

Non Raceday Inquiry - RIU v DD Schofield 12 December 2011 - Decision 14 December 2011

Rules:

[87.1 and 87.3](#)

Repondent(s)/Other parties:

Mr DD Schofield - Licensed Public Trainer

Name(s):

Mr T Taumanu - Registrar, Mr M Austin - Stipendiary Steward, Mr D Schofield Snr - Assisting Mr DD Schofield

Decisions:

**NON RACE DAY ENQUIRY
BEFORE THE JUDICIAL COMMITTEE**

Committee: Mr R Seabrook, (Chairman) - Mr A Dooley, (Committee Member)

Held at: Cambridge Raceway

Date: 12 December 2011

INFORMATION NUMBER: 67327

BETWEEN: NEW ZEALAND GREYHOUND RACING ASSOCIATION - T R Carmichael Chief Race Course Investigator

Informant

AND David Denis Schofield - Licensed Public Trainer

Defendant

ALSO PRESENT: Mr T Taumanu – Registrar, Mr M Austin - Stipendiary Steward, Mr D Schofield Senior (father of Defendant)

CHARGE: Breach of Rule 87.1 and 87.3

AS FOLLOWS:

That on 22 September 2011 David Denis Schofield was the trainer and person for the time being in charge of the greyhound HAVE A YAP which was presented for and raced in race 9 at a race meeting conducted by the Christchurch Greyhound Racing Club when the said greyhound was found to have administered to it a prohibited substance namely amphetamine; being an offence under the provisions of Rule 87.1 and 87.3 and punishable pursuant to rules 87.4 and 89.1 of the NZ Greyhound Racing Association Rules.

Mr Schofield (Junior) did not admit the breach of the rule. He admitted the substance was in the greyhound HAVE A YAP but he did not administer it.

Summary by Mr R Carmichael:

Mr. David Denis Schofield (the Defendant) is charged today with an offence under Rules 87.1 and 87.3 of the Rules of the New Zealand Greyhound Racing Association, in that he was the official trainer and person for the time being in charge of the registered greyhound Have A Yap which was presented to race at Christchurch on 22 September 2011 when, upon the analysis of a post-race urine sample, the greyhound was found to have a drug (Amphetamine) in its system.

All matters preliminary to this hearing, including the authority to lodge Information; the filing of a charge against the Defendant; the appropriate notices to the various parties; and the appointment of Judicial Committee, have been properly attended to.

The basic facts surrounding the matter are not in dispute and can be summarised as follows:

Information Number 67327:

1. The Defendant is a licenced Public Trainer. He has been so licenced for about eighteen years.
2. On 22 September 2011 the Defendant was the official trainer of the registered greyhound Have A Yap.

3. On 22 September 2011, Have A Yap was correctly entered for and started in race nine (the Jet Pets Sister Cities Cup C5) at a race meeting conducted by the Christchurch Greyhound Racing Club at Addington Raceway. This race was for Class 5 greyhounds over 520 meters.
4. Have A Yap finished last of eight starters in the race. It was 3/3 in the betting. Its form leading into the race was outstanding, having won its previous twelve starts. The Defendant was present at the meeting and was therefore the person for the time being in charge of the greyhound.
5. At the request of Mr. Schofield, Have A Yap was swabbed pre-race in order that he could make his return flight to Auckland.
6. The Defendant was present during the swabbing process and has indicated that the correct procedures were followed and he has signed the relevant sections of the swab card accordingly.
7. The samples were forwarded by courier to the Racing Laboratory at Auckland where they were received on 27 September 2011 "With all seals intact".
8. On 7 October 2011 the Racing Analyst confirmed in writing that the sample taken from Have A Yap at Christchurch North on 22 September 2011 had tested positive to Amphetamine.
9. The reserve sample was sent to Racing Analytical Services Laboratory in Melbourne for independent analysis. Amphetamine was confirmed in the reserve sample.
10. Amphetamine is a "psycho stimulant drug of the phenethylamine class which produces increased wakefulness and focus in association with decreased fatigue and appetite. The drug is also used recreationally as a performance enhancer". Amphetamine or substances containing Amphetamine have no legitimate therapeutic use in equine or greyhound racing. It is a non-endogenous substance. It therefore follows that its detection in a race day sample is, prima facie, a breach of the Rules.

Interviews:

11. Mr. Schofield was interviewed at his property on 11 October 2011. He has denied the intentional, or possible accidental, administration of any product that he knew contained Amphetamine. A search of the house and kennel area failed to locate any product that contained Amphetamine. No one at the property had been prescribed medication that may have contained the substance.
12. At the conclusion of the interview, the greyhound Have A Yap was identified by ear brand and a further urine sample obtained. That sample has been analysed but no trace of Amphetamine was detected.
13. Mr. Schofield travelled by air to Christchurch with Have A Yap on 22 September 2011. Have A Yap was not in his direct control from check in time until off-loading at Christchurch, a period of about two hours.
14. From arrival at Christchurch until kennelling, Have A Yap was in Mr. Schofield's care. From kennelling time there followed about a further three hours during which time Have A Yap was sequestered in the secure kennel block at Addington.
15. Although surveillance cameras are located in the kennel block, the film had been exposed to further race day filming and was not available for examination. In any event, the block of kennels where Have A Yap was placed was actually obscured from direct view of the surveillance camera.

Submissions:

16. The Defendant is charged with one breach of Rule 87.1 and 87.3. As indicated to the Judicial Committee earlier, the substance detected is not endogenous so therefore must have been administered, ingested or arose through contamination, directly or indirectly, to the greyhound prior to racing. It therefore follows, in the submission of the Informant, that the Defendant has in some way been negligent in failing to present the greyhound for racing in a drug free state.
17. The Defendant has been training and owning greyhounds for about eighteen years. He has appeared once previously in relation to a Procaine positive.
18. The Defendant had indicated prior to this hearing that this matter was to be defended. The basis was that he had not been responsible for the possible administration, ingestion or contamination of the greyhound with the subject substance. In anticipation of that argument the Informant seeks to state the purpose and implication of the Rules. It should be noted by the Judicial Committee that the charge which Mr. Schofield faces is under what is commonly referred to the Drug Negligence Rule. It is not the Informant's contention that Mr. Schofield was responsible for the actual substance being in the greyhound's system at the time that it raced, rather that he was the trainer, and the person for the time being in charge of Have A Yap when it was presented to race.
19. Rule 87 provides:

87.1 The Owner, Trainer or Person in charge of a greyhound nominated to compete in a race, shall produce the Greyhound for the race free of a Prohibited Substance.

87.3 Without limited any of the provisions of these Rules, the Owner, Trainer or person for the time being in charge of any greyhound

brought onto the Racecourse of any Club for the purposes of engaging in any Race which is found on testing, examination or analysis conducted pursuant to these Rules, to have received a Prohibited Substance shall be severally guilty of an Offence, unless the Board determines to absolve the Owner and/or Trainer of person in charge of any greyhound from the Offence.

87.4 Any greyhound which competes in a Race and is found to be the recipient of a Prohibited Substance shall be disqualified from that Race.

20. Proof of the charge against Mr. Schofield requires proof of the following elements:

- (i) that Have A Yap was taken to Addington raceway for the purpose of engaging in a race on 22 September 2011;
- (ii) that the greyhound was presented to race at the raceway on 22 September 2011 when it was not free of the Prohibited Substance Amphetamine;
- (iii) that Mr. Schofield was the trainer and person in charge of the greyhound when it was presented for, and raced in the Sister Cities Cup (Race 9); and
- (iv) that the Board has not absolved the Trainer of responsibility.

21. On 27 January 1995 the "all reasonable defence" provision in the NZGRA Rules was removed. The breach is therefore one of absolute liability.

22. In support of the proven elements of the charge in paragraph 21, the Informant refers to the High Court and Court of Appeal decisions in Mcl (2000):

[12] To my mind the scheme of the relevant rule is plain enough. Rule 135 (5) is what might be called the administration rule. It is directed to "any person" shown to be complicit in the administration of a performance affecting drug. Involvement in the act of administration, as a principal party, is the gist of the offence. If a breach is proved the committee may fine and disqualify that person. A proved breach is likely to be viewed very seriously. Rule 138(6), by contrast, is in the nature of a status offence. That is its breach requires proof that the person was "in charge of" the greyhound when it was taken to the race meeting. Of course it must also be established that that the greyhound had in fact been administered a performance affecting drug. The person in charge need not be shown to have been involved in the administration; rather it is the fact of being in charge of the greyhound when it was taken to the race meeting that is the basis of the breach".

23. The rules referred to above have since been re-written as quoted in paragraph 20 herein.

24. On the basis of the absolute liability nature of the rule, and the Court of Appeal decision in Mcl, the Defendant was the trainer of the greyhound Have A Yap which was presented to race with the drug Amphetamine in its system and therefore he is in breach of the rule.

25. Rule 87.4 provides the mandatory requirement for Have A Yap to be disqualified from Race nine at Addington on 22 September 2011. An order is so sought.

Submissions by Mr D Schofield Senior:

Mr Schofield (Senior) told the committee that HAVE A YAP was flown to Addington Raceway to trial on 15 December. A week later on 22 December, the race day in question, Mr Schofield said a crate from Air New Zealand was used to fly her down and he submitted this could have caused contamination. He further stated a camera was not in a position for HAVE A YAPS kennel to be viewed and they were unable to obtain a copy of the film in the kennel block. He also outlined to the committee the concern he has for the security at their home kennels as they have had some trouble in the past. Another concern Mr Schofield had was when they learnt the reserve sample sent to Australia to be tested had leaked from its container. He said this could have been another source of contamination. Mr Schofield concluded his submissions by stating why would they drug a greyhound in a G1 \$40,000 race?

Submissions by Mr D Schofield (Junior):

Mr Schofield confirmed all Mr Schofield (senior) submissions regarding the non availability of surveillance video footage. He submitted HAVE A YAP could have been knobbed. He admitted she was listless before the race but did not call a vet for a post race check. Mr Schofield told the hearing HAVE A YAP had won her 12 previous races prior to this Group 1 event and he fully expected her to win this one. He reiterated his concern over the leakage of the reserve bottle as he said this could have been their lifeline.

Decision:

After careful consideration of all the above facts it is not disputed that HAVE A YAP returned a positive swab to amphetamine which is a breach of rule 87.1 and 87.3. The committee is still unsure of how this positive swab arose, but we are satisfied there was no intent by Mr Schofield to gain an advantage by the administration of a prohibited substance. However this is a case of vicarious responsibility and every trainer must produce their grey hounds in a drug free state.

Accordingly we find the charge proved.

In addition it follows that any greyhound which competes in a race and is found to be the recipient of a prohibited substance shall be disqualified from that race. We rule accordingly.

Penalty Submissions:

The committee carefully considered the submissions on penalty from both Mr Carmichael and Mr Schofield (senior). Mr Carmichael said amphetamine was a non endogenous substance and it had no therapeutic use in greyhound racing. He submitted that previous breaches under this rule had incurred fines ranging from \$1500--\$3000. He said he had been asked to seek a disqualification of 6 months. He said those disqualified in previous cases under this rule were due to personal circumstances and it was over to this committee to impose whatever penalty they thought appropriate.

Mr Schofield (senior) said HAVE A YAP had clearly been got at but conceded that Mr Schofield (junior) is responsible for the end product. He submitted this charge had the potential to cost them \$25,000. Mr Schofield (senior) submitted that Mr Schofield (junior) had a clear record and was training up to 50 greyhounds involving 30 owners. Therefore they would prefer a fine.

Reasons for Penalty:

Before imposing an appropriate penalty the Committee considered all relevant issues regarding the charge. First and foremost, as previously stated, the Committee is satisfied there was no intent by Mr Schofield (Junior) to gain an advantage by the administration of a prohibited substance. Further mitigating factors are the deletion of surveillance films in the kennel block which were deleted three weeks after the race. Although Mr Schofield had incurred one breach under this rule in eighteen years Mr Carmichael asked the Committee to disregard this as that breach arose from contaminated meat. This in effect means Mr Schofield (Junior) has a clear record pertaining to this rule. It is also significant that this positive swab arose from a \$40,000 Group 1 Race when Mr Schofield (Junior) requested HAVE A YAP to be swabbed prior to the race. The Committee noted that HAVE A YAP had been selected for swabbing on several occasions prior to the Christchurch meeting. Each time the results were negative.

However in finding the charge proven the key element was the requirement for all trainers to produce their greyhounds to compete in a race free of any prohibited substance. This Mr Schofield failed to do.

In setting penalty the Committee is mindful that the integrity of Greyhound racing is paramount. All license holders must be treated on equal terms and any penalty must contain a deterrent element.

Penalty:

In imposing an appropriate penalty the committee is aware of the well documented requests for tougher drug penalties by the Racing Integrity Unit.

The Committee referred to the JCA listing of penalties under rule 87.1 and 87.3. This confirmed the range of penalties imposed previously ranged from \$1500 up to \$3500. The Committee has not heard any evidence today which points towards disqualification being the appropriate penalty.

Accordingly we impose a fine of \$3,000 and costs awarded to the JCA of \$500. The Racing Integrity Unit made no order for costs.

R Seabrook
Chairman

A Dooley
Committee Member