

# GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

TRIBUNAL: B. R. THORLEY, JUDGE

Assessor: Dr Peter Knight

## APPEAL OF Mr D. BARNES

### DECISION

The greyhound Fancy Penny, trained by Mr Dennis Barnes and owned by a syndicate consisting of members of the Barnes family, was presented for a feature race at Wentworth Park on 7 April 2007. It ran third and a urine sample was taken from it. Before the result of the analysis of that sample was returned, the same dog was presented by Mr Barnes for a race at Dubbo on 20 April 2007. It won that race, and accordingly yet another urine sample was taken. In due course both samples were analysed and were returned as positive to strychnine. This of course immediately triggered the holding by the stewards of an inquiry into these abnormalities. This took place in Sydney on 21 and 28 June 2007, and in consequence the Appellant was charged with a breach of the drug rule in respect of both presentations for racing.

In both cases he was found guilty, and in both cases he was subjected to three months disqualification together with the imposition of a fine of five penalty units, that is to say, \$550. It was directed that the disqualifications be served consecutively. So that in the result, he was facing a six months period of disqualification, dating from 28 June 2007 and the payment of an aggregate fine of \$1,100. He has appealed to this Tribunal against the severity of those orders. He does not dispute the findings of guilt.

Notwithstanding that he does not so dispute it, it is the Appellant's firm belief, as we detect it, that the cause of the strychnine findings in the dog were as a result of the feeding to it by him of meat taken from the carcass of a heifer which he had purchased locally from a grazier, the heifer being one which was dying on that man's property. Because it had been lame, the grazier in question had been feeding it Dr Bell's. There is no doubt that Dr Bell's contains within its ingredients a measure of Nux vomica, which in itself is a reference to the plant from which strychnine is obtained.

The findings that were made by the analytical laboratories demonstrated the spiking of strychnine but not of any of its metabolites. Indeed, the level of strychnine found in the second sample of urine was very much higher than the level found in the first,

although in neither case would it be said that the spectrographic findings indicated what might be called high levels of intoxication of the drug. Those facts do lend some credibility to the Appellant's belief that the cause of the abnormalities was the result of consumption of meat into which had already been introduced unwittingly some measure of strychnine. However, the validity of this argument was seriously challenged by the expert witnesses who were before the stewards. Indeed, any view to the contrary was, in one sense, ridiculed by those experts.

We at this Tribunal are unable to solve the dilemma of where it is that the strychnine came from. The Appellant himself asserts that he gave the greyhound nothing other than that which we have described.

However, this case does bear some close similarities to the decision which this Tribunal gave in the appeal of Smith, which was heard by this Tribunal in May this year. In the Smith case the Tribunal was concerned with two charges (as here) but not involving the same drug, and was concerned with an Appellant (as here) who had long been involved in the industry and who had a pretty good record in relation to the time that he had been so involved. In Smith's appeal the Tribunal took the view that it was not appropriate to subject him to an order which had the result of lengthening the period of disqualification when really what was at stake was a sequence of events which derived from a single cause. We think it is appropriate that the same reasoning be applied here, without committing ourselves to the theory embraced by the Appellant. Nonetheless, we think it more likely than not that that which caused the strychnine level was as a result of but one single approach to the dog's ingestion, and that the findings were but two examples of the same conduct.

On that basis, then, we think it appropriate that the stewards' direction that the periods of disqualification be served consecutively be replaced by a direction that they be served concurrently.

Moreover, in Smith's case, the level of fine attached to the periods of disqualification was in each case one of three penalty units. Equally, we think that that is the appropriate level here.

So that, in lieu of the stewards' orders, the period of three months disqualification in each case is confirmed. It is directed that they run concurrently, and will date from the date of the stewards' orders. In lieu of the fines, it is directed that there be substituted orders in both cases that there be a fine of three penalty units, namely, \$330, that is to say, an aggregate of \$660.

Whilst the Appellant has been partly successful in his appeal, we do not think it appropriate that he should have any portion of his appeal deposit refunded.