

**Non Raceday Inquiry RIU v M Flipp - Decision dated 13 July 2020 - 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 (RIU)**

Informant

**AND M FLIPP**

Respondent

**Judicial Committee: Mr T Utikere** (Chairman)

**Mrs N Moffatt** (Member)

**Parties: Mr S Irving** (for the Informant)

**Ms M Flipp** (as the Respondent)

**DECISION OF JUDICIAL COMMITTEE DATED 13 JULY 2020**

**FACTS**

[1] The Respondent has been charged with a breach of Rule 40.3 of the *New Zealand Rules of Greyhound Racing*.

[2] The relevant Rule is as follows:

*Rule 40.3: If a Greyhound is withdrawn without valid reason after the Box Draw, or after qualifying for a Semi Final or Final of a Totalisator Race, the Owner or Trainer of the Greyhound shall be guilty of an Offence.*

[3] The specific Information alleged that in Race 3 at the Wanganui Greyhound Racing Club's Meeting on 17 June 2020, the Respondent:

Withdrew ISAAC MARJEN without a valid reason. ISAAC MARJEN was presented to the OTV who could find no injuries/abnormalities that would prevent it from racing, and declared that the dog was fit to run. An alleged breach of Rule 40.3 of the New Zealand Greyhound Racing Association Rules.

[4] The Respondent originally denied admitting the breach, however, following a teleconference and her review of the Rule and the *Briefs of Evidence* supplied by RIU witnesses, she advised the Committee of a change in plea to that of admitting the breach.

**SUMMARY OF FACTS**

[5] A Summary of Facts was agreed to by both parties, which covered a number of salient points. It identified that at the Wanganui Greyhound Racing Club's Meeting on 17 June, ISAAC MARJEN, trained by Ms Marcie Flipp, was scratched from Race 3.

[6] Ms Flipp had scratched four runners for the meeting and had presented them to the on-course Veterinarian under Rule 40.14. The Vet's examination for any injuries or illness was carried out in the presence of Ms Flipp by the RIU approved Vet, Ms Kayd Smith. Soon after completing the examination, Stewards were approached by Ms Smith with a query as to what her next steps were to be as she could not find any injury or illness with the dog (ISAAC MARJEN) and in her professional opinion the dog was fit to race. She was advised that she would need to fill out a Veterinary Certificate to that effect and that the Stewards would then liaise with the trainer on the matter.

[7] Senior Veterinarian Mr Malcolm Jensen was also on Course in relation to another matter. Ms Smith asked if she could ask Mr Jensen to examine the greyhound due to his senior experience within the Greyhound Industry. She was advised by the Stewards that they were completely confident in her abilities to assess whether or not a greyhound was fit to race, but if she wanted to consult with him that would be permissible. Mr Jensen subsequently examined the dog and reported that he agreed with her initial examination in that he could find no injuries or illness and in his opinion the greyhound was fit to race.

[8] The trainer was then asked to sign a Minor Infringement for a breach of rule 40.3, however she did not wish to admit to a fine and signed the Information as not admitting the breach. A copy of the Vet's Certificate was also appended to the agreed *Summary of Facts*.

## **DECISION**

[9] As the charge was admitted, the Committee proceeds on the basis that it is deemed to be proved.

## **PENALTY SUBMISSIONS**

[10] Both parties filed written penalty submissions in accordance with the Committee's directions. For the RIU, Mr Irving identified the Respondent as a Licenced Public Trainer who had held her Trainer's Licence for over 18 years, currently training in excess of 40 race dogs out of her Foxton Property. She had also admitted to a breach of Rule 40.3 and the RIU submitted that the penalties which may be imposed were detailed in the Sixth Schedule, also known as the Minor Infringement Table. The position of the RIU was that a \$150 fine was appropriate as this was Ms Flipp's first offence under the Non-valid Withdrawal Rule. In addition, the RIU confirmed that they were not seeking any costs orders against the Respondent.

[11] In response, the Respondent confirmed that on the evening before the race meeting she had checked over all of her runners for the meeting; having a total of 16 dogs racing on that day. In her assessment she'd found four of those dogs to not be at an acceptable standard for them to race at the meeting. On 17 June her 16 dogs were taken to the track, including the four that she had scratched with the Club Secretary the night prior.

[12] As soon as the first kennelling had concluded she had produced the four dogs that she had scratched to the raceday Vet, Ms Smith. The dog ISAAC MARJEN was the first on the table and on each of the four dog's racing papers she had written a notation as to the likely injury it had so that it would make these things easier for her handlers in order to explain the problem. As she was bringing the last of the four dogs over she hadn't quite made it to the kennel block when ISAAC MARJEN was being checked.

[13] When she did arrive at the kennels Ms Smith had said that she could not find a problem with ISAAC MARJEN and that in her opinion he was fit to race. Ms Flipp asked Tom McCracken, who was with the dog, to read to her what she had written on the dog's papers to which he had replied it concerned the dog's right hip. She then proceeded to show Ms Smith where she thought the problem was, however, the Vet could still not see where she thought the problem was and declared the dog fit to race. Ms Flipp confirmed that Mr Jensen was also on course and was asked by Ms Smith, and approved by Steward Mr Austin, to provide a second opinion on the dog. As Mr Jensen could find nothing it was decided to charge the Respondent for scratching the dog without a valid reason.

[14] The Respondent advised that she had denied the charge initially because she would never scratch a dog for no reason and she had honestly believed that the dog was not fit to race. She cited the fact that dogs do not necessarily have to show pain to be unfit to race, which she believed was the case in relation to this dog. She reiterated her belief that the dog had muscle damage such as a small tear in the hip support area and although there may not have been any pain, it was nonetheless evident to her that there was still a problem with that muscle. She had trialled the dog at Wanganui on 14 June and was very disappointed in his performance which led her to suspect that he had an injury at the time. Animal welfare remained a priority for Ms Flipp and as she was still not satisfied with the two vets' assessment of the dog she sought another veterinary opinion.

[15] She had taken the dog to Mr Charlie Boyce in Foxton on 18 June. She advised the Committee that she had never mentioned anything about what had gone on the previous day in order to not influence Mr Boyce in any way. Following Mr Boyce's assessment of the dog he did find a couple of injuries which placed Ms Flipp's mind at ease as one of the injuries was in the right hip support.

[16] While she accepted that a Vet Certificate from Mr Boyce had little if any use to her in the form of evidence, her primary motivation in seeking this was to obtain peace of mind in that the dog needed some time to recover from the injury. Ms Flipp also attached a copy of Mr Boyce's Vet Certificate to her penalty submissions. Those written submissions also cite the Respondent's disappointment that the current matter is before a Judicial Committee, as she had gone to some effort to take the four dogs that had been scratched to the track on raceday. That had not been easy for them as they had to stay in a vehicle for most of the day and it would have been preferable, if not easier, for her to have left them at home and got Vet Certificates for each or accepted a 28 day stand down for each of the greyhounds, as provided under the Rules.

[17] On this occasion Ms Flipp submitted her belief that a trainer would know their dogs better than anyone else and that if the trainer had thought that the dog was not fit to race then surely animal welfare considerations come into play and the trainer would have the final say.

[18] She also expressed her regret that she did not push the issue more at the time in order to get to the bottom of the issue quicker; but at the time of the day that the Vet checks were being done she was aware that the Vet was due a break and that things were a little bit rushed. If she was to have an issue such as this again, she would take more time to sort the problem out at the time in order to avoid the experience that the current breach had led to. In conclusion the Respondent hoped that there would be some consideration given to reducing the potential penalty in light of the submissions that she had made.

#### **REASONS FOR PENALTY**

[19] The Respondent, Marcie Flipp, is a Licenced Trainer who has pleaded guilty to a breach of Rule 40.3, more commonly known as the Non-valid Withdrawal Rule. The Committee thanks the efforts of both parties in preparing and filing written submissions, and we are now in a position to issue a written decision as to penalty on this matter. It is clear to us that Ms Flipp takes issues of animal welfare very seriously; and this is confirmed by her desire to seek a third opinion from a vet in the form of Mr Boyce in Foxton. The position of the RIU in their penalty submission is very clear. That is, they believe as the breach is captured by the Minor Infringement approach and that the appropriate penalty for the respondent would be a \$150 fine.

[20] In the early stages of this proceeding it seemed as though an *in person* hearing may have been likely, and it is for that reason that *Briefs of Evidence* were prepared for potential RIU witnesses. Whilst proceedings did not get to a point where those *Briefs* were required to progress to the next stage, there is some cost, and indeed inconvenience, in having the RIU prepare such *Briefs*. In such circumstances it is generous for the RIU to not pursue at least a partial contribution towards costs from the Respondent.

[21] The Respondent's response clearly provides some valuable context to the issues leading up to the breach along with her explanation of steps that she had taken following the race meeting with Mr Boyce. On this occasion, the Committee accepts that her primary reason was in order to put her own mind at ease; and that is understandable. Whilst that may provide her with some comfort, it is this Committee's responsibility to look at the circumstances of the breach and to determine what an appropriate penalty would be. Under a normal admitted basis, this Minor Infringement breach would attract \$150 fine for a first offence.

[22] As this has been filed by way of an Information with Judicial Control Authority, it is open to this Committee to impose whatever penalty it considers appropriate, noting that this may fall outside of the \$150 quantum if the Committee considers it appropriate.

[23] Having considered all of the submissions, we form the view that whilst the Respondent's explanation for the breach can be understood, it nonetheless is a breach of the Non-valid Withdrawal Rule, and that the fairest penalty is one that would be received by other trainers in similar circumstances. Therefore, we see no reason to deviate from what is contained within the Minor Infringement Schedule.

#### **PENALTY**

[24] Ms Flipp is fined the sum of \$150.

#### **COSTS**

[25] While the position of the RIU is clear in that they are not seeking any costs; some minimal costs have been borne by the JCA as a result of the steps taken for preparing for an *in person* defended hearing. However, the Committee declines to exercise any discretion in making any cost award in favour of the JCA.

Signed at Palmerston North this 13th day of July 2020.

Mr Tangi Utikere

Chairman

**Penalty:**