

**Non Raceday Inquiry - RIU v FP McPhee 6 December 2011 - Decision 15 December 2011**

**Rules:**

[89.1](#)

**Repondent(s)/Other parties:**

Mr FP McPhee - Registered Handler

**Name(s):**

**Decisions:**

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

**Judicial Committee:** Mr R Seabrook, (Chairman) - Mr J Holloway, (Committee Member)

**Held at:** Cambridge

**Date:** 6 December 2011

**INFORMATION NUMBER:** 67335 and 67336

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

**AND** Francis Patrick McPhee - Registered Handler

**Defendant**

**ALSO PRESENT:** Mr B Oliver Race Course Investigator

**CHARGE:** Breach of Rule 88.1(0) and Abusive and threatening behaviour Rule 88.1 (g)

**PENALTY:** Rule 89.1

**AS FOLLOWS:**

That on the 8th day of September 2011 at Cambridge Raceway Francis Patrick McPhee committed a breach of rule 88.1 (g) in that he abused and threatened Bryan Oliver, a deputy Race Course Investigator, an official for the time being present at a race meeting conducted by the Waikato and District Greyhound Racing Club; and that Francis Patrick McPhee is therefore liable to the penalty or penalties that may be imposed pursuant to rule 89.1 of the Greyhound Rules of Racing.

**AND**

That on the 8th day of September 2011 at Cambridge Raceway Francis Patrick McPhee committed a breach of Rule 88.1 (0) in that during the course of a race meeting conducted by the Waikato and Districts Greyhound Racing Club, he called Mrs Tracey Steele a liar and a slut; an act which constitutes misconduct; and that Francis Patrick McPhee is therefore liable to the penalty or penalties that may be imposed pursuant to Rule 89.1 of the Greyhound NZ Rules of racing.

Mr McPhee did not admit the breach of these rules.

Mr Carmichael offered no evidence regarding Information Number 67336. Accordingly we dismiss this charge.

**Hearing:**

Mr Carmichael was present to prosecute on behalf of the RIU and was supported by Mr Bryan Oliver, RIU Investigator who had conducted the initial enquiry.

Mr McPhee was present and represented himself.

Mr Carmichael informed the committee he was calling 4 witnesses in support of the charge.

The first witness, Mrs Tracey Steele, provided background information on 8 September 2011 at the Cambridge raceway. She said Mr McPhee's behaviour was such that she complained to Stipendiary Steward Mr Michael Austin. Her specific allegations were that he had called her a liar and had followed her to her car where she was further intimidated by his behaviour.

Mr Michael Austin, Stipendiary Steward then gave evidence of being on duty the day of 8 September 2011 at Cambridge Raceway. As a result of an approach from Mrs Steele he called racing investigator, Mr Bryan Oliver, who had left the course, to return.

Mr W Robinson, Stipendiary Steward was then called to give evidence. He said he was present when Mr Oliver advised Mr McPhee that he was to leave the Cambridge raceway immediately after race 4. Mr Robinson gave detailed evidence of the comments made by Mr McPhee and directed at Mr Oliver. He confirmed that Mr McPhee was speaking in a loud and abusive manner and was concerned he may assault Mr Oliver.

Mr B Oliver (RIU Investigator) gave evidence of becoming involved in a preliminary investigation into the dispute of a racing greyhound prior to this race meeting. Earlier on 8 September he conducted an interview with Mr McPhee. After leaving the course he was contacted by Mr Austin and as a result returned to the Cambridge Raceway. After speaking to the Stipendiary Stewards and others Mr Oliver decided that in the best interests of the conduct of the race meeting he would request Mr McPhee to leave the course. This directive was given with effect after race 4 as Mr McPhee had a dog entered in that race. Mr Oliver then relayed to the hearing the contents of the abuse that Mr McPhee directed at him. He confirmed that he felt intimidated by this conduct and feared that he was about to be assaulted.

All the witnesses called by Mr Carmichael were cross examined by Mr McPhee.

Mr McPhee then gave evidence in his defence. He provided the background to the dispute arising from the ownership of the greyhound THRILLING JAFFA. On the 8th September at the Cambridge Raceway he admitted having approached and spoken to the witness Mrs Tracey Steele. He said she refused to talk to him. A short while later he was asked to desist by Mr Austin. Mr McPhee said he saw Mr Oliver returning to the course. A short while later after being beckoned down from the bar area by Mr Oliver, he spoke with him near the stir up area. He said Mr Oliver accused him of making threats against him and told him he was going to be removed from the course after race 4. Mr McPhee said as he turned and walked away from him, Mr Oliver started shouldering him. He said a short while later Mr Oliver returned with Mr Robinson to where he was seated in the house bar area. He further stated that Mr Oliver hit him with his forearm and elbow.

In cross examination by Mr Carmichael, Mr McPhee confirmed he had spoken to Mr Oliver and behaved in the manner complained of.

Mr McPhee then called Mrs Raewyn McPhee, his wife who gave evidence of the disputed ownership of THRILLING JAFFA.

Miss Natalie McPhee daughter of Mr McPhee gave evidence of the interaction between Mr Oliver and her father. She confirmed that Mr McPhee had been abusive towards Mr Oliver and that her father tended to be volatile. She said she observed Mr Oliver elbowing her father near the stir up area.

#### **Summing up by Mr McPhee:**

In conclusion Mr McPhee told the tribunal that the ongoing ownership dispute had prejudiced people against him. He believed Mrs Steele had tried to set him up, and along with various comments made by others he had felt very stressed.

#### **Summing up by Mr Carmichael:**

Mr Carmichael confirmed that the matters forming the basis of the charge had been the culmination of events which had commenced in early July 2011. There was an alleged assault, albeit minor, which was denied by Mr Oliver. However Mr McPhee made no complaint until 1 November. In conclusion Mr Carmichael submitted that for the charge to be proven, the prosecution needed to establish that Mr McPhee was a license holder within the rules of Greyhound Racing. Further that he had threatened and abused a steward namely Mr Bryan Oliver.

#### **Reasons for Decision:**

As the hearing progressed it became obvious that there had been considerable conflict between parties, both directly and indirectly associated with the disputed ownership of THRILLING JAFFA. Claims and counter claims had been made with various entities, including the police, the RIU and Greyhound Racing. These matters had been compounded by unfounded allegations. However the impact of this was to cause heightened conflict leading to the behaviour complained of.

It is the Tribunals contention that a number of matters raised while providing insight, were not matters we should consider. Further the allegation of assault raised by Mr McPhee was lodged with the Police on 1 November 2011. This is yet unresolved. From the various witnesses' accounts we cannot confirm that any assault took place.

#### **Decision:**

Accordingly after carefully considering all the evidence as presented we prefer that of the prosecution. We are satisfied that this breach of 881 (g) has been established.

#### **Submissions on Penalty by Mr Carmichael:**

Mr Carmichael submitted that this was a serious breach of the rule and any penalty should send a clear message to the Greyhound Industry that this behaviour towards officials would not be tolerated. He further explained that after the date of this breach, 8

September 2011, the NZ Greyhound Racing association had "warned off" Mr McPhee by letter dated 15 September 2011, pursuant to rule 21(2) (d). The effect of the warning off precluded Mr McPhee from attending any Greyhound race meeting.

Mr Carmichael told the committee that Mr McPhee' personal circumstances were such that he would have difficulty in paying a fine of the magnitude that this breach would normally deserve.

Mr Carmichael sought a finite disqualification of not less than 6 months and that the duration of the 3 month warning off period should be taken into account.

He made no application for costs for the Racing Integrity Unit.

**Submissions on Penalty by Mr McPhee:**

Mr McPhee expressed concerns at the veracity of some of the evidence given by the prosecution witnesses. He submitted that a six month disqualification was excessive where provocation was involved. Mr McPhee told the Committee that he had been in the industry for forty years with no previous breaches or history of conflict.

**Reasons for Penalty:**

The committee carefully considered all submissions pertaining to penalty. Rule 89 provides for the following penalties.

- a) A fine not exceeding \$10,000 for any one offence and / or
- b) Suspension and/or
- c) Disqualification and/or
- d) Warning off

We are satisfied that Mr McPhee's behaviour was such that a serious breach of this rule has occurred. Mr McPhee has an otherwise clear record of forty years participation in the Greyhound industry. There are no other mitigating factors.

The Greyhound industry is striving to improve its reputation and integrity and this sort of behaviour does nothing to improve that cause.

**Penalty:**

Accordingly we impose a period of disqualification commencing on 15 September 2011 and concluding on 15 March 2012.

The prosecution did not make an order for costs.

Bearing in mind Mr McPhee's personal circumstances we make an order for costs to the Judicial Control Authority of \$500.

R Seabrook

J Holloway

Chairman

Committee Member