

GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES

TRIBUNAL: JUDGE B. R. THORLEY

ASSESSOR: MR J. SCHRECK

APPEAL OF Ms ADELE POWELL

DECISION

At a hearing before the stewards on 7 May 2008 the Appellant Ms Adele Powell was charged under Rule 125(1)(p)—these being the rules which were then in force in 1907—with having failed to obey the lawful order of a steward. The particular of that charge was given that she disobeyed the lawful order of the steward Mr Maynard during an interview at Wentworth Park on the night of 24 September 2007 when he stated, "Ms Powell, do not leave this inquiry", when she was in the process of leaving the stewards room, and to which she replied, "Charge me."

When asked to plead to this charge, she said, "I'm guilty of leaving a stewards inquiry which I wasn't informed of; that's correct. I'm guilty of leaving the room. There was an inquiry that I didn't know was an inquiry, that is correct." Again, when pressed on page 64, and asked whether she was happy to proceed and enter a plea in relation to the charge, she said, "I'm guilty."

Her appeal against her conviction and her subsequent penalty of three months suspension has come before the Tribunal this day. Mr English, solicitor, has appeared for the Appellant, and Mr Orlizki, solicitor, has appeared for the Authority. Her notice of appeal asks, first of all, that leave be given to her to withdraw her plea of guilty and to enter a plea of not guilty. This application is resisted by the Authority.

Mr Orlizki has, commendably, produced for the benefit of the Tribunal the decisions in *The Queen v Galasso* [1981] ACR, at 455; *The Queen v Liberti* [1991] ACR, at 120; and *The Queen v Van* [2002] ACR, at 229. The effect of those decisions is to lay down the principles that are applicable in the criminal law when there be an application to change a plea of guilty to one of not guilty, and to spell out what is contained in, and the consequences of, a plea of guilty. We note, and of course respect, the decisions laid down by the several Courts of Criminal Appeal there involved. But we have to say that over many years this Tribunal has dealt with

similar applications to the one here, that is to say, applications for a change of plea to one of not guilty.

Almost without exception, in the Tribunal's memory, permission has been given to the Appellant to change the plea accordingly. This has been done in the Tribunal's recognition of the stresses which operate in the usual hearing to be conducted by stewards in the urgency and tempo of a race meeting. It is not to fail to recognise that a plea of guilty is even yet a solemn event and that the entry of such a plea is an admission of the totality of the ingredients that are needed to be proved by stewards in whatever breach of the rules is asserted by them. Indeed the several decisions of the Courts of Criminal Appeal themselves reveal occasions when it is appropriate for a change of plea to be suffered, and we would merely add to those by recognising that in the case of this jurisprudence we have to accept the pragmatic exigencies of what goes on during the running of race meetings. We propose then to permit of the plea of guilty to be changed, and it is so ordered.

The only issue argued on appeal on behalf of the Appellant is whether or not the facts demonstrate that there had been a lawful order. There is no issue raised in this case that, if the order be given, it was one given by a steward. Nor is there any issue raised that, if the order was a lawful one, it was directed to and understood by the Appellant as such. We repeat, the only issue argued is whether or not that which was done can be regarded as a lawful order.

It is pointed out by Mr English that there is no specific rule in the Greyhound Racing Rules which specifically empowers a steward to direct a person to continue to remain at a stewards inquiry and to take part in it. What happened in this case was that a complaint was made that Ms Powell, who is a licensed person, had failed to wear her ID card when in a proscribed area at Wentworth Park. The issue of whether or not she was wearing such an ID instrument is not to the point and is not determined by this Tribunal. However, she was asked to attend the stewards room in relation to this issue. This she did when Mr Maynard was the steward on duty.

It would seem as if the Appellant behaved in a non-receptive way to the fact of this inquiry and before its conclusion indicated that she would not remain any longer. Hence, as appears, it is said, on the bottom of page 7 of the transcript of that inquiry, as she was departing the stewards room the chairman Mr Maynard said, "Ms Powell, do not leave this inquiry." She responded to that by saying, "Charge me." It is that event and the utterance of those words, and her failure to heed them, that constitute the allegations that are made in this appeal against the Appellant.

Based on the absence of a specific rule to enable the utterance of the words attributed to the chairman of stewards, Mr English argues that that utterance could not be regarded as a lawful direction. He calls in aid the reasons which were given by Chief Justice Gleeson in the migration case appeal reported as *S157/202 v The Commonwealth*, reported at 195 ALR, where His Honour referred to the rights of citizens which could not be abrogated without clear statutory evidence of an intention so to do. Hence, it is argued, there was no power to direct the Appellant to remain since that would have had the effect of abrogating her right to her freedom

to some extent. Of course, such a decision from the High Court is regarded as binding on this Tribunal. But we do not think that it is in point.

Under the rules which existed in 2007, Rule 11(2) not only enabled but required any person who is subject to the Rules of Greyhound Racing (and, we interpolate, this obviously includes the Appellant) to attend and give evidence before a stewards inquiry. It is an absolutely necessary implication from that obligation that the person so required not only attend but keep attending until the stewards have completed, within reason, their inquiry. It is a rule which necessarily implies that during that time of attendance the person subjected to the rules will make himself or herself available for the giving of evidence for such time as might be reasonably required of that person by the stewards. To otherwise interpret the requirement under Rule 11(2) would be to render the whole purpose and effect of inquiries by stewards as a waste of time and to abrogate their duties.

We have no doubt that this was a valid direction and one to which she made a deliberate choice to respond by ignoring and disobeying it. Whilst we granted her leave to plead not guilty, we think the evidence clearly supports the finding of guilt.

As we have pointed out, the stewards determined that a period of three months suspension was appropriate. In so doing, the stewards gave credit to the Appellant, it is said, for the fact that she had pleaded guilty. It is now argued on behalf of the Authority that she, having come to this Tribunal and having now changed her plea to one of guilty, is no longer entitled to whatever credit was given to her for a plea of guilty and that therefore the period of three months should be increased by this Tribunal to whatever it is we think would have been appropriate at the outset. That the Appellant was at risk to suffer an increase of penalty was not disputed by Mr English on his client's behalf.

As we have indicated during the upper part of these reasons, we take the view that the stewards merit the protection of this Tribunal whenever there is an attempt to undermine their authority and their dignity. We have in previous decisions expressed our sentiments in these regards and have indicted that the stewards are the frontline troops of the Authority's obligations to regulate in an orderly way the running of this industry and their efforts need to be protected albeit regulated. For that reason, we share the view of the stewards that any endeavour to disrupt the work which falls to the panel of stewards has to be regarded as an affront to the industry and a breach of seriousness by the perpetrator.

However, this Appellant has had a very remarkable history of involvement in the industry. She is well-known in the industry. She has been a major contributor to it and has utterly no record, notwithstanding her 31 years of contribution. We think in those circumstances there is utterly no case to increase the penalty which is at stake. But, equally, we see no reason to reduce it. Mr English did argue earnestly for the imposition of either no penalty or for but the imposition of a fine. We, on the other hand, believe it is serious enough to warrant the three months suspension that was imposed.

Hence the appeal is wholly dismissed and the stewards' findings and orders are confirmed.

The order for suspension will date from today.

The Appellant's appeal deposit is forfeit.

B. R. Thorley, Judge
23 June 2008