31 March 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**CRAIG WEBB**

**Date of hearing:** 18 March 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Albert Dinelli, instructed by Mr Patrick Considine, appeared on behalf of the Stewards.

Mr Lynton Hogan represented Mr Craig Webb.

Mr Craig Webb appeared.

**Charge:** Greyhounds Australasia Rule (“GAR”) 86(q) states:

A person (including an official) shall be guilty of an offence if the person-

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

**Particulars of charge:** On 9 December 2020 Mr Craig Webb (304505) attended a Greyhound Racing meet at the Bendigo Greyhound Racing Club. During this meeting Stewards observed Webb to be displaying conduct deemed to be aggressive and intimidatory towards GRV officials.

On 10 December 2020, GRV staff attended the address of Mr Webb for the purpose of a property inspection. During this inspection Webb acted in an aggressive, hostile and contemptuous manner towards GRV staff.

On 21 December 2020 Investigative Stewards held an inquiry with Mr Webb. Mr Webb conceded he should have behaved differently upon reflection of the events put to him.

After considering the evidence, Investigative Stewards charged Mr Webb with a breach of GAR 86 (q). The evidence is supported by witnesses and recorded footage of the incidents.

These actions are viewed to be detrimental and prejudicial to the interest, welfare, image and control of greyhound racing.

Mr Webb pleaded not guilty to the charge.

Investigative Stewards found Mr Webb guilty of the charge and imposed the following penalty;

* Six (6) months suspension to be served immediately.

Investigative Stewards also note that Mr Webb previously appeared before the Stewards on 17 July 2020 regarding a similar incident at Shepparton Greyhound Racing Complex on 2 July 2020. In relation to this incident Mr. Webb pleaded guilty and Investigative Stewards imposed a six (6) month Suspension with three (3) months wholly suspended for 12 months and a $500 Fine. This incident breached previous suspended sentences and fines imposed. Mr Webb has breached that suspended sentence.

Therefore, a further Investigative Stewards penalty is imposed as follows:

* The three (3) month suspension which was previously suspended on 3 August 2020 is re-imposed and directed to be served cumulative with the six (6) months suspension.
* Total Effective Penalty is nine (9) months suspension to be served immediately.

In determining penalty, Investigative Stewards considered a number of factors namely:

* This is the third conduct related offence in 2020 for Mr Webb;
* Mr Webb has demonstrated an ongoing pattern of poor conduct towards GRV staff and participants which will not be tolerated;
* Mr Webb has been provided education and support on his conduct previously by GRV;
* Mr Webb’s lack of remorse and full understanding of the impact such behaviour can have on individuals subjected to the behaviour displayed by Mr Webb. This is conduct that will NOT be tolerated in the workplace;
* Specific and general deterrence;
* The ongoing image of the sport and perception and expectation of all participants.

**Plea:** Not guilty

**DECISION**

1. Mr Craig Webb has appealed to the Tribunal from a decision of the Stewards of Greyhound Racing Victoria (“GRV”) to find him guilty of a charge under Greyhounds Australasia Rule (“GAR”) 86(q) and to therefore suspend him for 6 months in respect of that charge, thereby activating a 3 month suspension from a previous offence leading to a total of 9 months suspension. GAR 86(q) provides that “a person (including an official) shall be guilty of an offence if the person commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing”.
2. Stewards questioned Mr Webb at an inquiry, held on 21 December 2020, concerning his conduct at a race meeting at Bendigo on 9 December 2020 and during a kennel inspection on 10 December 2020. The transcript of the interview goes for some 100 pages. It is only on page 98 that Mr Webb is informed that the Stewards are looking at charging him under GAR 86(q), which they shortly did and found him guilty without giving him any particulars of the charge. The decision recording the finding of guilty and the penalty was published by the Stewards on 23 December 2020. The Stewards then proceeded to find Mr Webb guilty and imposed a penalty of 6 months suspension on him without affording him an opportunity to make submission on mitigation of penalty. The failure to particularise any charge and the failure to allow submissions on penalty each involved separate egregious breaches of procedural fairness in relation to Mr Webb.
3. In his appeal, before amendment, Mr Webb only raised a concern with the severity of the sentence. He also sought a stay of the suspension decision. The Tribunal refused the stay, without knowing of the existence of the transcript of the Stewards inquiry. It did so because a mere finding of guilty by the Stewards, even if no penalty had been imposed, would have activated a 3 month suspension from a previous offence under GAR 86(q). The Tribunal considered that it would be in a position to arrange a hearing of the appeal inside the operation of the activated suspension, so it saw little utility in granting the stay.
4. After the rejection of the stay application, Mr Webb obtained legal advice. He then applied, by consent, to amend his appeal to include an appeal against conviction as well as sentence.
5. On 15 January 2021, the Tribunal, by consent, allowed the amendment of the appeal and granted Mr Webb a stay of the operation of the 9 month suspension pending the hearing of submissions on the form of the order the Tribunal should make as a consequence of the “double barrelled” denial of procedural fairness. On 18 January 2021, the Tribunal made an order allowing the appeal by consent.
6. The parties helpfully provided a memorandum dated 16 February 2021 for the Tribunal setting out why it was appropriate to allow the appeal. It is unnecessary to refer to that joint memorandum at any length. It made the following important points:
* Mr Webb was not given sufficient notice of precisely what was alleged against him;
* Mr Webb was unable to articulate a response to poorly articulated allegations;
* Mr Webb was given no opportunity to make submissions to defend himself on the so called charge or to examine witnesses;
* Mr Webb had no opportunity to obtain representation or advice about the charge;
* Mr Webb had no opportunity to make submissions regarding penalty.
1. The question for current determination is what order the Tribunal should make in addition to the order it made on 18 January 2021 that the appeal be allowed. Each party agreed that the Tribunal should make an order setting aside the decision of the Stewards. For avoidance of doubt, the Tribunal will make an order that the decision of the Stewards in respect of a purported charge under GAR 86(q) laid against Mr Webb by the Stewards and a purported decision regarding penalty each be set aside.
2. The fundamental difference between the parties is whether the Tribunal should make an additional order referring “the matter” back to the Stewards for consideration in accordance with law. That is the order that the Stewards seek. Mr Webb’s counsel, Mr Lynton Hogan, contended that no such order should be made. He submitted that it was up to the Stewards themselves to decide whether any further action should be taken against Mr Webb in respect of Mr Webb’s conduct on 9 and 10 December 2020.
3. Mr Hogan submitted that the Tribunal has no jurisdiction to refer “the matter” back to the Stewards pursuant to section 50ZE(2)(c) of the *Racing Act 1958* (“the Act”) because there was no “matter” to refer, as the proceeding before the Stewards was a nullity in the absence of a properly formulated charge. He contended that section 50ZE(2)(c) of the Act, which allows the Tribunal to make any order it considers is required in the interest of justice, must give way to the specific power to refer a matter back to the Stewards under section 50ZE(2)(c) and that section 50ZE(2)(c) was in effect a code on the subject of referring matters back to primary decision makers.
4. We reject the submission that section 50ZE(2)(c) is the sole repository of the Tribunal’s power to refer a matter back to the Stewards for consideration. As counsel for the Stewards, Mr Albert Dinelli, observed, section 50ZE(1)(b) is a broad power vested in the Tribunal. It allows the Tribunal to make any decision or order it considers is required in the interests of justice in the determination of any matter before it. In that context, “matter” includes an appeal.
5. It is not circumscribed by section 50ZE(2)(c). Section 50ZE(2)(c) uses “matter” in a different context, meaning the subject matter of the controversy between the parties, i.e. whether Mr Webb engaged in conduct in breach of the GARs and specifically, GAR 86(q) - see *Abebe v The Commonwealth* per Gleeson CJ and McHugh J [1999] HCA 14 at 24 at per Gummow and Hayne JJ at [165].
6. Section 50ZE(2)(c) only deals with referring a matter back to the maker or makers of the decision. Strictly applied, in this case, it would prevent the Tribunal from remitting the controversary between the parties back to a differently constituted panel of Stewards. Remittal back to the same Stewards who dealt with Mr Webb on 21 and 23 December 2020 may lead to any further action taken by those Stewards being subject to accusations of bias and a further denial of natural justice.
7. We consider that we have the power to decide and order that, in the interests of justice, the controversy concerning the conduct of Mr Webb on 9 and 10 December 2020 in his exchanges with Stewards and officials of GRV on those days can and should be properly before a differently constituted panel of Stewards for consideration. There is no need to concern ourselves under section 50ZE(1) to identify a matter to be remitted to the Stewards. However, should we be in error in that view, we consider that the matter is the controversary identified above in this paragraph. That is not the same as what was before the Stewards last December, but the entire topic of whether the conduct of Mr Webb on 9 and 10 December 2020 should be the subject of further action by the Stewards.
8. As we understand it, even in the absence of an order referring the matter back for reconsideration by the Stewards, differently constituted, Mr Hogan does not contend that the Stewards are prohibited from a fresh examination of Mr Webb’s conduct and the taking of any action reasonably open to them.
9. For the forgoing reasons, in addition to the order made on 18 January 2021 allowing the appeal, we make the following orders:
10. The decision of the Stewards made on 23 December 2020 to find Mr Webb guilty of a breach of GAR 86(q) is set aside.
11. The decision of the Stewards made on 23 December 2020 to suspend Mr Webb for 6 months is set aside.
12. The controversary concerning the conduct of Mr Webb on 9 and 10 December 2020 regarding Stewards and/or officials of GRV be remitted to the Stewards, other than those who were involved in the proceeding concerning Mr Webb on 21 December 2020 as reflected in the formal decision of the Stewards made on 23 December 2020.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal