

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE B. R. THORLEY

ASSESSOR: MR J. SCHRECK

APPEAL OF Mr RONALD FISHER

DECISION

The Appellant Mr Ron Fisher is a registered greyhound trainer who had three greyhounds involved in separate races at Potts Park on 15 March 2008. He owns a red Holden Commodore station wagon that is equipped with a screen between the rear of the back passenger seat and the rest of the vehicle, in which space the greyhounds were to be conveyed.

After the participation by these three greyhounds the Appellant retrieved them from the kennels and took them back to his car, where they were put into the space described. It is common ground that the windows of the station wagon were partly open, although there is some dispute as to whether they were open but two inches or three or four inches. Other attendants at the race meeting had their attention drawn to the condition of these greyhounds, and in particular a Mrs Sparks, and decided to remove them from the car in the belief that they were very affected by heat exhaustion deriving from their confinement in this vehicle. Having got them out of the car, they then proceeded to hose the greyhounds down in order to reduce their body temperature. At some point of time whilst this operation was in progress a friend of the Appellant's came and identified the concern that was being shown. He then went and located the Appellant, who returned to the car and took charge of his animals.

The concern that was exhibited by Mrs Sparks and others had been conveyed to Ms Curtis, a steward on duty at the race track. In due course, she reported these matters to Mr Hurley, the Chairman of the greyhound stewarding panel with the Authority. He then determined to open an inquiry into these events, and that took place at the office of the Regulatory Authority on 26 March 2008.

At the conclusion of the inquiry the stewards decided to invoke Rule 106(2), which requires that a registered person must exercise such reasonable care and supervision as may be necessary to prevent greyhounds pursuant to the person's care or custody from being subjected to unnecessary pain or suffering. A charge in these terms was then levied. It was particularised that he, the Appellant, had left the three named greyhounds in the vehicle unattended which resulted in the greyhounds being subjected to unnecessary suffering due to extreme heat conditions.

A common fact is that it was indeed a very hot day. Whilst there is no exact evidence of the precise temperature at the time of the dogs' confinement in the vehicle after they had raced, certainly the evidence indicates that during stages of the afternoon the temperature had reached 36° Centigrade. The Appellant was asked to plead to this charge, and on page 92 he states:

"Well, I suppose I have to plead guilty that the dogs were left unattended 15 minutes, for approximately 15 minutes unattended in the car."

After some interchange the Chairman of Stewards then asked his officiating colleague:

"Do you accept the plea of guilty in relation to the charge?"

To which his fellow steward said:

"Yes."

We have to say at the outset that we think that the statement by the Appellant is an equivocal plea of guilty at the very least. It seems to us that the most he was really saying is that he acknowledges that he in fact left the car with the dogs unattended for approximately 15 minutes. But it is not clear from that that he was pleading guilty to the charge as it had been enunciated by the stewards, and in particular to the subjection of the greyhounds to unnecessary pain or suffering.

He has appealed to this Tribunal, and it is not clear, either from his statements or any documentation lodged, whether he is appealing on all grounds or not. However, for the purposes of these reasons we have assumed that he has pleaded not guilty, as distinct from the course which was adopted before the inquiring stewards.

To that end then we have listened to his submissions, which have mostly been directed to an attack on the credibility of the persons who gave evidence before the inquiring stewards and to an assertion that the time constraints within which he did leave the greyhounds has to be restricted to no more than the 15 minutes to which he alluded before the stewards. Indeed, he would have this down to more like 13 minutes. He would further assert that the temperature inside his car was not oppressive beyond reason. Further, he would claim that, far from the greyhounds being in any distressed state, they were but merely reacting joyfully, if you will, or

wistfully, if you must, to the noise of the mechanical hare being projected around the rails of the Potts Park race track.

We would acknowledge that there is a dispute between the many witnesses as to the exact times that events happened or things were observed. It is predictable that the several people who contributed to the fact finding would provide varying evidence about the detail of what they observed and when they observed it. Of course, the Appellant was quick and eager to recognise this, and to point to these variations and inconsistencies, if only to ground his opening submission that the steward Ms Curtis was in reality in collusion with other witnesses to find him guilty of something. This suggestion is, we hasten to say, utterly groundless and based on no evidence. Nor indeed was it ever suggested to her.

Of course, we are uncertain as to the precise time that the dogs were so confined. But there are overt facts which can be regarded as beyond dispute. First, we have no doubt that the conditions inside that vehicle were oppressive. It is a matter of common knowledge and notoriety that a car will heat to a point well in advance of the ambient temperature in a very short time indeed, a fortiori when the car is of a darker colour. Secondly, these dogs were observed by people who are well involved in the greyhound industry. Any suggestion that they could be confused between dogs being distressed by heat exposure as compared to dogs being exhilarated by the noise of a mechanical hare is to us risible. We have no doubt that these people, in the goodness of their hearts, were moved to rescue these dogs from a condition that was causing completely unnecessary distress to these animals. To put the dogs in the car in those circumstances and to leave them there was, we think, an act which clearly attracts the attention of the rule under which he was charged and requires the finding of guilt that was made by the stewards.

On the question of penalty, however, we do have more to say. The issue of penalty is, in one sense, perhaps a bit more difficult. The stewards rightly opined that the welfare of the dogs was of prime importance. They referred to concerns in the general community—concerns which are shared by the Authority. The submission by Mr Fisher that these are matters of some irrelevance is rejected. Community concerns are to be noted and taken into account, albeit they may not be, as the case may be, compelling.

But where, the question is, do the instant facts fit into the context of events which could be regarded as breaches of Rule 106(2)? One can quickly imagine facts which should really result in the imposition of gaol sentences for crimes. That sort of offence, of gross cruelty, would very likely be followed by a complete ouster from the industry by the Authority of the offender. One can imagine other circumstances in which a registered person is involved in such an outburst of anger that a dog is beaten. One can imagine events when a greyhound is subjected to such a lack of food or water that its health is impaired. No doubt there are a whole variety of circumstances which can be at stake.

But, here, it seems to us that, apart from the instant matter, these dogs were well looked after. Indeed, two of them won races that day, and the third ran a place. We

would attribute the instant behaviour rather to a combination of perhaps laziness and thoughtlessness. We do not think that the Appellant in any way intended to do any harm to his animals. Nonetheless, the lack of care was significant, and were it not, as we have said, for the interest displayed by people who passed by this car, further and more serious harm may have resulted.

Categorising the offences in those terms rather indicates to us that the penalty of nine months disqualification is too high. We are aware of the type of penalty handed down in at least one other case by the stewards, and the Tribunal is also aware of a penalty that it itself ordered some year or so ago. But each case depends on its own facts, and this is a particular example of that.

In lieu of the stewards' penalty, we think it more appropriate that the Appellant be subjected to a suspension. We are not minded to alter the length of it. Hence, in substitution for the stewards' decision, we impose a period of nine months suspension. The suspension will date from today since the Appellant has been on a stay of proceedings.

The Appellant's appeal deposit is forfeit.

B. R. Thorley, Judge
28 May 2008