

**RACING APPEALS TRIBUNAL****QUEENSLAND****NOTICE OF DECISION**

**APPEAL NO:** RG001-08

**DATE:** 21 February 2008

**APPELLANT:** Mr Denis Godfrey

**RESPONDENT:** Greyhound Racing Authority

**APPEAL FROM:** Decision of the Stewards of Queensland Greyhound Racing Authority that the Appellant breached Rule 122 of the Rules of Greyhound Racing and the penalty imposed of six months disqualification and \$1,000 fine. Appeal against finding and penalty.

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**BREACH OF RULE:** R122 (New Rule R83(2))

**DECISION:** Appeal upheld.

**APPEARANCES:** Mrs Helen Boyd Solicitor appeared on behalf of the Appellant.

Mr Danny Ryan Chairman of Stewards with Mr Chas Clifford Deputy Chairman of Stewards appeared on behalf of the Respondent.

**REASONS FOR TRIBUNAL'S DECISION**

Mr Dennis Standfield - Member

The Appellant is Mr Denis Godfrey a Licensed Trainer who on 25 January 2008 was disqualified for a period of six months and fined \$1,000 by the Stewards of Queensland Greyhound Racing Authority for a breach of Rule 122 of the Rules of Greyhound Racing. Those Rules were replaced on 1 January 2008 and the former Rule 122 is now within the Greyhound Racing Authority (Qld) drug free Rule 83 and specifically sub rule (2).

Rule 122 stated:

"The owner, trainer or person in charge of a greyhound nominated to compete in an event shall produce the greyhound for the event free of any drug."

The Stewards Inquiry was held at Townsville commencing on 27 December 2007 and concluding on 25 January 2008. The particulars stated by the Stewards in support of the breach of the Rule were (at page 33 from line 40 of the Stewards Inquiry Transcript):

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"The Stewards are charging you under Rule 122, Mr Godfrey that you produced the greyhound Miss Manhatten to compete at the Townsville Greyhound Racing Club meeting on 1 November in Race 6, and upon subsequent testing of Sample Number 254594 taken from the greyhound returned positive to theobromine and paraxanthine, which are metabolites of caffeine."

The Appellant pleaded not guilty to the charge and vehemently denied that he had administered anything or have any knowledge of how the drug would have found its way into the greyhound's system.

In delivering their decision and finding the Appellant guilty of a breach of the Rule the Stewards stated (at page 36 from line 26 of the Stewards Inquiry Transcript):

"... Mr Godfrey, the stewards have considered the scientific evidence that has been provided to us by the Racing Science Centre and we have considered your plea of not guilty after being charged under Rule 122.

The Stewards have found you guilty as charged - that the greyhound Miss Manhatten was produced by yourself to compete at the Townsville Greyhound Racing Club on 1 November in Race 6, and was subsequently placed 6<sup>th</sup>, and upon testing under Sample Number 254594 was found to have theobromine and paraxanthine in the greyhound's system - both prohibited substances."

The Stewards then went onto refer to the Appellant's previous breaches in relation to positive swabs of 3 July 2004 and 10 November 2007 and imposed a penalty of disqualification for six months and a fine of \$1,000.

It is clear that the basis that the Stewards had found the Appellant had breached the Rule was relying upon the Certificate of Analysis provided to them stating that the sample analysed contained paraxanthine and theobromine. This the Stewards were entitled to do pursuant to Rule 81 which states that such a Certificate is prima facie evidence of the matters contained in that Certificate for proceedings under the Rules.

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Rule 81 does however have to be read in conjunction with Queensland Local Rule LR18 which states:

*"A certificate of analysis shall be in accordance with the provisions of the Act or in accordance with the policy laid down by the Racing Animal Welfare and Integrity Board".*

In the appeal of Mr Kerrod Smyth and Queensland Racing being Appeal No R004-05 of 9 May 2005 the Tribunal examined in detail the interplay between the requirements of the Racing Act 2002 and the Racing Regulations 2003 and the Racing Animal Welfare and Integrity Board publication of July 2003 titled "Procedures About The Way Things For Analysis Are To Be Taken And Dealt With" ("the Procedures Document"). That publication is still the relevant Procedures Document. As stated in that decision the Tribunal confirms that for a Certificate of Analysis to have probative value there has to be compliance with the Procedures Document.

Ground 1 of the Appellant's Notice of Appeal filed 29 January 2008 stated:

*"1. The Stewards erred in their decision as they relied on a flawed Certificate of Analysis as there were significant departures from the procedures outlined in the Procedures Document".*

What this ground of appeal relates to and what the Tribunal considers is the essential aspect of this Appeal is that when the Samples taken by the Stewards at the Townsville meeting of 1 November 2007 were received by the Racing Science Centre the tamper evident security seal was not affixed to the security bag. The tamper evidence security tag is in the Procedures Document and the Record of Sample Custody and Despatch form ("the Custody Form") commonly referred to as the "blue tag". A notation that the "blue tag" was not affixed to the security bag carrying the Samples is noted in Section 6 of the Custody Form when at 11:10am on 8 November 2007 there is written "no blue tag" where the Tag Number is to be inserted on the Custody Form. There is also an acknowledgment in the No box of the form that the "blue tag" was not intact on arrival. The Custody Form does however go on to state that the sample kit seals (which contain the Samples within the blue security bag) were "Intact + Consistent".

At the Inquiry the Appellant understandably questioned why the Samples taken on 1 November 2007 took until 8 November 2007 to be received at the Racing Science Centre.

There was produced at the Inquiry Exhibit 15 which was a letter from Mr Peter Coker Security Manager -- Queensland of TNT. That letter states that the consignment (which was the blue security bag) was collected by TNT from the Stewards at Townsville at 16:08 hours on 2 November 2007 and transported to the TNT Townsville depot. From there it was loaded into a Brisbane bound semi-trailer and arrived at TNT Salisbury depot over that weekend. The penultimate paragraph of Mr

Coker's letter then attempts to set out what occurred when the bag was at the TNT Salisbury depot. Although there is conflict in that letter in that the scanning consignment details state the bag was dispatched on 7 November while the letter refers to 8 November it is clear from the Custody Form the bag with the Samples were delivered to the Racing Science Centre at 11:10am on 8 November 2007. While Mr Coker's letter states that there is proper security at the TNT Salisbury depot the letter does not touch on why the "blue tag" was not on the blue security bag as it was when it was collected by TNT in Townsville from the Stewards six days previously.

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Mr Ryan accepts that the "blue tag" was not on the blue security bag but he states that the Samples themselves were in tact as stated on the Custody Form. Mr Ryan produced to the Tribunal examples of the "blue tag" and submitted that what occurred in this matter was that somehow it accidentally came off while the blue security bag was in the possession of TNT.

Notwithstanding that this is what may have occurred the Tribunal is of the opinion that the "blue tag" is an integral part of the Procedures Document and its failure to be attached to the security bag cannot be excused. While removal either accidentally or intentionally may have occurred while it was in the possession of TNT this does not relieve the Stewards from their obligations under the Procedures Documents (page 19) in that the "authorised representative of the control body must":

- Deliver, or arrange for the delivery of, the security bag and the chain of custody documents to the accredited facility.

The Tribunal finds that as the "blue tag" was not on the blue security bag that the Procedures Document has not been adhered to with respect to Sample No 254594

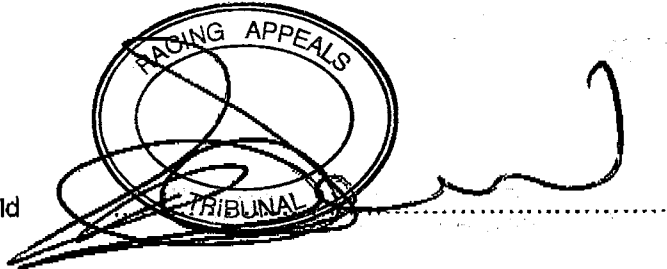
and accordingly it is not proper to rely on the Certificate of Analysis that relates to that sample.

The order of the Tribunal is:

- 1 Appeal allowed.
  
- 2 Appeal deposit fee to be refunded to the Appellant.

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Mr Dennis Standfield  
Member

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