

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

TRIBUNAL: JUDGE J. C. MCGUIRE

ASSESSOR: DR P. KNIGHT

APPEAL OF MR RODNEY McDONALD

DECISION

Mr Rodney McDonald (the Appellant) has appealed against a finding of guilt and the penalty imposed for a breach of Rule 83 of the Rules of Greyhound Racing following a stewards inquiry. That rule and the particulars thereto are as follows:

R83 Racing greyhound to be drug free

(2) The owner, trainer or person in charge of a greyhound –

(a) nominated to compete in an Event;

shall present the greyhound free of any drug.

Particulars:

That you did on 7th March, 2008 present the greyhound 'DANA JACK for an event being Race 8 Cowra Guardian Stake held at Cowra other than free of prohibited drugs in that the race day urine sample taken from the said greyhound has returned on analysis positive to PREDNISOLONE (Rule 83(2)(a) Rules of Greyhound Racing).

The Appellant was the owner and trainer of Dana Jack. It was subjected to a random swab that demonstrated the existence of the drug prednisolone. Exhibited before the stewards were the various documents relating to the analysis certifying the presence of the drug. That analysis was conducted by the Australian Racing Forensic Laboratory, which certified that the urine sample was found to contain the prohibited substance prednisolone.

In the course of his evidence in the stewards inquiry the Appellant was asked to explain the presence of this substance in the urine sample. He tendered a report from his veterinary surgeon, Dr Stuart Austin, in which were included the remarks:

I recommended the use of Prednoder® dermal ointment, to be applied twice a day for a period of 3 to 5 days, or until the condition resolved. Mr McDonald used the medication as directed from 28 January 2008 until 8 February 2008.

He then set out instructions provided by the manufacturer, and went on to say:

As a consequence of this guidance, I recommended to Mr McDonald that he should cease use of the product at least 14 days prior to competition, more than quadrupling the suggested safe period offered by Jurox Pty Ltd.

The Appellant claimed to have done exactly as the veterinary surgeon had advised him, and that he ceased using the preparation on 8 February 2008. When questioned at the stewards inquiry as to the time lapse between his claimed last use of the preparation on 8 February and racing the dog on 7 March, he stated that there were no races on for it. This was less than frank, as he subsequently admitted that in fact the dog raced on 9 February at Cowra and on 17 February at Forbes. In the course of his evidence he stated:

Yes. You can see he raced on 9 February at Cowra, by his record. I actually approached the steward in charge, Mr Paul Farrelly, and I said, "Paul," I told him I had used the cream. I said, "I could be in trouble here." Do you want me to scratch the dog, or is he right to go?" He said, "Race him."

The sample taken from the dog on 7 March 2008 was sent to the Racing Chemistry Centre in Western Australia for testing on 22 April 2008. A representative of that organisation, Mr Russo, was questioned about that organisation's test results and as to why prednisolone was not detected at the Western Australian centre. Mr Russo stated:

There are a few things in relation to the sample. Normally we turn our confirmation samples around in a lot quicker time. I'm actually having problems with one of my instruments. So we hoped to actually confirm it within a reasonable time frame, but it sort of took a lot longer than expected. We looked for it on a different instrument, and by that time we probably would have had some sample deterioration. When we actually looked at it, we could not see any indication of prednisolone at all. But that probably was due to sample deterioration, due to the time factor for us to actually analyse it. What else can I tell you about the sample? We could easily see spikes at about, we estimate, less than half a nanogram per mille, and we would have thought that this sample would have had a concentration of prednisolone in excess of that. But, again, that may have been due to the time factor for us to actually confirm it.

It will be seen from that answer that it is not strictly accurate to say that there were no traces of the drug, albeit that the quantity was small. From his statement, "We could easily see spikes..." et cetera, it appears to the Tribunal that Mr Russo was not excluding the presence of the drug in that sample.

Mr Rowe, counsel for the Appellant, conceded that in accordance with Rule 81 there was prima facie evidence of the presence of the drug prednisolone in the dog when it was presented for racing at Cowra. However, he submitted that, having regard to the expert evidence, the Tribunal could not be comfortably satisfied of the Appellant's guilt on the *Briginshaw v Briginshaw* standard. He contended that the real issue was whether the Tribunal could reconcile the evidence of a positive test and the negative results from the

confirmatory testing in the Western Australian laboratory. True it is that explanations were given to account for the degradation and deterioration in the sample, i.e. bacteria, the storage temperature, effluxion of time and pH in the urine, but, he submitted, there was no evidence as to the degree and extent of any bacteria, the existence of the temperature suggested or the pH in the urine. He further submitted that all the experts had done was to advance theories to explain the negative result and, further, that there was no good reason to query that negative result. It followed therefore, ran the argument, that because of the lack of a positive confirmation, a real doubt would exist as to the validity of the positive sample certified by the Australian Racing Forensic Laboratory. Accordingly the Tribunal could not be comfortably satisfied that the charge had been made out.

There is no issue that prednisolone is a drug within the meaning of the Rules of Greyhound Racing and that it has a number of actions, including anti-inflammatory action and relieving the pain of inflammation of the musculoskeletal system. In addition, it has affects on the central nervous system, including stimulation, euphoria and a feeling of wellbeing.

That drug was administered to Dana Jack by the Appellant. He, having received advice from his veterinary surgeon. Clearly would have been aware of the prohibitions and restrictions on the use of the substance. The Appellant disregarded veterinary advice and raced the dog on 9 February 2008 and 17 February 2008 when he well knew that he should not have done so. He is not before this Tribunal for that conduct. However, it is indicative of his lack of regard for his obligations to present a dog drug-free. His conduct at Cowra on 9 February is an example of that. Obviously on that occasion he would have been aware of the presence of the drug in the dog at that time having regard to the advices he had received from his veterinary surgeon.

The certificate of analysis is prima facie evidence of the presence of the prohibited substance. There is no requirement for verification by a confirmatory analysis. Having regard to that certificate and the surrounding circumstances and the entirety of the evidence, the Tribunal finds itself comfortably satisfied that the charge has been made out.

The Appellant is a single man aged 33 years. He has had a lengthy connection with the industry, commencing when he was but a child. His normal employment is that of an abattoir worker. He has some 15 dogs in training and 30 pups coming through. As well as spending some five hours a day training dogs and working at the abattoir, he devotes long hours to the advancement of the industry by his voluntary efforts in cleaning kennels and track maintenance.

Mr McDonald has been a registered trainer since age 18. Doubtless the many dogs he has raced over the years have been swabbed. He indicated that this had occurred some 50 to 100 times. However, he has a clear record. He has never previously been called before the stewards for any reason.

The Tribunal does not accept the proposition that prednisolone is not a performance-enhancing drug. However, it makes no finding on the question of whether he administered the drug with the deliberate intent to use the drug for this purposes.

The Tribunal is unable to accede to the submission that no conviction be recorded pursuant to Rule 98. It must be seen by the public that those engaged in racing and training are bound to observe the strict protocols designed to ensure fair and honest racing. All prohibited substances to some extent have the potential to affect a dog's performance. The

public is entitled to enjoy the confidence provided by the knowledge that the dog performs on its merits and without the benefit or hindrance provided by prohibited substances.

In fixing penalty the stewards took fully into account the various subjective matters standing to his credit. They were properly concerned with the element of deterrence. In fixing a three months disqualification, that was clearly a consideration. It must be seen by all associated with the greyhound racing industry that meaningful penalties are applied for breaches of the rules relating to the use of prohibited substances. This Tribunal, with respect, endorses the remarks of the stewards.

The appeal is dismissed. The finding of guilt is confirmed. The disqualification of three months is confirmed. The Tribunal waives the fine of \$350. The disqualification of the greyhound is also confirmed. It makes no order with regard to the Appellant's appeal deposit.

J. C. McGuire, Judge
30 July 2008