

<u>APPELLANT:</u>	BRUCE PETER HOCKADAY
<u>APPLICATION NO:</u>	A30/08/514
<u>PANEL:</u>	MR P HOGAN (PRESIDING MEMBER)
<u>DATE OF HEARING:</u>	13 DECEMBER 2000
<u>DATE OF DETERMINATION:</u>	13 DECEMBER 2000

IN THE MATTER OF an appeal by Mr B P Hockaday against the determination made by the Western Australian Greyhound Racing Authority Stewards on 6 October 2000 imposing a fine of \$2,000 for breach of Rule AR109(15) of the Rules of Greyhound Racing.

The appellant represented himself.

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

On 11 August 2000 at Mandurah Greyhounds the Stewards received a complaint from a Mr Ken Bainbridge that Mr Bruce Hockaday, the appellant in these proceedings and a licensed owner, had assaulted him. Mr Ken Bainbridge stated his complaint in the following terms:

"... he turned around and he let fly and he smashed me fair across the face and as you can see he's made me face bleed ..."

The Stewards interviewed Mr Hockaday to elicit his version of events. Mr Hockaday was advised that the Stewards would be conducting an inquiry into the alleged assault on a date to be fixed. The Stewards then conducted a further interview involving both Mr Ken Bainbridge and Mr Colin Bainbridge.

By letter dated 18 August 2000 the Stewards charged Mr Hockaday with a breach of Rule AR109(15) of the Rules of Greyhound Racing and that letter stated:

“The Stewards, after considering the evidence, have decided to lay a charge against you under Rule AR109(15) which reads:

AR109. Offences

Any person (including an official) who:

- (15) *has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the stewards, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*
shall be guilty of an offence and liable to a penalty pursuant to rule 111.

The relevant component is that you have "done a thing which in the Stewards opinion constitutes misconduct."

The specifics of the charge are that in the trainers' carpark at Mandurah on 11 August, 2000 you, Mr Hockaday, struck owner Mr K Bainbridge, an act which in the opinion of the Stewards constitutes misconduct."

At the Stewards' inquiry on 30 August 2000 Mr Hockaday pleaded not guilty. After hearing further evidence the inquiry was adjourned.

By letter dated 19 September 2000 the Stewards advised Mr Hockaday that the charge against him had been proved. Mr Hockaday now appeals against that conviction and as well the penalty. The grounds of appeal as stated in the notice of appeal lodged with the Tribunal on 19 October 2000 are:

"New evidence was presented at the hearing without my prior knowledge. The initial charge changed and I was not given the opportunity to prepare an adequate defence. Several anomalies (sic) became apparent at the inquiry and I feel these were not addressed objectively and conclusively by the stewards. I feel my right to natural justice was not met and would like to request 4-6 weeks to obtain legal advice and access information through the Freedom of Information Act."

Mr Hockaday today at this appeal hearing has effectively expanded upon that ground of appeal and made several submissions to me on discrete and isolated points, that he says should amount to his appeal being allowed. I will deal with those as best I can in the order they were presented to me.

Mr Hockaday says that there was a breach of natural justice because the case against him was changed and that is reflected in the written Notice of Appeal. He submits that natural justice required that he get an adjournment to present his case on the modified charge, as he called it. In my view that submission is misconceived. The charge against Mr Hockaday never changed. The charge against Mr Hockaday under AR109(15) was set out in the Stewards' letter. The charge was repeated to Mr Hockaday at the beginning of the hearing on 30 August 2000. What did happen though was that in preparation for the hearing, the Stewards going further than some other Stewards do in other codes, provided Mr Hockaday with the transcripts of the interviews that they had with Mr Ken Bainbridge, and then later with his son and him together. In effect, they gave Mr Hockaday the witness' statements, so to speak, so that he could prepare for the hearing. What happened at the hearing was that another witness was called, and that is Mrs Bainbridge, Mr Ken Bainbridge's wife. She gave evidence which was slightly different in some respects to that given by Mr Ken Bainbridge. What occurred then is that those differences in the evidence came out and were the subject of cross-examination by Mr Hockaday, questioning by the Stewards along the way, and ultimately the decision by the Stewards as to how to resolve those differences.

All of that does not amount to any breach of the rules of natural justice. That is simply the way that hearings run. In fact, as the evidence came out and the differences in the evidence worked to the favour of Mr Hockaday, in the sense that he was able to at least attempt to cast doubt on the

prosecution case generally. But there is nothing in the submission that there was a breach of the rules of natural justice. Mr Hockaday then goes on today to submit that Mr Borovica's investigation of the case was in some way tainted and unfair to him. Perhaps that might be said to be a breach of the rules of natural justice as well. That is also not the case and I find there to be no substance in that. Mr Borovica was under no obligation to present Mr Hockaday as an innocent person and didn't. He is also under no obligation to present Mr Bainbridge as a witness worthy of credit before the Stewards which ultimately heard the case, and he didn't do that either. All that Mr Borovica did was do what any investigator would do, which was to ask questions and elicit answers. Some of those were in a leading fashion, there is nothing wrong with that. Mr Borovica himself became a witness at the Stewards' inquiry and was subject to cross-examination. There is nothing therefore in Mr Hockaday's submission that Mr Borovica went about it in any way which amounts to a breach of natural justice.

Mr Hockaday put several discrete points today about the substance of the case, beginning I suppose with the fact that Mr Ken Bainbridge when he gave evidence failed to mention that his wife was a witness. That point was made in front of the Stewards. It was made by way of questioning, made by way of submission by Mr Hockaday, and dealt with by the Stewards in their reasons for decision which they set out in their letter to Mr Hockaday of 19 September 2000.

I should digress for a moment and say that with each of these points of substance that Mr Hockaday has raised today, the Stewards in fact dealt them with in their reasons for decision under their letter 19 September 2000. It is certainly my view and the accepted law that the Stewards are the persons who heard the evidence initially and are entitled to reach their own view of the witnesses. They are in the best position to do so having seen and heard the witnesses themselves.

If I can go back then to Mr Hockaday's point about Mr Bainbridge failing to mention that his wife was a witness. Indeed, that is the case, that was dealt with by the Stewards in their letter. The Stewards there said:

"... it does not surprise us that Mr K Bainbridge did not mention that his wife witnessed the incidence or that he mistook which hand he was struck with and whether the strike was with a fist or an open hand."

And indeed, if I recall the evidence during the course of the hearing on 30 August 2000, Mr Ken Bainbridge gave evidence to the effect that he didn't think that his wife fell into the category of a person who would be described as a witness. In any event, it was open to the Stewards to come to the view they did on that point.

Mr Hockaday then today points out that Mr Ken Bainbridge changed his evidence to what his wife said at page 23 of the transcript. What happened was in broad terms that Mr Ken Bainbridge initially in his interview with Mr Borovica spoke of being struck with a fist to the face by Mr Hockaday's right hand. When Mrs Bainbridge came to give evidence she spoke of seeing the blow being open hand to the face and Mr Hockaday using his left hand.

The discrepancies between the two witnesses again were the subject of evidence and cross-examination at the hearing and were dealt with by the Stewards in their letter and those previous comments apply, that it was open to the Stewards to reach the decision that they did and they said at the bottom of their letter at page 1:

"... we prefer the evidence of Mrs M Bainbridge in this regard. In any case, in our opinion this discrepancy is of no relevance to the issue at hand."

They were entitled to come that view. It is said that Mrs Bainbridge was a person not in a good position to witness what she said she witnessed. Again this point was made at the hearing and was dealt with by the Stewards in their letter of 19 September 2000 at page 2 towards the bottom:

"After witnessing Mrs M Bainbridge giving evidence before us we have formed the opinion that she is a credible witness and we can see no reasons why she would say what she did, if in fact it did not occur."

Importantly as well, the Stewards in reaching their decision that there had been an assault by Mr Hockaday, did not determine whether it was with an open hand or a fist. But it matters not because it was clearly one or the other. Again that finding was open to the Stewards. There is nothing in Mr Hockaday's submission to me today to take away from that finding.

Mr Hockaday in reply did make the point that Mr Ken Bainbridge demonstrated a certain aggressive nature, at least immediately after the incident, in that he confronted Mr Hockaday in the view of one of the Stewards and made various statements to the effect that he was going to sue Mr Hockaday. It is also pointed out that Mr Bainbridge behaved in an aggressive fashion at the hearing itself, such that he had to be spoken to by the Steward in charge. Indeed, that appears to be the case. Those things simply are not relevant. If they are to the extent that Mr Bainbridge did exhibit emotion, it was said by Mr Borovica in his capacity as a witness that Mr Bainbridge was in a considerable state of shock and distress. That is entirely understandable. It is a separate issue, so there is nothing in that submission by Mr Hockaday.

As a separate issue, it is said that this matter does not come within the jurisdiction of the Stewards because it is not connected with greyhound racing. Clearly that is simply not the case, it is connected for all the various reasons. Both persons are licensed persons and the incident occurred in the car park of premises owned by the Greyhound Authority.

For all of those reasons, I find that there is nothing in the submissions put to me by Mr Hockaday today to upset the Stewards' findings. The appeal against conviction is dismissed.

As to the appeal against penalty the Stewards dealt with penalty and at the hearing on 4 October 2000 and gave their decision by way of a letter sent to Mr Hockaday on 6 October 2000. They referred to previous decisions, particularly of this Tribunal, as to the range of penalties to be looked at in misconduct/assault type cases. In the end, they decided that there would be a fine in the sum of \$2,000.

In my view, that is entirely within the range of penalties properly available. Mr Hockaday has pointed out some differences between this and the case of HOUGHTON. In Ms Houghton's case, there was a premeditated and unprovoked assault. In this case, there was no premeditation and possible provocation. However, those aren't the main differences between these two cases. The obvious and main differences between these two cases, as was pointed out by the Stewards, are that in Ms Houghton's case she assaulted an official but it was of a minor nature. In this case, there was an assault on another licensed person, but it was a much more serious assault. For those two reasons, these two types of cases come together in the scheme of things. This is a more serious assault, but not on an official.

The Stewards had in mind and were aware of every thing else in Mr Hockaday's case and the fact that he had no previous convictions. So it can't be said that they didn't fail to take anything into account.

For all of those reasons the appeal against penalty is dismissed.

The fine is to be paid to the Western Australian Greyhound Racing Authority within 14 days.



PATRICK HOGAN, PRESIDING MEMBER

