RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

WEDNESDAY 8 MARCH 2018

APPELLANT MORGAN FENWICK-BENJES

GREYHOUNDS AUSTRALASIA RULE 83(2)

SEVERITY APPEAL

DECISION:
1.Appeal dismissed
2. Penalty of disqualification of 21 weeks to commence 8 March 2018
3. Appeal deposit forfeited

1. The appellant, former licensed trainer Morgan Fenwick-Benjes, appeals against the decision of the stewards of 21 November 2017 to impose upon him a period of disqualification of 42 weeks to commence on 12 October 2017 for two breaches of rule GAR 83(2) - presentation not free of a prohibited substance.

2. Stewards set out the breaches of the Rule 83(2) as follows:

> "That you, Morgan Fenwick-Benjes, a registered trainer, while in charge of the greyhound 'Universal Girl', presented the greyhound for the purpose of competing in race one at The Gardens on 4 February 2017 in circumstances where the greyhound was not free of any prohibited substance."

It was particularised as follows that:

> "(a) you, Morgan Fenwick-Benjes, a registered trainer, on 4 February 2017, presented the greyhound Universal Girl for the purpose of competing in race one at The Gardens.
> (b) prior to the event, a urine sample was taken from the greyhound and allocated the number V438576.
> (c) the sample was analysed by Racing Analytical Services, an accredited laboratory under the GRNSW Greyhound Racing Rules.
> (d) the laboratory provided a certificate signed by David Batty, accredited laboratory officer, confirming the presence of theobromine in the sample.
> (e) the sample was analysed by Australian Racing Forensic Laboratory, an accredited laboratory under the GRNSW Greyhound Racing Rules, and
> (f) the confirmatory laboratory provided a certificate signed by John Keledjian, an accredited laboratory officer, confirming the presence of theobromine in the sample in circumstances where:
> (g) by virtue of you presenting the greyhound to compete in the event, you were in charge on the greyhound and
> (h) theobromine is a prohibited substance under the GRNSW Greyhound Racing Rules."

3. The second alleged breach related to the same rule for the same day, the same venue, for race four for the greyhound Submarine. The particulars are in essence the same except for those changes just mentioned and a different sample number V438577.

4. When confronted with those matters set out in a charge sheet, the appellant indicated at the stewards' inquiry on 21 November 2017 that he admitted each of those breaches, he did so at the very commencement of the stewards' inquiry and the matter proceeded before the stewards to

determine penalty. They determined the penalty just outlined. In a document dated 21 November 2017 they set out their reasons for finding penalty.

5. The appellant, in lodging this appeal, maintains the admission of the breach of the rule. This is a severity appeal only.

6. The evidence before the Tribunal has comprised the transcript and exhibits before the stewards together with a number of other documents. There is the report of inquiry of 6 April 2017 relating to a prior breach of the prohibited substance rule, to which the Tribunal will return. There is then a bundle of parity cases, to which the Tribunal will return. There is the actual breach charge sheet. There is then the swab history for the subject former trainer. A kennel inspection report of 1 February 2017, to which the Tribunal will return. And a reference of the appellant's father, Mr Warwick Benjes, of 7 February 2018. The appellant gave oral evidence and was cross-examined.

7. In addition, in the course of the hearing, the Tribunal received a document setting out the level of theobromine recorded in each of the samples, and it is not a disputed fact that that was a mid level. The Tribunal will return to the relevance of that.

8. It is an accepted fact by the parties for the purposes of these proceedings that theobromine is a central nervous stimulant and has been known to exist as a prohibited substance for some period of time. It is also acknowledged that it is a metabolite of caffeine and that it can be present in chocolate and cocoa. It is acknowledged in this case there is no evidence that caffeine has played any part in the cause of the presence of the prohibited substance on the two occasions.

9. These are civil disciplinary proceedings, not criminal proceedings. It is, therefore, the function of the Tribunal to determine what it considers to be an appropriate penalty having regard to the facts before it and the application of numerous principles which the Tribunal has outlined in previous cases, having regard to the facts that are here and then projecting to the future. The aim of the stewards is the protection and welfare of the industry, and that is the function which the Tribunal must bring to its determination. There being no issue about those sort of matters, they need not be canvassed in greater detail.

10. It is first necessary to assess the objective seriousness of the actual conduct in which the appellant engaged on this day in respect of these two greyhounds in the two separate races. A brief history of some relevant facts is necessary.

