

Non Raceday Inquiry RIU v J McInerney - Reserved Decision dated 9 August 2018 - 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

JOHN MCINERNEY - Respondent

Judicial Committee: Mr Paul Williams (Chairman), Mr Tangi Utikere (Committee Member)

Appearing: Mr Gavin Whiterod, Chief Stipendiary Steward, Racing Integrity Unit as the Informant
Mr John McInerney, Licensed Trainer as the Respondent

Venue: Matter was heard via teleconference

Date of Teleconference: 8 August 2018

Date of Decision: 9 August 2018

RESERVED DECISION OF JUDICIAL COMMITTEE

1] On 30 July 2018 at the Palmerston North Greyhound Racing Club meeting Mr McInerney was charged with a breach of Rule 45.11 of the Rules of the New Zealand Greyhound Racing Association Incorporated (the Rules) in that, as stated in Information A10901, **“JINJA RULES was presented up in weight by 2 kilograms from his last start on 6 July 2018”**.

2] Rule 45.11 states: - *Where the weight of a greyhound recorded at a Meeting varies by more than one and half (1.5) kilograms from the weight recorded in a Race in which it last performed that Greyhound shall be permitted to compete in the current Race but the Trainer of the Greyhound shall be guilty of an Offence unless permission has been granted under Rule 45.12.*

3] Rule 45.12 details the criteria to be met before a penalty can be waived and, on this occasion, Mr Whiterod decided those criteria were not met.

4] On the race day, Michaela Attwood, who was representing the kennel and present when “Jinja Rules” was weighed, signed Information A10901 but did not indicate whether the breach of the Rule was admitted or not. At the beginning of the teleconference Mr McInerney confirmed he had been provided with a copy of Information A10901 by the RIU and also that the breach of the Rule was admitted. He also confirmed he was happy for the hearing to be held via today’s teleconference.

5] Mr Whiterod briefly explained the process when “Jinja Rules” was weighed at the Palmerston North track on 30 July 2018. He confirmed “Jinja Rules” was correctly weighed with Stipendiary Steward, Mr Austin and Ms Attwood both being present for the weighing of the greyhound. Because the greyhound weighed in at 36.2kgs or 2kgs over its last start weight on 6 July 2018 the

greyhound was re-weighed shortly after its first weigh in and again the weight recorded was 36.2kgs. As a result, Information A10901 was completed and signed by Ms Attwood, who Mr Whiterod said, had agreed the weight for the greyhound was correctly recorded at 36.2 kgs, and a copy forwarded to Mr McInerney on 1 August 2018.

6] Mr McInerney told the Committee he did not dispute the greyhound was overweight from its last start on 6 July 2018 but said the variance was 1.8kg and not 2 kgs as stated by Mr Whiterod. He said it had always been intended that the greyhound race that day at a weight in excess of its last start weight because it always lost weight when travelling to the races. However, on this occasion not as much weight as expected had been lost. He added he understood there were problems with the weighing scales at the track on 30 July 2018 and Ms Attwood had told him the recorded weight for the greyhound was different both times it was weighed.

7] In response, Mr Whiterod said whilst there had been a problem with the scales at the meeting on 6 August 2018 there had been no problems on 30 July 2018 and all greyhounds had been weighed correctly. He re-iterated that the weight for "Jinja Rules" had been officially recorded at 36.2kgs and this had not been contested by Ms Attwood.

8] Mr Whiterod agreed he would provide to the Committee a copy of the weight records for "Jinja Rules" for the 6 and 30 July 2018 meetings to confirm the official weight of the greyhound recorded on those race days.

SUBMISSIONS ON PENALTY

9] Mr Whiterod submitted this was Mr McInerney's fourth breach of this Rule in the previous 120 days with the other breaches occurring on 12 June 2018 at Palmerston North – penalty \$100; 26 June 2018 at Dunedin – penalty \$150; and 6 July 2018 at Wanganui – penalty \$175. He said Mr McInerney has two training operations – at Darfield in the South Island and Foxton in the North Island – and whilst this was the third breach in 120 days by the Foxton kennels the RIU treated both kennels as one operation – hence this being the fourth breach of the Rule since 12 June 2018. He said the RIU were concerned this was the fourth breach of the Rule in a very short space of time and a penalty was required that would hopefully act as a deterrent in the future. When asked what that penalty should be he said a fine in the region of that imposed for the previous breach on 6 July 2018 - \$175 - was an appropriate penalty on this occasion.

10] Mr McInerney said he accepted he had breached the Rule but "Jinja Rules" was only 1.8kgs above its previous weight and not 2kgs. He said had he delayed the greyhound's next start a further 4 days, and it then weighed the same as it had on 30 July 2018 (ie 1.8 kgs in excess of its 6 July 2018 weight), he would not have been in breach of the Rule because a greyhound racing after a 28 days or greater break is not subject to the weight variance provisions of Rule 45.11. He added that this and the previous three breaches detailed by Mr Whiterod were all for different greyhounds and whilst the current Rule penalised trainers he believed changes were going to be considered to make the Rule "greyhound specific" rather than "trainer specific". He concluded by saying any penalty to be imposed should be similar to that imposed for the breach of the rule on 6 July 2018.

REASONS FOR PENALTY

11] The Sixth Schedule of the Rules is a list of breaches of Rules classified as Minor Infringements. The schedule lists the penalty to be imposed if a Minor Infringement occurs and also the penalty to be imposed if a second breach of the same Rule occurs within 120 days of the first breach - \$100 and \$150 respectively. Where a third or further breaches of the same Rule occur within 120 days the matter is referred to the Judicial Control Authority to determine the penalty to be imposed. Rule 45.11 is included in the list of Minor Infringements in the Sixth Schedule of the Rules.

12] Mr McInerney operates two training establishments. However, the RIU treat the combined operations as 1, as do Greyhound Racing New Zealand when publishing details of the trainer's premiership table. Mr McInerney had 5819 starters in the 2017/2018 season – approximately 1600 more than any other trainer – and has already had 150 starters within the first 8 days of the 2018/2019 season. Whilst those statistics show Mr McInerney to be a very busy trainer, the Committee is concerned this is his fourth breach of this Rule in 48 days.

13] The Committee notes Mr McInerney's admission of the breach, his cooperation with the Stewards when advised of the breach of the Rule and the fact that it was intended to race the greyhound at a weight in excess of its 6 July 2018 weight that was within the 1.5kg permitted variance.

14] The Committee has received an email dated 9 August 2018 from Mr Whiterod which states:-

"The information supplied to me by my Assistant on 30.07.18 was that the dog JINJA RULES was 2.0 kilograms overweight from its previous start on 06.07.18.

The actual weights recorded on the NZGRA Computer are on 30.07.18 a weight of 36.0 kilograms. On 06.07.18 a weight of 34.2 kilograms.

This was a difference of 1.8 kilograms overweight which shows that Mr McInerney was in fact correct. However, the dog was still over the allowable limit of 1.5 kilograms".

15] The Committee records its concern that the weight increase was incorrectly recorded on Information A10901. However, the Rule is one of strict liability and the actual weight variance of 1.8kgs does still mean that Rule 45.11 has been breached.

16] The breach of the Rule on 30 July 2018 is the fourth in 48 days and the Committee considers this repeated breach is more serious and, by its very repeat nature in a short space of time, it must attract a greater penalty than the one previously imposed in order to act as a deterrent and discourage others from committing a similar breach of the Rules.

17]After considering the submissions of both parties and taking all of the above into account we believe a penalty by way of a fine larger than that imposed for Mr McInerney's breach of this Rule on 6 July 2018 is appropriate. We have not considered what is an appropriate starting point for a fourth breach of the Rule but rather what is an appropriate increase in the previous penalty of a fine of \$175 imposed on 6 July 2018. Whilst initially considering an increase of \$100 we have decided that as the weight variation is confirmed as 0.3kgs an increase on this occasion of \$50 is appropriate.

PENALTY

18] Mr McInerney is fined \$225.

COSTS

19] The Informant did not seek an order for costs and as the matter was heard by teleconference there will be no order for costs in favour of the JCA.

Paul Williams

Chairman

Dated at Wellington this 9th day of August 2018

Penalty: