

**GREYHOUND & HARNESS RACING
APPEALS TRIBUNAL**

TRIBUNAL: His Honour Mr. B.R.Thorley A.M.

Assessor: Mr. J Schreck

APPEAL BY Mr. R. STEEL

DECISION

This is an appeal against the finding of guilt and the imposition of a period of three months disqualification imposed by the Stewards upon the appellant on the 27th, April 2008. The appellant was at that time a disqualified person upon whom there had been imposed a period of disqualification for a breach of the drug rules such as will expire, we understand, on the 9th of June next. The instant disqualification was directed to run consecutively upon the first.

At a non-TAB meeting at Dubbo on 24/4/08, there was nominated for a race the greyhound Half Moon which was registered in the name of and owned by the Appellant. Rule 99(2)(a) of the Rules of Greyhound Racing provides:

"A person who is disqualified, warned off, suspended or declared to be a defaulter shall not,
during the period of the penalty -
(a) nominate a greyhound for any event,"

The stewards, after an inquiry which was conducted on the 24th, the 25th and the 27th April charged the Appellant under this rule and found him guilty.

This appeal was heard on the 29th May when Mr. Taylor, Solicitor, appeared for the Appellant and Mr Degan appeared to represent the Stewards. Mr Taylor had prepared

written submissions for which the Tribunal gives him thanks. Whilst a number of matters were canvassed in those submissions, the gravamen of the appeal can be reduced to one real issue. This is whether on the proper construction of the rule and on the available evidence, the appellant who was a disqualified person can be said to have nominated this greyhound for the race at Dubbo.

This then obliges the Tribunal to examine the evidence upon which the Stewards acted. The appellant had been a registered owner and trainer of a number of greyhounds. Mrs. Steel, his wife, was also the registered owner of other greyhounds. When he suffered disqualification for the drug breach, he attempted to transfer dogs, including Half Moon, to his wife. However this application was rejected by the Authority, as might well be expected. Mr. Graeme Smith is a public trainer. To him, the appellant turned and sought that he take over the dogs including Half Moon. Mr. Smith agreed to take the dogs but exactly on what arrangement is not clear. At all events some weeks before the races at Dubbo, the dogs were physically handed into the care of Mr. Smith. At the same time were handed over papers relating to their registration together with a nomination form for the race in question. It seems this form had been partly completed by Mrs. Steel and bore the name of the appellant as owner. We understand from the evidence that this did not cause Mr. Smith any alarm who believed there was nothing amiss with this form of paper work. At all events he did himself complete and forward the nomination form onto the race club at Dubbo. (We would comment that in the case of a non-TAB meeting, this course of events is usual and thus the scrutiny of the Authority is not immediately directed) In doing this, he did not alter the form where it described the appellant as owner. It also appears to be common ground that the appellant was told by Mr. Smith that the dog was indeed nominated for the race on question. To this revelation, it appears on p.10 of the transcript, the appellant said 'Do what you like with them because you are his trainer. I've got nothing to do with them.'

It is not entirely clear but we deduce that at the time the dogs were physically handed to Mr. Smith, the Authority had not communicated its decision to refuse transfer to the wife. It follows that at that point of time, the appellant believed that he had done

enough to rid himself of involvement. However by the time of the race, this belief could not be sustained.

The definition clause in the Rules contains a definition of 'nomination' as meaning 'the submission of an entry of greyhound for an event'. This definition does not help in providing a solution to this appeal. It operates to restrict what is involved to the bare act of a submission. In other words, acceptance of the submission is not needed to come within the act of nomination. But this is not to the point here. Here there can be no doubt that the dog was nominated. The only question is whether that act of nomination can be attributed to the appellant.

It is common industry practice for nominations to be effected by the trainer of the dog. So many of the participants in the industry are owner/trainers. Nominations by such a person present no issue. When the dog is owned by a person who is not the trainer i.e. when the dog is in the care of a public trainer, nomination by the trainer again does not present any difficulty because the trainer can clearly be seen to be acting within ostensible authority such that the act of nomination by the trainer can be attributed to the owner. To cull from the words of Byles J. in the well known old case of *Dingle v Hare* (1859 7 CB 143) an agent to train for racing has a general authority to do all that is usual and necessary. This obviously includes an authority to nominate for a race a dog which is being trained to race.

The particulars given by the Stewards of the charge under R. 99(2)(a), as they appear on p.35 of the transcript are but an assertion that the appellant was "aware that a greyhound in your name had been nominated" This assertion was, in the Tribunal's opinion, correct in fact. But we are not satisfied that mere awareness of that fact constitutes the act of nomination. To hold that mere knowledge is sufficient requires an interpretation of the Rule that we do not think is available.

We well understand that the stewards took action to inquire. Perhaps there is a case to provide some amendment to the Rules to cover the case where someone takes no

action to avoid an impropriety. Surely the appellant does not deserve any credit for his failure to set matters aright following upon his disqualification. But in the end result, we are not convinced that the particulars given support the claim that there has been a breach of the relevant rule.

For these reasons, the appeal is upheld and the orders and findings of the Stewards are set aside. It is directed that the appeal deposit be returned.

A handwritten signature in black ink, appearing to be 'R. M. M. M.', written in a cursive style.

TRIBUNAL
29/5/08