

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CHRISTOPHER WILLIAM HALSE
APPLICATION NO: A30/08/591
PANEL: MR R J NASH (PRESIDING MEMBER)
DATE OF HEARING: 7 MAY 2003
DATE OF DETERMINATION: 7 MAY 2003

IN THE MATTER OF an appeal by Mr C W Halse against the determination made by the Stewards of the Western Australian Greyhound Racing Authority on 26 March 2003 imposing a \$1,000 fine for breach of Rule AR109(15) of the Rules of Greyhound Racing.

The Appellant represented himself.

Mr D Borovica appeared for the Stewards of the Western Australian Greyhound Racing Authority.

On 18 March 2003 at approximately 6.00 a.m. the Chairman of Stewards, Mr C Martins and Stipendiary Steward, Mr P Searle observed Mr Halse, a Registered Owner-Trainer, walking six greyhounds simultaneously on the limestone section of Gull Road, Nambeelup. All the greyhounds were muzzled. The Stewards in attendance recorded the incident on audio/video tape. When confronted by the Stewards Mr Halse admitted that he knew he was committing an offence.

Section 31 of the *Dog Act 1976* (the Act) states:

"31. Control of dogs in certain public places

(1) *A dog shall not be in a public place unless it is –*

- (a) held by a person who is capable of controlling the dog; or*
- (b) securely tethered for a temporary purpose,*

by means of a chain, cord, leash or harness of sufficient strength and not exceeding the prescribed length.

- (2) A dog is exempt from the requirements of subsection (1) if –
- (a) it is an area specified by a local government under section 51 as a dog exercise area;
 - (b) it is in a public place in an area of the State that is outside the metropolitan region or a townsite;

...

Section 33 of the Act states:

33. Special provision fro greyhounds

- (1) A greyhound shall, except while it is on premises occupied by its owner, be muzzled in such a manner as will prevent it from biting a person or animal.
- (2) Section 31 applies to a greyhound subject to the following modifications –
 - (a) the exemptions in subsection (2)(a) and (b) of that section shall not apply;
 - (b) a greyhound is exempt from subsection (1) of that section while it is participating in a race or trial under the control of the Western Australian Greyhound Racing Authority established by the Western Australian Greyhound Racing Authority Act 1981; and
 - (c) for the purposes of subsection (1)(a) of that section, a person shall be conclusively deemed to be incapable of controlling a greyhound if it is one or more than 2 greyhounds held by him at one time.”

The Application for Registration as an Owner-Trainer dated 12 March 1991 submitted to the Western Australian Greyhound Racing Authority by Mr Halse included the following condition:

“That I undertake that in the event of registration being granted to me to observe the following conditions when exercising greyhounds in any public place, street or park:

- (1) *Such greyhounds shall be properly muzzled and on a leash.*
- (2) *One person shall not exercise more than two greyhounds at any one time.*

...

- (5) *Observe all government and/or municipal lawful requirements.”*

By Letter dated 20 March 2003 the Stewards charged Mr Halse with a breach of AR109(15) and directed him to attend an inquiry on 26 March 2003.

Rule 109(15) of the Rules of Greyhound Racing states:

“AR109. Offences

Any person (including an official) who:

- (15) *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, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*
- shall be guilty of an offence and liable to a penalty pursuant to rule 111.”*

The specifics of the charge were:

“...that on 18 March, 2003 at approximately 6.00am you were walking six greyhounds simultaneously on the limestone section of Gull Road at Nambeelup Park and by doing so have done a thing in relation to greyhound racing which in the opinion of the Stewards is improper.”

At the outset of the inquiry on 26 March 2003 before Mr M Kemp, as Chairman and Mr D Borovica, Stipendiary Steward, Mr Halse pleaded guilty. After hearing submissions on penalty the Stewards adjourned the inquiry. By letter on the same day the Stewards delivered their decision as to penalty as follows:

“The Stewards have taken into account your plea of guilty and your respectful conduct through both the initial stages of this incident when you encountered the Stewards on the morning of 18 March 2003 and throughout the course of this inquiry. Had you failed to acknowledge what was an obvious offence the penalty issued by us would have been significantly higher as it would have indicated to us that you had no regard for your obligations as a registered person, or the fact that the stewards had previously penalised you for the same offence.

As it is we remain concerned that this is now the second time that the Stewards have found you to be breaching a condition of your registration by walking more than two greyhounds on a public roadway. By your own admission you knew that what you were doing was contrary to the Rules and yet chose to take your chances. Your reasons for doing so, offered by you during the inquiry, are in no way justification for deliberately choosing to break the rules. Given that you have previously been penalised for doing more or less exactly the same thing, we would not have expected that you would have repeated the same behaviour. The penalty issued for the first offence was meant to act as a deterrent not only to you but to others yet it seems it has failed in the first instance and you have proceeded to commit the offence again undeterred. The detection of such offences requires some effort from the Stewards as is evident by the fact that the Stewards were in attendance at Gull Road prior to 6.00am. It was therefore reasonable for you to expect that your breach would remain undetected and it appears to us this is the main reason you proceeded to walk 6 greyhounds down a public road at the one time. These circumstances serve to aggravate the offence.

Whilst not our duty to enforce or prosecute infringements of the Dog Act, it is clear that this Act specifies that a person is conclusively deemed to be incapable of controlling a greyhound if it is one of more than 2 greyhounds held by him at one time. That being the case it follows what you were doing represents a potential danger, despite the fact that you claim to be able to control 6 greyhounds at the one time. In the opinion of the Stewards walking 6 greyhounds simultaneously in the manner you did is an improper act and it is deemed to be improper because a person cannot claim to be in proper control of this many greyhounds. The consequences of losing control of one or more of these greyhounds can be serious and have an extremely negative impact on the Greyhound industry. It is largely for this reason that you were fined \$400 on the first occasion.

The circumstances of the offence are obviously serious enough in themselves without the additional fact that you are not a first offender in these matters and that it does not appear that you have learnt anything from the previous offence. As stated by us at the outset, had you not acknowledged the offence and conducted yourself in a proper fashion the penalty issued would have been even higher, however we have made a significant discount for these factors. It would not be in your best interests to find yourself facing a third charge on these matters in the future as this would seriously place in jeopardy your registration status with this Authority. In view of all the circumstances we feel that the appropriate penalty is a fine of \$1,000 which is payable to the WAGRA offices within 14 days.”

The grounds of appeal as stated in the Notice of Appeal are:

“Severity of the fine.

The legality of the Stewards to police Shire laws before the Shire polices them.”

My understanding of what the Appellant has had to say today, in clarifying his grounds of appeal, is that he is not appealing against the power or the authority of the Stewards to charge him under Australian Rule of Racing 109(15) for improper conduct. He accepts that it was open to the Stewards to fine him for improper conduct under that Rule, namely walking six greyhounds simultaneously in a public place. That conduct was considered by the Stewards to be improper and it is noteworthy that the conduct is also clearly in breach of the *Dog Act*.

The Appellant pleaded guilty to the charge and has cooperated with the Stewards in relation to the offence. He has conceded that his conduct was wrong and improper in both the hearing before the Stewards and he still makes that concession before this Tribunal.

The appellant has previously been warned about this kind of conduct by the Stewards and was fined \$400 by the Stewards for a previous offence of the same kind on 14 February 2001. The Appellant says he believed that fine was excessive but decided not to appeal against it. It seems that Mr Halse believes that the Stewards are taking an overly tough stance against him. He also considers that his conduct was not unsafe or particularly serious. He refers to the fact that the dogs were of relatively mild disposition and that he, at the time, had full control of them.

The Stewards on the other hand draw my attention to the fact that the *Dog Act* deems that a person is incapable of controlling more than two greyhounds in a public place. Mr Borovica, on behalf of the Stewards, also draws my attention to the following facts:

- greyhounds are born and bred to chase any animal that moves;
- Mr Halse had admitted one of the things that he looked for on these walks was the sighting of other animals that would excite his dogs;
- it would reflect poorly on the greyhound industry if Mr Halse’s dogs were to get away and attack an animal; and
- this was a second offence and Mr Halse does not seem to be learning from his previous warning or the penalty imposed on a previous occasion.

I have to say that I accept what the Stewards have to say in relation to all the above matters. Having said that, I am of the opinion that a fine of \$1,000 having regard to the nature of the offence and what I saw on the video would appear to be manifestly excessive.

In the circumstances, I am required to consider what an appropriate penalty should be having regard to the fact that it was a second offence. I consider the appropriate penalty in all the circumstances of this matter is \$600.

The appeal is accordingly upheld in part. The fine of \$1,000 is set aside and a fine of \$600 is substituted.



ROBERT NASH, PRESIDING MEMBER