

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

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ASSESSORS: DR P. KNIGHT**

**APPEAL OF MR PETER PASSFIELD**

**DECISION**

Peter Michael Passfield, the Appellant, appeals against the conviction and a fine of \$1,000 imposed upon him on 15 October 2008 following a stewards inquiry into the positive finding of 19-norepiandrosterone in the post-race urine sample taken from the greyhound Mick's Puzzle at The Gardens, Newcastle, on 18 July 2008.

With the leave of the stewards, Dr Yore, veterinarian, represented the Appellant, who was charged pursuant to Rule 83(2)(a) of the Rules of Greyhound Racing, which provides:

- (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.*

The particulars of the charge are that the Appellant did on 18 July 2008 present the greyhound Mick's Puzzle for an event being race 9 at The Gardens other than free of prohibited drugs in that the raceday urine sample taken from the said greyhound had returned on confirmatory analysis positive to 19-norepiandrosterone.

The inquiry stewards relied upon certificates issued by the Australian Racing Forensic Laboratory and the Racing Science Centre, Queensland. Sample identity card No. 59258, together with various certificates of analyses, ownership records of Mick's Puzzle, a copy of the kennel bay seal record, a random ballot seal record, ownership records and other formal documents were furnished to the Appellant and, without objection, tendered before the stewards inquiry. The transcript of that inquiry and the documentary evidence are before this Tribunal. Dr Yore was again given leave by this Tribunal to represent Mr Passfield, and both he and Mr Passfield made submissions. Mr Orlizki represented the Authority at this appeal.

The Authority publicised in a press release, following a meeting with Greyhounds Australasia, that as from 1 July 2008—with an exception that is irrelevant to this Tribunal's consideration—the stewards would be testing for anabolic steroids.

Dr McKinney, an analyst with the Australian Racing Forensic Laboratory, gave evidence to the following effect: the metabolised nandrolone sample taken from Mick's Puzzle was the first confirmed positive sample taken since the 1 July deadline as advised.

The proceedings before the stewards inquiry were conducted in an unusual fashion in that Dr Yore, who as the Appellant's veterinary adviser, had cared for Mick's Puzzle for some two years, and had administered the drug to Mick's Puzzle, represented Mr Passfield and indeed contributed to a substantial dialogue or debate with the stewards. He had last injected Mick's Puzzle on 7 June 2008, that is, some six weeks after the press release was issued and some 23 days prior to the introduction of the prohibition on 1 July 2008. Some five weeks after he viewed the press release he had injected the dog twice after the notification.

There was evidence by way of exhibits and the accounts of Dr McKinney and Dr Suann, another veterinary surgeon. However, the major content of the proceedings consisted of a dialogue between Dr Yore and the stewards, with an occasional contribution from the Appellant. Accordingly, the stewards did not have evidence in the strict sense from Dr Yore. However, he made plain his various expressions of opinions and his attitude to the action against the Appellant.

With regard to him injecting the dog five weeks after he had viewed the press release, he stated:

*"I justify my actions by the fact that everyone was reluctant to change when the dogs were going okay."*

When asked whether the decision to inject Mick's Puzzle on 7 June was made in consultation with the Appellant, or whether it was the Appellant's decision, he replied:

*"It's a little bit of both."*

He stated his belief that the drug would be out of the dog's system in three to four weeks. Apparently, this belief was founded on something that he had read thirty years before. Dr Suann, Senior Official Veterinarian, Australian Racing Forensic Laboratory, was questioned as to the effect of the drug on performance. He responded:

*"I guess that's the key issue and we are dealing with a report of a positive finding irrespective of whether or not it's having an effect on performance."*

This Tribunal is not concerned with the question whether a performance enhancing substance was present. The prohibition envisaged in the rule is the presence of a prohibited substance simpliciter, regardless of whether it affects the performance of a dog.

A suggestion was made to Dr McKinney that the dog could have ingested the substance from horse meat, the horse having been treated with nandrolone prior to going to the knackery. However, he was highly sceptical of this. There was, of course, no evidence before the stewards that the dog had in fact eaten such meat, that is to say, meat from a horse that had been treated with nandrolone.

It was further submitted that the metabolites present could be explained by way of an endogenous product. There was no evidence produced to support this proposition. Indeed, Dr McKinney refuted it. He opined that it was generally not found to be present in dogs, but only in humans.

There can be no doubt that Mick's Puzzle was injected by Dr Yore, with the cooperation of the Appellant.

It was submitted that a very small quantity of the offending substance was found. Quantification is not an issue. There is no requirement that there be demonstrated any particular level of a drug or prohibited substance.

It was further submitted that the drug was not recognised by the World Anti-Doping Agency. This Tribunal considers that proposition, assuming it to be correct, as being totally irrelevant.

The acknowledged fact of the matter is that the Appellant and Dr Yore knew that the Authority would be testing from 1 July 2008, yet the dog was twice injected when the Appellant presented the dog to Dr Yore, and was injected at the Appellant's behest.

Dr Yore stated:

*"We did not realise that particular substance we were using would last that long. We assumed that we'd be clear by July."*

And:

*"... it wasn't sufficient time for us to clear the system of metabolites."*

It is plain that the Appellant was ultimately responsible for presenting the dog for injections by Dr Yore and then presenting it to race on 18 July 2008. Simply put, the Appellant took the chance that the dog was "clean". This is not a case of ignorance of the injection or of the possibility of the presence of the drug in the dog. The Appellant was not entitled to take a punt, as it were, that the substance would not be present.

The Tribunal is comfortably satisfied, on the balance of probabilities, that the Appellant did not present the dog Mick's Puzzle drug free and is guilty of a breach of the rule. Accordingly, the appeal as to conviction is dismissed.

As to the question of penalty, as stated, the quantity of the prohibited substance or drug is not a consideration in determining whether the rule has been breached. However, the Tribunal considers it appropriate to have regard to that matter when fixing penalty. The quantity of the drug was extremely small and it was administered on 7 June 2008, that is, some 42 days before the dog raced. The Tribunal accepts that the purpose of the

drug was to prevent the bitch coming on heat, rather than to affect its performance. The information given to the industry in an insert accompanying the drug Laurabolin indicates that a single injection could maintain a continuous, high level of anabolic activity for four to six weeks. The administration of the drug was on the very edge of that period.

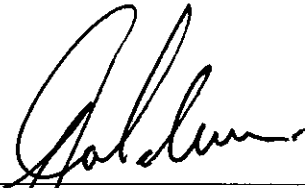
The Appellant accepted the advice of his long-time veterinary adviser, Dr Yore, and did not engage on some risky frolic of his own. His conduct was not in defiance of the rules. The Tribunal is aware that the admissions made by the Appellant constituted highly prejudicial evidence against him in the course of the stewards inquiry. It is to his credit that he was frank and forthright before the stewards inquiry. The Tribunal is also aware of the Appellant's clean record for the last ten years.

In all the circumstances, the Tribunal will reduce the penalty to \$400.

Regardless of the mitigating factors, it must still be seen by those associated with the industry and the public at large that a penalty will be attracted by a breach of a rule vital to the conduct of honest dog racing.

The appeal deposit is forfeited.

27 November 2008



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J. C. McGuire, Judge