11. The appellant was licensed to train in 2015/2016, and, in fact, in June 2016. His swab history indicates that his first swabbing was 23 December

2016, the greyhound Arlo Marlo. That produced a positive. The Tribunal will return to that matter. There was a negative on 24 January 2017 for the subject dog Submarine. There were then the two presentations on 4 February for the subject dogs Submarine and Universal Girl, each of which was positive. There are then three negative swabs: 7 February, 9 February and 14 February. Importantly, in respect of the 7th and the 14th, it was the greyhound Universal Girl. Pausing for a moment, as was in the submissions for the respondent, that is not a long and satisfactory swabbing history. It was suggested it might be a world record. It is hard to know without more records, but it is certainly a history that is somewhat unique.

12. As just set out, on 23 December 2016 the appellant presented and was subject to his first swab, which was positive. The notification of that positive swab took place on 1 February 2017 at a kennel inspection and the appellant was given a notice in the standard form of that first laboratory sampling for that 23 December 2016 presentation. The Tribunal will return to what else was said. On 4 February, he made the two subject presentations. On 10 March he received advice of the second set of positives, the subject matters of this appeal. On 16 March, the stewards preferred a breach notice in respect of the 23 December 2016 presentation. On 6 April 2017 he received a disqualification of 12 months for that first matter.

13. That first matter, to summarise it, as it is relevant on the issue of penalty here, was a cocaine presentation in circumstances where the appellant had left the subject greyhound in the care of an unlicensed person whilst he was on holidays. That person appears to have been a user of a substance from which it appears cocaine became present in the greyhound. The appellant was not present when that contamination may have occurred and was not present when the greyhound was presented to race.

14. The stewards in their determination of 6 April 2017 took into account a number of matters, which need not be summarised, in coming to their determination. Some key matters, which are relevant to the way the stewards assessed the penalty in this matter and on the way in which the submissions were made on this matter in respect of how that first matter is to be dealt with, raise for consideration these matters. The stewards took into account this: a significant level of culpability rests with the participant having entrusted the care of his greyhounds to an unlicensed person. And the source and circumstances surrounding the presence of the prohibited substance had been established by the inquiry. There are then, as is usual, a number of matters which interestingly are repeated here as being subjective factors in his favour: recent and substantial investment in the industry; steps to review and amend his practices; good and honest character; significant personal financial circumstances, and an admission of the breach.

15. The determination, therefore, of a 12 months penalty was against a starting point for that particular substance of three years. The express words that were subsequently used by the stewards in the determination in their published document on written reasons for penalty, consistent with what they said at the inquiry, was that they took into account the activities of that unlicensed person in determining in the first matter a period of disqualification that was reduced, by these words: “the source and circumstances surrounding the presence of the substance”. Interestingly, in their determination here, they again gave the benefit to the appellant of a reduction in penalty. It might be said that was double counting.

16. There is, therefore, an appellant with advice on 1 February of the presence of cocaine in one of his greyhounds in circumstances in which he had no knowledge. Therefore, a mere three days later when he made the subject two presentations, there was, firstly, no opportunity to take any substantial steps to amend practices and, secondly, the nature of the substance on the second and subject matters, the theobromine, has nothing to do with cocaine. Therefore, it is not as if between 1 February and 4 February he failed to take action to ensure that cocaine was not present in the two greyhounds, and, indeed, it was not.

17. There is then the fact relevant to that history that he had not had on 4 February an alleged breach of the rules, a mere notification of a positive swab. In addition, on 4 February he had not been the subject of a disqualification. That was not until 6 April. Between 1 February and 4 February, it is trite to say, he was not suspended. Interestingly, he was not suspended on this matter, and that may well have arisen by reason of the fact that whilst he received a letter on 10 March, he did not receive the two documents entitled “Charge Sheet” until 24 May and, of course, he had then been disqualified on 6 April. In essence, nothing turns on that fact.

18. The Tribunal has referred to his swab history. He cannot claim to be dealt with otherwise on the basis that in looking at the seriousness of the matters his swab history is unfavourable. It certainly does not lead to any reductions in appropriate penalty. The short time he was licensed is of deep concern to the Tribunal. To be licensed in June 16 and have a presentation in December 16, and a further presentation in February 17, are not matters which reflect well upon him in that he has not been able to demonstrate to the industry or to the community at large that he is a person who has either an understanding of or a capacity to comply with the rules.

19. Indeed, his evidence is that he was somewhat ill-informed, to choose a neutral term, because the words mistaken and ignorant were the subject of some questioning, but that he had apparently done very little to teach himself and to keep up to date with what was required of him up until about 4 February.

20. As has been set out, the only evidence about theobromine and its likely presence is that which is the agreed facts which have been referred to. There is no evidence here of any source of contamination or other conduct which has led to the presence of that prohibited substance in the two greyhounds in the two races. The appellant gave evidence to the stewards that he had never heard of it prior to it being brought to his attention, that he had not given the two greyhounds caffeine and he had not given them chocolate and he had not given them anything, to his knowledge, which might cause the presence of this prohibited substance in the two greyhounds. He is not able to attribute the presence of the prohibited substances to anything.

21. The stewards, as has been the case determined by Racing Appeals Tribunals for a very long period of time, do not have to establish the how, when, why or wherefore that this drug came to be present in these two greyhounds. It is, therefore, that this is a no-evidence or no-explanation case.

22. Despite the fact it is suggested that it is not relevant by the appellant, in Kavanagh and O'Brien v Racing Victoria Limited, Victorian Civil and Administrative Tribunal, Administrative Division, Review and Regulation List, a decision of 27 February 2018 by His Honour Justice Garde, President, His Honour referred to some law in a Victorian harness racing decision.

23. In His Honour's decision at page 6 paragraph 15, the case of McDonough v Harness Racing Victoria is referred to. In McDonough His Honour Judge Williams set out some thoughts flowing from a decision in New South Wales involving Rogerson, a decision of the then Tribunal of His Honour Mr Thorley – and it is in the references here undated. Judge Williams analysed three categories of case.

24. It is suggested that that should not apply because, firstly, it is VCAT and, secondly, it is harness racing. The Tribunal does not accept that submission and it does not do so because whilst it is not a binding decision, it nevertheless relates to rules of racing generally and its application is entirely apt in this State in this code. And, in any event, it arises not inconsistently with decisions in this State by this Racing Appeals Tribunal. And, lastly, it is consistent with what this Tribunal has been saying for some years.

25. There, Justice Garde, in referring to judge Williams and adopting Tribunal Member Thorley, confirmed the three categories just referred to where there is, firstly, positive culpability on behalf of a trainer; secondly, where there is no idea as to why, that is, the explanation given by the trainer is not accepted or there was no explanation. And a third category where it is able to be clearly established that the trainer has no culpability and it can be established in others.

26. To show why the adoption of that case by Justice Garde in Kavanagh is equally apt here is that in respect of this appellant's first prohibited substance presentation, the stewards dealt with him within the equivalent of the third of those categories,. And here it is that the second category of no real idea is, firstly, consistent with the facts and, secondly, consistent with the approach adopted by the Racing Appeals Tribunal generally for a long time: the how, when, where and wherefore case. And, thirdly, it could hardly be said that the first category, where there is a positive culpability, could be anything but consistent with the way matters have been dealt with in New South Wales.

27. Here, therefore, this matter would squarely fall within that second category. Just to deal with how Judge Williams, adopted by Justice Garde, thought it should be dealt with, that the second category could be equivalent to a first category, but a case would turn on its facts. Whereas the third category would lead to some low-level or perhaps no penalty at all. That is, to some extent, the benefit that this appellant received in respect of his first presentation matter. This Tribunal does not elevate, however, the facts in this case to an equivalent of the first level. To return then to these matters, it is simply that there is no explanation.

28. What then of matters that might cause the objective seriousness to be considered less on these facts and circumstances? There was the short period of time between the receipt of the first notice on 1 April and the commission of the breaches of the rules on 4 April. It is not, on the facts of the matter, a performance-enhancing case. It is not a case in which aspects of irregular betting are available on the evidence at all. There is the further fact, to which the Tribunal said it would return, and it is a mid-level range of matter. That is relevant when the Tribunal turns to look at the applicability of the penalty guidelines. This drug itself is not the most serious of matters, and that is reflected in the penalty guidelines.

29. What then are the subjective circumstances of this appellant? The Tribunal has referred to the fact that he gets no credit because of the limited period of time between his licensing and the commission of this breach, having regard to the very short period of time between his licensing and the first breach. Therefore, he has not proved himself to the industry or the community. He has failed again. He has failed to meet the rules, he has failed to do so in respect of a prohibited substance matter which is of itself serious. As the Tribunal has said, however, the second substances, theobromine, are not related to the first substance, cocaine.

30. The Tribunal notes his present family background, namely, all the way, as set out in the character reference of his father, back to his grandfather, his mother's father and, indeed, his father all being associated with the racing industry generally, the first of those in respect of greyhounds and his father in respect of a thoroughbred spelling and care facility. The appellant

has been associated with greyhounds all of his life. It is noted, however, that he came to seek to be licensed only in recent times. That arose because of his personal circumstances causing him to give up a business he had in the Sydney area and take himself to the Dooralong area where his father has a property and there, after a substantial investment, which the stewards and the Tribunal each accept, involved him building a very fine and first-rate kennel facility together with training track and other facilities. He told the stewards he had invested some $150,000 in cash. And, of course, over and above that there would be the personal time and emotional investment in establishing such a facility. He currently is a sole parent looking after his son.

31. Any loss of training privilege, or continued loss, would occasion to him substantial financial hardship. In respect of that, this Tribunal has said repeatedly, and says again, that hardship is in many cases an inevitable consequence of one's own conduct and in appropriate cases a penalty, which all of the facts indicate should be imposed, should not be avoided simply because there is an aspect of hardship, financial or personal.

32. In addition, the Tribunal notes, but says nothing further, about the fact that he does not enjoy good health. The Tribunal does accept that, uniquely in this case, the sending to him of a steward's letter which indicated that he was facing a six-year disqualification, on a calculation based on the Penalty Guidelines, occasioned to him substantial stress. There is no medical evidence to support that. The Tribunal merely notes that between the time of receiving that material and the stewards' inquiry he had been hospitalised on two occasions. There is nothing to attribute that letter to those hospitalisations and there is no criticism of the issuing of the letter in the terms that it did.

33. Importantly, as this Tribunal has often repeated, as do all Tribunals, the admission of the breach – and its ready admission – entitles the appellant to a discount. Here he admitted it immediately before the stewards, he has maintained that admission, he cooperated with the stewards, he has cooperated with the Tribunal, and an appropriate 25 percent discount is available and will be given.

34. He was at pains to have expressed on his behalf at the stewards' inquiry his knowledge that he would be swabbed and therefore all the more unlikely is anything that he would do which would cause him to come under adverse notice. The Tribunal finds, however, that his evidence on that point is less than satisfactory. He told the stewards that that advice was given to him at a training track, either Gosford or The Gardens. It is apparent from his sworn evidence today that that was first given to him by the officers conducting the kennel inspection on 1 April and that the subject presentation was on 4 April and he said on oath that there were no presentations between 1 and 4 April and that therefore there was no opportunity for him to be more cautious on

any occasion other than his presentation for this subject day's racing. And that was so short a period of time that it could hardly be said that any great weight could be given to the fact that he had been told he was going to be pre-race swabbed other than he knew it on this one occasion.

35. The Tribunal has to look to the future, as it has said. In that regard, it led from him that he had certainly received a message in respect of his future conduct as he had quite clearly indicated to the stewards about his change of practices and the like. But importantly, that he now, as was not the case on 23 December 16, was fully apprised of the rules, that he is cognisant of the presence of The Dogs website and keeps himself informed on that in relation to stewards' inquiries and the like, in relation to media releases, and in keeping up to date with the policies of industry.

36. The Tribunal has referred to the reference. That reference perhaps has to be read down because it is given by his father. But nevertheless, it is favourable to him. Having referred to the history of association of the family and his personal – that is, the appellant's personal – change of circumstances and establishment of his present kennelling facilities, it is emphasised that he came to the industry as a novice person, that the appellant has expressed to his father his devastation that he has suffered the penalties that he has and that he is a "new style individual" and that he believes in enterprise and was attempting to provide the best possible environment for his endeavours.

37. It is important that the appellant can perceive, and that others who have been dealt with in the past or might in the future, that like penalties are provided for like conduct – parity, as it is known amongst the lawyers. In that regard, there are three theobromine cases presented to the Tribunal by way of exhibits today.

38. The first of those is a decision of the stewards of 12 October 2017 in a matter of Proietto where there was an admission of the breach, a licence history 1966 with no priors – again, similar – review and amending his practices. The personal and financial circumstances and, unlike this appellant, a contribution to the industry. A 12-week suspension.

39. The second matter is Ashton, 23 May 17. Again, an admission of the breach early. A licence history from 2013 with no priors. Again, similar to here. Review and amend his practices, and personal circumstances. A 12-week suspension.

40. Thirdly, Shipley, 21 October 16, two breaches, both admitted early. Licence history 1993 with no priors. Again, equivalent to here. Reviewing and amending his practices, but also a contribution to the industry, and references. A 14-week suspension each matter, concurrent.

41. It might be noted in addition in respect of Proietto, relevant to the husbandry issue here, that the greyhound there had been given Milo in the weeks leading to the event. In respect of Ashton, that the greyhound, according to the trainer, had eaten chocolate. In respect of Shipley, it might be noted in passing there is no reference to anything similar.

42. What then of those cases? Are they the same, or can this appellant and his personal circumstances be distinguished? A key and distinguishing factor is that in respect of each of them there was no other conduct which was in the mind of the stewards of a similar type. A suspension, therefore, for particularly Proietto and Shipley and their long history is not surprising. The fact that they got 12 and 14 weeks for those two is not unusual. The matters of Proietto and Ashton are virtually the same, with 12 weeks' suspension not being a surprising outcome. And, indeed, Shipley is relatively common.

43. Is it appropriate that that gives a strong indication that a suspension is an appropriate outcome here? The distinguishing factor is this: that here at the time of this presentation there was an appellant on notice of a prior matter. As to whether a suspension is not possible because at the time of the imposition of this disqualification he had been disqualified for the first matter does not have to be determined.

44. The Tribunal has determined that each of those three cases of parity can be distinguished on the basis of the facts here and the fact that there had been an earlier matter.

45. The reason for that is the message that has to be given. That message is one which requires the Tribunal to assess what message has to be given to this individual appellant to clearly ensure that this type of conduct is not repeated in the future? Firstly, the message is slightly diluted because the second set of matters occurred before he was the subject of a penalty on the first matter. Secondly, that the message can be further reduced in looking to the future by reason of the practices that he has indicated he will put into effect when he returns to the industry and in particular his changed knowledge. There is some comfort in his indication he will engage in changes in his practices when he returns to the industry, notwithstanding these are second matters, because as the Tribunal has said, there was virtually no opportunity between his first notification on 1 April and these presentations on 4 April for him to be able to have done anything in that time.

46. What then, though, of the message to be given to other licensed trainers, other licensed people, the regulators themselves, the regulatory body itself and, importantly, the public? And the public are those who participate in greyhound racing and in racing generally and also the public at large. This is not advanced as a welfare case but the issue of the integrity of

the industry is forefront in the minds of the public and, indeed, of parliamentarians, by reason of the recent legislation in 2016 and the new regime put in place with the legislation in 2017, that integrity, in conjunction, of course, with welfare, plays a most important part. It is essential, therefore, that the stewards and the Tribunal convey to the public at large, by appropriate penalties, via messages to that community, that the failure to comply with the rules and the failure to comply with matters as serious as prohibited substance rules will attract substantial penalties.

47. Having regard to the objective seriousness which has been referred to, considering the subjective circumstances, the Tribunal has determined that a period of disqualification is appropriate.

48. It does so for the key reasons that there was a very short history, that the matters involve a prohibited substance, that at the time of the presentation there had been notification of a prior prohibited substance. To impose a penalty less than disqualification would not be the appropriate message to be given.

49. What then is an appropriate period of disqualification? In that regard, this Tribunal conducts a de novo hearing. It is not necessary for it to analyse the reasoning of the stewards in coming to their determination. They indicated quite fairly to this appellant, despite the criticisms of them, their reasoning. They indicated, after their oral expressions, by their written document of the same date, that they had taken into account everything on the appellant's behalf that they should have and engaged in the appropriate balancing exercise that they had. In respect of the aide-mémoire tendered to the Tribunal today, which confirmed their method and rationale, the Tribunal finds no reason for criticism.

50. It is for the Tribunal itself to determine penalty. Does it follow the penalty guidelines or does it approach the matter independently of them? The Tribunal has said on many occasions since they were introduced in this code in October 2012, and in the other codes since they were introduced or reinforced there, that they are guidelines, not tramlines, that the Tribunal should nevertheless, for reasons of parity and ensuring that there is some method of understanding, both by the stewards and the regulator generally, that there is some rational way of coming to the penalty decision, have regard to them. It has an important impact upon parity for stewards.

51. What then is provided here? There are five categories. This is a Category 4. A Category 4 arises from "all other substances that have the ability to improve or impact racetrack performance and which are not in 1, 2, 3 and 5." And, to be clear, Category 1 is the worst, and that is "negatively impact on performance or be a 'stopper'." Category 2 is something less, that it is an illegal substance. Category 3 picks up steroids. And Category 5

picks up permissible registered products for greyhound, animal or human use, and also which can be therapeutic.

