

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RG001-09

DATE: 15 April 2009

APPELLANT: Mr Allan George Svensen

RESPONDENT: Greyhounds Queensland Limited

APPEAL FROM: Appeal against the decision of the Stewards to impose a penalty of 3 months suspension and a fine of \$500.00 for a breach of Rule 83(2)(a)(d). Appeal against finding and penalty.

BREACH OF RULE: Rule 83(2)(a)(d)

DECISION: Appeal dismissed.

APPEARANCES: Mr Svensen appeared on his own behalf.

Mr Danny Ryan, Chairman of Stewards appeared on behalf of the Respondent.

REASONS FOR DECISION

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

The Notice of Appeal in this matter was filed on 6 March 2009. The Tribunal extends the period for the hearing of this Appeal to the date hereof in accordance with the provisions of Section 171(2) of the Racing Act 2002.

The Appellant is the holder of an Open Licence and was on 16 October 2008 the Trainer of the greyhound Little Italian when it competed in Race 5 at the Rockhampton Greyhound Racing Club Meeting and was placed 5th. A specimen of urine was taken from the greyhound. The Certificate of Analyst from the Racing Science Centre stated the sample contained betamethasone. A confirmatory sample was analysed by the Australian Racing Forensic Laboratory and was also found to contain betamethasone. Betamethasone is a synthetic corticosteroid that exerts anti-

inflammatory effects. It is used in veterinary medicine in topical eye and ear ointments to assist in the treatment of inflammation of the eye or inflammation of the external ear. In human medicine it is used in the treatment of rheumatic disorders.

The Inquiry into the positive finding commenced at the Rockhampton Greyhound Racing Club on 16 October 2008. At the Inquiry Mr Svensen was adamant that he had not given the greyhound any substances or that there was any change in the dog's normal diet. Mr Svensen also stated that when he was advised of the positive swab and asked if he had used any eye creams, he and his wife checked everything they had used and nothing was stated on the creams to have in them the presence of the drug.

As Mr Svensen could not see how the greyhound could have returned a positive swab, he did at the first day of the Inquiry raise matters of procedure which were of concern to him with respect to the security, handling of dogs and taking of samples at the Rockhampton Club. However, Mr Svensen did acknowledge that the taking of the sample by the veterinary surgeon on 16th October was not a basis of his complaints which related generally to procedures in past instances (Stewards Inquiry Transcript ("SIT") Page 16 Line 3).

At the Inquiry Mr Svensen was charged with breach of Rule 83(2)(a)(d) which states:-

"The owner, trainer or person in charge of a greyhound:-

(a) Nominated to compete in an event;

(d) Shall present the greyhound free of any drug."

After Mr Svensen entered his plea of not guilty, Mr Danny Ryan who was Chairman of the Stewards' Panel at the Inquiry advised the Inquiry would be adjourned and that the matters raised by Mr Svensen would be investigated by Greyhounds Queensland's Investigative Steward, Mr Zac Bryson.

The Inquiry recommended on 23 February 2009 which was after Mr Bryson interviewed Mr Svensen and other persons at the Rockhampton Club. Mr Svensen did give to Mr Bryson a list of three substances that he asked to be analysed. Details of these substances were Exhibit 11 at the Stewards Inquiry and were stated as Le Tan, Poly Tears and Efudix. The Stewards did request information on those substances and were advised by the Manager of Veterinary Services, Racing Science Centre, Dr E. Bruce Young that there is no betamethasone in any of those substances. Furthermore, the Stewards did request from Dr Young advices on

whether he could express an opinion that the drug could have been on the hands of the Veterinary Surgeon when he checked the greyhound. That email to Dr Young was dated 19 January 2009 and was as follows:-

“Dear Bruce,

On Saturday the 17th of January I opened a Stewards Inquiry in Rockhampton relation to Sample 268500 positive to betamethazone.

During submissions from the trainer he claimed amongst a number of other things, that the drug betamethazone found in his greyhound’s system could have resulted from the drug being on the hands of the veterinary surgeon while checking the greyhound at kennelling time or from the hands of a steward checking greyhounds as well.

Given the hands of both parties are on the greyhound spasmodically during a 30 second period, could you please express an opinion of this action being the source of the positive test.

