

THE RACING PENALTIES APPEAL TRIBUNAL

**REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)**

APPELLANT: MAXWELL JOHN JULIEN

APPLICATION NO: A30/08/554

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR S PYNT (MEMBER)

DATE OF HEARING: 7 MAY 2002

DATE OF DETERMINATION: 23 MAY 2002

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 20 December 2001 imposing 18 months disqualification for breach of Rule AR105(15) of the Rules of Greyhound Racing.

Ms BJ Lonsdale, instructed by Dwyer Durack, appeared for the appellant.

Mr RJ Davies QC, assisted by Mr JM Woodhouse, instructed by Watts & Woodhouse, appeared for the Stewards.

Background

On 18 November 1999 the Stewards of the Western Australian Greyhound Racing Authority began what eventually became a very complicated and long winded inquiry into the conduct of Mr MJ Julien, a registered public trainer. The Stewards' panel comprised Mr D Borovica as Chairman, Mr C Martins (the Chief Steward) and Mr P Searle. At the outset of the inquiry Mr Borovica stated:

"...the stewards are now opening an inquiry into the circumstances surrounding the nomination of the greyhounds TERONGA and OPTIMISTIC GEOFF for the 1999 National Sprint Championship WA State Series and the related Statutory Declaration dated 5 August, 1999 lodged by Mr Julien..."

A condition for a greyhound to be eligible to compete in the Series is that the greyhound be domiciled in Western Australia at least 90 days out of the 150 days immediately prior to the time fixed for the finalising of nominations and drawing of fields. Nominations closed on 28 July 1999. The fields were drawn 10 August 1999. Mr Julien had nominated the two greyhounds in question. Both greyhounds had been purchased from Queensland on 8 May 1999. Accordingly, to be eligible for the Series, those greyhounds had to be domiciled in Western Australia on or before 12 May 1999. On 5 August 1999 Mr Julien lodged a statutory declaration with the Authority in which he declared:

'That the greyhounds racing as OPTIMISTIC GEOFF, SERIOUS ISSUE and TERONGA were purchased by me on 8/5/99 and arrived in WA on 9/5/99.'

The Stewards' Inquiry

After convening on 18 November 1999 the Stewards' inquiry continued on 16 December 1999. A very substantial body of evidence was compiled. The transcript covered 206 pages and dealt with over 20 exhibits. At the conclusion of those proceedings the Stewards informed Mr Julien that having obtained the evidence and clarified certain points they would proceed to determine whether there were breaches of the Rules. That process took a great deal of time. The Stewards by letter dated 14 July 2000 charged the appellant with a breach of the Rules of Greyhound Racing. That letter stated:

'I refer to the Stewards' inquiry conducted on 16 December, 1999 into the circumstances surrounding the nomination of the greyhounds TERONGA and OPTIMISTIC GEOFF for the 1999 National Sprint Championship WA State Series and the related Statutory Declaration dated 5 August, 1999 lodged by you.

The Stewards, after considering the evidence, have decided to lay a charge against you under Australian Rule 109(15) which states:

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 specifics of the charge are that you Mr Julien knowingly submitted a false Statutory Declaration (Exhibit No. 5) for the purpose of having the greyhounds TERONGA and OPTIMISTIC GEOFF drawn into The 1999 National Sprint Championship WA State Series, which they were not eligible for and by doing so, in the opinion of the Stewards, you have committed a fraudulent act.

The Stewards will now be resuming this inquiry in the Stewards' office at Cannington on 26 July, 2000 commencing at 9.30am, which you are directed to attend.

At the resumption of the inquiry on 26 July 2000 Mr Julien pleaded not guilty to the charge. After hearing further evidence which ran well over 70 pages of transcript, the inquiry was adjourned for the Stewards to consider the matter. The Chairman of the inquiry eventually wrote advising the appellant that the Stewards had found the charge proven. That letter, although lengthy, is worth quoting in full.

'11 September 2000

*Mr M J Julien
4710 Stoneville Road
STONE VILLE WA 6081*

Dear Sir

STEWARDS' INQUIRY CONDUCTED 26 JULY, 2000

I refer to the Stewards' inquiry conducted on 26 July, 2000 into the allegation that you had breached AR109(15).

After careful consideration of all of the evidence, the Stewards' finding in respect of the allegation are as follows.

The specifics of the charge laid against you, Mr Julien, contain several components. You have readily accepted that the Statutory Declaration lodged by you was for the purpose of justifying the eligibility of the greyhounds TERONGA and OPTIMISTIC GEOFF in order to have then drawn into the 1999 National Sprint Championship WA State Series. You have also accepted that ultimately, the greyhounds were not eligible to contest the race. You have also readily admitted that the Statutory Declaration lodged by you was false. Furthermore, you have not disputed that if you had knowingly submitted a false Statutory Declaration as a means to having your greyhounds drawn into a race they were not eligible for, this would be a fraudulent act.

The sole aspect of the charge that you have disputed is the question of whether you knowingly submitted a false Statutory Declaration. From the outset of this inquiry, even before any charge was laid, you have led the argument that the false Statutory Declaration lodged by you was as a result of misinformation received by you. You have offered that the error made by you was not deliberate but in fact was an honest and genuine mistake that you were led into making as a result of incorrect information received. As this is the main aspect of the charge that you dispute, we have focused mainly on the question of whether you knowingly supplied false information on your Statutory Declaration.

The manner in which you chose to defend yourself is important in assessing this matter and we have therefore carefully considered your defence to the charge. You have consistently maintained that you were misled into submitting a false Statutory Declaration. Exactly who misled you has not always been consistent.

In fact, there are various aspects of your defence that are inconsistent, which detracts from your submission that you were acting honestly and genuinely throughout this event. Throughout the initial stages of the inquiry you have placed the blame for your error squarely at Mr Farquharson's feet. You in fact presented a letter from Mr Farquharson who was only too happy to take all the blame for the error and was by virtue of his letter now clarifying the matter. That letter indicated that the greyhounds did not arrive together. It is difficult to believe that if you had of rung Mr Farquharson to obtain information regarding the arrival of the greyhounds that he would not have, at the very least, supplied you with two arrival dates. This is especially so given that he later told us that he had intended to send you all the greyhounds at the same time but circumstances prevented him from doing so. Given this and the significant gap in arrivals we do not believe that he would have forgotten that the greyhounds were sent separately. Therefore if you rang to ask him about when the greyhounds arrived or were sent we would have expected him to provide you with two dates and if you were relying on this information to complete your Statutory Declaration then it should have stated the two dates. Pages 31, 32, 38, 52, 98, 124 and 126 clearly show that your argument was that you were acting on information from Mr Farquharson only. At the last stage of the inquiry, when it was pointed out to you that Mr Farquharson appears to blame Mr Mackey for misinforming you, which is contrary to your defence that Mr Farquharson misled led you, you make an about face and suddenly claim both Mr Mackey and Mr Farquharson misled you. Strangely on page 126 when asked directly whether it was Mr Mackey or Mr Farquharson that misinformed you, you clearly indicated that Mr Mackey had no part to play in this regard. There is no reason why you would not have told us at the outset that Mr Mackey was also responsible for giving you incorrect information, if in fact this occurred, as this would have supported your defence that you had received incorrect information. We shall never know what Mr Mackey might have to say about this because after submitting a Statutory Declaration to support your nominations he chose to become warned off rather than answer questions relating to this matter. We are also not satisfied with your explanations as to why your Statutory Declaration only contained one date and stated that all the greyhounds arrived on this date. If you had placed any reliance on information from Mr Mackey, then given that his Statutory Declaration clearly indicates that only two greyhounds arrived on this date, this would indicate you deliberately chose to ignore this and lie about the manner of arrivals. Given that you had his Statutory Declaration in your possession prior to submitting yours it would appear that this indeed was the case. We shall address the point in regard to the manner of arrivals in due course. Knowing full well that you have submitted a false Statutory Declaration when you are called to appear at this inquiry, you come armed with Mr Farquharson's letter as a means of supporting your claim that you were initially misled. Your eagerness to present this letter at the outset of the inquiry is very apparent as you believed it would resolve the matter and bring a halt to the Inquiry as a result. His letter as you have admitted is, through cross-examination, revealed to be totally unreliable and laced with blatant errors. It clarified nothing and only had the potential to mislead the inquiry. Despite the fact that you took offence to our initial indications of wanting to clarify Mr Farquharson's correspondence by speaking with him, it is fortunate that we did as it was only then that it was revealed that his correspondence was, as you later admitted, clearly incorrect. Our investigations in this regard revealed that the

greyhounds concerned did not leave the Langtree's premises on 9 May as Mr Farquharson states in his letter. This is crucial because Mr Farquharson relies on this very information as the reason why he told you 9 May, which led you to state this in your Statutory Declaration. Yet Mr Farquharson, through cross-examination conceded that this submission made by him was incorrect. His attempt at explaining by virtue of his letter, which according to you and him was at your insistence, how the error came to be made revealed that it too was wrong. Not only was the explanation for the error proven to be wrong, but also his letter contained a new date of 23 May, which later also turned out to be wrong. It certainly cannot be held against you that Mr Farquharson has revealed himself to be a totally unreliable person on these matters. What is a concern is that he was clearly aware of the Stewards' inquiry, Mr Mackey's refusal to answer questions on the matter and, according to him, had already been questioned by the Queensland Stewards. Clearly, he would have been aware that what was being sought from him was not just answers off the top of his head (page 144). By the time he came to be writing this letter, which you insisted he do for the purpose of this inquiry, we cannot understand how he can claim to be so blase about it. It is a concern that you came to the inquiry claiming you had established with an airline, which amazingly under the circumstances you now can not recall, evidence of arrival dates that supported Mr Farquharson's dates of 16 May and 23 May. If this were true it would be understandable that you chose to present to us the letter from Mr Farquharson. Exhibit No. 13, however, reveals that one of the greyhounds arrived on 6 June and not 23 May, as stated by Mr Farquharson in his correspondence. Therefore, if you had confirmed Mr Farquharson's information with an airline it would have revealed to you that his information was wrong again. Had the Stewards not obtained themselves Exhibit No. 13, Mr Farquharson's letter would have mislead us into believing that he initially got it wrong by a week and now at your insistence he was clarifying the matter. What was ultimately revealed was that Mr Farquharson's explanation for his initial error was wrong, his clarification was also wrong and your explanation that an airline had confirmed his correspondence, which was why you were submitting it, is also wrong. We do not accept your explanation that the airline information would have matched the misinformation of Mr Farquharson as this is a coincidence too unlikely to accept. You were the person who had nominated these greyhounds and according to Mr Bottcher were quite insistent that they were eligible for the event. This was even before a Statutory Declaration was requested of you and therefore even before you needed to ring Mr Farquharson to tell you what to write on your Statutory Declaration. According to you, he then provides you with a date that just happens to fall within the eligibility range by three days and you then pursue the nominations with all the vigour you can. Then at the eleventh hour, after threatening legal recourse, you claim you now have grave doubts about their eligibility and cease your pursuit in these matters. You come to a Stewards' Inquiry armed with a letter that according to you will fully explain how you were misled and that letter is proven to be unreliable. The truth of the arrival dates was never provided by you despite the fact that you had ample opportunity to do so. As the trier's of fact, the Stewards have had the advantage in seeing and hearing your reaction to the revelation of the Consignment Note of 6 June. There was no cogent explanation forthcoming as to why Mr Farquharson, or more significantly you, had not advised the Stewards of this date. In view of all these matters we therefore find that your defence has fallen well short of providing us with an

acceptable explanation as to how you came to be misled into submitting a false Statutory Declaration.

In examining the question of whether you knowingly supplied false information on your Statutory Declaration it is worthwhile to focus upon the circumstances which gave rise to the Statutory Declaration. The evidence before us has shown that approximately one week prior to the fields being drawn Mr Bottcher requested you to provide airline tickets to support your contention that the greyhounds OPTIMISTIC GEOFF and TERONGA were eligible for the race you had nominated them for (page 60, 61 & 82). It is not the case, as you put it, on pages 261 to 264 that you were under pressure to submit a Statutory Declaration on a particular night. We also do not see any substance in your assertion that TERONGA was not included in this whole scenario as it is clear that you were aware that TERONGA's nomination was being considered and you did nothing to remove it from consideration. Clearly, you intended to have both greyhounds considered for the race and this assertion you are now making is one based on convenience. The evidence further shows that you rang Mr Bottcher one or two days later and claimed you could not obtain airline tickets (page 62). It was only after this that you were then requested by Mr Bottcher to submit a Statutory Declaration as a means of addressing the question of eligibility. The simple truth of the matter is that had you done what was initially requested of you and obtained information from the airlines, this inquiry need never have arisen because the information would immediately have ruled out the greyhounds. The Stewards were able to obtain Consignment Notes, which you have acknowledged pertain to the greyhounds in question, so clearly it is not an impossible task. You, in fact, agreed on page 95 that obtaining this information is not a difficult thing to do. You have outlined to us how your greyhounds are regularly coming and going via the airlines and you have confirmed that there is only one place you go to when dealing with these matters. It would therefore have been a simple matter for you to return to the place where you had always gone and had signed for one of the greyhounds only a month beforehand and make some inquiries. The opportunity to inform yourself in this manner clearly existed prior to you submitting a Statutory Declaration. You clearly had ample time to make the relevant inquiries and you would have known where to ask. The fact that you told us you were eventually able to get the information over the telephone is a clear indication that there was nothing stopping you from complying with Mr Bottcher's initial request for airline information. Yet you chose not to do this. According to you, you instead went to extraordinary lengths to make several calls to the Eastern States, sign a Statutory Declaration yourself, organise a supporting Statutory Declaration from Mr Mackey and make several phone calls to Mr Bottcher and even threaten legal recourse. You have failed to satisfactorily explain to us why you would pursue this course of action as opposed to the airlines. The compelling suggestion is that you knew that you would not be able to obtain information that would support your claim that the greyhounds were eligible. Clearly, if you complied with the initial request you would have proven without a doubt that the greyhounds were not eligible for the race. As a consequence of your explanations on this question and the circumstances surrounding this issue there is a very strong inference of guilt on your behalf.

It is also important to distinguish that your Statutory Declaration was false not only on the question of the date of arrivals, but also false in that it stated that all of the greyhounds arrived on this date. It has not been disputed by you that the greyhounds arrived in lots of two and then one. Exhibit Nos. 12 and 13 put this question beyond dispute. Even Mr Farquharson's letter indicates that the greyhounds did not arrive together. If it was true that you had relied upon Mr Farquharson to obtain the information quoted in your Statutory Declaration we can see no reason why he would not have provided you with two arrival dates. He clearly was responsible for sending you the greyhounds, informing you of when to pick them up and he surely would have to have known whether he sent them together or otherwise. In addition to all this, we have the Statutory Declaration of Mr Mackey which also indicates that the three greyhounds did not arrive together. It is worthy at this time to note that Mr Mackey's Statutory Declaration was dated 3 August and your Statutory Declaration was dated 5 August. It is also fact that you had the opportunity to read this Statutory Declaration prior to submitting it with yours, despite the fact that you attempted to deny any specific knowledge about Mr Mackey's Statutory Declaration. At the early stages of the inquiry, when questioned on this point, you demonstrated total ignorance into the circumstances of the submitting of a Statutory Declaration by Mr Mackey. This was often your chosen approach to various matters until such time that it became obvious that you were in a position to know about the matter being spoken of. As in the example of Mr Mackey's Statutory Declaration you eventually accepted that you were the person who requested Mr Mackey to submit his Statutory Declaration and it was initially sent to you. (page 35) It is also clear that your Statutory Declaration states that OPTIMISTIC GEOFF, SERIOUS ISSUE and TERONGA arrived in WA on 9 May. That is obviously false. It is also fact that you were the person who collected two of these greyhounds on 16 May, 2000 (sic) and a further greyhound on 6 June, 2000 (sic). Collecting greyhounds from the airport is not like collecting letters from your letterbox where it may be difficult to remember whether you collected two or three letters at a time. You are a public trainer for whom greyhound racing is a way of life, who is organising the purchase of greyhounds and going personally to collect them and you surely must know whether the greyhounds arrived together or otherwise. This is especially so given the significant gap in arrival dates and the fact that these three greyhounds are the only three greyhounds you collected which had come from Queensland at around this time. It is therefore reasonable to expect that you would remember whether the greyhounds arrived together or not. They did not just turn up at your property one day. You went some considerable distance, got them and delivered them to your kennels and you had to do this twice in separate months. Even if there was no other evidence in relation to this point we feel that this is enough to suggest that you knew they did not arrive together. When you were questioned on this point on pages 132 to 136 your answers were far from convincing, which is not surprising given that you clearly knew they had not arrived together. At one point on page 132 you stated that they had all arrived together in your Statutory Declaration just to make things easy. This in itself is a strong suggestion that you knew they had not arrived together and detracts from your defence that you had completed the Statutory Declaration as a result of misinformation. You were just making things easy according to you. It was not a case of you being unable to remember. It is further not surprising that after being questioned by Mr Martins on page 136 and 137 you actually admitted what we would have thought to have

been obvious given the preceding questions and your answers. That is, you admitted that when you completed the Statutory Declaration you knew the three greyhounds had, in fact, arrived on two different occasions. With the exception of this admission, your previous explanations regarding the question of your knowledge in this area were unconvincing, and at times senseless. As the triers of fact we have had the benefit of viewing you whilst giving evidence and the admission you eventually made did not appear to be as a result of stress or duress. It was not against the grain of what you had already been alluding, to and in truth appeared as a natural progression of accepting what one would of thought was obvious. To then come to the inquiry conducted on 26 July, 2000 and retract this admission, after a considerable pause, on the basis of answering incorrectly due to stress was a complete shock to us. Whether you admit it or not does not change the fact that a reasonable person would be expected to remember such a detail as whether they collected the greyhounds all at once or otherwise under these circumstances. The fact that you did admit it and then retracted it when you realised the consequences of the admission serves only to suggest that your answering of questions is based on convenience rather than truth. Having considered all the circumstances surrounding this matter we are satisfied that you must have known that you did not collect all three greyhounds at the same time. It therefore follows that if you knew that the three greyhounds did not arrive together, then you must also have known that 9 May could not be correct as two dates were required not just one. By declaring, that you collected all three greyhounds at the one time when the truth is that you knew you did not, is a clear indication to us that you knowingly made a false Statutory Declaration.

In the early stages of this inquiry you went to great pains to impress upon the Stewards that you nominated the greyhounds in good faith and when you realized that "they weren't right" (page 27) you then proceeded to do the honorable thing, and withdraw the nominations and request Mr Bottcher to dispose of them and the Statutory Declaration. In fact, the way you put it to us at the time it seemed quite reasonable that you were... "a bit dubious as to the actual times, because the people that dealt with the dogs over in ... in Queensland weren't really firm in the belief that they'd come over on those days, so I checked it myself and then as soon as I found out that they weren't right then I pulled them out." (page. 27) You further stated on page 30 even before being asked that... "... at the time I believed that they were here on the ... ah ... the 9th, which put them in the 90 days ... but then when I found out later that... ah ... they weren't then... ah ... I think I... then I rang Mr Bottcher to tell him to pull out the dogs". According to you on page 32 you even checked airlines yourself which led you to withdraw the greyhounds. Mysteriously when questioned on this point you claimed that although initially you did not know which airline it was, you eventually did find out, but then forgot again. It is difficult to believe that this would be true given the importance of the matter. In truth your actions were anything but honourable. This became apparent after Mr Bottcher gave his evidence and said on pages 64 and 65 ...

Bottcher

"Ah ... yeah I .. um ... I was at Northam Greyhounds at a race meeting on the Monday, 9 August and Max called me up early in the afternoon and... just to confirm whether I still needed any more paperwork etc. for the ... for the greyhounds to be considered eligible ..."

Bottcher

"... I just told him we weren't happy at this stage and we wouldn't be including them in the fields based on the Stat Decs alone."

It is clear that Mr Bottcher told you that he still required further information and further told you that the information you had provided to that point would not be enough to have the greyhounds drawn into the event. Your response at this time according to Mr Bottcher, which you accepted as true, was ...

Bottcher

"... from memory that time he said something to the effect that whether he would have to take some legal recourse to make sure that they were drawn in the fields." (page 65)

It is evident that at this point you were still quite insistent that the greyhounds were eligible. Then a short time later you rang Mr Bottcher again and said according to you ...

Julien

"... I do use the telephone quite a lot so in the time that I've spoke to Mark I've rung Sydney just to clarify something or Queensland ... ah ... then ... then I've got a bit of doubt that's when I rang Mark back and said ... you know ... there's something's not right so pull 'em out, tear 'em up, throw 'em in the bin."

Your argument that you withdrew the greyhounds, and therefore any "bantering" prior to this is irrelevant, is inaccurate. The truth of the matter is that you were told in no uncertain terms that your greyhounds would not be drawn into the fields based on the information Mr Bottcher had before him. Essentially, they had been ruled as being ineligible and you were told this. In the process of clarifying what did exactly occur when you rang Mr Bottcher on 9 August it became apparent even on pages 47 and 48 that you knew prior to making the first phone call to Mr Bottcher that the information contained in your Statutory Declaration was wrong. When asked why you would be threatening legal recourse if you already knew that the greyhounds were ineligible, you stated that it was "probably to try him out" (page 157). When asked on page 158 why you would be threatening legal action if you knew the greyhounds were ineligible you said ... "Well because that's what I do, I'm that sort of fella. " Once it came out into the open that you knew the greyhounds were ineligible prior to ringing Mr Bottcher on 9 August you did not retract this or shy away from it. Even after the charge was laid against you, you continued to accept the fact that you knew prior to the first phone call that the greyhounds were ineligible (page 274 to 277). It is apparent that you knew perfectly well that the greyhounds were ineligible prior to the first phone call to Mr Bottcher. Yet, far from doing the honorable thing and withdrawing the greyhounds when told your nominations were not going to be accepted on the basis of the information received at that time, you resorted to threats in an attempt to have them drawn into the fields. Clearly, you mislead the inquiry in the early stages with your description of events at that time. The passages quoted on pages 27 and 86 are clearly untruthful which does not do your credibility any favours. These are not the actions of a genuine person. Furthermore, these are not the actions of a person who had been misled and was now rectifying a genuine error. If you had been misled and then became aware of the truth of the matter we would expect a genuine person to immediately desist from pursuing the matter and not make threats of legal recourse whilst knowing full well that the greyhounds are ineligible. Not only do these actions have the appearance of sinister motives, but also this is compounded by what occurred when you rang Mr Bottcher on the

second occasion on 9 August. On that occasion, you sought to have the nominations and Statutory Declaration disposed of. Not satisfied with making this request once, you then rang three days later to find out whether your instructions had been carried out. In viewing the events of 9 August in their correct context it is patently clear that you were indulging in what can only be described as brinkmanship in an attempt to have these greyhounds drawn into the fields. There is further consequence to your actions that must be addressed which is closely connected with these events. Clearly, something transpired between the first and second phone call on 9 August that resulted in your sudden desire to withdraw the nominations and destroy them and the Statutory Declaration. As has already been explained, it certainly was not, as was claimed by you, a sudden revelation that the information you previously had was wrong. When pressed on this matter you eventually stated that your request to have the nominations and Statutory Declaration disposed of was because you knew how the Stewards were in these cases and that something would come of it (page 277). You were clearly concerned that the Stewards would become involved in this matter and well you might have been given the fact that you had submitted a Statutory Declaration which you knew was false. All your explanations as to why you requested the destruction of the Statutory Declaration and nominations fail to satisfy us that this request was nothing but an attempt to remove the possibility that your actions would be investigated. You have failed to provide any other cogent explanation for the fact that you requested the destruction of the evidence hours after insisting that your greyhounds should be drawn into the fields. All your explanations on this point have, in our opinion, failed to negate the appearance of sinister behaviour. Not only was your instruction to destroy the Statutory Declaration an attempt to destroy evidence, it clearly was your desire to prevent the Stewards from becoming involved in this matter and there is a strong inference that this is what caused you to cease your pursuit of this matter.

