

Non Raceday Inquiry RIU v A Turnwald - Written decision dated 21 December 2017 - Chair, Mr P Williams

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE THE JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

AND IN THE MATTER of the Rules of New Zealand Greyhound Racing Authority (Incorporated)

BETWEEN

RACING INTEGRITY UNIT (RIU) - Informant

AND

ANGELA TURNWALD – Licensed Trainer and Respondent

Judicial Committee: Mr Paul Williams (Chairman), Mr Noel McCutcheon (Committee Member)

Appearing:

Mr Michael Austin, Stipendiary Steward for the RIU as the Informant

Mr Simon Irving, Racing Investigator for the RIU

Ms Turnwald elected not to appear

Venue: Otaki Racecourse

Date of Hearing: 21 December 2017

Date of Decision: 21 December 2017

DECISION OF JUDICIAL COMMITTEE

1] Mr Austin has requested a ruling from the Judicial Control Authority (JCA) on a matter that arose in relation to Race 3 at the Palmerston North Greyhound Racing Club meeting on 18 December 2017. Specifically, Information A4462, filed with the JCA in terms of Rules 66.1(a) and (b), states:-

THAT Angela Turnwald nominated VIVA LA VIXEN for a 660 metre race in error when the dog had been competing in sprint races for the last 6 months. An alleged breach of Rule 62.1.o of the Greyhound Racing New Zealand Rules of Racing.

2] Rule 62.1 states: - "*Any person (including an Official) commits an offence if he/she (o) has, in relation to a Greyhound or Greyhound racing, done a thing, or omitted to do a thing which is negligent, dishonest, corrupt, fraudulent or improper or constitutes misconduct*"

3] At the start of the hearing Mr Austin advised that Ms Turnwald had previously told Chief Stipendiary Steward Mr Whiterod that she did not wish to be present at the hearing. The Committee is also aware that, when the documentation relating to the hearing was sent to Ms Turnwald by the Executive Officer of the JCA, the covering email noted that she had indicated she would not be present today. The Committee is satisfied that the hearing can proceed in the absence of Ms Turnwald – clause 24 of the Seventh Schedule of the Rules of Racing of the NZGRA Inc refers.

4] When Information A4462 was served on Ms Turnwald on 18 December 2017 it was clearly stated the RIU were seeking a request for a ruling from the JCA as to whether she had breached Rule 62.1.o. It is unclear why Ms Turnwald indicated on that Information that she admitted a breach of the Rule when the Information was filed to ascertain whether she had or had not done so. When asked to comment on this matter Mr Austin said he had been advised by Mr Whiterod to seek a request for a ruling as what the RIU were alleging had been done by Ms Turnwald was not covered by the Code's Minor Infringement Schedule. The Committee expressed their concern that Ms Turnwald had admitted a breach of Rule 62.1.o prior to a hearing which was set up to ascertain whether or not she had breached the Rule. After further discussion between Mr Austin and Mr Irving, Mr Austin sought approval from the Committee to amend Information A4462 to show it was in relation to a breach of the Rules and not a request for a ruling. The Committee said it

would agree to the request subject to Mr Austin advising Ms Turnwald and getting confirmation from her that she agreed to the change and that she still intended to admit the breach of the Rule and did not wish to appear at the hearing – clause 27.4 of the Seventh Schedule of the Rules of Racing of the NZGRA Inc refers.

5] After a brief adjournment Mr Austin confirmed that he had spoken to Ms Turnwald and that she understood the change that had been made to the Information and that she did admit the breach and did not wish to be present at the hearing.

SUMMARY OF FACTS BY THE INFORMANT AND FOLLOW UP DISCUSSION

6] Mr Austin provided the following Summary of Facts:-

7] A Turnwald, charged under Rule (62.1.o) in this instance, was (Negligent) in nominating a greyhound for a race the dog had not been trained for and would not have been able to be competitive.

8] Greyhound (VIVA LA VIXEN) was nominated and drawn in to a (cd2) 660m race to which she was eligible at the Palmerston North greyhound meeting on the 18 December 2017.

9] Trainer A Turnwald's kennel representative, Paul Freeman, advised Chief Stipendiary Steward Gavin Whiterod soon after the fields were drawn on the 12 December 2017 that VIVA LA VIXEN had been nominated for the race in error and would not be starting over that distance as she is primarily a sprinter and not trained to run a distance. Gavin Whiterod advised that Mike Austin would be Chairing the meeting on that race day and that he will be handling the matter.

10] VIVA LA VIXEN was scratched from the race on Monday morning by 7.30am which is cut off for scratchings to the TAB. The Stewards allowed the Scratching of VIVA LA VIXEN with no penalty for the dog under Rule 40.7 as to expect the dog to race would be detrimental to its welfare. Under this rule the Stewards could have stood the dog down for 28 days.

11] A Turnwald had the whole field of 8 dogs entered for this race.

12] An aggravating factor in submissions on penalty are that VIVA LA VIXEN was not scratched at the earliest opportunity to give the TAB and punters advance notice of their intention not to start the dog. There were two other Turnwald scratchings in the race due to injury which left a 5 dog field.

13] The Stewards were told that VIVA LA VIXEN was nominated in error for the race, however we have concerns as to why the dog was not withdrawn at the earliest opportunity as would have been expected.

14] VIVA LA VIXEN is drawn in to a sprint field over (305m) on Friday 22 December 2017 at the Wanganui Greyhound Racing Club.

15] In follow-up discussions it was clearly established that VIVA LA VIXEN had been correctly nominated for the race and in being scratched on the morning of the races Ms Turnwald had not breached Rules 40.1 and 40.3 which relate to the scratching of a greyhound. Mr Irving suggested that Ms Turnwald and Mr Freeman (her stable representative and President of the Palmerston North Greyhound Racing Club) had nominated 8 greyhounds for the Race to ensure the Race went ahead and, once that was confirmed, the RIU were advised that VIVA LA VIXEN would be scratched as it had been put into the race in error. Mr Irving described this as "field manipulation" because a sprinting greyhound had been nominated for a staying race but conceded he had no evidence to support his comments.

16] When asked to comment Mr Austin said he thought Mr Irving's comments had "some validity" but confirmed this matter had not been put to Ms Turnwald when she was served the Information, nor had it been raised with her prior to the hearing.

SUBMISSIONS BY THE RESPONDENT AND FOLLOW UP DISCUSSION

17] Ms Turnwald, via Mr Freeman, forwarded a written submission to the Committee prior to the hearing. The key points she made were:-

- i) Mr Austin is incorrect when he says VIVA LA VIXEN was scratched along with 3 other runners for the meeting on morning of the race meeting (Monday 18 December). They were actually scratched at 11.30 Sunday. (Note – the submission did not specify am or pm)
- ii) As to the TAB and punters not having advance notice of the scratching, this is the silliest thing I have heard. For the last 20 years the TAB call greyhound club Secretaries for scratchings at 7.30am on the morning of the race meeting
- iii) The meeting on 18 December had no futures betting on it and with that a punter couldn't bet till the scratchings were published
- iv) The point of having all 8 runners in the race has no merit as the new race policy requires only 6 dogs to card a race
- v) As this is not a hearing but rather a request for a ruling I would ask for Mr Austin's aggravating untrue factors to be disregarded
- vi) We made an error and we did the best we could when the error was noticed

DECISION OF THE JUDICIAL COMMITTEE

18] The Committee has considered all the submissions put before it. The only issue for the Committee to consider is whether Ms Turnwald, as stated in Information A4462, has breached Rule 62.1.o and been negligent in nominating VIVA LA VIXEN for a 660m race when the greyhound had not been trained to compete in a race of that distance.

19] In the RIU's Summary of Facts (para 8 above) it is said VIVA LA VIXEN was nominated for a race for which she was eligible. In speaking to his Summary of Facts today Mr Austin said that the greyhound was correctly nominated for Race 3 at the PNGRC meeting on 18 December. The only concern expressed by the RIU was the greyhound was a sprinter nominated for a distance race.

20] The scratching of VIVA LA VIXEN by Ms Turnwald did not breach Rules 40.1 or 40.3.

21] The Committee cannot consider the matter of possible field manipulation raised by Mr Irving as the issue was not raised with Ms Turnwald prior to the hearing and she has not had the opportunity to respond to the comments made today by Mr Irving and Mr Austin.

22] The Committee is required to exercise and perform its duties, powers and functions in a manner consistent with the rules of natural justice – clause 5.1 of the Seventh Schedule of the Rules of Racing of the NZGRA Inc refers. In this regard, after listening to what was said during today's hearing, had Ms Turnwald been present today, the Committee would have asked Ms Turnwald to consider whether she wished to change her plea to one of not admitting the breach of the Rule and defend the charge.

23] It is clear, and confirmed by the RIU, that VIVA LA VIXEN was correctly nominated for Race 3 at the PNGRC meeting on 18 December, a race for which she was eligible and as such it cannot be said the greyhound was nominated in error. Therefore, the charge of "doing a thing which is negligent" has not been proved by the RIU and the charge is dismissed.

Paul Williams
Chairman

Penalty: