

TASMANIAN RACING APPEAL BOARD

Appeal No. 13 of 2019-20

Panel:	Kate Brown (Chair) Rod Lester (Member) Wendy Kennedy (Member)	Appellant:	Richard Hall
Appearances:	Michael Hoyle, on behalf of the stewards Neville Allison, on behalf of the appellant	Rules:	GAR 86 (o)
Heard at:	Launceston, Tasmania	Penalty:	Fine of \$500 (of which \$250 is suspended for 2 years)
Date:	16 July 2020	Result:	Upheld. Penalty varied to \$250 (wholly suspended for a period of 12 months)

REASONS FOR DECISION

1. The appellant was charged with misconduct contrary to GAR 86(o) which provides that a person shall be guilty of an offence if they have:

in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

2. The particulars of the charge were that the appellant:

being a licensed greyhound trainer misconducted [himself] in the way [he] spoke to Stewards Dominic Tyson, Sherry Barr and ... Laura Lord at an inspection at [his] registered kennel address on the 13th of February 2020. Stewards are of the opinion that the foul language used and the way it was directed towards stewards, in particular towards Mr Tyson constitutes misconduct"

3. It is worth noting that despite the Inquiry being convened some four months after the misconduct was alleged to have occurred, the particulars of the offending behaviour are not put to the appellant until some 17 pages into the 24 page transcript. The foul language itself is not specified in the particulars although what had been said was common ground between the parties at all times. It is also noted that Stewards could have proceeded under GAR 86(g) which deals specifically with abusing or insulting a steward.
4. The Board finds the following occurred:
 - a) On the 13th of February 2020, Mr Tyson, Ms Lord and Ms Barr attended at the appellant's property to undertake a kennel inspection:
 - b) The appellant's wife initially opened the door and went to get the appellant.
 - c) When the appellant came to the door, on seeing Mr Tyson he said "you can get in the car". Mr Tyson responded: "you aren't serious are you?" to which the appellant said "I'm fucking dead serious".

- d) Ms Lord asked the appellant why, and the appellant (referring to Mr Tyson) said "because he's an arsehole". Mr Tyson said "I don't think I am" and the appellant shut the door.
5. The Board accepted that essentially the particulars of the misconduct were swearing ("*I'm fucking dead serious*") and referring to Mr Tyson as "*an arsehole*". The appeal was against penalty only, asserting that the penalty of a \$500 fine, \$250 of which was suspended for two years, was excessive in all the circumstances.
6. In support of the appeal the appellant's advocate referred to the appellant's generally good record as a licensed person within the industry, and noted his only previous offences were relatively common and minor breaches of the rules. The Board was referred to 6 recent penalties for breaches of the same rule as support for the proposition that the appropriate penalty for a first offence was a reprimand:
- Martin on the 26th of August 2019 when a reprimand was issued;
 - England on the 14th of October 2019 when a reprimand was issued;
 - Fitzsimmons on the 22nd of October 2019 when a reprimand was issued;
 - Fitzsimmons on the 7th of January 2020 when a \$100 fine was imposed;
 - Fitzsimmons on the 17th of February 2020 when a \$150 fine was imposed; and
 - Fitzsimmons on the 30th of March 2020 when a reprimand was issued.
7. The offending behaviour in the above matters ranged from staring at stewards to telling a fellow participant that the offender would "ram his head up his arse".
8. Amongst other matters Steward's submitted in support of the penalty imposed that stewards ought not be abused in their workplace and that participants are expected to be able to control their behaviour.
9. The Board had regard to all material before it, both written and the evidence and submissions on the appeal. The Board accepts that Stewards are entitled to go about their work without being subject to abuse from participants, however considers the appellant's misconduct on this occasion to be towards the lower end of the scale for the following reasons:
- a) The appellant was in his own home
 - b) He had previously had a negative experience with Mr Tyson (which was not disputed) which had prompted him to speak to the Director of Racing;
 - c) He was of the belief (which may or may not have been correct - the Stewards did not call any evidence from the Director) that in that conversation the Director had said that Mr Tyson "*would never step foot back*" on his property;
 - d) The misconduct was clearly directed at Mr Tyson and as a result of this past incident - there was no evidence of misconduct towards the other two stewards present;
 - e) The appellant's record as a participant was otherwise good.
10. The Board accepted the penalty imposed was excessive, upheld the appeal and varied the penalty to a \$250 wholly suspended fine, suspended for a period of 12 months on the condition that Mr. Hall not be convicted of any misconduct under GAR 86 (o) during that time. The Board ordered that the appellant forfeit 50% of the prescribed deposit and pay 50% of the costs of the preparation of the transcript.