

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: GEOFFREY SHAW

APPLICATION NO: A30/08/608

PANEL: MR D MOSSENSON (CHAIRPERSON)
MS A BRADDOCK SC (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 24 MARCH 2004

DATE OF DETERMINATION: 24 MARCH 2004

IN THE MATTER OF an appeal by Mr G Shaw against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 5 January 2004 imposing a 12 month disqualification coupled with a fine of \$500 for breach of Rule AR109(17) of the Rules of Greyhound Racing.

Mr TF Percy QC with Mr A Rowe, on instructions from D G Price & Co, appeared for the appellant.

Mr RJ Davies QC appeared for the RWWA Stewards of Greyhound Racing.

This matter came on for hearing on 24 March 2004. The Tribunal unanimously dismissed the appeal and undertook to publish reasons subsequently.

BACKGROUND

Following the running of race 7 at Mandurah Greyhounds on 9 December 2003 Racing and Wagering Western Australia Stewards conducted interviews focused on advice which they had received that an altercation between two trainers had occurred in the vicinity of the

return gate. The Stewards present at the first interview were Mr M Kemp, Chairman, and Messrs D Borovica and N Goold.

Mr Geoff Shaw, trainer of PREMIER BOY, and Mr Graeme McComb, trainer of BOILING RAIN were both called to the interview. During the course of the interview process the following exchange took place:

Mr Kemp ... Now we've received advise (sic) of an altercation after that particular race. ... Could you Mr McComb explain what happened to us firstly?

Mr McComb ..., well after the race was finished the dogs were running back and the gate was left opened because there was uh ... a dog coming in injured so they were running back so I sort of stood there to slow them up um ... the black dog which was PREMIER BOY bowled over a dog on the way down headed for the gate very aggressively so I tried to grab him and my dog was on the other side of it and I grabbed the dog and restrained it and the chap hit me in the head because he said I was trying to rip its head off. I asked him why he did it and he said I was trying to rip its head off. I was shocked and counted to ten.

Mr Kemp Ok and he also hit you in the head did he strike...

Mr McComb ... well there's a lump there and I don't feel good.

Mr Kemp Yeah, I can see a lump there it's on the left hand side of the bottom of your jawbone there.

Mr McComb That's right.

Mr Kemp Now, when you say hit what sort of hit was it?

Mr McComb ... just a wild haymaker with his fist.

Mr Shaw Punch.

Mr Kemp Sorry?

Mr Shaw Punch.

Mr Kemp You punched him did you?

Mr Shaw Yeah.

Mr Kemp Ok so you are acknowledging that Mr Shaw?

Mr Shaw Yes.

Mr Kemp And is that the reason why you punched him?

Mr Shaw Um, he just about ripped the head of the dog of um ... twice, you know grabbed the dog, big hunk of hair of it and pulled it side ... pulled it around sideways and you can nearly hear the cracks in the neck.

Mr Kemp Mm.

Mr Shaw You know it was pretty rough on the dog.'

Kennel Attendant, Mr T Swindell, and Parade Steward, Ms S Watt, were also interviewed by the Chairman and Steward Goold on that evening. Both officials confirmed that they had observed Mr Shaw strike Mr McComb on the head.

By letter dated 10 December 2003 Mr Shaw was charged by the Stewards with a breach of AR109(17). That rule is as follows:

'AR109. Offences

Any person (including an official) who:

- (17) commits or omits to do any act or engages in conduct which is any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing;*

shall be guilty of an offence and liable to a penalty pursuant to rule 111.'

The specifics of the charge were:

'...on 9 December 2003, you Mr Geoff Shaw being an owner/trainer with WAGRA, at the completion of Race 7 in the vicinity of the return gate, punched owner/trainer Mr Graeme McComb in the face, conduct which is detrimental to the image of greyhound racing.'

An inquiry was convened for 22 December 2003 before a Stewards' panel comprising Mr C Martins as Chairman, Mr M Kemp, Deputy Steward, and Mr P Searle, Stipendiary Steward. Mr Shaw pleaded guilty to the charge early on in the proceedings. After hearing submissions from the appellant the Stewards adjourned the inquiry to consider an appropriate penalty. By letter dated 5 January 2004 the Stewards advised Mr Shaw of their decision. The relevant excerpts from that letter are reproduced in these reasons as follows:

'Dear Mr Shaw

I refer to the Stewards' inquiry conducted in the Stewards' office at Cannington on Monday 23 (sic) December 2003 where you pleaded guilty to a charge under AR109(17).

The specifics of the charge are that on 9 December 2003, you Mr Geoff Shaw being an owner/trainer with WAGRA, at the completion of Race 7 in the vicinity of the return gate, punched owner/trainer Mr Graeme McComb in the face, conduct which is detrimental to the image of racing.

The Stewards have now concluded their deliberations in this regard and following are the Stewards findings.

In determining an appropriate penalty, the stewards have taken into consideration all of the evidence and relevant issues in relation to this matter.

We acknowledge that on the evening of the 9 December 2003 you promptly admitted to having punched Mr. McComb and then the day after submitted a letter to the Stewards apologizing for your actions and disrepute they brought upon the greyhound industry. You have also pleaded guilty to the subsequent charge although given the quality and precise nature of the evidence this does not surprise us. The stewards are of the opinion that this was the only reasonable plea that you could have entered under these circumstances. We are aware of your length of involvement in the industry and your unblemished record since obtaining registration with the WAGRA. We also note the general respectful manner with which you have conducted yourself during this entire matter.

However, the charge that you have pleaded guilty to is a very serious matter. From our experience it is common for a pack of greyhounds to congregate together and play fight aggressively after a race and it is equally common for persons to have to use reasonable force to separate such greyhounds. Mr McComb does appear to have removed PREMIER BOY in a forceful manner, however given the aggressive behaviour of PREMIER BOY it is clear that a degree of force was necessary to separate the greyhounds. A subsequent veterinary examination revealed only minor soreness to the extent that PREMIER BOY was not stood down from racing for any period of time. It is said that Mr. Mc Comb swore at you just before you punched him however we feel that no direct insult was levelled at you but rather a general comment in relation to your greyhound. Whilst the Stewards by no means condone the use of such language, we would imagine that this certainly is not an unusual occurrence between handlers in this situation. The Stewards are not persuaded that Mr. McComb's conduct amounts to any provocation that would justify your actions as you finally acknowledged. Your subsequent reaction beggar's belief. What on earth were you thinking? You have punched someone in the face in full view of not only those persons in the immediate vicinity but any number of persons from the general public who were on course that evening, persons watching the race live on CFM or viewing replays of the race on course. There is no way that Mr McComb would have expected to be struck, in particular in such an open area as this, where activities are under constant scrutiny by officials. We would expect that whilst engaged in official activities such as securing a greyhound at the completion of a race, as Mr. McComb was, that registered persons would be able to perform them with a large degree of safety and without fear of unpredictable and random acts of violence. Unfortunately your actions has to a certain extent cast some doubt about the safety of these people and as you have indicated to us the persons there that evening just wanted to "get out of there". The manner that you have punched Mr. McComb was in effect a full-blooded "king hit". It was a gross overreaction on your part and indeed the wrong time and place to display your abilities in this regard. Greyhound racing is family sport and your violent actions have tarnished the good image that everyone strives to maintain. After viewing the video footage of this unfortunate and shameful incident we were surprised and left stunned with disbelief that someone without any hesitation, would

have the audacity to deliberately punch another person with such force and conviction right in the middle of the track. Given the brutality and force of the punch it is amazing that Mr McComb did not sustain more serious, physical injuries. You may well consider yourself fortunate that Mr McComb has no intention of pursuing this matter with the Police.

After hearing Mr McComb's evidence, it was apparent to the Stewards that not only has he suffered physically but also emotionally. Before us, he showed an intense feeling of hurt, embarrassment and distress as any normal person would after being subjected to such humiliating behaviour in the open and in full view of colleagues and the general public. The effect of this deplorable act was such that Mr. McComb had no intentions to continue in the Industry or to even inform his wife of what had occurred. It was only when he received the notice of inquiry that he then reluctantly felt the need to inform his wife. We are amazed at the self-control that Mr McComb exercised and it is fortunate for you that he did and there was no retaliation, for as you have acknowledged, it was his restraint that prevented a full-blooded fistfight from occurring. Your belated apology, which was not delivered until the question was posed to you, whether you had done so, is of concern as we would have expected this courtesy, if it were genuine, to have occurred very soon after the incident.

We have compared your offence with those previously mentioned that are well known to the Stewards and detail our comparisons as follows;

The circumstances of the **Hockaday** offence are largely different to yours. On that occasion there had been a continued argument in respect to the paying of damages following a vehicle accident which led to Mr B Hockaday striking Mr Bainbridge in the trainers car-park with only a few persons in the vicinity. In this instance the Stewards were unable to determine whether Hockaday had struck with an open hand or a closed fist, hence the Stewards preferred the lesser charge of misconduct. We are of the opinion that the Hockaday case is of limited assistance to the Stewards in this case as we view it as being at the lower end of the scale for these types of striking offences.

The case of **Beckett** is more similar to yours in that he struck with a punch, there was an argument between two people about a trivial matter which ended up in an intoxicated Mr Beckett punching the owner in the bar area at Cannington. It was after the races with few witnesses or public around.

The cases of Messrs **Puls and Green** were similar to each other in that there were disputes between the 2 parties involved in each case. Like Beckett and yourself they both struck with a punch, although theirs (Puls and Green) only resemble Becketts in that they performed the acts of violence in the public bar area at Mandurah and again few persons viewed the incidents.

The case of **Jeffries** differs in that he struck the Course-electrician behind the grandstand at the end of the race meeting, with only a few witnesses, again possibly with an open hand. He was unregistered when he was Warned Off for 18 months.

The case of **Phillips** was part of an intoxicated rampage the like not seen before by us which resulted in 7 separate charges being judged for which he was subsequently Warned Off.

We feel your case is of a more serious nature than the ones enunciated. The location, the timing and the circumstances surrounding the commission of your offence as outlined earlier on by the Stewards, is in our opinion, more detrimental and aggravating than the other cases referred to by the Stewards. We have also taken into account the effect that this unsightly occurrence may have on the general public and their perception on the image and control of greyhound racing. It is thought that your punch had the potential to be viewed by far more persons than the other cases and as a result the detrimental effect caused would be on a larger scale.

Greyhound racing depends largely on the support of the public to maintain its well-being. The public needs to be confident that the industry that they support is properly regulated and free from such unpleasant and fearful images. Therefore the Stewards must not only impose a penalty which suits your set of circumstances but also one that discourages other persons from even contemplating this type of action. We are aware of the requirement for the Stewards to be consistent in the imposition of penalty and be conscious that any penalty imposed must fall within the range of penalties previously imposed for similar cases.

Your comments that you don't rely on any income derived from your involvement in the Industry for your livelihood, further strengthens the Stewards view that a disqualification is warranted. The suggestion of a fine and suspension is totally inadequate and inconsistent with previous penalties. We would be in dereliction of our duties to simply allow you to be fined and suspended and continue to attend racecourses. We feel the industry would be somewhat alarmed if you were allowed to have any involvement immediately after such a serious offence.

In arriving at our determination we have concluded that similar-type of offences in the past have attracted a 12 month disqualification. However in this instance, for the reasons that we have stated above, we view this offence as more serious than those mentioned and therefore the penalty must be such that it reflects our findings.

Taking into account all of the relevant circumstances we believe the appropriate penalty is that you be disqualified for a period of 12 months and fined the sum of \$500.00.'

Mr Shaw lodged a notice of appeal on 6 January 2004 in which he simply asserted 'the penalty imposed was manifestly excessive in all the circumstances'. He did not at the same time seek a suspension of operation of the penalty. Subsequently the appellant's lawyers forwarded to the Registrar proposed amended grounds of appeal as follows:

- '1. The Stewards erred in making findings of fact, which were either wrong or not reasonably open on the evidence in respect of several important issues.

Particulars

- (a) the Stewards erred in finding that the matter was actually, rather than potentially seen by a large number of patrons and by off course viewers on CFM television.
 - (b) the Stewards erred in finding that the blow to McCoomb (sic) was a "full blooded king hit".
 - (c) the Stewards erred in finding that, the actions of the Appellant had actually rather than potentially, tarnished the good image of the sport.
 - (d) the Stewards erred in finding that, the Complainant was punched with force and conviction, right in the middle of the track, and that the punch had the potential to cause serious physical injury.
 - (e) the Stewards erred in finding that the actions of the Appellant cast doubt upon the safety of greyhound handlers generally.
 - (f) the Stewards erred in finding that the blow had caused the Complainant intense feelings of hurt, embarrassment and stress.
2. Stewards failed to consider the issue of provocation correctly as it applies to pleas of guilty.

Particulars

- (a) the Stewards concluded that the aspects of provocation in question, namely the words spoken by the Complainant and the Complainant's mistreatment of the dog, would not "justify" the Appellant's actions.
 - (b) it was never the Appellants case that his actions were justified, only mitigated to some extent by the provocation.
 - (c) the Stewards were obliged, once provocation was raised as an issue in mitigation, to take into account as a factor to mitigate any penalty they might impose unless it could be excluded to a high degree of proof.
 - (d) in failing to take provocation into account at all as a mitigatory factor (as distinct from an exculpatory factor) the Stewards were in error.
 - (e) the Stewards erred in failing to give any or adequate weight to the evidence of the independent witness Swindell concerning the question of provocation.
3. The Stewards erred in failing to give any or adequate weight to the Appellant's plea of guilty, his expression of contrition, and his previous good record.

Particulars

- (a) *the Stewards appear to have given no weight to the Appellant's apology dated 10 December 2003.*
 - (b) *the Stewards placed significant weight on the fact that Shaw had failed to personally apologise to the victim until the hearing on 22 December 2003.*
 - (c) *the Stewards made no specific allowance for the Appellants prior good record or his plea of guilty at the first opportunity.*
4. *By reasons of the errors complained of in grounds 1, 2 and 3. The Stewards have, as a result, imposed a penalty that is manifestly excessive in all the circumstances of the case.*
 5. *The Stewards erred in principle, finding that the offence could only be adequately dealt with by way of a period of disqualification.*
 6. *The Stewards erred in dealing with the offence as being more serious than the assault of an Official, when it did not necessarily belong in that category.'*

The appeal was allowed to proceed on the basis of the new grounds.

GROUND 1

All of the findings of fact which are questioned in the first ground were either reasonably open on the evidence or in fact accurately reflect what did happen based on a reasonable assessment of the evidence before the Stewards.

The incident clearly occurred on the race track at the conclusion of a televised race. A not insignificant number of persons would have actually seen it occur live in front of them or would have viewed it on a television screen. Nothing turns on the distinction contained in the argument between the incident having been seen actually rather than potentially.

Mr McComb was undoubtedly deliberately struck on the head by a forceful punch delivered by Mr Shaw. The evidence before the Stewards clearly supported the finding that the blow was struck with force and conviction. This deliberate blow was delivered with aggression and without warning. A clenched fist was employed. The target, namely Mr McComb's head, was without doubt struck. There was potential to exact serious physical injury. There can be no dispute that this action took place on the race track immediately following the running of a race in the area where the excited and highly energised animals were being separated and rounded up by the handlers. The people who were allowed on the track at the time for the purpose of rounding up the dogs had the job of separating the greyhounds and clearing the track immediately following the running of the race. For such an incident to have occurred at that moment in time, at that location and between people engaged in that rounding up process would undoubtedly tarnish the reputation of this sport. Indeed, in his letter to the Stewards (ex 6) Mr Shaw admitted having brought the greyhound industry into disrepute. This is not surprising as greyhound racing is a family sport which is conducted in the public eye.

Mr Shaw's aberrant conduct would cause all reasonable greyhound handlers who were going about their normal duties at the end of a race to fear for their safety. In the short time and in the relatively confined circumstances that the handlers are focused on the greyhounds they should only be preoccupied with the process of separating and gathering in the dogs, rather than with the possibility of being assaulted.

The evidence clearly established Mr McComb did suffer emotionally as a consequence of Mr Shaw's actions. He was taken by complete surprise at being struck. When the blow was delivered he had to fight hard and did well to maintain his composure. As a consequence of what happened Mr McComb actually seriously contemplated giving up the sport. The incident so badly affected him that he decided not to report it to his family. He only subsequently changed his mind once he was summoned by the Stewards to give evidence at the inquiry into the incident.

Taking into account all of these factors we are satisfied there is no merit in any of the contentions raised in ground 1.

GROUND 2

As to the second ground we are not persuaded the Stewards were in error in concluding the language employed by Mr McComb together with the method employed in handling Mr Shaw's greyhound would not condone Mr Shaw's actions. In the circumstances of this matter, irrespective of the words used and how they were delivered, Mr Shaw cannot be exonerated or excused for his uncontrolled violence. There can be no justification or excuse for such excessive behaviour and the inappropriate use of a fist in anger in full public view on a racecourse between persons actually engaged in assisting the orderly conduct of the race meeting. This is despite the fact that, to his credit, Mr Shaw pleaded guilty to the charge. There is no merit in particulars (b), (c) and (d) of this ground.

Mr Swindell's evidence was to the effect that Mr McComb grabbed Mr Shaw's dog by the head, threw it backwards and at the same time in impolite terms told Mr Shaw to get his dog off Mr McComb's animal. Little if any weight in my opinion could or should be given to these facts in deciding the provocation issue in light of all of the other relevant surrounding circumstances.

GROUND 3

We are not persuaded there is any merit in this ground. The letter of apology was written to the Stewards on 10 December 2003, the day after the incident. Mr Shaw did not apologise to Mr McComb for his actions until the Stewards' hearing on 22 December 2003.

Early in their reasons the Stewards state they '*...have taken into consideration all of the evidence and relevant issues in relation to this matter*'. They then proceed to summarise the facts and the issue which influenced their thinking. There is nothing in the reasons which supports the contentions contained in this ground.

GROUND 4

This ground lacks merit. The penalty, in view of the circumstances, was reasonably open to the Stewards.

GROUND 5

The Stewards quite properly concluded that disqualification rather than a lesser penalty was appropriate. So serious was the misconduct which occurred during a semi-official act at the end of the race in full public view on the track that any lesser penalty would not have been adequate. This ground is also dismissed.

GROUND 6

We are not persuaded by this ground. Both Mr Shaw and Mr McComb were performing semi-official functions on the track at the conclusion of a race. Not only the timing and the place where the offence having occurred makes it very serious but the excessive use of force aggravates the matter. All of the relevant circumstances combine to justify the matter having been dealt with at the level of seriousness which the Stewards attributed to it.



DAN MOSSENSON, CHAIRPERSON

