

TASMANIAN RACING APPEAL BOARD

Appeal No. 10 of 2020-21

Panel:	Kate Cuthbertson (Chair) Patrick O'Halloran (Deputy Chair) Rod Lester (Member)	Appellant:	David Crosswell
Appearances:	Michael Hoyle (on behalf of the Stewards)	Rules:	GAR 69(1)
Heard at:	1 Civic Square LAUNCESTON TAS	Penalty:	<i>Highland Chief</i> stood down from racing for a period of 28 days (Hobart only)
Date:	17 February 2021	Result:	Dismissed

REASONS FOR DECISION

1. On 10 December 2020 the appellant Mr David Crosswell (a licenced greyhound trainer) was charged as a result of an incident during race 5 (- the Ladbrokes Hobart Thousand (G1) Heat 3 - SE 461M) held on that date in which a greyhound he trained, HIGHLAND CHIEF, was said to have marred another greyhound, HEADWALL, in the home straight.
2. Having made that finding - and noting that HIGHLAND CHIEF did not have any previous offences of marring - the dog was stood down from racing pursuant to GAR 69(1) and (2) for a period of 28 days, limited only to the Hobart track, and until the completion of a satisfactory trial.
3. In a notice of appeal dated 14 December 2020, the appellant appealed against the 'conviction and penalty' relating to the finding made by the Stewards on 10 December 2020. On the filing of the appeal, the Chairperson of the Tasmanian Racing Appeals Board (TRAB) granted a stay of the penalty imposed until the determination of the appeal.
4. The offence of marring is created by GAR 69. This Rule provides:
 - (1) *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 period of suspension imposed pursuant to sub-rule (1) shall be:*

- (a) *In the case of a first offence, at the track where the offence occurred, 28 days and until the completion of a satisfactory trial; or*
 - (b) *Subject to Rule 70, in the case of a second offence, at all tracks, 3 months, and until the completion of a satisfactory trial; or*
 - (c) *In the case of a third or subsequent offence, at all tracks, 12 months and until the completion of a satisfactory trial*
- 5. Relevantly GAR 1 defines “mar” or “marring” as meaning the act of a greyhound which turns the head **and** makes head or muzzle contact with another greyhound. (*emphasis added*)
- 6. It is to be noted that - with reference to the inclusion of the word ‘shall’ within sub sections (1) and (2) - once a finding is made that marring has occurred the Stewards do not have any discretion in regard to the imposition of the penalty. The only relevant factor being whether the marring is a first or subsequent occasion of such conduct.
- 7. At the hearing of the appeal on 17 February 2021 all parties had the opportunity to review and refer to the video footage of the race including the specific time point at which it was said the marring offence had occurred.
- 8. The appellant made several oral submissions to the Board which can be summarised as follows:
 - a. That the appellant had had the opportunity to view the relevant film footage on a laptop after the race and before the hearing of the appeal;
 - b. That interactions between other dogs immediately prior to the alleged marring offence had directly impacted on HIGHLAND CHIEF, causing HIGHLAND CHIEF to lose balance and/or causing the dog to turn its direction inward and make contact with HEADWALL - i.e. that any head contact made by HIGHLAND CHIEF to HEADWALL was inadvertent and/or at a point in time when HIGHLAND CHIEF was (still) off balance;
 - c. That in their assessment of whether a marring had occurred, the Stewards should have taken into account or given more weight to the fact that the dog had not marred before, the period of the race in which the marring was said to have occurred and the position/placement of the dogs said to have been involved or impacted by the marring (that is the marring was said to have occurred in the final stages of the race and did not impact the outcome of the race in any way);
 - d. That the marring contact (if it was said to be marring) was not sustained;
 - e. That the head on camera view did not accurately depict (or capture) the placement of each dog in the race at that time - including the space between each dog and the cause(s) of any physical contact between each dog;
 - f. That HIGHLAND CHIEF was a young dog with a limited race history and such behaviour as depicted in the race footage was very unusual or out of character for the dog;