The Stewards, in determining this matter, are fully aware that in order for the specifics of the charge to be met we need to focus upon that point in time that you wrote your Statutory Declaration. The crucial question, which needs to be answered, is whether the information you wrote in your Statutory Declaration was false as a result of misinformation or whether you knowingly wrote information you knew to be false. Our opinion, after taking into account all of the evidence, is that you knew the information you were providing in your Statutory Declaration, Exhibit No. 5, was false at the time you were completing it. What followed from that point on, including the evidence given by you at this inquiry, only serves to support the contention that when completing your Statutory Declaration you knew the information it contained was false. We cannot see that the events following the receipt of your Statutory Declaration suggest in any way that you were misled into completing a false Statutory Declaration. On the contrary, everything that followed only serves to reinforce the specifics of the charge that you knowingly submitted a false Statutory Declaration. In view of all the circumstances we find you guilty as charged.

The Stewards will now be resuming this inquiry in order to hear submissions on the question of penalty in the Stewards' office at Cannington on 20 September, 2000 commencing at 9.30am, which you are directed to attend.

The transcript of the inquiry conducted on 26 July, 2000 has now been completed and is available at a cost of \$220 (including GST).

You are reminded that you may bring any witnesses who you feel may help your cause.

Should you not attend, the Stewards may proceed in your absence in accordance with Local Rule 169.

Yours faithfully

(signed)

D Borovica

Stipendiary Steward'

A number of observations can be made regarding the letter. Firstly, that the Stewards had amassed a great weight of evidence. Secondly, the Stewards sifted through the material with great care and close consideration to detail. Thirdly, the Stewards were at pains to make quite clear their process of reasoning in evaluating the evidence. They spelt out the precise basis for convicting Mr Julien.

The Stewards continued the inquiry on 21 November 2001 when a letter from counsel for the appellant was read into the transcript. The substantive parts of that letter are reproduced here.

As you are aware, our client has been granted an Order Nisi to challenge the finding of the Stewards in relation to his conviction under rule 234(7) of the Rules of Greyhound Racing and one of the grounds for this application is that there was a reasonable apprehension of bias on the part of the Stewards who conducted the inquiry.

We are instructed that two of the three Stewards that sat on the Rule 234(7) inquiry ("the first inquiry") also sat at the second inquiry and that our client objected to these two Stewards sitting on the second inquiry.

As the Supreme Court proceedings involve the issue of bias on the part of the Stewards, it is our client's strong view that this issue needs to be determined before the second inquiry is completed. In this regard, in our view it was inappropriate for the Stewards to make any determinations in relation to the second inquiry after the issue of bias was raised in relation to the Supreme Court proceedings.

Unless within 48 hours we receive an undertaking from the WAGRA Stewards that they will not take any further action in relation to the second inquiry, our client's instructions are to apply to the Supreme Court for injunctive relief and if it is necessary for our client to take these steps we will produce this letter to the Court to support an application that our client's costs should be paid by the WAGRA Stewards on an indemnity basis.

The background to this aspect was that Mr Julien had been disqualified for 9 months on 20 January 1999 for having control of a greyhound that competed in a race and was found to have a prohibited substance administered to it. This Tribunal on appeal sent that matter back to the Stewards on 15 June 1999 to adduce further evidence. The Stewards' panel both at the original inquiry and the re-hearing in that matter comprised Mr C Martins as Chairman, Mr M Kemp and Mr D Borovica.

The Stewards re-heard the matter and subsequently confirmed the original finding as to guilt and penalty. Mr Julien lodged an appeal against that finding which was dismissed by this Tribunal on 12 July 2000. The Full Court of the Supreme Court of Western Australia heard an application for a writ of certiorari. On 6 November 2001 the order *nisi* was discharged.

The Stewards adjourned the inquiry and advised Mr Julien that that matter would be re-convened on 5 December 2001. On that date further submissions were made by Mr Julien in respect to penalty. The Stewards concluded proceedings by reserving their decision on sentence.

By letter dated 20 December 2001 the Stewards advised Mr Julien of their finding in regard to penalty. Those findings were:

'The Stewards have carefully considered all the relevant aspects on the question of penalty for the offence that you have been found guilty of. We are aware that although you are currently a disqualified person, your intentions for the future is to resume your participation in Greyhound Racing at a similar level to which you were previously involved. On the question of penalty for this offence we have not taken your previous offence under Rule 234(7) as an aggravating factor. Leaving aside your disqualification under Rule 234(7) your record nonetheless indicates that you have offended under the Rules in the past and although you have been involved in greyhound racing for a number of years it cannot be said that you have a clean record. Being fully aware of your personal circumstances we have turned our mind to consideration of an appropriate penalty in all of the circumstances for the offence you have committed. It is not difficult to recognise that attempting to have greyhounds contest a race for which they are not eligible is serious in itself. It compromises the integrity of the race and opens the possibility of serious consequences to Greyhound Racing as a whole should it remain undetected until after the race, when it would become necessary to disqualify the greyhound following the event. It is easy to imagine the adverse publicity and consequences for the sport and the persons in charge of it should such a situation arise. In an industry dependant on the support of the betting public for its viability it is crucial that their confidence is maintained to ensure the future of the sport. The fact that the race involved in these circumstances was a National race for which there were clear conditions in regard to eligibility, that you were aware of, serves to aggravate the offence. In your circumstances, however, the attempt to have your ineligible greyhounds drawn into the race was through the medium of a Statutory Declaration, signed by you, containing a statement you knew to be false. It was not simply a case of just nominating ineligible greyhounds and verbally pursuing these nominations with the grader. You were prepared to, when requested, effectively swear a written oath you knew to be

false as a means of attempting to defraud your greyhounds into the race. Signing false Statutory Declarations in any circumstance is a serious offence of its own. Whilst it is not our duty to prosecute or penalise such offences, it is recognised that this is a criminal offence. When it is done for the purpose of defrauding greyhounds into a race this is of grave concern to us. It is difficult to imagine a more odious method of committing fraud in these circumstances short of forging consignment notes or blackmail. You were not above using intimidation and threats of legal recourse in your pursuit of the matter with Mr Bottcher and when all this failed to have the greyhounds drawn you then proceeded to request that Mr Bottcher destroy the Statutory Declaration and Nominations for fear that they may come into the Stewards hands. The sinister nature this instruction is quite apparent. There is no redeeming quality to any of your actions at this time. It seemed that you were prepared to go to extraordinary lengths to have these nominations accepted for the race.

Having failed to have your nominations accepted for the race and being summoned to a Stewards' inquiry into the circumstances surrounding the nomination of the greyhounds TERONGA and OPTIMISTIC GEOFF for the 1999 National Sprint Championship WA State Series and the related Statutory Declaration dated 5 August 1999 lodged by you, you attended the inquiry fully aware that you had submitted a false Statutory Declaration. Although you now claim to have taken these matters lightly, we fail to see how you could have. You surely must have been concerned that the Stewards were inquiring into a Statutory Declaration you knew and freely admitted at the outset was false. You had even said to us that your request to destroy the Statutory Declaration was because you did not want it coming to the Stewards' attention. Once you received notice of inquiry you surely would have been concerned. Yet despite this you did not come armed with accurate information. You presented a letter and explanation involving Mr Farquharson who was later revealed to be unreliable. You did not provide the inquiry with accurate information about when the greyhounds arrived. Although you had ample time to do so you did not make proper inquiries to determine the correct dates. Your clarification by way of Mr Farquharson's letter only had the potential to mislead the inquiry. It does not appear to us that you took matters lightly but rather further attempted to disguise the true nature of your actions. Your conduct throughout the inquiry was far from co-operative and on many occasions we found you being difficult in answering what were simple questions. For example on page 28 of the transcript when asked "Were you contacted by anybody from the Racing Department after the nomination had been submitted questioning you about the arrivals or eligibility of these greyhounds?" your answer was "Oh....not that I can recall". You knew full well you had because you had had several discussions with Mr Bottcher, he had asked for a Statutory Declaration, which you did provide and threatened legal recourse when Mr Bottcher ruled your greyhounds ineligible. This is just one example and there were many, of you being difficult for what appears to be for no other reason other than for the sake of it. On occasions extracting answers from you to simple questions was akin to extracting teeth. Having committed the offence, you did nothing afterwards that could be seen as mitigation for it. In fact all your actions thereafter serve only to compound the seriousness of the offence. When given the opportunity at the latest inquiry to present your submissions on the question of penalty you present next to nothing of relevance. It is therefore

difficult to find anything of mitigation on the question of penalty following your committing of the offence.

Although not offered by you, the Stewards have considered the question of whether a fine would be an appropriate penalty under the circumstances. We are conscious of the need to issue a penalty, which would not only be suitable in your circumstances, but also one which has a strong deterrent value. Although no offences of this nature have previously been recorded, the possible ramifications of someone successfully defrauding a greyhound into a race of this nature are so severe that we feel it appropriate that the penalty be such that it actively discourages people from attempting to do so. Given the serious nature of the offence we do not feel that a fine of any value or your suggested "severe reprimand" would be appropriate under these circumstances and that disqualification is the most appropriate.

As there is no record of similar offences in the past, it is our duty as those charged with administering the Rules of this Authority to set the standard for this type of offence. To this end we have undertaken an extensive review of previous penalties issued for other offences and have tried to draw some comparisons so as to assist us in assessing this case and circumstances. We are extremely mindful that because no other similar offences are known to us, that these comparisons are serving to act as tentative guides rather than direct comparisons as it is extremely difficult to compare different offences. Nonetheless, there is some value in being aware of what type of penalties different serious offences draw. As you would be aware, it is not uncommon for this Authority to issue penalties of disqualification for parent drug related offences where a person has been found guilty of presenting a greyhound to race with a banned substance in its system, even for first offenders. In the case of most drug related offences, there is no proof that the person has knowingly administered the substance or in fact had any knowledge of its administration. In essence these offences do not prove or necessarily demonstrate mens rae. The same cannot be said of the offence you have been found guilty of. This involved deliberate intent to gain ineligible entry to a lucrative race for prize money or at least the opportunity to compete for it. The presence of intent is an important consideration in determining penalty. This is reflected in the case of Mr A Van De Klashorst who pleaded guilty under then Rule 234(8) (5 July 1993) for administering a stimulant to a greyhound for the purpose of affecting its speed, courage or stamina. Quite possibly one of the worst offences a person could be guilty of. This greyhound in fact competed and won a race with this substance in its system. Mr Van De Klashorst, by pleading guilty to this offence, essentially admitted intent and it is largely for this reason that this offence drew a three year disqualification. Although you failed in your attempt to have the greyhounds drawn into the race and in actual fact failed to make any gain by your actions, it must be remembered that it was Mr Bottcher who told you that he would not be drawing the greyhounds and then you later decided to cease pursuing the matter after making threats that you would. The fact that your false Statutory Declaration failed to gain you entry into the race due to Mr Bottcher's diligence, is a circumstance that works in your favour. Certainly the situation would have been all the more serious if Mr Bottcher had accepted your Statutory Declaration and the greyhounds proceeded to race. Whilst recognising that the worst case scenario did not occur, the

circumstances and offence itself remain serious. When considering all these matters and all the other circumstances previously outlined we feel that the appropriate penalty is a disqualification of 18 months.

It remains for the Stewards to make a determination in regard to Local Rule 181(3) given the fact that you are currently serving a term of disqualification for an unrelated offence. Having put the question to you during the hearing on 5 December 2001 you stated that in circumstances such as these any disqualification issued ought to be cumulative. Even so we have carefully considered the question regarding whether any disqualification ought to be concurrent or cumulative. Clearly, the relevant rule empowers us to make disqualification penalties cumulative if it is ultimately deemed appropriate to do so. It is clear that this offence is separate from your previous offence and has occurred on a separate occasion. We have also considered the appropriateness of the totality of the two penalties. We are of the view that the nature of the two offences you have been found guilty of are serious and that the penalties applicable should be served individually. A concurrent serving of this penalty would, in our opinion, unfairly devalue the penalty issued and as a result the penalty would therefore not be commensurate with the offence. We therefore feel it appropriate to act in accordance with Local Rule 181(3) and order that the penalty is to be made cumulative and therefore it shall commence to be served as of 23 May 2002 and will therefore expire on 22 November 2003.'

It is clear the Stewards went to considerable lengths and displayed much care and attention to detail in their approach and their reasoning for imposing the cumulative penalty of 18 months disqualification.

The Appeal

Mr Julien appeals against both the conviction and the penalty. The amended grounds of appeal are:

'Error of law

1. *The respondents erred in law in finding the appellant guilty of knowingly making a false statement contrary to AR109 of the Australian Rules of Racing.*

Particulars

- 1.1 *The respondents reversed the onus of proof in that, having found the statement made to be false, effectively asked the appellant to prove that he did not know that the statement was false.*
- 1.2 *The respondents having found that the appellant should have produced consignment notes or airline tickets at the relevant time, failed to consider that the appellant may have been guilty of either negligently or wilfully making a false statement but not knowingly making a false statement.*

- 1.3 *The respondents failed to show clear and cogent proof that the appellant knew at the time of making the statement that the statement was false.*
- 1.4 *The respondents effectively found the appellant responsible for the unreliability of witnesses whereas the very unreliability of those witnesses should have led the respondents to conclude that they were so unreliable that it was likely that they did mislead the appellant.*
- 2. *The respondents failed to consider that there was an inference to be drawn that, at the time of making the statement, the appellant did not in fact know that the statement was false.*

Particulars

- 2.1 *The evidence of Mr Farquharson that he told the appellant that three dogs were delivered to the appellant on 9 May 1999.*
- 2.2 *The evidence of Mr Mackey that he told the appellant that three dogs arrived in Perth on 9 May 1999.*
- 2.3 *The evidence of Simon Jackson that he told Mr Farquharson the he had booked three dogs to fly out on 9 May 1999.*
- 2.4 *The evidence of the appellant that he had agreed to purchase the dogs on 8 May 1999 and that Mr Farquharson or Mr Mackey told him they arrived on 9 May 1999.*
- 2.5 *The (fresh) evidence that the appellant telephoned airlines to confirm the date the greyhounds arrived after speaking to Mr Bottcher for the first time on 9 August 1999 but before speaking to Mr Bottcher for the second time on 9 August 1999.*

By reason of the matters outlined in 2.1 – 2.4, it was reasonable for the Stewards to infer that the appellant was misled into believing that the dogs arrived on 9 May 1999.

Penalty

- 3. *The respondents failed to give adequate reasons in relation to the issue of penalty and, in doing so, failed to demonstrate that adequate weight had been given to the following factors:*
 - 3.1 *The appellant withdrew Teronga and Optimistic Geoff from nomination of his own motion.*
 - 3.2 *The risk of tarnishing the image of greyhound racing was not a possibility because neither Teronga nor Optimistic Geoff raced.*
 - 3.3 *The penalties imposed in other cases.*

- 3.4 *The effect that the sentence would have on the appellant.*
- 3.5 *The totality principle.*
- 4. *The respondents erred by finding that:*
 - 4.1 *The appellant [ought to have] provided the inquiry with accurate information about when the greyhounds arrived as the onus to do that was not on him.*
 - 4.2 *The appellant's submission of Mr Farquharson's letter only had the potential to mislead the inquiry.*
 - 4.3 *The appellant had resorted to intimidation and threats of legal recourse which finding was not the only inference open on the evidence.*
 - 4.4 *The appellant was prepared to go to "extraordinary lengths" to have the relevant nominations accepted for the race.*
 - 4.5 *The way in which the appellant conducted his defence compounded the seriousness of the offence.*
 - 4.6 *The appellant withdrew the nominations because Mr Bottcher told the appellant he would not be drawing them and not because the appellant had ascertained the time position with respect to the arrival of the greyhounds.*
- 5. *The respondents erred by making the sentence cumulative on the sentence already being served by failing to have regard to the principle of totality.*
- 6. *By reason of the errors particularised in paragraphs 3 – 5 the sentence was, in all of the circumstances, manifestly excessive.*
- 7. *The respondents erred in law by not finding that there was a reasonable apprehension of bias and therefore not disqualifying themselves.*

Particulars

- 7.1 *The respondents had previously made adverse findings of credibility against the appellant in another case.*
- 7.2 *The Chief Steward who was a member of the panel who conducted the inquiry was cross-examined as to credit by the appellant.*
- 7.3 *The respondents had pre-judged the issue as to the appellant's guilt.'*

At the outset of the appeal leave was sought to produce an affidavit sworn by Mr Julien on 7 May 2002. That affidavit deals with the fact that, after the Stewards' inquiry, Mr Julien resorted to various telephone accounts and records to prove telephone calls were made to

different people who were relevant to this episode. The affidavit became Ex 'A'. Further, leave was sought for Mr Julien to give fresh evidence. The Tribunal has the power to accept further evidence and is not limited to the material before the Stewards. I indicated I would allow the evidence to be presented and would rule on its admissibility later. I am satisfied this is a proper case to admit this type of evidence. The Tribunal is not bound by the rules of evidence and procedure as is a court of law. The Tribunal is given considerable flexibility in this respect by virtue of the provisions of s11 of the Racing Penalties (Appeals) Act.

I have already made some positive comments on the reasons issued by the Stewards. In their reasons for conviction the Stewards assert at the outset that they have carefully considered all of the evidence. The care and attention to detail exhibited, coupled with the crystal clear process of reasoning employed by the Stewards and their comprehensive treatment of the facts abundantly support their proposition in that regard.

The Stewards have identified three key admissions which were made by Mr Julien, namely:

- the statutory declaration was to justify the eligibility of the 2 greyhounds being drawn into the national event
- the declaration was false
- that had the declaration been submitted knowingly to be false, it would constitute fraud.

The Stewards have also identified the key to the whole complicated process, namely whether the false declaration had been knowingly submitted, or as Mr Julien would have it, it was due to an honest and genuine mistake. In their reasons the Stewards have then gone through and carefully summarised the evidence and the approach adopted by Mr Julien.

The defence raised in part relies on Mr Julien having been misled by false information. As the Stewards explain in their findings Mr Julien's story in this regard proved to be something of a moving feast which the Stewards found to be implausible for the reasons explained in detail by them.

The Stewards have gone into a lengthy examination of the question of whether Mr Julien knowingly supplied false information partly by reference to the circumstances giving rise to the statutory declaration. That examination has not been shown to be unsound or unsatisfactory in terms of its line of reasoning, the relevance of the facts referred to or conclusions which have been drawn.

The explanation provided in the reasons as to not just the date of arrival but also as to all greyhounds having allegedly arrived on the same day has not been shaken at all.

As the Stewards point out in their reasons they had the advantage of observing Mr Julien whilst he gave his evidence. The Tribunal too was able to observe Mr Julien on oath in the witness box. His evidence before the Tribunal, rather than doing anything to improve his position or to establish his credibility, diminished it in the way he responded to cross-examination.

I agree with the ultimate conclusion reached by the Stewards. It is worthy of repeating.

'The Stewards, in determining this matter, are fully aware that in order for the specifics of the charge to be met we need to focus upon that point in time that you wrote your Statutory Declaration. The crucial question, which needs to be answered, is whether the information you wrote in your Statutory Declaration was false as a result of misinformation or whether you knowingly wrote information you knew to be false. Our opinion, after taking into account all of the evidence, is that you knew the information you were providing in your Statutory Declaration, Exhibit No. 5, was false at the time you were completing it. What followed from that point on, including the evidence given by you at this inquiry, only serves to support the contention that when completing your Statutory Declaration you knew the information it contained was false. We cannot see that the events following the receipt of your Statutory Declaration suggest in any way that you were misled into completing a false Statutory Declaration. On the contrary, everything that followed only serves to reinforce the specifics of the charge that you knowingly submitted a false Statutory Declaration. In view of all the circumstances we find you guilty as charged.'

I am satisfied that nothing has been presented in support of the appeal which throws any doubt on the propriety of the approach adopted by the Stewards. Further, I do accept and adopt all of the submissions made and reasoning applied by senior counsel for the Stewards.

There was no error of law as alleged in ground 1 and the particulars have no merit. The Stewards properly dealt with all factual issues and did not reverse the onus. The Stewards were entitled to doubt Mr Julien's credibility and to test it as best they could to expose the truth. This case has all the hallmarks of a determined person attempting to raise all manner of diversions in an attempt to cover his tracks after the event.

Ground 2 has no merit. In all the circumstances of this complicated web of action and reaction to the delving by the Stewards, I am satisfied it was not reasonable for the Stewards to have inferred the appellant was misled into believing the greyhounds arrived on 9 May 2002.

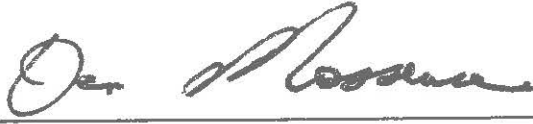
It has not been shown that there was any inadequacy as to the reasons on penalty and to the weight given to any of the factors identified in ground of appeal 3. I am not persuaded there was any error as alleged in paragraph 4.

There is no merit in ground 5. The penalty has not been shown to be manifestly excessive as alleged in ground 6. A fine is totally inappropriate for such a serious offence.

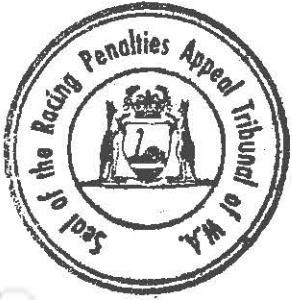
The bias ground 7 has no merit.

I am satisfied that had I been deciding this matter in the first instance I too would have approached the matter along similar lines and would have reached the same conclusions as the Stewards did.

Accordingly, I would dismiss the appeal both as to conviction and penalty.



DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR S PYNT (MEMBER)

APPELLANT: MAXWELL JOHN JULIEN

APPLICATION NO: A30/08/554

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR S PYNT (MEMBER)

DATE OF HEARING: 7 MAY 2002

DATE OF DETERMINATION: 23 MAY 2002

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 20 December 2001 imposing 18 months disqualification for breach of Rule AR105(15) of the Rules of Greyhound Racing.

Ms BJ Lonsdale, instructed by Dwyer Durack, appeared for the appellant.

Mr RJ Davies QC, assisted by Mr JM Woodhouse, instructed by Watts & Woodhouse, appeared for the Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson.

I agree with those reasons and conclusions and have nothing to add.

STEVEN PYNT, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
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APPLICATION NO: A30/08/554

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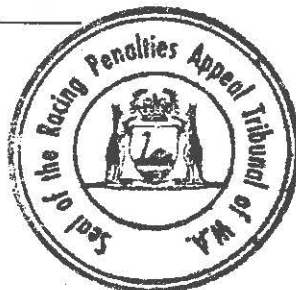
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P. J. Hogan

PATRICK HOGAN, MEMBER



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Mr RJ Davies QC, assisted by Mr JM Woodhouse, instructed by Watts & Woodhouse, appeared for the Stewards.

This is a unanimous decision of the Tribunal.

For the reasons published the appeal is dismissed.



DAN MOSSENSON, CHAIRPERSON

