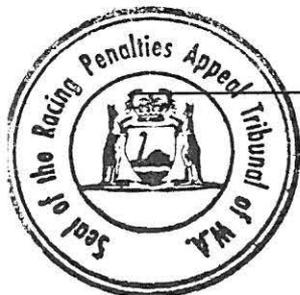
The veterinarian himself did not examine the dog in question.

The question then remains, did the Stewards fall into error in imposing a period of 6 months disqualification or was such a period of disqualification manifestly excessive in the circumstances of the matter?

Although the Stewards in their written reasons for penalty refer to the Appellant's antecedents, his record, his co-operation at the inquiry and the consequences of a severe penalty on the Appellant, we consider 6 months disqualification in the circumstances of this case was manifestly excessive due to the following reasons:

1. The reasonably light amount of the therapeutic drug detected in the urine.
2. The youth of the Appellant.
3. It was the Appellant's first offence.
4. The likely effect on the Appellant's livelihood and the personal circumstances of the Appellant and his family.
5. The Appellant's early plea of guilty.
6. The Stewards accepted the Appellant's explanation for the quantity of the drug found in the dog.

In view of the above factors and the other circumstances of this case, we are satisfied an appropriate penalty was a disqualification of 2 months. We therefore substitute a disqualification of 2 months for the original disqualification of 6 months.



John Prior

JOHN PRIOR, PRESIDING MEMBER