- g. That HIGHLAND CHIEF was injured at or about and/or as a result of the alleged marring;
 - h. That the appellant in training HIGHLAND CHIEF drew upon the benefit of training dogs for almost 60 years;
 - i. That in terms of penalty, the Stewards did have a discretion to not impose the penalty they did and should have used this discretion to impose a lesser penalty. Whilst this submission was not abandoned as such, it was clarified with the Appellant that this submission may have been based on his misunderstanding that the dog had been charged with 'Failing to Pursue' pursuant to GAR 69A where such a discretion does exist.
9. Mr Free on behalf of the Stewards submitted (with reference primarily to the 'head on front view' of the video footage):
- a. That whilst there was an occasion of two other dogs (HEADWALL and ENCHANTED SPIRIT) bumping into each other on a number of occasions prior to the marring incident, they continued to race with their heads faced forward;
 - b. That at the point in time at which those two dogs were bumping into each other, HIGHLAND CHIEF (already) had his head turned in, continued on in his inward passage, made a 'bee-line' into the dogs, before ultimately making head and muzzle contact with HEADWALL and continued to make such head and muzzle contact for up to a further five occasions
10. It is noted by the Board that such a description is entirely consistent with the Stewards Report from the Hobart Greyhound Racing Club held on 10 December 2020 which recorded:
- a. 'In the home straight, HIGHLAND CHIEF and HEADWALL bumped and as a result ENCHANTED SPRIT checked off the heels of HIGHLAND CHIEF. Soon after, HIGHLAND CHIEF marred the running of HEADWALL'; and
 - b. Stewards were of the opinion that HIGHLAND CHIEF had turned its head inward and made head or muzzle contact with HEADWALL and by doing so had marred the running of that grey hound...'
11. Mr Free further submitted that HIGHLAND CHIEF's actions were not a function of being off balance - as evidenced by the fact that he already had turned his head prior to the head and muzzle contact occurring.
12. In regard to the offence and penalty it was submitted :
- a. For a marring to occur the requisite contact has to be a voluntary action - noting that marring occurs only when the turning of the head is combined with the head and muzzle contact - and a 'common sense approach' is taken by stewards in this assessment;
 - b. That the location of a dog in the race or whether the outcome of the race (in terms of place getters) is impacted has no bearing on an assessment of whether a marring has occurred;

- c. That in the event of a finding of marring the stewards had no discretion as to penalty.
13. The Board had the benefit of the advice of the Greyhound adviser, Mr Rob Higgins, and carefully considered the race patrol film. Having considered the submissions of the parties, the race patrol film (specifically the 'fixed front view' and 'head on front view') and the advice of the adviser, the Board was satisfied that there was clearly a marring in this case.
14. Such a finding is borne out by the race patrol film which clearly depicted:
 - a. That HIGHLAND CHIEF was racing tightly with the two other dogs ('HEADWALL' No. 6 and 'ENCHANTED SPIRIT' No. 1)
 - b. That HIGHLAND CHIEF went from the outside (before) heading into the rails and encountering 'HEADWALL' and 'ENCHANTED SPIRIT'. In the course of doing that - if there was a shifting outwards of HEADWAY it was only marginal by comparison to the amount of distance HIGHLAND CHIEF took to get to the rails;
 - c. To the extent HIGHLAND CHIEF was off balance - that was not the cause of its turning its head - as it appeared to gain some balance - and whilst there was clearly some jostling between the dogs, HIGHLAND CHIEF was gaining balance and running cleanly at the time it turned its head. The Board was satisfied it was not an involuntary act - but was instead utterly voluntary; and
 - d. HIGHLAND CHIEF then made contact with HEADWALL's muzzle and head.
15. Neither the period of the race, the position of the lure nor the position of each dog in the race at the time the head and muzzle contact occurred had any bearing on whether the marring event occurred.
16. The Board affirmed the decision of the Stewards and ordered that the appeal be dismissed. Further the stay granted in regard to the stand down is lifted with the penalty to commence on 17 February 2021.
17. In accordance with s 34(1A) of the Act, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the costs incurred in the preparation of the transcript in accordance with s 34(4A) of the Act.