Two other greyhounds were also tested at the same race meeting (268499 , 268502) under the same conditions and were clear of drugs.

Thanking you in anticipation.

Danny Ryan

Chairman of Stewards”

Dr Young’s response to that email was dated 20 January 2009 and was as follows:-

“Dear Mr Ryan,

Regarding the scenario you have provided regarding sample 268500, I provide the following comments.

It is acknowledged that there are several registered veterinary and human products which contain betamethazone for use topically (on skin), aurally (in the ears) and ophthalmically (in the eyes).

Whilst it is possible the above preparations may inadvertently contaminate a veterinary practitioner’s hand, the likelihood of it then being transferred to a greyhound, ingested, metabolised and then excreted in a urine sample, all

within the timeframes of a race meeting is extremely unlikely, almost “fanciful”.

It would be my opinion that there are many more plausible scenarios to explain the presence of betamethazone in sample 268500 than the one you have provided for comment.

Regards,

E.B. Young. BVSc”

At the resumed Inquiry, Mr Svensen continued to refer to matters of non-procedure at Rockhampton meetings with those matters still being of a general nature and not specific to the sample taken from his greyhound on 16 October 2008.

The Stewards considered the matter and found against Mr Svensen. With respect to penalty, they acknowledged Mr Svensen's integrity and honesty and that he has an unblemished record in the industry for over 20 years. They then applied what they stated was the minimum penalty for a positive swab which was a suspension of his licence for 3 months and a fine of \$500.00.

In his Appeal to the Tribunal, Mr Svensen appeared by videolink from Rockhampton, and read submissions which were filed in the Tribunal on 9 April 2009. With those submissions Mr Svensen also filed in the Tribunal with the consent of Mr Ryan the report of Mr Zac Bryson dated 30 January 2007 which is headed “Private & Confidential” and “Rockhampton Investigation Re: Svensen Inquiry”. That report is comprehensive and refers to matters raised by Mr Svensen with respect to procedures at Rockhampton racemeetings and matters observed by Mr Bryson when he was at the Rockhampton meeting on 27 January 2009.

With respect to the charge against Mr Svensen, Mr Bryson did state in the penultimate paragraph of his report:-

“In conclusion even though Mr Svensen did raise a number of matters that need rectifying urgently, I am of the opinion that none of these matters themselves as explained in this report are sufficient enough for the charge against him to be dropped. I believe the only unanswered questions in relation to the charge against Mr Svensen is whether or not it is plausible that betamethasone could have been passed on through the contamination of someone's hands when examining the greyhound for racing, or if any of the list of products Mr Svensen had been using at home contains

betamethasone. As mentioned previously this matter is for the appropriate qualified personnel to make comment on.”

As to the specific matter of whether handling of the dogs could have resulted in the positive swab, this was considered by the Stewards and they have the response from Dr Young in his email of 20 January 2009 that any contamination of the sample “...is extremely unlikely almost “fanciful””. While further explanation of the matter was sought by Mr Svensen, the Tribunal sees no obligations on Dr Young to give any further explanations. It is noted that Mr Svensen has not presented any evidence to the Tribunal to dispute Dr Young’s evidence.

The standard of proof applicable is “on the balance of probability” as expounded in the decision of *Brigginshaw v Brigginshaw (1938) 60CLR 336*. Although for a charge of this nature it is at the “higher end” of the proof required, there is simply nothing before the Tribunal to cast doubt on the Certificate of Analysis finding that the sample from the greyhound contained betamethasone. In considering the Transcript of the Inquiry with the exhibits and Mr Svensen’s submissions, the Tribunal finds the breach of the rule proven.

While Mr Svensen may feel aggrieved because he is adamant that he did not administer any substance to the greyhound, that is not relevant when a breach of this rule is to be considered. The greyhound was found to have a drug in its system when it raced on 16 October 2008 and the industry demands that greyhounds that are participating in racing be drug-free.

The Appeal against the finding of the Stewards with respect to a breach of the Rule is dismissed.

With respect to penalty, Mr Svensen did not offer any submissions and the Tribunal’s view is that because of his previous unblemished record in the industry that the penalty of 3 months suspension and \$500.00 suspension is appropriate.

The Appeal against penalty is also dismissed.

Mr Brock Miller
Deputy Chairman

Mr Dennis Standfield
Member