

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-65	
Name	Albert Kennewell	
Panel	Mr Kerry O'Brien (Chairperson)	
Code	Greyhounds	
Rule	Australian Rules of Racing 76(7) <i>An offence by an owner or trainer is committed if, in the opinion of the Stewards, a greyhound is scratched from an Event for an unacceptable reason.</i>	
Penalty Notice number	PN-009149	
Appearances & Representation	Applicant	Self-represented
	Respondent	Queensland Racing Integrity Commission Daniel Aurisch
Hearing Date	15 November 2023	
Decision Date	15 November 2023	
Decision <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(b) the Racing Decision is varied with a reprimand being substituted for the penalty of a fine of \$200.	
Case References	<i>Briginshaw v Briginshaw & Anor</i> 1938 60 CLR 336	

Reasons for Decision

- [1] Mr Albert Kennewell is a licensed trainer of Greyhounds and as such is bound by the Rules of Racing of Racing Queensland as they apply to greyhounds.
- [2] Mr Kennewell comes before this Panel seeking a review of a decision made by greyhound Stewards on the 10th of November 2023 for a breach of Rule 76(7) of those rules.
- [3] The penalty imposed on Mr Kennewell was a fine of \$200 and in accordance with section 252AD(2) of the *Racing Integrity Act 2016*, the Application for Review is therefore one which can be dealt with by the Chairperson of the Panel sitting alone.
- [4] GAR76 deals with the scratching of greyhounds after the box draw. GAR 76(2) provides that:
- “in order to withdraw a greyhound from an event, the owner or trainer or person authorised by either of them must apply to the Controlling Body or the Stewards. The Controlling Body or the Stewards may, once satisfied the application is for an acceptable reason, authorise the scratching of the greyhound and apply an appropriate stand down period commencing on the date of the Event.”*
- [5] GAR 76(7) goes on to provide that:
- “An offence by an owner or trainer is committed if, in the opinion of the Stewards, a greyhound is scratched from an Event for an unacceptable reason.”*
- [6] It is this rule that Mr Kennewell is said to have breached. The particulars of the charge against him were as follows;
- “Trainer Albert Kennewell entered a plea of guilty, was found guilty and fined the sum of \$200.00 in respect of a charge issued pursuant to Greyhounds Australasia Rule 76(7) as a result of the greyhound City Steamer and Brandy Balloon being scratched from race 4 and race 6 respectively for a reason which, in the opinion of the Stewards, was unacceptable.”*
- [7] In his Application for Review, Mr Kennewell sets out his reasons for seeking the review as follows;
- “I obtained the race fields for Ipswich dated 10th November, showing kennel closing time for the meeting as 14:30PM. I left for the Ipswich racetrack at 13:10PM, 10 minutes into my trip, a steward from Ipswich rang me on my mobile, asking if I was on the road, which I said yes I was then asked how long before I would be at the track. I replied 30 minutes roughly, The Steward then said that kennels close at 13:30PM, I replied that the draw I had for the meeting showed kennels closed at 14:30PM.*
- To my knowledge, I had the correct kennel time, [14:30PM] shown on the race program printed, Printed out from The Dogs website. I had left home within ample time to get to the track for kennel time. The steward told me that if it was going to take me a further 30 minutes to get to the track, that would be too late for kennelling, and would be regarded as a late scratching, with which I replied. The steward then said I will call you for a statement after you get home, about 30 minutes, which he did.*
- I did plead guilty when asked because when told that kennels closed at 13:30 then under those times I would naturally be declared guilty. I believe that I was in the right going by the kennel closing time on the printout for the meeting that I had a copy of the printout from The Dogs website is attached.”*
- [8] The Print Out, referred to by Mr Kennewell, is before this Panel and it clearly shows the words “kennelling time 1430”. There is no reason to doubt Mr Kennewell's claim that he acted on the basis of that information.

- [9] By way of follow up to the conversation referred to by Mr Kennewell in his application, the Stewards contacted him on the afternoon of the 10th of November 2023. When asked why he had not presented his dogs at the prescribed kennelling time, the Applicant explained that he had been away on holidays overseas, leaving Australia on 5 October 2023 and returning on 28 October 2023.
- [10] The issue of daylight saving, which commenced in New South Wales on 1 October 2023, had not occurred to him in the period after his return.
- [11] Prior to the subject incident he had not raced a dog since the 2 October 2023 and certainly had not raced any since he's returned from overseas on 23 October. The 2 October 2023 event was a race at Abion Park, a venue where, as the Applicant put it, "times do not change with daylight saving."
- [12] He had relied on the kennelling time published on the website "thedogs.com.au" but had not turned his mind to a consideration of daylight-saving issues. He described the situation as "a big mix up", an explanation which the Stewards described as "understandable".
- [13] For the reason set out in his Application, Mr Kennewell pleaded guilty to the charge. Proof of an offence against GAR76(7) required not only proof that the scratching occurred. It is necessary to prove further that the scratching occurred for "an unacceptable reason". Notwithstanding their earlier observation in that Mr Kennewell's explanation was "understandable", the Stewards accepted the plea and found the charge proven. They stated that there was a "standard penalty" or "set precedent" of a fine of \$200.00 for a breach of the rule and proceeded to impose that penalty on Mr Kennewell.
- [14] Notwithstanding his plea of guilty Mr Kennewell, considers that he should not have been found guilty of the charge. He argues, in effect, that his plea, in the circumstances, did not truly constitute an acknowledgement of guilt of the offence.
- [15] As noted above he provides in his Application the reason for entering that plea.
- [16] Ignorance of the Rule relating to the obligations associated with scratchings would afford no excuse to an offender.
- [17] If, however, Mr Kennewell held a belief that was both honest and reasonable, though mistaken, as to the correct kennelling time, then that may well afford him a defence to the charge such as would justify the setting aside of his plea of guilty.
- [18] A mere mistake would not be sufficient. The mistaken belief must be both honest, that is, genuinely held by the Applicant, and reasonable, that is, based on reasonable grounds in the circumstances.
- [19] Importantly, it is not for the Applicant to prove that he acted under a such a mistaken factual belief. It is for the Respondent to prove that he did not. The standard of proof required of the Respondent in such a situation is on the balance of probabilities, as explained in cases such as the *Briginshaw v Briginshaw & Anor*.¹
- [20] The website relied on by the Applicant is "www.thedogs.com.au".
- [21] It is common ground that this is both a credible site and one which the Applicant has used for many years.
- [22] The website provides a so-called "field screen" which does contain the correct kennelling times, in this case, 13:30 hours. However, if the fields that are then printed, as they were by Mr Kennewell, the New

¹ *Briginshaw v Briginshaw & Anor* 1938 60 CLR 336

South Wales time of 14:30 is displayed. This was the cause of Mr Kennewell's mistaken belief. That is the time clearly displayed on the exhibited field print outs.

- [23] I can find no reason to doubt the honesty of his belief that the kennelling time was 14:30. His activities and his words on that day are totally consistent with him holding such a belief.
- [24] So far as the reasonableness of the belief is concerned however, there are additional considerations.
- [25] Mr Kennewell has a been involved with the greyhound industry for some 57 years. He is almost 81 years of age, and his experience in the industry is extensive.
- [26] It is now many years since daylight saving was first introduced in New South Wales and over that time the Applicant has raced many greyhounds, both at Albion Park and at Ipswich. Moreover, to arrive at the "print meeting" icon feature of thedogs.com.au website, he necessarily had to open the website which displayed the correct kennelling times. Those correct times could also have been obtained from the Racing Queensland site had the Applicant chose it to look there as well.
- [27] Given the accumulation of these matters, I am satisfied that the Applicants belief was not one that was reasonably held in the circumstances. Consequently, the finding of guilt should be maintained.
- [28] I come now the issue of penalty, the Queensland Racing Integrity Commission Greyhound Racing Penalty Guidelines provide a starting point of \$100 for this offence in the case of a first offender. If the offender has a breach in the previous year, then the starting point becomes \$250. This does not apply to Mr Kennewell. Further breaches, again of no relevance here, attract a higher starting point of a \$500 fine.
- [29] The Guidelines make it clear that the penalty ranges provide guidance only, and are not in any way mandatory. According to the mitigating or aggravating circumstances of a particular case, the guidelines do not prohibit the imposition of a penalty that is either less than or greater than the minimum starting point.
- [30] Although consistently of penalty is an important consideration, penalties should not be determined simply by the automatic application of an outcome from a previous matter. There can be no one, immutable penalty for every breach of the one Rule. Each case must be assessed according to its own facts and circumstances.
- [31] Although stressing that each case must be assessed on its own merits, taking into account any aggravating or mitigating circumstances, the guidelines do identify features relevant to determining penalty. They include:
- the nature/seriousness of the breach in the circumstances in which it was committed,
 - personal circumstances of the participant,
 - the need for general deterrence and personal deterrence,
 - the disciplinary history of the participant.
- [32] The Guidelines include certain features of potential mitigation as well as certain features of potential aggravation.
- [33] It can properly be said that none of those identified features of aggravation have any application to the circumstances of this case, although most if not all of the mitigating features do exist.
- [34] The Applicant here entered a plea of guilty at a very early opportunity.

- [35] It is clear that he co-operated throughout the Stewards Inquiry. He was frank in all statements and admissions which he made. He is clearly a person of good character, having been involved in the industry for a very long period of time, and he has a good disciplinary record.
- [36] There is no reason to suppose that a mistake of this nature is likely to be again committed by the Applicant.
- [37] There are, moreover, certain special circumstances here. Those relate to the fact that he had recently returned from overseas and that this was the first occasion since that return that he had entered a dog in a race.
- [38] He's explanation that he did not turn his mind to the fact that daylight savings was in operation, is understandable, in the circumstances, as the Stewards acknowledged.
- [39] The Respondent has raised the issue of concern for the betting public and the consequences for them of a late withdrawal from a race. Having made that submission, the Respondent has fairly conceded that this was, "a weekday Ipswich race of no significance" and "for which the prize money was small."
- [40] This was not a case of wilful disregard for the rules, nor was it a case of a wilful blindness to the requirements of the rule.
- [41] The Applicant honestly believed he was acting in compliance with the relevant rules. That alone affords him no defence to the charge, but it does bear significantly upon the culpability of his conduct.
- [42] The issue of personal deterrence is not a feature of any importance in the case of this Applicant. General deterrence, the maintenance of the integrity of the industry and the need to deter offenders in the industry for committing similar offences is always important, but their significance must be assessed in the context of the facts of the particular case.
- [43] Ultimately, the punishment imposed, as the guidelines recognised, must be appropriate and proportionate, taking into account the specific circumstances of the individual and of the offence committed.
- [44] It is my view that the appropriate outcome in this case is that the Applicant should be dealt with by way of a reprimand and that the fine imposed upon him, which should be set aside.
- [45] Pursuant therefore to section 252AH of the *Racing Integrity Act 2016* my order is that the racing decision will be varied with a penalty of a reprimand being substituted for the penalty of a fine of \$200.