52. This, then, is a Category 4 – 4 out of 5. It is towards the lesser end of the scale. The guidelines indicate for the worst possible presentation, a category 5 it is five years down to 12 weeks for a Category 1. Here, for a Category 4, it is 24 weeks. That is considered to be a starting point.

53. In determining a starting point, unlike the criminal law – and this is not a criminal case – there are then matters added to it rather than what might be considered to be matters which remove deductions. And they are called in the guidelines aggravating factors. The key one of these here is the prior matter. Ones that can be eliminated immediately are high level, because it is an accepted fact it is a mid-level, and other exceptional circumstances. There are none identified.

54. It purely leaves an analysis as to the starting point of whether or not there should be an increase, according to the table, of 48 weeks for a prior prohibited substance matter. In that regard, the Tribunal said certain things in Finn about how it assesses a second, third, fourth or fifth matter when a first matter or, indeed, the second when a third is dealt with, etc, should be dealt with. There, as a result of submissions made on that occasion by Mr Murrihy, the Tribunal slightly varied its approach to concurrent and cumulative matters and how that other matters should be considered in relation to prior matters. The simple addition of 48 weeks is how the regulator has given guidance to the industry and the stewards as to how they should approach the matter.

55. The Tribunal approaches the matter on the facts of this case on this basis: that it should have regard to the 24-week starting period, but that is not an actual starting period. It has regard to it in this way: that on 1 April there was a prior matter, as outlined, which had not been finalised. It might be said, if it was a criminal matter, it is on the equivalent of bail. Not quite, because to draw that analogy out slightly, he had not been charged, to use the criminal analogy. He was not in fact, again in a criminal analogy, not charged for the first matter until 16 March. But he was on notice.

56. It cannot be said, in looking at the message that must be given to the community at large, that anyone in those circumstances could be treated as if nothing prior had occurred. It had occurred. It had occurred on 23 December. There had been a most serious breach of the rules. It is, therefore, that the Tribunal has determined that its actual point from which it will consider any reductions is not by a starting point with an addition of an aggravating factor but that it starts with a starting point of 42 weeks as being appropriate. That is, a 42-week disqualification.

57. Against that there is a discount for the plea and related matters, combined with some other subjective discounts, which will give discounts of 21 weeks. It is not necessary to specify precisely 10.5 plus 10.5 equals 21, but that the discount for the plea of guilty of 25 percent, together with other subjective matters, gives a discount of 21. That leaves, not unsurprisingly, a disqualification period of 21 weeks.

58. How should it then be considered for commencement? Firstly, it is not in issue in respect of each of these two matters that they occurred on the same date in the same circumstances and that each of these two matters should be served concurrently. Rule 97 sets out some matters that the stewards are required to consider, as is the Tribunal, as it stands in the shoes here, of the rule relating to cumulative penalties. It says, relevantly, if a person is disqualified for more than one period, any period is to be served cumulative or, previously disqualified, is to be served cumulatively unless there is some other order.

59. Here the stewards in fact determined a penalty of 42 weeks and then, in the Tribunal's opinion, very generously backdated it, but they did so on what the Tribunal has already referred to as a form of a double discount. They determined that it should be backdated partially to correspond with the present penalty, which expires 7 march 2018, of 12 months for the first matter.

60. The Tribunal does not consider that the penalty of disqualification of 21 weeks should be backdated in any fashion other than to operate from today, that is, to distinguish the determination of the stewards but to come to, in essence, the same outcome. That is not an intentional result of mathematical sleight of hand, but the Tribunal has formed the opinion, having regard to all of the matters before it, that that is an appropriate outcome. It is not mathematically crafted.

61. As the appeal is against a penalty of equivalent nature, the formal order of the Tribunal is that the appeal is dismissed, a penalty of disqualification of 21 weeks, to commence on 8 March 2018, is imposed.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

62. Application is made for a refund of the appeal deposit of $250. The facts are that this was an appeal against severity. The original penalty was 42 weeks, backdated. The effect of that was a penalty starting tomorrow. The effect of the Tribunal's decision is a penalty of 21 weeks starting tomorrow. The effect is that the disqualification period which the stewards considered appropriate will expire at the same time as that which was previously in existence. Whilst it is a technical aspect of success, the appeal was dismissed. I order the appeal deposit forfeited.
