

NZGRA Request for Review H Mullane v RIU - Written Decision dated 28 March 2018 - Chair, Mr G Jones

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF

THE JUDICIAL CONTROL AUTHORITY FOR RACING

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

BETWEEN

Hayley Mullane, Licensed Trainer

Applicant

AND RACING INTEGRITY UNIT (RIU)

Respondent

Judicial Committee: Mr G Jones (Chairman) and Mr A Dooley (Committee Member)

Hearing: 27 March 2018 at the Manukau Stadium

Present: Mrs H Mullane (Applicant)

Ms M E Potts (Handler)

Ms P Kinsey (Stipendiary Steward, for the Respondent)

Date of oral decision: 27 March 2018

Date of written decision: 28 March 2018

WRITTEN DECISION OF JUDICIAL COMMITTEE

[1] This is a hearing convened pursuant to Rule 55.11 of the Greyhound Racing New Zealand Rules of Racing ("the rules"). This rule provides that:

An Owner or Trainer of a Greyhound may seek a review of any decision under Rule 55.1, by the Judicial Committee, in accordance with Rule 66.20.

[2] This hearing arises from a Request for Review of the decision from Race 4, the *Pump & Engineering Services Ltd Series Heat*, run at the Auckland Greyhound Racing Club, on Sunday 25 March 2018 at the Manukau Stadium. The winner of the race was ATOMIC MISSILE who is trained by the applicant Mrs H Mullane.

[3] Following the running of the race, Stewards conducted a post race investigation and concluded that ATOMIC MISSILE was in breach of Rule 55.1 (b) and (c) in that it failed to pursue the lure by voluntarily easing up. As a consequence Stewards imposed a 28 day period of suspension and until the completion of a satisfactory trial.

[4] In her written Request for Review Mrs Mullane outlined her reasons for disagreeing with the Stewards' decision to stand down ATOMIC MISSILE. Those grounds included:

- a) That ATOMIC MISSILE came off the track cramping,
- b) That the track was power harrowed earlier in the week and due to the heavy sand and coupled with ATOMIC MISSILE trying her best to win she tied up in front; and
- c) That as ATOMIC MISSILE was a swab (dog) the veterinarian was unable to check her off the track.

The Relevant Rules

[5] Rule 55.1 provides that *Where a Greyhound:*

b. Fails to pursue the Lure in a Race; the Stewards may impose the following periods of suspension:

(a) in the case of a first offence, twenty-eight (28) days and until the completion of a Satisfactory Trial.

[6] In addition, Rule 55.2 provides that:

Where a Greyhound fails to pursue the Lure as provided under Rule 55.1, the Greyhound shall be examined by the officiating Veterinarian or Authorised Person.

[7] Fails to Pursue the Lure is defined within clause 1 of the rules. It means: *the action of the Greyhound voluntarily turning the head without making contact with another Greyhound, or voluntarily easing up, or stopping during a Race while free of interference.*

[8] At the commencement of the hearing, following discussion with both parties the Committee outlined the proposed procedure for the conduct of the hearing. It was determined that Ms Kinsey on behalf of the RIU would present their case first, followed by the applicant Mrs Mullane. Also at this point the relevant rules were read out and the parties were asked if they required clarity.

[9] The matter was heard at the Manukau Greyhound Stadium on 27 March 2018.

Respondent's case

[10] Ms Kinsey confirmed that following the running of race 4 at the Auckland Greyhound meeting on Sunday 25 March 2018 a post race investigation was commenced into the racing manners of the race winner, dog number 6 ATOMIC MISSILE. Ms Kinsey advised the investigation found that ATOMIC MISSILE was in breach of Rule 55.1 (b) and (c). As a result a 28 day suspension was imposed.

[11] Using available video footage Ms Kinsey demonstrated the alleged breach. She identified ATOMIC MISSILE in the green rug jumping from box number 6. Using the side-on film she pointed out ATOMIC MISSILE, in the home straight, improve around the leading dog, RED DOT SPECIAL, who was on the rail. She said at that point ATOMIC MISSILE changed its action and eased.

[12] Using the head-on view to demonstrate her point, Ms Kinsey said that ATOMIC MISSILE lost concentration and shifted in on RED DOT SPECIAL. She emphasised the films clearly show that ATOMIC MISSILE did ease up.

[13] Ms Kinsey said that any assertion dogs are not able to be vet checked when they come off the track is quite wrong and animal welfare is always at the forefront and always takes precedence. She said there are at least three circumstances when such checks would be carried out immediately following a race. They include:

- a) In cases of serious injury;
- b) Where dogs are showing any signs of immediate lameness; and
- c) In circumstances where the connections of a dog raise concerns and request a check.

[14] Ms Kinsey said that in all other circumstances veterinary checks take place anytime between 30 minutes and 2 hours following a race. She said that this is the norm. Specifically in relation to race 4 no concerns were raised regarding any injury to ATOMIC MISSILE, cramping or otherwise and on that basis it proceeded to the swabbing area. She added that if any injury concerns were raised a veterinary check would have taken priority over swabbing requirements.

[15] In response to questions from the Committee Ms Kinsey said that in the past injury concerns have generally been communicated to raceday Stewards. But on this occasion no such concerns were raised. Ms Kinsey also said that race 4 commenced at 2 pm and ATOMIC MISSILE was swabbed at 2.50 pm. After swabbing ATOMIC MISSILE was checked by the Officiating Veterinarian, Dr Joan Hessel who advised of no abnormalities.

[16] Mrs Mullane was spoken to during the course of the Stewards post race investigation and the issue of ATOMIC MISSILE cramping was raised. As a result Ms Kinsey said she sought advice from Dr Hessel on the issue. Dr Hessel again confirmed that no abnormalities were raised or detected during her post race inspection. She said that Dr Hessel added there was no evidence of ATOMIC MISSILE cramping and in her opinion had cramp occurred it would have pulled up after the event. Ms Kinsey said that ATOMIC MISSILE did not pull up immediately, but rather it continued on well after the lure had stopped and appeared to be running freely.

[17] Ms Kinsey outlined to the Committee passages from the Greyhound Racing NZ Guidelines (undated) relating to Failing to Pursue. She highlighted the definition and said in this case ATOMIC MISSILE had clearly eased up. She also added that although a 'serious injury' can be recognised as a factor in certain circumstances; it is not a relevant factor in this case as the post race examination did not detect any injuries to ATOMIC MISSILE. She concluded her commentary on the guidelines by putting forward a number of (hypothetical) scenarios which at times may contribute to a greyhound's failure to pursue; but which are irrelevant as any defence to a non-pursuing stand down. The examples submitted included:

- Dislike of the track
- Loss of concentration

- Easing in running
- The ultimate finishing position.

[18] In wrapping up the case for the respondent, Ms Kinsey said that the Manukau track was presented in a good safe condition for racing on Sunday 25 May 2018. She said no concerns were raised about the track by any of the participants; no injuries were notified or recorded due to the state of the track and if anything the track was racing slower due to it having been harrowed during the previous week.

Applicant's case

[19] Mrs Mullane advised the Committee that this was the first 'failing to pursue' case that she or any of her greyhounds have been involved in. She was partly assisted during the hearing by Ms E Potts who was ATOMIC MISSILE's handler for the race concerned.

[20] Mrs Mullane advised that when ATOMIC MISSILE came off the track she was "a bit lame" and did nothing further about it because her dog was required for swabbing. She said that it wasn't until about race 10 when Stewards advised that ATOMIC MISSILE was under investigation for failing to pursue and she raised the fact that her dog had cramped during the concluding stages of the race.

[21] Using the available video footage Mrs Mullane demonstrated that at no point did ATOMIC MISSILE's head change direction. She highlighted the fact that the dog number 4 had fallen on the first corner and as a result ATOMIC MISSILE had to work extremely hard around the bend. She added that ATOMIC MISSILE has possibly cramped up just prior to the finish line and this may have caused her to angle inward at the same time looking for the lure.

[22] Mrs Mullane was adamant that ATOMIC MISSILE's action did not change and she did not pull up or ease up. She said that ATOMIC MISSILE has had a high recent work load having raced the previous Thursday evening and arrived home late at night. She believed the build up of lactic acid may have caused ATOMIC MISSILE to cramp and that it may be a contributing factor.

[23] Ms Potts, ATOMIC MISSILE's handler told the Committee that immediately after ATOMIC MISSILE finished the race she showed signs of cramping. She said by the time they had walked back to the dais signs of cramp were no longer apparent. Ms Potts added that she has received advice third hand from a Veterinarian in South Auckland which indicates that you cannot always tell whether a dog is suffering from cramp.

[24] In concluding her case Mrs Mullane said that two of her other dogs also cramped up on the same day and she felt there was no need to advise anyone, including Stewards. She added that she thought the state of the track as a result of it being harrowed earlier in the week was a factor in her dog tiring and cramping.

Summing up

[25] In summing up for the Respondent Ms Kinsey submitted:

25.1 That post race the connections of ATOMIC MISSILE expressed no concerns and Stewards would have expected any issues to be raised, particularly in relation to injury.

25.2 That post race veterinarian checks are routinely undertaken between 30 minutes and 2 hours after racing, but as a matter of priority they are completed immediately if a dog is seriously injured or lame; or connections request a check.

25.3 That it is the opinion of the Officiating Veterinarian, Dr Hessel that had ATOMIC MISSILE cramped it would have pulled up, shortly after the finish, but it did not do so.

25.4 That the reason ATOMIC MISSILE was swabbed was because the race was a 'Heat' with the final being run the following week. Two other runners in the race were checked by the veterinarian because they were badly interfered with during the running of the race.

25.5 That the race video footage clearly demonstrates ATOMIC MISSILE has eased short of the finish line.

25.5 That there is no evidence of cramp and ATOMIC MISSILE continued running freely well past the finish line.

[26] In summing up for the Applicant, Mrs Mullane submitted:

26.1 That at no point immediately after the race was she advised ATOMIC MISSILE was under investigation for failing to pursue and it was for that reason she did not raise the issue of the dog cramping with officials.

26.2 That when considering the video footage (head-on) it shows that ATOMIC MISSILE has angled around the home bend, straightened up and has maintained the same running action as the number 5 dog.

26.3 That ATOMIC MISSILE misjudged the distance between her and RED DOT SPECIAL as she angled inwards, perhaps believing the inside dog was further in front than what she actually was.

26.4 That ATOMIC MISSILE was trying so hard she cramped up just prior to the finish line and that she is now being penalised for trying hard.

26.5 That it is not illegal for a dog to be a "bully to try to get to the rail".

26.6 That ATOMIC MISSILE has not failed to pursue.

Reasons for Decision

[27] The Committee has carefully considered the totality of the evidence placed before us at this hearing. This includes the detailed submissions of the applicant and respondent, their respective interpretation of the video films as well as our own analysis of the films.

[28] The respondent's case is simply that a failure to pursue by definition includes "*voluntarily easing up*" (refer definition clause 1 of the rules) and in this case the films clearly demonstrate that ATOMIC MISSILE did ease for several strides close to the finish line.

[29] On the other hand the applicant's case is that her dog did not fail to pursue; and its running action over the concluding stages of the race was influenced by (a) the state of track due to it having been harrowed during the previous week; (b) ATOMIC MISSILE has raced twice in recent days, was possibly tired and cramped up near the finish line and (c) due to swabbing requirements ATOMIC MISSILE was unable to be vet checked immediately after the race.

[30] The fact that the track was harrowed during the previous week is not contested. We were advised that no concerns were raised by other participants about the state of the track and we were also told that no injuries were notified due to the condition of the track.

[31] ATOMIC MISSILE's race handler, Ms Potts told the Committee that immediately after the race she noticed that ATOMIC MISSILE was suffering from cramp. She said that by the time they walked back to the dais cramp was no longer evident or a problem.

[32] The Committee was advised that the post race veterinarian inspection revealed no abnormalities and no reference was made during that inspection about the possibility of ATOMIC MISSILE having suffered from cramp. We were told that cramp is not uncommon nor is the timing of post race inspections. Due to tight timeframes between races veterinarian inspections are routinely carried out anywhere between 30 minutes and 2 hours after the conclusion of a race.

[33] The rules, (clause 55.2) require a greyhound who fails to pursue to be examined by the officiating Veterinarian or Authorised Person.

[34] The rules (clause 55.4) also define "seriously injured" to mean *an injury which the Veterinarian or Authorised Person concludes will result in a period of incapacitation of 21 days or more*. In accordance with clause 55.4 the rules provide that *"Where a Greyhound is found not to be seriously injured upon an examination pursuant to Rule 55.2, the Owner or Trainer of the Greyhound may, within 72 hours after the completion of the Meeting at which the Greyhound failed to pursue the Lure, apply to the Stewards seeking a re-examination at a time to be agreed by the Stewards."*

[35] The rules allow for circumstances where a seriously injured dog should not be suspended, subject to re-examination by the Veterinarian or Authorised Person (refer clause 55.5). In this instance ATOMIC MISSILE was examined by the officiating Veterinarian Dr Hessel and no injuries (serious or otherwise) were detected. On that basis there is no evidence before us of ATOMIC MISSILE having incurred injury that falls within the definition of "serious injury". Therefore, we cannot give any weight to any claims of injury as a significant contributing factor.

[36] In our deliberations the Committee carefully considered the available video films. We looked at all angles, real-time, slow motion and frame by frame. Our interpretation of the films is as follows:

36.1 At the straight entrance ATOMIC MISSILE is racing in second position approximately 3-wide and 2 lengths behind the race leader, RED DOT SPECIAL. ATOMIC MISSILE is racing free of any interference at this point.

36.2 In the home straight ATOMIC MISSILE finishes strongly, challenges, shifts inwards and takes the lead.

36.3 For several strides prior to the finish line ATOMIC MISSILE changes her action and eases up of her own accord. It is evident that her body action changes.

36.4 It is noteworthy, given the discussion regarding cramping up, that ATOMIC MISSILE is observed to run freely after the finish line to a point just prior to the 318 metre start point. ATOMIC MISSILE does not appear to show any interest in the lure and does not appear to be in any discomfort.

Decision

[37] We believe it is more probable than not that close to the finish line ATOMIC MISSILE did voluntarily ease up free of any interference. Accordingly the review is unsuccessful.

[38] There was no application for costs and we made no award for any costs.

Dated at Auckland this 28th day of March 2018.

Gavin Jones

Chairman

Penalty: