

TASMANIAN RACING APPEAL BOARD

Appeal No 09 of 2017/2018

Panel:	Kate Cuthbertson (Chair) Rod Lester Wendy Kennedy	Appellant:	David Crosswell
Appearances:	Scott Quill on behalf of the Stewards Graeme Barber on behalf of the Appellant Rob Higgins (Adviser)	Rules:	Greyhound Australasia Rule 69(1)
Heard at:	Launceston	Penalty:	Fernando Bolt – 28 days stand down and satisfactory trial
Date:	18 December 2017	Result:	Appeal Dismissed

REASONS FOR DECISION

1. Mr Crosswell is the owner and trainer of the greyhound *Fernando Bolt*. The greyhound raced in Race 6 – Simons Carpet One Gold Collar Final – SE-515M on 13 November 2017. Following an inquiry into the race, Stewards were of the opinion that *Fernando Bolt* had breached GAR69(1) which provides:

“Where, in the opinion of the Stewards, a greyhound is found to have marred another greyhound during an Event, the Stewards shall impose a period of suspension in respect of the greyhound pursuant to sub-rule (2), and the specifics shall be recorded in the relevant Controlling Body Register, or where applicable, the Certificate of Registration or Weight Card of the greyhound.”

2. The particulars of the charge were as follows:

“In the home straight after bumping with Dolly Does It, Fernando Bolt then turns its head inwards towards Dolly Does It and makes head and muzzle contact with that greyhound and, in doing so, has marred the running of that greyhound.”

3. Having advised the appellant of the charge, he proceeded to debate the matter with Stewards. It is not clear that any plea was taken from him but it is apparent that Stewards assumed he had pleaded not guilty and then found the charge proved. As a consequence, the mandatory period of suspension provided under GAR69(2)(a) was imposed. That provision provides that a greyhound is suspended at the track where the offence occurred for 28 days and until the completion of a satisfactory trial.

4. This appeal relates to the finding that *Fernando Bolt* had marred *Dolly Does It* during the course of the race. The appellant was granted a stay of the conviction and penalty pending the outcome of the appeal.

Marring

5. Marring is defined in GAR1 as follows:

“Marr’ or ‘marring’ means the act of a greyhound which turns the head and makes head or muzzle contact with another greyhound.”

6. In order to find a charge under GAR69(1) proved, it is necessary to establish that the head or muzzle contact was the result of some ‘conscious’ behaviour on the part of the greyhound as opposed to an accidental cause.

Inquiry Evidence

7. During the course of the inquiry, the race film was viewed. The appellant noted the following:

- it was pretty crowded tight racing;
- the greyhound in red was coming at *Fernando Bolt* all the time and hitting him all the way up the straight;
- that greyhound turned *Fernando Bolt* sideways and probably knocked him off balance.

8. When Stewards put to the appellant that *Fernando Bolt* had opened his mouth and “had a bit of a go” at *Dolly Does It*, the appellant responded, “*Oh well, he was stuffed when he come back, I can tell you he was looking for fresh air fair up the guts.*”

9. It was noted by Stewards that it looked like *Fernando Bolt* had his mouth open and was turning to the dog on his inside. The appellant suggested that other dogs also had their mouths open, presumably to get air into their lungs.

10. The appellant reiterated that *Fernando Bolt* had never balanced up properly and that he had been hit by another dog, probably turning him sideways. It was clear that Stewards had formed the view that *Fernando Bolt* had turned its head in and attempted to bite *Dolly Does It*.

Notice of Appeal

11. The appellant stated in his notice of appeal that Stewards did not give enough weight in their determination to the fact that the dog *Fernando Bolt* had been extremely hampered in the final straight by *Dolly Does It* which was tiring and trying to leave the rail and move up the track. It was asserted that this caused *Fernando Bolt* to be turned sideways in towards *Dolly Does It* at the time the Stewards allege the marring occurred.
12. In his application for a stay of proceedings the appellant further asserted that the dog did not commit any voluntary offence, but was reacting to pressure applied to him from the dog racing underneath and trying to move up the track.

13. In further submissions provided in support of the appeal, the appellant stated that the dog should not have been charged with any offence as clearly it had been severely hampered during the race in the home straight by *Dolly Does It* wanting to get off the track.

Appellant's Submissions

14. The appellant submitted that there had been severe interference to *Fernando Bolt* during the course of the race, and that this was the cause of the trouble. It was submitted that *Fernando Bolt* was involved in a severe collision which knocked its legs. *Fernando Bolt* continued to go up the track which stopped *Dolly Does It* from going in a straight line.
15. It was noted that in the Stewards' report of the race, *Fernando Bolt* was mentioned on four occasions. This was said to be evidence of the degree of interference the greyhound had experienced during the course of the race. The interference from the home turn onwards was described as severe. It was also submitted that the contact was not of its own volition, but caused by interference in the home straight. It was suggested that the physical force of the dog coming up the inside turn caused the back end of the dog to turn out and the front end to turn in towards the dog on the inside.

Stewards Submissions

16. It was noted by Stewards that bumping was not unusual in a greyhound race. What was unusual, however, was for a greyhound to turn its head in and make an aggressive movement towards another dog.
17. Stewards viewed the race as follows:
 - in their view *Dolly Does It* shifted up slightly and contacted *Fernando Bolt*;
 - in their view *Fernando Bolt* resented that pressure and made an aggressive movement in response.
18. They submitted that the purpose of the rule is to protect punters as marring can affect the outcome of a race. The need to have a satisfactory trial following a period of suspension is to enable Stewards to be satisfied that a greyhound will not interfere or mar again on that particular race course. The rule is one fundamental to the integrity of greyhound races.
19. It was submitted by Stewards that there was no pressure being experienced by *Fernando Bolt* from the outside, its move was aggressive and it had tried to bite *Dolly Does It*.

Race Patrol Film

20. A number of angles of the race were viewed during the course of the appeal. The view that most clearly shows the relevant incident was the head on view.
21. The side view footage does not show the relevant part of the race. It does, however, show the relative positions of other greyhounds. About the time of the alleged marring, there were three greyhounds racing in close proximity to each other. The Board, however, agrees with the view of Stewards that *Fernando Bolt* was not receiving pressure from the outside dog.

22. The fixed front view shows the greyhounds approaching the home straight. It is evident that *Fernando Bolt* and *Dolly Does It* make contact with each other. It is also evident that *Dolly Does It* is moving up the track. This coincides with *Fernando Bolt* moving marginally closer to the rail. *Dolly Does It* makes contact with *Fernando Bolt*'s side. There is a further bump at a point when *Dolly Does It* is slightly ahead of *Fernando Bolt*. It is at that point that *Fernando Bolt*'s head turns inwards towards *Dolly Does It*.
23. The fixed back view footage shows no relevant portion of the race.

Decision

24. Having viewed the race footage, the Board were satisfied that the opinion of Stewards that *Fernando Bolt* had marred *Dolly Does It* was correct. The Board, however, was not satisfied that *Fernando Bolt* had attempted to bite *Dolly Does It*. It is, however, clear that *Fernando Bolt*'s head or muzzle makes contact with *Dolly Does It*. We were satisfied that that movement was a voluntary movement and not an involuntary reaction to the contact that had been occurring between the two greyhounds. At the time of the incident, *Dolly Does It* was ahead of *Fernando Bolt*. It is not the case that *Fernando Bolt*'s rear legs were pushed outwards causing his head to move inwards. In our view, although *Fernando Bolt* was responding to pressure and the contact being caused by *Dolly Does It*, the response was a deliberate act of the dog, rather than accidental contact.
25. The appeal is dismissed. The Board affirms the finding of Stewards that *Fernando Bolt* marred *Dolly Does It* during Race 6. The penalty imposed was a mandatory one and not capable of being appealed.
26. Pursuant to ss.34(1A), (2)(a), (4A) and (4B)(a) of the *Racing Regulation Act 2004*, the Board orders that:
 - (a) 50% of the prescribed deposit paid by the appellant is forfeited to the Secretary of the Department; and
 - (a) the appellant pay 50% of the cost incurred in the preparation of the transcript of the Stewards enquiry held on 13 November 2017.