

TASMANIAN RACING APPEAL BOARD

Appeal No 16 of 2014/15

Panel:	Mr Tom Cox (Chair) Mr Rohan Foon Dr Sue Martin	Appellant:	Mr Ricki Donaldson
Appearances:	Mr Greg Richardson on behalf of the appellant Mr Paul Turner on behalf of the stewards	Rules:	Greyhound Rule 86(q)
Heard at:	Launceston	Penalty:	A seven year disqualification
Dates:	1 & 29 June 2015	Result:	(1) Appeal against conviction – dismissed (2) Appeal against penalty – varied to a two year disqualification

REASONS FOR DECISION

1. The appellant has been a registered owner of greyhounds since 2002 and a registered greyhound trainer since 2004. He has not actively trained greyhounds since 2006.
2. The appellant resides at 278 Murchison Highway in Somerset. In March this year, at his property, he kept 12 greyhounds, including seven pups and five older greyhounds, one of which was a deregistered greyhound by the name of “*Hellyeah Tom*”. *Hellyeah Tom* was whelped on 29 April 2002 and following its retirement from racing in 2006 kept by the appellant and his family as a pet.
3. On 4 March 2015 the stewards conducted a random kennel inspection at the appellant’s property. Shortly after the stewards arrived at the property they observed *Hellyeah Tom* standing on the property’s back door step. One of the stewards, Miss Sara Richards, observed “*The greyhound had a large growth protruding from its stifle underbelly area. The growth was weeping and the greyhound was in a poor condition, its ribs and backbone and hips were protruding and there were dark patches on its hind legs which looked like blood.*” The greyhound walked from the back step of the property to an undercover area in the garden. To Miss Richards “*it walked slowly and it appeared quite lethargic and to be in some discomfort and it was not walking in a normal gait.*” The greyhound then took up a lying position in a metal box in an area of the garden that was sheltered by shade cloth. There was torn up bedding on the floor and food bowls in the immediate area.
4. Following Miss Richards’ observations, a veterinarian, Dr Holm, was called and attended to conduct a clinical assessment of *Hellyeah Tom*. As a result of that assessment, *Hellyeah Tom* was euthanased. Following euthanasia, *Hellyeah Tom* was taken to the Animal Health Laboratory in Launceston for a post mortem examination.
5. An inquiry was subsequently conducted by the stewards on 24 March 2015. At the conclusion of that inquiry the appellant was disqualified for seven years. The disqualification resulted from findings that the appellant had conducted himself in a

manner which was detrimental to the image, welfare and promotion of greyhound racing r.86(q) of the Rules of Greyhound Racing. The particulars of the charge alleged that the appellant had failed to seek and provide any proper veterinary attention to prevent or alleviate suffering to *Hellyeah Tom*.

6. R.86(q) provides:

“A person (including an official) shall be guilty of an offence if the person.....commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.”

7. The appellant contends that he did not breach the rule on two grounds. Firstly, he says, that as a matter of fact, *Hellyeah Tom* was not suffering. As a result, any conduct on his part could not have been detrimental to greyhound racing. Secondly, he says, the conduct complained of was not sufficiently proximate to the notion of “greyhound racing” within the meaning of r.86(q). Further, the appellant contends that if he is in breach of the rule, the period of disqualification was excessive in all of the circumstances.

The Pathologist’s report

8. The pathologist found that *Hellyeah Tom* had two malignant tumours: the large skin tumour described above, as well as a tumour on the right kidney. The left kidney also had abnormalities. The pathologist considered that both of these tumours would have contributed to the animal’s poor condition. The cutaneous (skin) tumour, arising from the prepuce was described as being approximately 15cm in diameter and 5 cm thick. There was infection, ulceration and extensive discharge present.

Dr Holm’s Clinical Assessment

9. At the stewards’ inquiry Dr Holm described *Hellyeah Tom*’s condition as he observed it on 4 March:

- *“There was a little bedding in the crate. The dog was lying in virtually poor hygienic conditions, although there were, was not apparent faecal or urinary soiling. The dog was in very light condition, the vertebral spines were prominent as were the ribs. There was a large ulcerating tumour visible and immediately beside and in front of the right knee joint of the stifle.”*
- *“Not only was the mass (the tumour) extensively ulcerated but sero-sanguinous exudate, that means fluid containing blood and serum, from its surface was present on the inside of both hind legs which would suggest that this had been weeping for quite some time. There was also dried blood spots on the concrete near the crate.”*
- *“At the clinical examination the dog was quiet and showed no resentment to examination, had a resigned and lethargic and tired demeanour as is often seen in animals with long term ill-health and chronic pain and this is the sort of behaviour you see also in old people with cancer in their latter stages. The pulse and respiration were in the low end of the normal range. The dog was very debilitated with almost white mucus membranes, that’s the lining of the mouth and eyelids, indicating a significant degree of anaemia or blood loss and had a severe flea infestation to which it appeared oblivious.”*
- *“The dogs coat was dull and unkempt and the skin lacked the normal elasticity which is associated with a severe level of tissue dehydration.”*

Was *Hellyeah Tom* Suffering?

10. Dr Astbury, on behalf of the appellant, proffered an opinion before this Board to the effect that we should not be satisfied that the dog was suffering. He opined that because dogs in general have a higher tolerance for pain than humans and, in the absence of being able to take a direct account from the dog as to what it was feeling, any person's interpretation of the extent to which a dog may be suffering can only be subjective or speculative. He said that the cutaneous tumour was benign. The pathology report said otherwise. He said pain is a product of the impact on the nervous system and that the tumours were "nerve-less." If his implication was that the type of cancers in this dog are never painful or that an animal would not *suffer* from a cancerous growth, we reject it. Dr Astbury was also critical of Dr Holm's decision to euthanase *Hellyeah Tom*.
11. It is unnecessary to go into Dr Astbury's evidence in any more detail. He made no observations of *Hellyeah Tom*. He merely reviewed the evidence Dr Holm has given at the inquiry, along with a pathology report confirming the malignant tumours, the dog's renal abnormalities and other pathological findings.
12. Dr Astbury's opinion and the criticism of Dr Holm's decision to euthanase *Hellyeah Tom* should be put aside. It is true that any assessment of an animal's pain state will suffer from limitations that are not generally present when assessing a human's pain state. However, it is not correct in our view to suggest that any objective findings of the condition of an animal precludes an assessment of its wellbeing or, moreover, its need for treatment.
13. All of the observations made by Dr Holm are consistent with a finding that *Hellyeah Tom* was suffering, no doubt in part on account of its age, but also, no doubt, on account of the existence of the tumours and the impact they had on the dog. The skin tumour was grotesque and it would have been patently obvious to any person who made any observation of the dog that its condition was impacted by the presence of this tumour. While the existence of the kidney tumour was not as visible, the resultant clinical signs were of an extremely unwell dog. In a sense, the question whether *Hellyeah Tom* was suffering is a distraction. The real question is whether *Hellyeah Tom* presented to his owner, the appellant, in need of treatment. The answer to that question, even the appellant accepts, is yes.

The Appellant's Conduct

14. Before considering the appellant's second ground of appeal, it is necessary to capture the appellant's conduct. In this regard, we find that:
 - the appellant knew that for at least two months before the stewards attended the property *Hellyeah Tom* had, what he considered to be, an incurable cancer;
 - the skin tumour was weeping and infected and started bleeding at least up to a week before the stewards' attendance;
 - the appellant sprayed *Hellyeah Tom* with an antiseptic "to keep the flies away";
 - *Hellyeah Tom* had not seen a vet since last year (2014) when he received treatment for a "popped blood vessel in its ear";
 - the appellant was concerned that if he had taken *Hellyeah Tom* to the vet the dog would have been euthanased;
 - the appellant conceded that, having heard the stewards and Dr Holm's evidence, he had made "a serious ... error of judgment on whether [...] *Tom* was suffering";

- the appellant was not concerned about the cost of veterinary care, rather he was concerned that *Hellyeah Tom* would be euthanased, and neither he nor his children wanted the dog put down;
- the appellant's wife, a nurse, had told him about a week and a half before the stewards' attendance that he needed to "*do something*" about *Hellyeah Tom*;
- the appellant was hoping that *Hellyeah Tom* would "*pass away peacefully and we'd get up and the kids had his burial planned*";

15. Ultimately, the appellant summed up his own conduct in the following manner:

"Look I'd known for two months he needed attention and the fact that he was suffering from what you know I considered to be an incurable cancer and that he would be put down. I just wanted to keep him. I think the RSPCA guys summed it up pretty well ... I was looking after the dog for my own and my children's needs rather than what was best for the dog."

16. And further:

"Don't get me wrong you know of course I seen the tumour develop from internal to external. I seen it every day and, you know, I've gone out there with Tom every day and just fed him and just tried to, you know, just tried to keep him happy and it looked ugly it looked horrible, you know, I said to someone I said to my boss at work on the Monday that I'd got to look at this. I said if anyone came and seen Tom they wouldn't, you know, I said he looks just terrible at the moment."

"Greyhound Racing"

17. The appellant's second ground of appeal contends that on account of *Hellyeah Tom* being an unregistered greyhound and, effectively, a domestic pet, that any act or omission in connection with *Hellyeah Tom* could not be an act or omission sufficiently connected with "greyhound racing" within the meaning of r.86(q). Further, the appellant contends that if this Board finds that he failed to provide veterinary treatment to *Hellyeah Tom* he should have been charged under r.106(1) which provides:

"A registered person must ensure that greyhounds, which are in the person's care or custody, are provided at all times with-

- (a) proper and sufficient food, drink and protective apparel;*
- (b) proper exercise;*
- (c) kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in a clean and sanitary condition; and*
- (d) veterinary attention when necessary."*

18. Both of these contentions must fail. The appellant is a registered owner and trainer of greyhounds. The stewards attended his property to conduct a kennel inspection. Although *Hellyeah Tom* was an unregistered greyhound, the dog was in the care of a registered owner and trainer. Further, r.106 only applies to registered greyhounds and would not, in the present circumstances, apply.

19. In our view, the appellant's conduct in failing to seek veterinary treatment for *Hellyeah Tom* was conduct which was intimately connected with greyhound racing. The rights and privileges that attract to an owner and trainer also attract the responsibility that an owner and trainer conduct him or herself in a manner that is compatible with those rights and privileges. Conduct that is incompatible with those right and privileges is likely to impact the image, welfare and promotion of greyhound racing.

20. The appellant was under an obligation to keep and care for his registered greyhounds, and that included providing veterinary treatment, consistent with r.106. To sever that obligation on *Hellyeah Tom's* retirement would be artificial. On a greyhound's retirement r106 may no longer operate, but that is not to say that a registered owner and/or trainer may conduct him or herself with impunity when it comes to the welfare of greyhounds for which he or she is responsible. The humane treatment, by providing necessary veterinarian services, of a greyhound until its natural death is just the other side of the coin to the humane euthanasia of a greyhound by a veterinarian. Any failing on the part of an owner or trainer in either regard will adversely impact the image, welfare and promotion of greyhound racing.

Penalty

21. In our view, the period of disqualification for seven years is patently excessive, having regard to the nature of the appellant's conduct. The appellant was wilfully blind to the need to seek veterinary treatment for *Hellyeah Tom*. He was so in circumstances where the dog had a grotesque tumour the size of a large fist protruding from the side of its prepuce. The tumour was ulcerated, infected and discharging blood and fluid. The dog was flea ridden and dehydrated. The dog's condition over the previous weeks, if not longer, we infer, was poor and, apart from the application of an antiseptic spray to "*keep the flies off*", the appellant failed to seek any veterinary assistance. To make matters worse, his wife, a nurse, had given him notice that something had to be done about *Hellyeah Tom*. Nothing was.
22. The appellant has admitted his serious error of judgment. We accept that he genuinely loved the dog. Regrettably though, his affection for *Hellyeah Tom* clouded his judgment.
23. We also acknowledge that the appellant has been active in the retired greyhound adoption programme.
24. The facts of this case are not comparable to any previous case before this Board. In *Medhurst No.5* of 2007/08 this Board reduced a period of disqualification of eight years to three years for a trainer who had shot 11 greyhounds owned and trained by him contrary to r.106 and dishonestly attempted to hide from the stewards that he had done so. Although the case involved an element of dishonesty, it is informative in its observation that the requirement under the rules for euthanasia by a certified veterinarian was imposed to minimise the risk of maltreatment to the many number of retired greyhounds who unfortunately were not kept or adopted out as pets. The decision has informed this Board of the need to discourage conduct which may lead to a perception of animal maltreatment or cruelty within the greyhound racing industry.
25. In another jurisdiction, namely Queensland, in the matter of *Stokker* (3.11.1999) the Queensland Greyhound Racing Authority reduced a 10 year period of suspension to a two year period of suspension for a trainer who neglected eight greyhounds by malnourishment. In its decision the authority concluded "*certainly neglect and/or cruelty to animals should be treated with appropriate seriousness and at all times vigorously discouraged.*"
26. Again, to the extent that the decision in *Stokker* informs this Board's determination, we consider that conduct of the type in this case should be actively discouraged.
27. Although the original penalty was excessive, we consider that a period of disqualification is required to act as a general deterrent to those in the racing industry who find themselves in similar circumstances and, further, to mark this Board's disapproval of the appellant's conduct. We also note that the appellant is not active as a trainer and that the prospect of any similar conduct is remote. Nevertheless, we consider a lengthy period of disqualification is required and that the appropriate period is two years. It is every owner's duty to ensure, as best as possible and by taking reasonable steps, that care is provided to a

greyhound until its demise. Such a duty is compatible with the duty on every person with the care or charge of an animal to take reasonable measures to ensure the welfare of that animal. In order to ensure that reasonable measures are taken veterinary treatment will in many cases form part of that process; certainly it should have in the circumstances of this case.

28. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 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 cost incurred in the preparation of the transcript in accordance with s.34(4A).