

Appeal decision

Decision date: 18 September 2015

Hearing date: 28 August 2015

Code of racing: Greyhound

Appeal panel: Mr B Miller (Chair), Mr P James and Mr D Kays

Appearances: Mr Barry Taylor, solicitor, Emanate Law appeared on behalf of the appellant Darren Barbour
Ms April Freeman of counsel appeared on behalf of Racing Qld

Decision being appealed: Findings of guilt under GAR86(o) and GAR86(q)

Appeal result: Decision under GAR86(o) varied and appeal upheld in respect of GAR86(q)

Darren Ross Barbour was the Racing Manager at the Brisbane Greyhound Racing Club and was seconded to act as a stand-in Grader at Racing Queensland to assist in the absence of the Chief Grader, Mr Doug Lutherborrow. During the course of his acting for Racing Queensland, he was involved in the grading of a particular race which resulted in the greyhound Just Like Tina, being improperly included at the expense of another greyhound Earning which had been an earlier nomination for the grade. Investigations reflected that the greyhound Just Like Tina was owned by a syndicate which included Mr Barbour's family and close friends and it also revealed that he had placed two bets on the race both of which included Just Like Tina. A complaint was received from the owner of Earning which resulted in an Inquiry being conducted by Stewards into the circumstances of the inclusion of Just Like Tina and the exclusion of the other greyhound. The Inquiry was conducted over a period of three non-consecutive days and at the conclusion of that Inquiry, the Stewards issued charges against Darren Barbour under GAR.86(o) and GAR.86(q). The first charge under GAR.86(o) stipulates:

A person (including an official) shall be guilty of an offence if the person has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

GAR.86(q) stipulates:

A person (including an official) shall be guilty of an offence if the person commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

The particulars of each charge comprise six separate components which were numbered (a) – (f) inclusive. The particulars were identical in each charge and effectively identified that he:

- directed Ms Nicola Hardman to extend nominations for the event when not required as sufficient nominations were already received;
- failed in his obligations to declare to Racing Queensland his conflict of interest in respect to the greyhound Just Like Tina when he was aware that such greyhound was owned by his immediate family and others;
- failed to remove himself from his duties in overseeing the grading of the particular event;
- entered Just Like Tina into the race in preference over an originally nominated greyhound;
- wagered on the particular event by placing a quinella and first four bet with Just Like Tina in his selections via a betting account; and
- also placed other wagers on greyhound events during the week of 23 February to 26 February which he either graded or oversaw the grading.

At the conclusion of the Inquiry, the Stewards convicted Mr Barbour of both offences and imposed a 12 month disqualification period. It is as a result of that conviction and the imposition of the disqualification that Mr Barbour has appealed to this Tribunal.

In his Notice of Appeal, Mr Barbour has alleged that he was:

- (1) not guilty of negligent, dishonest, corrupt, fraudulent or improper conduct and did not act in any manner which constitutes misconduct; and
- (2) he did not engage in conduct which was in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

He certainly conceded during the Inquiry that he had made a mistake or an error in judgment but stipulated that there was no basis for any conviction being maintained against him as a result of his actions. He also appealed against the disqualification that had been imposed upon him.

It is accepted by all the parties that Mr Barbour was requested by Racing Queensland to assist with the grading of greyhound races in the relevant period. As the Chief Grader was on leave, it was the view of Racing Queensland that the only remaining Grader, Ms Nicole Hardman was not sufficiently experienced to be able to handle the role on her own. It is common ground that Mr Barbour had previous experience in the position of Grader and was well versed in the procedures which identified the processes to be adopted. It is also apparent from the transcript and witnesses that he reluctantly accepted the temporary role for a short period because the Chief Judge was absent on leave. Ms Hardman gave evidence that she printed the nominations for the event in question and took them to Mr Barbour when he arrived. He then graded them and put them into various races and subsequently asked Ms Hardman to extend the nominations for fifth grade and novice races. A number of other nominations were then received and Ms Hardman printed those nominations and took them to the appellant. He then graded the races and gave the papers back to Ms Hardman who entered them into the computer and printed the field sheets. Ms Hardman's evidence was that in respect to those late nominations she printed the letter "L" on those sheets so that Mr Barber would know that they were in respect to late nominations. She accepted that this was not a standard procedure but was rather done on the day to assist Mr Barbour. It appears that there were only two late nominations for the race in question and those were Just Like Tina and Femme Jolie.

