

TASMANIAN RACING APPEAL BOARD

Appeal No 22 of 2016/2017

Panel:	Tom Cox (Chair) Kate Cuthbertson Rod Lester	Appellant:	Graeme Moate
Appearances:	June Phillips on behalf of the appellant Reid Sanders on behalf of the stewards	Rules:	Greyhound Australasia Rule 86(o)
Heard at:	Hobart	Penalty:	\$500 fine with \$250 wholly suspended for two years
Date:	25 May 2017	Result:	Upheld

REASONS FOR DECISION

1. The appellant, Mr Moate, has been a greyhound trainer for 60 years. On 12 January 2017 he presented *Shanlyn China*, to race in race 5 at the Hobart Greyhound Racing Club meeting at Elwick racecourse.
2. The appellant was not feeling well and had received injections in his shoulder that day. As a consequence, he arranged for his son in law, Mr Steven Croft, to act as handler and present the greyhound to the boxes. The appellant signed a handler's sheet to this effect. Mr Croft had assisted the appellant in presenting his greyhounds to race for eight years and was well aware of the dog's name and rug size. When Mr Croft presented the greyhound to the official to receive his racing rug, he told the official the dog's name and rug size. The official provided Mr Croft with the incorrectly numbered racing rug. Mr Croft did not realize the mistake and the appellant, who was on course but not at the track pre-race, was not on notice of the error. Another greyhound, *Tigra Tron*, was also presented to the same official and issued with an incorrectly numbered rug. As a result, both greyhounds started from the incorrect boxes. *Shanlyn China* finished first. An official in the catching pen noted the mistake after the race. Both greyhounds were subsequently disqualified from Race 5 at the Hobart Greyhound Racing Club, with the finishing positions amended accordingly.
3. On Friday 21 April 2017, stewards conducted an inquiry into the circumstances relating to the incident. The stewards considered evidence put forward by Trainer Susan Gittus (of greyhound *Tigra Tron*), the appellant, Steven Croft (handler of *Shanlyn China* on the night), Club Officials Terry Woodward and Brendon Lamprey, and Starter/Steward Gary Cooper.
4. During the inquiry the stewards issued charges to Mrs Gittus, Mr Moate, Mr Croft, Mr Woodward and Mr Lamprey under rule 86(o) of the Greyhound Australasia Rules (GAR) which provides:

"A person (including an official) shall be guilty of an offence if the person-

has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct."

5. The appellant was found guilty of the charge on the basis that he was negligent in that he failed to *ensure* that the correct rug had been placed on his greyhound, *Shanlyn China*. The appellant was fined \$500 with \$250 wholly suspended for 24 months.
6. The appellant lodged an appeal with the Board on the 1 May 2017.
7. The stewards particularised the breach of the rule as follows:

“...on the 12th of January 2017 at the Hobart Greyhound Racing Club you failed to ensure that the correct rug was placed on the greyhound you trained and was in charge of that night, SHANLYN CHINA, and as a result that greyhound started from the incorrect box and was subsequently disqualified.”
8. The stewards contend that the appellant, as the person with ultimate responsibility for the presentation of *Shanlyn China* to race, owed what is effectively a non-delegable duty to *ensure* that his greyhound was presented with the correct rug. It was submitted that the appellant was not able to delegate the task to Mr Croft and if it was delegated and an error occurred in the numbering of the greyhound, the appellant would be in breach of the rule. At the very least, it was argued, strict supervision was required to ensure the correctly numbered rug was worn.
9. With respect, the Board does not accept this submission. GAR 86(o) does not impose strict liability upon trainers for the negligent acts or omissions of their employees or agents. The relevant part of the rule is directed at the negligence of the person, in this case, the appellant as trainer. It is trite to say that the word “negligence” in the rule means negligence in the sense of want of reasonable care. So the question in this case is whether the appellant owed a duty to take reasonable care in presenting the greyhound with the correctly numbered rug and if so whether he failed to discharge that duty.
10. It may be readily accepted that the appellant owed a duty to take reasonable care to present the greyhound with the correctly numbered rug. However, did he fail to discharge that duty? Mr Croft was well aware of the dog’s name and rug size. He told the official the dog’s name. There is no suggestion that the greyhound was incorrectly identified when presented to race. Having been advised of the correct name, the official should have been well aware of the dog’s race number. The official had the means to check the dog’s identity by reference to its ear tags and cross reference its identity to the correct number. Mr Croft had assisted the appellant over many years and the appellant was entitled to think that between Mr Croft and the official the correct number would be issued. In our view, it would set the standard far too high to require the appellant to supervise both Mr Croft and the official in this task. Further, the appellant was not, in fact, on notice of the error until after the race by which time there was nothing that could be done.
11. If it were the responsibility of a trainer to inform the officials of the box number that the greyhound started from, or the responsibility to check themselves off the list once the rug had been issued, a case for negligence may be warranted. However, this was not the state of the evidence. Club Official, Mr Woodward, gave evidence that procedurally, the person asking for a rug will often ask using the name of the dog, while some will ask for the number. There is no hard and fast rule, and it is certainly not required that a trainer, whether handler or not, specify the dog’s number. It was not suggested during the enquiry that a greyhound must be identified to the official distributing race rugs in any particular way. In the circumstances, there was nothing more that the appellant could have been asked to do.
12. Stewards referred the Board to two previous decisions regarding breaches of this rule relating to greyhounds wearing incorrect race rugs. The NSW Racing Appeals Tribunal decision in *Rowe* dated 29 July 2016 concerned the first identification steward who failed to correctly read the microchip words on a microchip reader and to properly identify the ear tag brand on a dog in accordance with his statement of duties. The other matter was a report of a stewards’ inquiry concerning a race where a trainer presented two greyhounds in the same race where the racing numbers were misallocated between the two. The report gave no indication of the factual circumstances surrounding the making of the mistake. In the circumstances, the Board was not assisted by those decisions.

13. The appeal is upheld and the penalty dismissed. The stewards' decision dated 21 April 2017 is quashed.

14. The Board orders that the appellant have his deposit returned to him pursuant to s.34(2) of the *Racing Regulation Act 2004*.