

GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

TRIBUNAL: JUDGE B. R. THORLEY

ASSESSOR: MR T. GREEN

APPEALS BY GREYHOUND AND HARNESS RACING AUTHORITY

AGAINST

M. BELL AND H. SARKIS

DECISION

On 11 December 2004, just before the running of the eighth race, an altercation took place in front of the main viewing area at Wentworth Park between Mr H. Sarkis and Mr M. Bell, both of whom are registered trainers and both of whom are, as the Tribunal understands it, prominent in the industry in stud activity. Those events, in somewhat varying but overlapping time portions, were witnessed by a variety of people. The events were reported, whereupon the Authority stewards opened an inquiry into them, this occurring on 11 January 2005. In the result, each was charged under National Rule 109, sub-rule 15, with, in short terms, having done a thing which, in the opinion of the stewards, is improper.

Particulars of the charges against both were then given. To these I shall return. Each pleaded not guilty; each was found guilty. Sarkis was subjected to disqualification for three months and a fine of five penalty points, that is, \$550. That disqualification was directed to be served cumulatively upon other orders then operating in other issues dealt with by the stewards. Bell was subjected to disqualification for one month and a fine of five penalty units, again, namely \$550. Bell on that day, 11 January, lodged an appeal against the decision adverse to him. He sought a stay of proceedings, which was granted. Sarkis did not lodge any appeal.

The next procedural step occurs on 19 January, when this Tribunal received from the solicitor for the Authority, Mr Hartmann, a notice of appeal, dated 18 January, against the leniency of both orders. At the outset, a question arose whether these two appeals by the Authority were lodged in time. This is, as a matter of interest, the second time that there

has been an exercise of the right recently conferred by legislation in the Authority to appeal against decisions of its own stewards. When that right is to be exercised, it is a requirement that notice of that fact be given "within seven days" of the publication of the decision sought to be impugned. Power is given to the Tribunal to extend that time. There is no doubt, it seems to this Tribunal, that the appeal was lodged in time. The Acts Interpretation Act clearly designates that the day of the event from which an appeal is brought does not count in the computation. And, even if this be wrong, the delay of one day would not have been such as to have encouraged this Tribunal not to exercise its power to extend.

There appears to have been some little confusion as to the procedures which then arise. The regulations made pursuant to the statute are not comprehensive, and we think, for guidance generally, it is desirable that we give some directions. Whenever a notice of appeal be received at any point of time, the secretary to this Tribunal must forthwith inform not only this Tribunal but the proposed respondent and provide a copy of that notice of appeal. Thereafter, steps are to be taken to secure, and provide to both sides, a copy of the transcript of the proceedings from which the appeal is being brought. Grounds of appeal must be furnished within the time prescribed (or extended). Copy of those grounds of appeal must, equally, be sent to the respondent to the appeal as soon as they are to hand. The Tribunal will then fix a date for hearing (if one has not already been allocated in anticipation of compliance). Generally speaking, any interlocutory application will be dealt with informally, but the Tribunal will formally assemble and sit when circumstances indicate that this is the appropriate course.

These two sets of appeals came on for hearing on 10 February. Mr Callaghan, Senior Council, and with him Mr Robertson, of counsel, instructed by Mr Hartmann, appeared for the Authority. Mr Coroneos, of counsel, instructed by Murphys, solicitors, appeared for Mr Bell. Mr Carney, solicitor, appeared for Mr Sarkis and sought an adjournment. This was granted until the 23rd idem. However, the appeals relating to Bell proceeded, and a decision was reserved to enable the Sarkis appeal to be dealt with at the same time. This has now occurred this day. Mr Carney continued to appear for his client and Mr Hartmann appeared for the Authority.

Over my legal career—and I have listened to countless cases involving assaults—the one common feature in all of these is that one never gets a totally common version of fact. This is to be expected. Witnesses vary in their observations and in their powers of description for a number of quite human and acceptable reasons. These include self-interest and differing emphases on particular incidents that occur in the course of events. However, from this melee of fact one has to find an appreciation of the events. But the point needs to be made at the outset that neither the stewards nor this Tribunal sits as a court in a criminal jurisdiction such that it is required to address issues at stake in a charge of assault and of self-defence. That which is at stake here is an allegation of impropriety.

The view that the Tribunal takes of the events at stake here is as follows. Sarkis was standing on the concourse area at Wentworth Park in front of the grandstand, about to watch the next race. Bell joined him. They had had antecedent business relations concerning the supply of canine semen. Words were exchanged in an atmosphere of

resentment. I have no doubt that Sarkis launched, and did so deliberately, the first physical attack by way of head-butting Bell to his front facial aspect. No doubt Bell retaliated. The immediate sequence of events is somewhat confused, but in the ultimate Sarkis finished on the surface of the area where he had been standing, and there Bell struck him on a few occasions, before the contestants were pulled apart by officials.

Mr Coroneos submitted that whatever his client Mr Bell did was by way of self-defence. The Tribunal thanks Mr Coroneos for bringing it up-to-date with decisions of superior courts dealing with issues of self-defence in criminal cases, and the obligation of the Crown in such cases to disprove those elements which go to self-defence, be they objective or subjective. Whilst one would anticipate retaliation to a physical attack, particularly one of the quality of a head-butt, and might regard that as reasonable and not improper within the rule, the solution, however, is not to be found in the approach embraced on Mr Bell's behalf. To some extent, the submissions made by Mr Coroneos follow on the particulars to the charges to which I have previously referred. In the case of Sarkis, they identified the particular act of head-butting. In the case of Bell, it was the few punches. Particulars are designed to alert the recipient to the broad area of concern. It would have been sufficient to have advised both recipients merely that their participation in an altercation was at stake, without endeavouring to identify their participation in any greater detail.

However, in our view, the delivery of a few punches to Sarkis whilst he was in a prone position was, in the circumstances, improper, and the stewards were entitled to form that view. The actions of Bell may have been partly fuelled by some alcohol; we do not know. But they certainly were fuelled by the assault initiated by Sarkis. We, as did the stewards, certainly regard Sarkis as the main offender. Insofar as Bell is appealing against his conviction, his appeal fails and his conviction is confirmed.

There remain the appeals by the Authority against the alleged inadequacy of penalties. In general terms, we indicate that we share the view of the Authority that the penalty imposed on Sarkis was excessively lenient. The attack launched by him was utterly disproportionate to whatever resentment he felt from words uttered by Bell. Indeed, we regard it as a cowardly and dangerous attack. The potential harm to the recipient of the attack is important. But more import, for our purposes, is the context of the assault. To engage in this sort of conduct in the view of a significant number of people who go to greyhound racing, who are of both genders, who include children, is to create an atmosphere which is potentially harmful to the industry. Whilst every case depends upon on its unique circumstances, we would say that for any like case in the future this Tribunal would support a sterner approach by the stewards.

But there is here a factor that takes the question of a penalty for Sarkis into other realms. This very day Sarkis has been before this Tribunal on an appeal in relation to other matters. He has been found guilty by this Tribunal of what the Tribunal regards as serious departures from his obligations as a studmaster. Penalties were there imposed which, if they stand the test of oversight by supervising courts, will result, on one view, in disqualification for three years, and, on another view, for twelve months, or, even on a third view, he will escape any penalty. But so far as this Tribunal be concerned at this

point of time, he is currently serving a period of disqualification of three years. The reasons that we gave in the other appeal embraced the concepts of proportionality and totality of penalty. It was correct of the stewards in this particular appeal to direct that the penalty of three months disqualification be served consecutively upon those penalties to which Sarkis was then subjected, this in order to reflect the separate quality of this offence. Equally, we propose that our order be so served. But, once more, we must have regard to the totality of the disqualification periods which have been imposed in the early appeal and upon which there will be yet a further accumulation. We emphasise that, if there had not been this complicating feature, we would have increased the penalties against both participants. But, whether in the ultimate Sarkis is required to serve three years, or one year, we think an addition three months out of the industry is a sufficient, adequate deprivation.

So, in the case of Sarkis, the appeal by the Authority is dismissed, the stewards' order of three months disqualification is confirmed, and service of that period is directed to commence at the expiration of whatever orders remain from the earlier appeal this day. The fine is also confirmed.

In the case of Bell, it might be said that he benefits from the approach adopted in relation to Sarkis. His conduct was, assuredly, the lesser of the two. He would be entitled to feel a comparative injustice if he were to receive a penalty that did not reflect his lesser involvement. So, whilst we would otherwise have increased his penalty, we think in his case it is appropriate that the penalty be confirmed. Hence, the stewards' order is confirmed, and it is directed that it be served from the date of the publication of these reasons to him. The fine is also confirmed. It follows, of course, that the appeal by the Authority against Bell is dismissed.

23 February 2005

B. R. Thorley, Judge