During the course of the Inquiry it became apparent that it was really unnecessary for any late nominations to have been called as there were the requisite numbers available. Evidence given by Mr Barbour was that he had obviously made a mistake. He maintained that the mistake was not intentional and was therefore not capable of sustaining a charge against him. Of perhaps some more significance is that when the sheets were returned to Ms Hardman, she simply entered the fields into the computer and apparently did not notice that Just Like Tina was a late nomination. She stipulated that the presence of the large "L" should have been capable of forewarning her. Nevertheless, that did not occur and Just Like Tina was included in the race at the expense of the greyhound Earning which had been an earlier nomination and which should have taken precedence for racing over Just Like Tina.

The appellant admitted to placing the two bets on Just Like Tina and also on greyhound events other than the one in question. He believed that he would have had something in the order of 10-12 wagers of a similar amount of \$100.00 as was invested in each of the Just Like Tina bets. He stated that when previously he had been an employee of Racing Queensland and engaged in the greyhound grading of events, he had signed an agreement undertaking not to participate in betting and it stipulated that he gave undertakings in that respect and honoured those undertakings during this employment. He said however that at the relevant time in question he had merely been asked to assist Racing Queensland not as an employee of Racing Queensland but as the manager of racing at the Brisbane Greyhound Club. He maintained a position that by virtue of his merely being in a position of assisting in Racing Queensland, he was not bound by any prior undertaking or agreement signed while an employee of Racing Queensland and was also not in any way likely to be responsible for any mistakes which he made during that period of time.

The Stewards were concerned, not just at the mistake that had been made in entering a greyhound in a race to replace another greyhound which was entitled to be a participant, but also at the revelation that the replacement greyhound was in fact owned by members of Mr Barbour's immediate family. It seemed, to this Board, that such a revelation was the prime reason why the Inquiry was opened in the first place and why it was found necessary to continue investigations for some considerable period of time resulting in the Inquiry being conducted over three separate days. It has to be accepted that the Stewards acted most appropriately because of the circumstances associated with the ownership of the greyhound and with the attitude adopted by Mr Barbour that he seemed to have no responsibility to Racing Queensland simply because he was not an employee being paid by Racing Queensland and of course further that he believed he was not in any way capable of being held to be responsible for his actions.

The evidence presented by Mr Barbour throughout the entire Inquiry reflected a demeanour that was simply not appropriate. He had previously signed a declaration of compliance with the rules of Racing Queensland and he stipulated that he was aware of the restrictions imposed upon him whilst he was an employee. This Board believes that he should also have been aware that, even in his replacement role, he should have taken responsibility for his actions and should have been compliant with former undertakings and declarations given to Racing Queensland. In his favour, Mr Barbour made no attempt to rely on provisions that he said allowed him as the Grader to disregard compliance rules. He stipulated that he could, if he so wished, replace any greyhound and substitute any other as and when he so saw fit. He did not attempt to rely upon that entitlement and he must be commended for so doing. Notwithstanding that stance, the Stewards continued to investigate and eventually came to

the conclusion that he breached the rules and breached the two sections of the rules with which he had been charged. A closer inspection of each of those rules is warranted in the circumstances. Both of the rules refer to the commission of something or an omission to do something. GAR.86(o) raises the need for the Stewards or Controlling Body to be of the opinion that what he did or did not do was "*negligent, dishonest, corrupt, fraudulent or improper or constitutes misconduct*". In the opinion of this Board the evidence given by Mr Barbour confirms that he was neither dishonest, corrupt, fraudulent or improper or did anything which constituted misconduct. It does not however exclude his actions if they were negligent. He stipulates that he made an error of judgment or a mistake. In the true meaning of the word that error of judgment or mistake can be nothing other than a negligent action on his part. It seems that the Stewards adopted the belief that Mr Barbour had acted negligently and that therefore they were obliged or even entitled to confirm that he had contravened the provision of GAR.86(o). This Board stands in the stead of the Stewards and/or the Controlling Body when considering all of the evidence that was before the Stewards and may, if it sees fit, substitute its determination for that of the Stewards.

The Stewards throughout the course of the Inquiry embarked on an investigation which was pre-empted by the knowledge that an officer engaged on behalf of Racing Queensland had acted in such a way as to give benefit to some family members over and above connections of another greyhound. The media reports demanded that such an investigation be undertaken and it was a matter of public interest that a determination be reached on whether Mr Barbour had acted in such a way as to be culpable not merely for negligence but for all other elements associated with GAR.86(o). This Board is of the opinion that none of Barbour's actions were such as to constitute satisfaction with any other element of 86(o) with the exception that because of an error on his part, it could be identified that he was negligent. Once he is shown to have been negligent, the Stewards believed they had no option other than to convict and as a result they did so and imposed a disqualification.

At the same time those Stewards believed that the same evidence that had been made available was sufficient to satisfy the provisions of GAR.86(q) however for any charge to be properly maintained under that section, it would have been necessary to prove that what Barbour had done was prejudicial to the interest, welfare in each control or promotion of greyhound racing. That would necessitate a finding of something higher than mere negligence which is all that could be seen to be proved based on the evidence as presented to the Inquiry. This Board does not consider that the evidence presented to the Stewards by all members of the various bodies that provided evidence was sufficient to warrant a finding of guilty under GAR.86(q). In the circumstances, this Board upholds the Appeal by the appellant against his conviction under GAR.86(q).

This Board believes that the evidence given by Mr Barbour was truthful. At no point in time before the Stewards did he attempt to blame anyone other than himself. He readily accepted that he had made a mistake and believed it was because of the pressure under which he was being asked to act, being on the premises only for a few hours each day to complete tasks and thereafter returning to his earlier employment. The Board believes that Barbour made a genuine mistake and the question then is whether that genuine mistake is sufficient to constitute negligence such that it is punishable under GAR.86(o).

In the opinion of this Board the Stewards did not act appropriately in arriving at a finding of guilty based on the evidence that has been presented. What the Stewards should have done was consider that Barbour was negligent but that such negligence was not sufficient to

constitute guilty in the true sense of the word under that section of the Rule. The Stewards should have had recourse to the provision of Rule 98 and identified that whilst the charge is proved, it would be inappropriate to inflict any punishment or any more than a nominal punishment as a result. The punishment was imposed upon Mr Barbour as effectively denied him from participating in his employment, not just for the period of 12 months but more likely than not for the remainder of his working life. The steps that he took do not warrant the imposition of such a penalty and the Stewards should have been cognisant of all the facts and accepted that mistakes do happen, not only on the part of Mr Barbour but also possibly on the part of Ms Hardman who acknowledged throughout the evidence that she gave before the Inquiry that she may also have made an error in not reviewing the sheets that had been presented to her by Mr Barbour after grading, but also when recalling whether she actually had or had not inserted the "L" on the sheets of the late nominations.

In the circumstances, this Board determines that whilst the charge under 86(o) may have been proven in respect of the negligent aspect of the charge which incidentally is admitted by the appellant, it is inappropriate to inflict any punishment or anything more than a nominal punishment and accordingly it directs that it discharges Mr Barbour without proceeding to record any finding of guilt or to impose any penalty. The appellant is therefore discharged pursuant to sub-rule 1 of Rule 98 of the Greyhounds Australasia Rules but confirms that such discharge is on condition that Mr Barbour not commit any further breach of these Rules for a specified period of 12 months failing which Mr Barbour may be dealt with for any such further breach and for this breach by the Controlling Body or by any Stewards dealing with the further breach.

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Chairman

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au