

**CITATION:** *Hess v Queensland Racing Integrity Commission* [2018] QCAT 16

**PARTIES:** Anthony Charles Hess  
(Applicant)  
v  
Queensland Racing Integrity Commission  
(Respondent)

**APPLICATION NUMBER:** OCR061-17

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 11 January 2018

**HEARD AT:** Brisbane

**DECISION OF:** **Member Cranwell**

**DELIVERED ON:** 16 January 2018

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. The internal review decision dated 23 February 2017 is confirmed.**
- 2. The Tribunal makes no order as to costs.**

**CATCHWORDS:** PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – OTHER PROFESSIONS, TRADES AND CALLINGS – where greyhound trainer lived on property of warned off person – where parties agreed on proposed penalty – whether proposed penalty is suitable

*Greyhounds Australasian Rules, Rule 86*  
*Racing Integrity Act 2016 (Qld), s 3*

*Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70  
*Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

## REASONS FOR DECISION

- [1] Mr Hess was a licensed greyhound trainer.
- [2] During a stewards' inquiry conducted on 9 November 2016 and 19 December 2016, Mr Hess made admissions that he did, on 21 May 2015, live at the property of Mr Tom Noble at Wotan Road, Churchable.
- [3] Mr Noble was warned off on 4 March 2015 for his involvement in, and knowledge of, live baiting which took place at his property.
- [4] Mr Hess admitted he knew that Mr Noble was a warned off person, and that he was in regular contact with Mr Noble throughout this period of time.
- [5] The stewards found that Mr Hess was guilty of an offence under Rule 86 of the *Greyhounds Australasian Rules* (the Rules) for associating with a disqualified person for the purposes of greyhound racing. The stewards imposed a two-year disqualification on Mr Hess, effective from 19 December 2016.
- [6] Mr Hess sought an internal review of the stewards' decision. The internal reviewer reduced the penalty from a two-year disqualification to a one-year disqualification.

## Proposed orders

- [7] The parties have come to an agreement for the finalisation of the review and ask the Tribunal to make orders in accordance with their agreement. Those orders are that:
  - 1. The Applicant's Application for Review filed 22 March 2017 is dismissed.
  - 2. Internal Review Decision 008-17 dated 23 February 2017 is confirmed.
  - 3. The Applicant's period of disqualification expired on 1 August 2017.
  - 4. There be no order as to costs.
- [8] I note that the internal review decision imposed a one-year disqualification from 19 December 2016, and that Mr Hess' period of disqualification therefore ended on 18 December 2017. The reference to the period of disqualification expiring on 1 August 2017 is unexplained and appears to be in error.

## Consideration of penalty

[9] It has been held that the Tribunal ought not depart from a proposed sanction agreed between parties, unless it falls outside the permissible range of possible sanctions for the conduct.<sup>1</sup>

[10] Guidance on setting penalties in a racing industry context was provided by the reasoning of Thomas J in *Queensland Racing Integrity Commission v Gilroy*<sup>2</sup> ('*Gilroy*'). His Honour noted that "[a] key consideration is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated."<sup>3</sup>

[11] The Tribunal has previously expressed the view that "the purpose of a penalty is to ensure that the standards of the racing industry are upheld: this necessarily involves a penalty that has a deterrent effect and demonstrates to the public that this behaviour will not be tolerated".<sup>4</sup> However, the exercise of "imposing a penalty involves a balance between the severity of the offence, the need for deterrence and any mitigating factors".<sup>5</sup>

[12] These statements are consistent with the main objects of the *Racing Integrity Act 2016* (Qld) set out in s 3(1):

The main purposes of this Act are—

(a) to maintain public confidence in the racing of animals in Queensland for which betting is lawful; and

(b) to ensure the integrity of all persons involved with racing or betting under this Act or the Racing Act; and

(c) to safeguard the welfare of all animals involved in racing under this Act or the Racing Act.

[13] Thomas J also noted in *Gilroy* that it is appropriate to take into account sanctions that have been imposed in respect of similar offences.<sup>6</sup> The parties jointly submit that the appropriate range for an offence such as that in the present case is a period of disqualification of one to two years.

[14] I accept that it would have been difficult for Mr Hess to avoid contact with Mr Noble, living as he did at a property owned by Mr Noble. In the circumstances, I am satisfied that the proposed penalty is within the range of permissible sanctions for Mr Hess' conduct, and achieves a balance

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<sup>1</sup> *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146, 4 [12].

<sup>2</sup> [2016] QCATA 146.

<sup>3</sup> *Ibid*, 6 [24].

<sup>4</sup> *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70, 5 [11].

<sup>5</sup> *Ibid*, 7 [27].

<sup>6</sup> *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146, 7 [27].

between the severity of the offence, the need for deterrence, and the mitigating factors relating to Mr Hess' residence at the property.

- [15] I will make orders confirming the internal review decision and that there be no order as to costs.