

# TASMANIAN RACING APPEAL BOARD

## Appeal No 24 of 2016/2017

<b>Panel:</b>	<b>Mrs Kate Brown (Chair) Mr Rod Lester</b>	<b>Appellant:</b>	<b>Dr Tom Astbury</b>
<b>Appearances:</b>	<b>Mr David Farquharson on behalf of the Stewards</b>	<b>Rules:</b>	<b>GAR31(4)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>28-day stand down of Tecoma Skilda</b>
<b>Date:</b>	<b>5 July 2017</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. On the 5<sup>th</sup> of July 2017 the Tasmanian Racing Appeal Board (the “TRAB”) heard an appeal by Tom Astbury, filed on the 14<sup>th</sup> of May 2017, against the penalty imposed on the 2<sup>nd</sup> May 2017 for failing to present a greyhound for kennelling before the kennels closed, in breach of GAR 31. Dr Astbury had also been fined \$100 for breaching GAR 86(o) for his failure on that occasion but he indicated at the commencement of the hearing that he was not appealing the imposition of the fine, which he had in fact paid shortly after the offence occurred.
2. It is noted that GAR 31(4) provides:  
*(4) A greyhound not presented pursuant to sub-rule (2) shall not be allowed to compete in the Event for which it has been drawn and shall be prohibited from competing in any Event for a period of not less than 28 days commencing on the date on which the failure to comply with sub-rule (2) occurred, provided however that the Stewards or Controlling Body may revoke or vary such order of prohibition.*
3. The appellant corresponded with stewards about the imposition of that penalty on the 2<sup>nd</sup> of May, but his appeal was not lodged until the 14<sup>th</sup> of May. He did not seek a stay of the 28 day penalty.
4. The Board had regard at the hearing to
  - a. The Notice and Grounds of Appeal,
  - b. An email from Stewards to the Secretary of TRAB regarding the circumstances leading to the imposition of the penalty, setting out the Stewards evidence in that regard;
  - c. Steward’s Report from the NWGRC meeting on the 2<sup>nd</sup> of May 2017
  - d. Evidence and submissions for Dr Astbury during the hearing
  - e. Evidence and Submissions from Mr Farquharson at the hearing, including a document published on the 22<sup>nd</sup> of March by TasRacing headed Programming Update (which was published on the ORI website and made available to clubs); the Field Sheet for the meeting on the 2<sup>nd</sup> of May 2017 published on the 27<sup>th</sup> of

April 2017; and Steward's Reports from race meetings on the 9<sup>th</sup> March 2015, 28<sup>th</sup> July 2016, 17<sup>th</sup> September 2016 and the 7<sup>th</sup> of February 2017.

5. Dr Astbury's evidence was that he had been delayed by traffic on his way to the race meeting and that in any event, he had calculated the kennelling close time based on information as to race times on a third party website, and that when he had realised he was going to be late (for the time he had calculated) he attempted to ring stewards to advise them of that, but was delayed in doing so due to an inability to get service on his mobile phone. He also made submissions to the effect that the penalty imposed should have been pursuant to the Local Rules, rather than the GAR, and that Stewards mistakenly refer to the GAR when it is clear that where there is a conflict the LR are to prevail, and that in any event the circumstances of his offending were such that Stewards ought to have used their discretion to waive the prohibition imposed under GAR31(4), and that the trials conducted prior to the race were a source of confusion for him.
6. Mr Farquharson referred to the documents he had tendered, noted above. He relied on the fact that the Race Field sheet published on the 27<sup>th</sup> of April and available on the ORI website noted specifically the kennelling time was 10.27am-11.13am. He noted the Programming Update published by TasRacing in March stated "*Kennels will close one hour prior to the first race when qualifying trials are conducted*". He indicated that the first contact Stewards on that day had from Dr Astbury was around 11.30am, well after the kennels had closed, from a point on the Bass Highway where he had some 20 minutes or more to travel. He relied on the Steward's reports he had tendered as indicating that the standard penalty for this offence was a suspension of the greyhound for 28 days (and a \$100 fine for the trainer).
7. It is also noted that Dr Astbury had been advised by stewards a few weeks prior to this race meeting that he needed to be on course earlier as on that occasion he had arrived right on the kennel closing time.
8. The Board was satisfied that Stewards had proceeded under the correct rules in dealing with this matter. The local rules referred to by Dr Astbury are to be found within Part 6 of the Local Rules which deals with Nominations. LR 23.4 was referred to by Dr Astbury and provides:  
*Any greyhound in respect of which a nomination is withdrawn after closure of nominations but prior to box draw for any reason shall be prohibited from competing in any other Events for a period of ten (10) days from the date of the meeting.*
9. Dr Astbury argued that this applied because, in advising him that *Tecoma Skilda* would not be permitted to race on the 2<sup>nd</sup> of May because he had missed the kennelling closure time, the Stewards had withdrawn the dog from the race.
10. Established principles of statutory interpretation make it very clear that this situation was exactly that contemplated by GAR 31, and conversely, it would take a great deal of stretching of the wording of Part 6 of the Local Rules and specifically LR23.4 fit this factual scenario. The Board is satisfied that GAR 31 is the appropriate rule to follow in circumstances such as this.
11. The Board then considered if there was any basis for the revocation or varying of the 28 day prohibition set out in GAR 31(4). It noted that the kennelling closure time was clearly set out on the Race Field Sheet published by ORI and available 4 clear days prior to the race meeting. It also had regard to Dr Astbury's evidence that he

did not at any time have regard to the information published by ORI, but instead relied on third party information. It had regard to Dr Astbury's experience as a trainer in Tasmania, and that he was generally aware that trials were held in Devonport on a monthly basis (which affected the times for kennel closures).

12. The Board determined to affirm the decision of Stewards and pursuant to s.34 of the *Racing Regulation Act 2004*, ordered that 75% of the prescribed deposit be forfeited.