

Appeal D Schofield v RIU - Interim Decision of Appeals Tribunal dated 8 May 2018 - Chair, Mr M McKechnie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE AN APPEALS TRIBUNAL OF

THE JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of the New Zealand Rules of Greyhound Racing

DENIS SCHOFIELD, Licenced Trainer

APPELLANT

RACING INTEGRITY UNIT (RIU)

RESPONDENT

Appeals Tribunal: Mr Murray McKechnie, Chairman & Mr Tangi Utikere

Present : Mr Denis Schofield

Mr Ashley Sharp counsel for Mr Schofield

Mr Andy Cruickshank representing the RIU

INTERIM DECISION OF APPEALS TRIBUNAL OF JUDICIAL CONTROL AUTHORITY

DATED THIS 8TH DAY OF MAY 2018

1. NATURE OF APPEAL

1.1 Mr Schofield has appealed from a reserved decision of a Non-Raceday Judicial Committee dated the 29th day of April 2018. Mr Schofield was disqualified for a period of two (2) years and that disqualification was to commence on the 14th day of May this year.

1.2 Mr Schofield had pleaded guilty to a charge laid under Rule 61.1 of the Rules of Greyhound Racing. As set out in the minute of the Tribunal dated the 3rd day of May 2018 that rule provides:

The owner, trainer or person in charge of a greyhound nominated to compete in a race, shall produce the greyhound for the race free of any prohibited substance.

1.3 Mr Schofield was the licenced trainer of the greyhound *ZIPPER ANDRE* when that dog raced on the 29th day of December 2017 at the Waikato Greyhound Racing Club meeting at Cambridge. The dog won the race and subsequently tested positive for an amphetamine. The precise spelling of that amphetamine is not entirely clear from the decision of the Non-Raceday Judicial Committee. We are satisfied from what we have heard today that the correct spelling is methamphetamine.

2. THE POSITION FOR MR SCHOFIELD

2.1 Mr Sharp, counsel for Mr Schofield, filed detailed submissions in support of the appeal and addressed those submissions before the Tribunal today. Mr Sharp made available to the Tribunal a decision from Australia before the Victorian Civil and Administrative Tribunal involving the licenced trainers Mark Kavanagh and Danny O'Brien. That decision was culmination of the very extended inquiry into horses that had been presented for racing by Messrs Kavanagh and O'Brien and which horses had subsequently tested positive for the prohibited substance cobalt. Further Mr Sharp made available the decision of Pankhurst J in *McInerney & NZ Greyhound Racing* High Court Christchurch, 10 November 1999. That case involved the prominent greyhound trainer Mr John McInerney.

2.2 Mr Sharp emphasised what he said was the low level of culpability on the part of Mr Schofield. He emphasised Mr Schofield's hitherto unblemished record. The phrase that Mr Sharp adopted several times in his submissions was "at the very low end of the scale". He also drew attention to Mr Schofield's age. Mr Schofield is seventy eight (78) years of age.

2.3 From a reading of the decision of the Non-Raceday Judicial Committee and from a consideration of the submissions made and the oral presentation today from both Mr Sharp and Mr Cruickshank and further as a consequence of answers Mr Schofield gave to the Tribunal the rather unusual circumstances of the Schofield training operation became clear. Mr Schofield and his wife live at Devonport on the North Shore of Auckland. The kennels are at Rangiriri in the Waikato some 110kms from Devonport. At Rangiriri Mr Schofield's son David lives with his partner Ms Archer and her son Mr Hodgson. Mr David Schofield has had a number of differences with the Greyhound Racing Authorities. In the result he surrendered his trainer's licence some three (3) years ago. In November 2016 his handler's licence was revoked. Ms Archer and Mr Hodgson are both licenced handlers. It can be seen from what is briefly outlined here that Mr Denis Schofield is a trainer who is not domiciled where the kennels are situated and thus cannot be responsible for the daily care and welfare of the dogs. The Tribunal was told that Mr Schofield visits the kennels about three times per week. He takes the dogs to race meetings and returns them to the kennels. The Tribunal was told that Mr David Schofield does not go to race meetings. He is currently not licenced under the Rules of Greyhound Racing but could attend race meetings as a member of the public.

3. THE POSITION FOR THE RIU

3.1 Mr Cruickshank filed written submissions and today spoke in support of those. It was the position of the RIU that the disqualification of two (2) years was perhaps generous and that a period of three (3) years disqualification might have been appropriate. The Tribunal pointed out that there was no cross-appeal from the RIU with reference to the level of the penalty. Mr Cruickshank's submissions pointed to a number of aggravating considerations. These included but were not necessarily limited to the fact that Mr Denis Schofield is not involved in the day to day care, control and training of the greyhounds. He was described in the RIU submissions as an "absentee" or "de facto" trainer. Further it was said that Mr Denis Schofield had knowledge of his son's past difficulties with the authorities and knew that his handler's licence had been revoked.

4. RECENT DEVELOPMENT

4.1 The RIU has drawn to the Tribunal's attention the fact that on the 30th day of April Mrs Pam Schofield, the wife of Mr Denis Schofield filed an application with Greyhound Racing New Zealand for a public trainer's licence. The Tribunal inquired of Mr Cruickshank as to when Mrs Schofield's application might be heard. Mr Cruickshank advised that the next Greyhound New Zealand Board Meeting is to take place on the 18th day May this year. Further that Mrs Schofield's application was unlikely to be able to be considered at that time. Mr Cruickshank went on to advise that Mrs Schofield has previously held a handler's licence but not any form of trainer's licence and that it was therefore perhaps unlikely that her application for a public trainer's licence would be granted. It is not for this Tribunal to become involved in the merits or otherwise of the application lodged for Mrs Schofield. The Tribunal has raised this matter because it would be unfortunate if there were a hiatus created while the application for Mrs Schofield's licence were considered.

5. INTERIM DECISION OF TRIBUNAL

5.1 The Tribunal can detect no mistake in the decision of the Non-Raceday Judicial Committee sufficient to give grounds for a successful appeal. The nominated starting point under the rules for a breach of the relevant rule is five (5) years. In the circumstances of this case the Non-Raceday Judicial Committee by paragraph 64 of its decision adopted a starting point of four (4) years. This is a recognition that a five (5) year starting point would be appropriate in cases where there was evidence of administration and in those circumstances the disqualification could be expected to lift above the five (5) year nominated starting point. The Non-Raceday Judicial Committee made reference to a number of cases involving methamphetamine or other banned substances. We were told today that this is the first case involving methamphetamine in greyhound racing in New Zealand. There is a previous decision in thoroughbred racing *Newton*. In that case there was a penalty imposed of disqualification for three (3) years.

5.2 For the reasons briefly set out here we dismiss the appeal and uphold the disqualification of two (2) years. Given the limitations of time today a more detailed decision will issue from the Tribunal setting out the detailed reasons for the conclusion that has been expressed above. At the same time the Tribunal will deal with the issue of costs. Presently the Tribunal is not inclined to award costs in favour of the RIU but Mr Schofield will be expected to make some contribution towards the costs incurred by the JCA.

5.3 For completeness it should be recorded that Mr Cruickshank told the Tribunal that the situation that has developed in the Schofield family has led to what he described as "a loophole". By that he meant a situation where the licenced trainer was not involved with the day by day care and welfare of the animals. He indicated to the Tribunal that a rule change was contemplated to address this situation. For its part the Tribunal would consider that is appropriate. The present situation that has been made clear today is essentially artificial and does not recognise the fact that the person primarily responsible for the training and care of the Schofield dogs is Mr David Schofield. Mr David Schofield, Ms Archer and Mr Hodgson are responsible to Mr Denis Schofield and he in turn must be responsible for their conduct. Mr Cruickshank advised that the new rule to address the "loophole" issue is to come into effect on the 1st day of August 2018.

5.4 Under the decision of the Non-Raceday Judicial Committee the period of disqualification was to commence on the 14th day of May 2018. Given the time that has elapsed since the decision of the Non-Raceday Judicial Committee on the 29th day of April 2018 and in part by reference to the events outlined above in relation to Mrs Schofield's application to be licenced the period of disqualification will commence one (1) month from today namely the 8th day of June 2018.

Dated this 8th day of May 2018

Murray McKechnie

Chairman

Penalty: