

Non Raceday Inquiry RIU v D Kettlewell - Decision dated 29 October 2018 - Chair, Mr T Utikere

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of the Rules of Greyhound Racing

BETWEEN RACING INTEGRITY UNIT

Informant

AND D KETTLEWELL

Respondent

Judicial Committee: Mr T Utikere (Chairman)

Mr N McCutcheon (Member)

Parties: Mr G Whiterod (for the RIU)

Mr D Kettlewell (as the Respondent)

DECISION OF JUDICIAL COMMITTEE DATED 29 OCTOBER 2018

FACTS

[1] The Respondent has been charged with a breach of Rule 62.1(o) of the *New Zealand Rules of Greyhound Racing*.

[2] The relevant Rule is as follows:

Rule 62.1 (o): "Any person (including an Official) commits an offence if he/she: 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] The specific Information alleged:

Information No A11003

THAT on the 28 September 2018 at race meeting conducted by the Wanganui Greyhound Racing Club at Wanganui Mr Kettlewell used foul and offensive language towards Steward, Mr Mike Austin when advised his dog IVANHOV was to be swabbed after winning race. An alleged breach of 62.1(o) of the Greyhound Racing New Zealand's Rules.

[4] The relevant Penalty provisions are contained in Rule 63.1 which states:

"Any Person found guilty of an Offence under these Rules shall be liable to:

- a. a fine not exceeding \$10,000 for any one (1) Offence; and/or*
- b. Suspension; and/or*
- c. Disqualification; and/or*
- d. Warning Off."*

PRELIMINARY MATTERS

[5] The Committee had previously issued a Minute dated 15 October following a teleconference held with both parties on that date. That Minute identified that the Committee was in receipt of the Notice of Appointment, the Charge Rule and Penalty Provisions and an Authority to Charge Letter from the General Manager of the Racing Integrity Unit (RIU), Mr M Godber. The Minute also identified that

the Respondent admitted the charge and that at the request of both parties, and with the concurrence of the Judicial Committee, this matter would be determined *on the papers*.

[6] Timetabling directions for the filing of an Agreed *Summary of Facts* and Penalty Submissions from both parties were set, all of which have been complied with. The Committee is now in a position to issue a Written Decision on this matter.

INFORMANT'S SUBMISSIONS

[7] The RIU submitted an Agreed *Summary of Facts* that identified the following points:

The respondent Donald Kettlewell is a licenced trainer in partnership with Neville Phillips under the Rules of the New Zealand Greyhound Racing Association.

At the Wanganui GRC meeting at Hatrick Raceway on 28th September 2018, Mr Gavin Whiterod was the Chairman of Stewards on duty and was assisted by Steward, Mr Michael Austin.

At the commencement of the day, Mr Whiterod selected a dog as a pre-race swab for the last race which was something Mr Whiterod does on a regular basis.

Following the last race, Mr Whiterod selected the winner of the race to be a post-race swab. This was because he was of the opinion that the dog, being a relative outsider with no recent placed form, was justified in being selected for swabbing. As was the usual procedure, Mr Whiterod then called the Security Guard to advise him of the Swab. The winner of the race was IVANHOV, trained by Mr Kettlewell and Mr Phillips and being handled by Mr Kettlewell.

A short time later, Mr Austin advised Mr Whiterod that when notified of the Swab, Mr Kettlewell, who was leading the dog back to the dais, reacted by using abusive language towards Mr Austin in a loud voice and was heard quite clearly by those in the vicinity, including the security guard Mr De Bethann-Montgomery.

Sometime after the incident, Mr Whiterod went to the kennels area where he was approached by Mr Kettlewell who apologised to Mssrs Austin and Whiterod for his behaviour. Mr Whiterod then advised him that the outburst was totally unacceptable and that he would speak to witnesses to the incident, but that based on what he had been told, he was seriously considering preferring a charge against him.

Mr Kettlewell stated that he felt that the Stewards were targeting the partnership as they had been swabbed a number of times over recent months and that he had a two hour drive home and just wanted to get on the road. He also stated that he had been under considerable personal pressure and that his mother had recently passed away. Upon leaving the swab area after the sample process had been completed, Mr Kettlewell again apologised for his earlier behaviour.

Mr Kettlewell has been involved in Greyhound Racing for many years and in Mr Whiterod's approximate 20 years as a Greyhound Steward, he does not recall ever having to speak with him at any time over any issue around behaviour.

RESPONDENT'S SUBMISSIONS

[8] Mr Kettlewell advised the Committee that he accepted the *Summary of Facts* as presented by the RIU.

DECISION

[9] As the charge was admitted, the Committee deem the charge proved.

RIU PENALTY SUBMISSIONS

[10] The RIU filed the following written Penalty Submissions:

This is a first offence for Mr Kettlewell.

Charges in recent years:

*Trainer C.Weir in 2014 Sent email containing offensive language to GRNZ official
1st offence. Admitted. \$200 fine. (Starting point \$300)*

Trainer L.Phillips in 2013 Insulting language to a Club official. 1st offence. Admitted. \$350 fine. (Starting point \$400)

Trainer W.T.Hodgson in 2015 Using offensive language to a Steward. 1st offence. Admitted. \$400 fine. (Starting point \$650)

*Trainer J.Lane in 2015 Offensive language towards Stewards. 1st offence.
Admitted. \$300 fine. (Starting point \$400)*

In the opinion of the Stewards, this was a serious outburst by Mr Kettlewell within the hearing of a number of other Licence holders and others in the vicinity of the dais, including a number of children.

It was the result of Stewards carrying out their normal race day duties of selecting a Greyhound for swabbing and this is standard practice for all three codes at every race meeting.

Stewards should not be subjected to this type of abuse and there should be some deterrent value in any penalty imposed.

With respect, in the Stewards opinion, a starting point of \$500 would seem to be a reasonable figure with the Committee taking into account the following mitigating factors:

In mitigation, this is a first offence, there was an apology to the Stewards soon after the event and that Mr Kettlewell admitted the charge at the first opportunity and was under some pressure due to personal issues at the time."

RESPONDENT'S PENALTY SUBMISSIONS

[11] In a written response to the RIU's Penalty Submissions, Mr Kettlewell advised that in the last few weeks he had been under a fair amount of stress from losing his mother to cancer after a two year battle. It was during that period that he had also been caring for her as she had lived permanently with him.

[12] Mr Kettlewell had also advised that at the time of this offence, he had recently learned that a close friend, who was also an industry participant, had been diagnosed with terminal cancer. On the night that IVANHOV won, Mr Kettlewell said that he became very emotional and had reacted badly after hearing that his dog was to be swabbed after the last race. He believed that he was very tired at the time, and just wanted to get home as soon as he could. He also advised the Committee that he had apologised to both Stipendiary Stewards on the night as the behaviour he displayed was not the norm for him.

REASONS FOR PENALTY

[13] The Committee considered the submissions from both parties and thanks them for the timely provision of such submissions.

[14] Mr Kettlewell has accepted his behaviour was inappropriate from a licence holder. While we have been furnished with a Statement from the security guard who witnessed Mr Kettlewell's behaviour, there is no need for us to delve into that further as the Respondent has accepted his wrongdoing. The Committee accepts that Mr Kettlewell did not seek to direct his language specifically at anyone, but rather chose to use such language in frustration. The circumstances that he has put before us, provide some weight to that view. The Committee also notes that the fact that members of the public, and specifically children, were present to witness the foul and offensive language is an unfortunate circumstance. It was also possible that any media coverage could have broadcast the comments to a broader audience, given the post-race location of where the comment was made.

[15] This must be balanced with the understanding that Mr Kettlewell's reaction was to something that is a fairly standard practice on raceday. Given IVANHOV had won the race, there would also have been a reasonable expectation that that dog may have been post-race swabbed.

[16] While the Committee understands that there may be some reluctance on the part of any licensed trainer to be detained at the end of a race meeting, the purpose for which such a delay occurred on this occasion related to the professional expectations and obligations that Mr Kettlewell had, to ensure the integrity of racing is maintained.

[17] In adopting an appropriate starting point, we note that the *JCA Penalty Guidelines* do not specify a starting point for a breach of Rule 62.1(o). In this sense, it falls to the Committee to consider the context of this charge in determining an appropriate starting point.

[18] The RIU suggest a \$500 starting point, and they refer to previous cases in support of their position. While Mr Kettlewell does not specify a view on a starting point, he does advance aspects to be applied in mitigation, which we will address shortly.

[19] Of the cases submitted by the RIU, in our view the two of most relevance are *Hodgson (RIU v WT Hodgson*, Decision dated 4 March 2015) and *Lane (RIU v J Lane*, Decision dated 27 March 2015).

[20] *Hodgson* concerned a downgraded charge where the respondent used improper, insulting or offensive language; to which he subsequently pleaded guilty. Mr Hodgson's behaviour in that circumstance was coupled with intimidation and was specifically directed at a Stipendiary Steward. While it could be described as intentional behaviour, the explanation that was accepted by that Non-Raceday Committee had its genesis in the heat of the moment. That was also Mr Hodgson's first charge in 36 years as a licence holder. The Starting Point in that matter was set at \$650, and after mitigation a \$400 fine was the end result.

[21] *Lane* related to comments that had been made about the competence of Stipendiary Stewards with regard to a greyhound dress code matter. That was Mr Lane's first charge in five years as a licence holder. The Starting Point was set a \$400, with a \$300 fine being the end result.

[22] In both *Hodgson* and *Lane*, the behaviour was sustained in nature; which is a point of difference with the behaviour of Mr Kettlewell currently before this Committee.

[23] After considering the context of this charge, we consider a \$400 starting point is appropriate and accordingly we adopt that. Mr Kettlewell has advanced a number of mitigating factors, which are endorsed by Mr Whiterod. Therefore, in mitigation we have considered Mr Kettlewell's exemplary record over 36 years along with his early admission of the breach. We also accept that Mr

Kettlewell suffered significant personal circumstances at the time of the offence, and while this is not an excuse, it nonetheless provides a reason for his erratic outburst.

[24] We have reached the view that such behaviour, while erratic, was a misjudgment that was instantaneous and not sustained in nature. Mr Kettlewell also took steps to immediately apologise on at least two occasions since the offence had occurred that night. After considering all relevant factors, we determine it appropriate to move downwards from the \$400 starting point.

PENALTY

[25] Mr Kettlewell is fined \$250.00.

COSTS

[26] As this matter was determined *on the papers*, there will be no order for costs.

Signed at Palmerston North this 29th October 2018.

Mr Tangi Utikere
Chairman

Penalty: