RACING APPEALS TRIBUNAL
NEW SOUTH WALES

TRIBUNAL: MR D. B. ARMATI

Wednesday 4 April 2018

EX TEMPORE DECISION

APPEAL OF MR CHARLES NORTHFIELD

BREACH OF RULE 83(2) OF GREYHOUND RACING RULES

SEVERITY APPEAL

DECISION

1. APPEAL UPHELD;
2. PENALTY OF SUSPENSION OF 26 WEEKS;
3. APPEAL DEPOSIT REFUNDED

The Appellant appeals against a decision of the stewards of 4 October 2017 to impose upon him a period of suspension of his licence to train greyhounds for a period of 30 weeks. The stewards alleged two breaches of rule 83(2) as follows:

> That you, Charles Northfield, a registered trainer, while in charge of the greyhound 'Erin Choice', presented the Greyhound for the purpose of competing in Race one at Casino on 17 February 2017 in circumstances where the Greyhound was not free of any prohibited substance.

The particulars of the second alleged breach were in the same terms, for the same greyhound, except the presentation was for race five on 3 March 2017.

2. The Appellant, when confronted with those allegations by the stewards, immediately entered a plea of guilty. The stewards inquiry proceeded on the basis that there were no issues about the fact that the Appellant, firstly, presented the greyhound on two occasions; and, secondly, that on each of those occasions it contained cobalt and that cobalt is a prohibited substance. This appeal has proceeded on the basis of that admission. It is maintained, and this is a severity appeal only.

3. The evidence before the Tribunal has comprised the transcript and exhibits before the stewards, together with the decision of the stewards of 4 October 2017; a report of veterinary surgeon Dr Christie Budd, and a report of regulatory veterinary surgeon Dr Steven Karamatic; the stewards report on the Quinton/Boss Lane inquiry of Racing NSW of 5 October 2017; the decisions of stewards in respect of cobalt penalties from 1 January 2017 to 14 November 2017; and an extract, as best can be made by the stewards, of the type of kibble in the various positives referred to in those cobalt decisions where the stewards reports were able to discern the product.

4. There are two issues in this appeal. The first is whether the Appellant can establish that the presence of the elevated levels of cobalt was occasioned by the ingestion of kibble. Second were the usual matters dealt with on a severity appeal.

5. At the outset, the Tribunal has regard to the recent decision in Victoria of Justice Garde in the Victorian Civil and Administrative Tribunal, Administrative Division, Review and Regulation List, in the matter of Kavanagh and O'Brien v Racing Victoria Limited, a decision of 27 February 2018. His Honour there adopted the reasoning of Judge Williams, the Racing Appeals Tribunal Victoria, undated, in McDonough v Harness Racing Victoria.

6. Judge Williams had analysed (as has been done in various tribunals and stewards' decisions over the years) three circumstances in which a presentation case may be analysed for determination of culpability of the trainer: first, where a presenter has a positive culpability; secondly, where at the end of the day the explanation which is given by the presenter is not accepted by the decision-making body or where the presenter concedes that he or she has no explanation; and, thirdly, the presenter provides an explanation which the decision-maker accepts and which demonstrates that the presenter has no culpability at all.

7. Judge Williams assessed, and Justice Garde adopted in Kavanagh, as that was his actual finding of the third level, that where it is established that a presenter has no culpability at all then the penalty should be at the lowest level of denunciation, and it is possible that there would be no penalty at all.

8. The Tribunal is satisfied, as it has expressed now in a number of decisions since 27 February 2018, that that is a present explanation of what has been the how, when, why and wherefor approach adopted by the stewards and the Tribunal in respect of presentation matters for decades: that is, that in an absolute matter such as this it is not necessary for the stewards to establish how, when or by what route a prohibited substance came to be presented in an animal presented contrary to the rules.

9. At the outset, and by way of substantial narrowing of the issues to which each of the veterinary reports were directed, were the following accepted facts. To put them in context, it is common ground that this Appellant fed greyhounds in his kennels a kibble called Winning Edge dry food. The accepted fact is that this trainer fed to the subject greyhound Erin Choice 250 grams of that kibble in the morning and 200 grams of that kibble in the afternoon, and had done so for a number of months, and possibly years.

10. As expressed, the issue is: Does that accepted fact explain that this Appellant has no culpability for his two presentations because the elevated levels of cobalt are explained by the feeding regime just outlined?

11. There are some other facts. Firstly, the Appellant has a prior presentation on 30 April 2016 for cobalt, in a different greyhound, Kingsbrae Chooky, at an unknown level. It was dealt with by the stewards on 28 October 2016, just to draw that out, by way of a suspension of twelve weeks on an admission without inquiry. As a matter of evidence, the Tribunal does not know whether Kingsbrae Chooky was fed the subject food; nor, as to the time of its presentation, when. It is an accepted fact that the greyhound Erin Choice was fed the subject food on the two presentations; but it is not established, on the evidence, precisely when, in relation to its presentation, that last feeding occurred.

12. On 28 September 2017, as part of a testing regime described in detail by Dr Budd in her report, the trainer presented three greyhounds—the subject Erin Choice, Kingsbrae Jim and Kingsbrae Chooky—for pre- and post-race cobalt swabbing at stewards trials on 26 September 2017. A number of other tests were conducted. The precise time of the feeding of the food prior to those presentations is not given. The readings, respectively, were 9 pre-race and 15 post-race, 7 and 7, and 9 and 10—patently below the threshold of 100.

13. There is the fact that all of the presentations for cobalt testing by the Appellant between 19 July 2015 and 9 August 2017 were made available to, and used by, Dr Budd and analysed by Dr Karamatic in their reports. As the Tribunal understands it, those figures are confidential. Suffice it to say that what that list establishes is that the subject greyhound Erin Choice's levels were at its presentation on 17 February 2017 at 121, on 3 March 2017 at 149, and on 22 May 2017 at 7. It is noted in addition that Kingsbrae Chooky on 30 April 2016 exceeded 100 (the level is

not known) and it is noted that subsequently Erin Choice and Kingsbrae Chooky had their readings of 26 September 2017, set out above.

14. The rest of the list demonstrates what each of the two veterinarians in their reports analyse and accept: that of the 31 samples, the vast majority were outside the range expected of the normal racing population, and 12 of those 31 were in the top 1 per cent of samples, those samples being those referred to in tests by Greyhounds Australasia in a study of 762 greyhounds in 2015, with analysis by Professor Hibbert, and which led to the establishment of a threshold of 100 on the basis it would provide a robust margin of safety with normal amounts of cobalt supplementation through routine nutritional sources. A median value of 3.44 ng/mL was established, and 74 per cent of the samples were below 10.

15. In a 2017 study, using similar methodology, 18,155 greyhounds were sampled on raceday. The results, after analysis again by Professor Hibbert, were a median value of 1.2 ng/mL, with 96 per cent of samples below 10 ng/mL and only 23 of the 18,155, that is, 0.1 per cent, exceeding the threshold of 100 which had been established. Professor Hibbert concluded that the chance of a greyhound exceeding 100 ng/mL was, at most, 1 in 614,000. That puts in context therefore some of the analysis which was conducted.

16. Dr Karamatic analysed the subject feeding regime of Erin Choice, that is, 250 grams of kibble in the morning and 200 grams in the afternoon. He said because of the fact that Winning Edge kibble had 1.2 mg/kg of cobalt, that that would equate to certain levels. The reason that figure is given is that the label said it was 0.05, a difference of 24 times. Allowing for that very high level of cobalt therefore, 250 grams of the food would equate to 300 µg of cobalt and 200 grams to 240 µg of cobalt. Dr Karamatic continued that a previous test with the application of Vam paste to a greyhound in an equivalent of 293 µg of cobalt gave an excess over 100 for up to six hours. There was then a rapid decline over 24 hours, and a mean half-life of 32 hours. Therefore the conclusion adopted in that assessment reported by Dr Karamatic was that after 24 hours of administration of Vam paste, exceeding 100 was likely to be 1-in-15,385. He continued:

> "Only a small level of accumulation was expected after repeat administrations on alternate days of Vam paste."

He continued:

> "The accumulation may be higher with twice-daily feeding of Winning Edge Kibble at the above amounts and concentrations."

17. It is to be noted that here the amount of Winning Edge kibble given on a day would equate to 540 µg of cobalt. It is not known, on the facts given in these reports, if the first 300µg of cobalt in 250 grams of kibble were given in the morning, whether the 6-hour, 24-hour and half-life rules would mean that there was, or was not, any greater or lesser accumulation by the giving of the further 200 grams, or 240µg, given in the afternoon. The reports just did not go into that type of detail.

18. What is not known here—as has been summarised to date—is that when that 6-hour calculation might apply on these facts, when the 24-hour calculation might apply, or when the 32-hour half-life issue may be relevant.

19. The reports of Dr Budd and Dr Karamatic touched upon a range of other matters and other likely sources, each of which, at the end of the day, the Tribunal is not invited to consider or analyse, and it does not.

20. Dealing firstly with Dr Budd's report—and it is important that it be read into this decision—at paragraph 13 on page 11, under the heading "Investigator Comments", she reported as follows:

> “This investigation is incomplete. Further testing would be required to conclusively demonstrate that feeding heavily cobalt supplemented commercial dog food could have caused the positive swab results of the Northfield greyhounds in question. However, there is sufficient evidence to allow the possibility that the dogs breached the cobalt threshold without any active supplementation by Mr or Mrs Northfield. Vitamin B12 (cobalamin) is a naturally occurring, cobalt containing, water-soluble vitamin, essential for life. It is a necessary part of a healthy diet for all animals. Vitamin B12 deficiency is associated with clinical disease. To date, no disease has been linked to over-supplementation of vitamin B12. It is not possible with current testing to distinguish between cobalt which has been taken in naturally through normal dietary sources, versus active supplementation.”

21. Dr Budd then set out, in paragraph 14, under the heading "Preliminary Conclusions", as follows:

> “Based on the findings of this investigation to date, a reasonable source of positive urinary cobalt swab results was the prolonged feeding of the Winning Edge dry food. The length of time the dogs were exposed to high levels of dietary cobalt through the feeding of this dog food is unknown at this time, but it is feasible it may have occurred for several months or possibly years. It is also possible that these high levels of cobalt were only present in the food intermittently, which may account for the variation in urinary cobalt levels in Northfield greyhounds documented by GRNSW in their random swabbing program. It is also not unreasonable to consider that the effects of racing, causing breakdown of red blood cells and/or muscle tissue, could also have contributed in a modest way to producing urinary cobalt levels over the legal limit.”

22. The Tribunal deals then with eliminating some matters arising from those two paragraphs. Firstly, the vitamin B12 issue is no longer pressed, so that the issue of it being an accumulation, as it were, through normal dietary sources does not arise for consideration. Secondly, it is now an agreed fact, in respect of her conclusions, that the feeding occurred for several months or possibly years. Therefore, there is that accumulation matter to be considered.

23. In addition to the matters referred to in Dr Karamatic's report, it is necessary to note that after analysing the amount of Winning Edge kibble

provided to these two greyhounds, and comparing the Vam paste greyhound analysis test, he came to this conclusion (page 9):

> "Based on the above, it is possible that the routine feeding of Winning Edge dry dog food containing 1.2 mg/kg of cobalt was the reason for the vast majority of the 31 samples taken from Mr Northfield's greyhounds being outside of the range expected of the normal racing population, with 12 being in the top 1% of samples. However, at this stage, it is unproven."

Then, on page 10, he set out the following conclusion:

> "The finding in this greyhound of a urinary concentration of cobalt greater than 100 ng/mL in both samples V491350 and sample V441097 confirms in each case the administration and presence of a prohibited substance that is capable of affecting the condition or performance of a greyhound, with any effect on performance more likely to be positive. The administration may have been inadvertent through the feeding of a dry dog food containing unnecessarily high concentrations of cobalt for a canine diet."

24. To distil down that paragraph for a moment, the first parts about it, of being performance-enhancing and causing an excess, are not in issue. As to whether it may or may not have been inadvertent is not a key factor. But what he is saying is that it may have been unnecessarily high as a result of the canine diet.

25. Firstly, there are some points to which each of the veterinary surgeons has referred. They have referred to normal diets. It seems to the Tribunal that it cannot be said that a product containing 24 times the appropriate and labelled level of the substance put forward in the description is normal. Secondly, the veterinary surgeons in each case, by reason of two factors, do not provide a level of certainty.

26. Firstly, Dr Budd's report—and this is no criticism as it is entirely as she wished to have it presented—is described as a preliminary report. It is just that. She made it quite clear in her investigator's comments that it is an incomplete investigation. Secondly, she can therefore put no higher, nor does she, that it is a possible reasonable source, that it is feasible that something may have occurred by long-term feeding, and there could have been contributions.

27. Dr Karamatic, who is an experienced regulatory veterinarian, having analysed all of those matters, puts it that it is unproved that Winning Edge kibble was the source; and, secondly, that something may have happened.

28. Again, without any criticism of the Appellant in the presentation of his case, nor that of Dr Budd as she has quite clearly said that she has not come to concluded views, a comparison must be made with the Quinton/Boss Lane case. The reason for that is this: that in that case the stewards determined—although they did not say it in their reasons for decision—that no penalty would be imposed on the trainer, Mr Quinton, and they came to that conclusion based upon what was an extraordinary level of research and testing. In fairness, it has to be

acknowledged here that this trainer has gone to an extraordinary level in arranging for various testing and research to be conducted.

29. Returning to Quinton—and this is the key difference—having found problems with varying cobalt levels in various horses in Quinton's stables, having identified that the feed called Phar Lap, which had been given for in excess of ten years, contained, in some samples, 50 times the permissible levels of cobalt, they decided they should conduct a further, controlled, ethically-based test, and that test was feeding the subject Phar Lap, which was at 20 times the permissible level, in a highly controlled environment, from horses which had been kept off that product for a sufficient period of time for them to have normal cobalt levels, and then were fed that Phar Lap feed, and they returned higher levels. It was, therefore, that the stewards, based upon expert regulatory advice through Dr Suann and through advice of Dr Selig and through advice of Dr Foote—which, incidentally, indicated that a usual daily intake of cobalt in a thoroughbred was 6 to 7 milligrams per day, and that the subject horses were getting 75 milligrams—they therefore concluded as follows:

> "… were comfortably satisfied that the cause of the levels of cobalt in Boss Lane and Imanui were due to the prolonged ingestion of Phar Lap feed which contained levels of cobalt up to 50 times higher than the manufacturer's label advised, which resulted in Boss Lane and Imanui ingesting cobalt well in excess of the average daily intake of cobalt for a thoroughbred horse."

30. The Tribunal does not have the benefit of that level of assessment here which enabled the stewards in the Quinton inquiry to form a level of comfortable satisfaction. The totality of the evidence here is that there is conjecture, there is speculation, and there is a case raised that the Winning Edge formula may be the cause.

31. This Tribunal must make a decision on the Briginshaw standard, described, as it is, of comfortable satisfaction having regard to the gravity of the allegations. Without quoting Briginshaw in detail dealing with what evidence is accepted or not, because that is not an issue here, there must be that level of comfortable satisfaction.

32. In the submissions for the Respondent it is suggested that a dangerous precedent would be created if this Tribunal were to conclude, on the evidence it currently has, that the Winning Edge kibble was the source after prolonged ingestion. The state of the evidence is such that that comfortable level of satisfaction is not established by the Appellant.

33. The effect of that in respect of this decision is that it remains that the Tribunal is unable to determine how, when, why or by what route the subject cobalt came to be present in the two presentations of Erin Choice.

34. The effect of that, going back to Judge Williams in McDonough—adopted, as has been said by this Tribunal post Justice Garde in Kavanagh and another—is that this matter does not fall within that third category where the

Appellant is able to comfortably satisfy the Tribunal that the culpability lies elsewhere.

35. What penalty, therefore, is appropriate? The Tribunal has the penalty guidelines. It is not necessary in this appeal to analyse how they are to be approached. This Appellant has a prior. The way in which the penalty guidelines are written is that there is a starting point of 24 weeks, and 48 are added for the prior to get to 72 weeks, and there are then various deductions.

36. There is also here, notwithstanding that penalty guideline table, the summary of cobalt decisions which have been referred to. Firstly, none of them contain a disqualification. That, as the Tribunal expressed to the parties, and repeats for the purposes of this decision, comes to it as something of a surprise. That is a matter for the stewards entirely, and no criticism is directed at them. But what it does mean is this: Should this matter be elevated and there be visited on the Appellant on these facts a disqualification when no-one else has been subject to it in 21 cases since 26 September 2017 to 14 November 2017? The answer is no. Parity would not permit such an approach to be adopted by the Tribunal. Not only would it be unfair; it would be entirely out of kilter with what is considered by the regulatory body, regardless of its penalty guidelines, to be a starting point.

37. The Tribunal, therefore, in this case—but does not indicate it will do so necessarily in all future presentations—will analyse parity on the basis of those stewards decisions. As has just been said, there are 21 of them. The range of matters comprise readings as low as 112 up to 960. The majority of them are less than 200. They have involved suspensions of between 8 and 36 weeks. The 36-weeks matter was a matter of Peck of 1 March 2017 where the reading was 960. No other facts are given. There is no understanding, therefore, in the Tribunal why 36 weeks, which is quite an outliner marker, was felt to be appropriate. The next highest penalty where there is no prior—and Peck had no prior—is 21 weeks. Where there were priors—and there are three of them—August 2017, a 2014 prior, category 4, equivalent level here of 24 weeks. The next is 15 June 2017, 200 (a higher level), a 2016 prior, category 5, 21 weeks. The next is 27 April 2017, considerably higher at 228 and 248, a prior category 4 and category 5 in 2015, 20 weeks. So it was considered with priors in the past that the highest rate of suspension would be 24 weeks.

38. Is there some reason why this Appellant, with facts not dissimilar, was given 30, rather 20, 21 or 24? Again, the Tribunal does not have all the facts relevant to those prior matters. It requires briefly an analysis of his prior matter at this stage. As has been set out, it was a 28 October 2016 decision on a 30 April 2016 presentation, at a low but unknown level of cobalt, with an early admission, and which commenced on 28 October 2016 and would have expired, on that 12-week period, on or about 28 January 2016. It was a suspension. The Tribunal assumes, it does not have to be certain about it, that once that suspension was concluded he resumed his training activities. He then is subject to this presentation, less than a month later, on 17 February 2017. It is to be noted that the three precedents to which the Tribunal has been referred were all matters where the prior presentation was a lot longer.

39. Therefore, this matter needs to be assessed, on a parity basis, on whether there is anything that would warrant a penalty of 30 weeks, as against 24 weeks. It is, of course, open to conclude that that short period of time did not enable a greater discount to be given to him. It is also to be noted, when looking at the issue of parity, and only briefly as it has been referred to many times, that this trainer cannot expect, nor does he ask to be dealt with, on the basis that this prior matter was an old one and should be disregarded.

40. What, then, are the subjective matters? The reference to his plea of guilty to the stewards, his co-operation with them—and it was full co-operation—his ready admission of the breach before this Tribunal and his maintenance of that throughout, and his co-operation with the Tribunal all mean that he is entitled to the full discount, which the Tribunal has expressed as 25 per cent, and he shall have it.

41. The Tribunal takes into account he has been licensed since 1993, a 25-year association with the industry, despite a few moments out of it because of these cobalt matters, but it is a long and satisfactory history subject to that one prior matter.

42. The Tribunal has regard to the financial impact upon the Appellant. Firstly, as it has said as long ago as in the Morris harness racing appeal of 2011, hardship is an inevitable consequence in nearly all cases of a failure to comply with a privilege of a licence by breaching a rule as serious as this one. If it is to be a consequence, therefore, that there is financial hardship, that is brought about by an Appellant's own conduct.

43. Here, there are some matters of relevance on financial hardship. Firstly, as is virtually always the case, there is a loss of prize money. Nothing turns on that. That is normal. Secondly, he has incurred without doubt substantial costs from the time he found out about these positive swabs, on a voluntary basis, in obtaining expert assistance to try to find a cause. As the Tribunal has said, regrettably, at the time of the presentation of his appeal, that research is incomplete. There are of course legal costs.

44. The cost of that research is not known; it does not have to be. It has, when it is considered, two important factors attached to it. First is the reason why he undertook that research. That reason is a firm belief in his practices throughout the time he has been licensed, his family history and the maintenance of kennels at the highest level and his wish to establish that that was a failure, now on three occasions, not attributable to any wrongdoing on his part. And secondly, there is in the Tribunal's opinion, although it has not been documented or put, some benefit to the regulator by the research that has been conducted by him about how it should approach assessment of kibble in the future by reason of the mislabelling and the fact that there is this substantial 24-times excess. As to how it deals with that is entirely a matter for the stewards and the regulatory body, should it wish to do so.

45. There is then the family history. The Tribunal accepts that he is a third generation participant and that he has a proud and established history, with a

great desire to maintain his name, and that he has been successful. The Tribunal accepts that, based on that history, he has a kennel that is of first-rate standard. The Tribunal is reinforced in those conclusions by the references that he provided to the stewards.

46. The first is by veterinarian Sam Tonge, who has worked with him for 10 years and seen the delight and sadness that the running of kennels provides to a trainer and breeder, notes that he has fed and cared for his greyhounds to the best of his family's ability, ensuring that he buys only the best and most reputable products, and ensuring that the highest levels of care and respect are shown to the greyhounds themselves. Importantly, this veterinarian expresses that he has never seen any suspicious activity, particularly from a person whose livelihood depends on this industry. He concludes by describing the Northfield family as proud and honest trainers who show great respect and care for their greyhounds, and notes that they hold the industry in high regard and seek to present themselves and their greyhounds in the best possible light. It is to be noted, of course, that Dr Tonge was aware of the subject matter.

47. The second reference is by veterinary surgeon Dr Brown, who is also aware of the subject matters. He has been operating on a professional basis with the Appellant for 11 years, says he has always been a trainer who presents his greyhounds to her in good condition, presents as a person with a clear understanding of the rules of racing, and that she has no hesitation in providing a positive character reference for the Appellant.

48. This case contains some different facts on a subjective level. On 13 July 2017 this Appellant and his wife, who shares the training and breeding facility with him, voluntarily withdrew themselves from the industry. The stewards recognised that in their decision, as does this Tribunal. This Appellant received the benefit of a stay, on a limited basis, on 25 October. Essentially, it was advanced on the basis that it would enable Mrs Northfield to continue to operate her activities but limited this Appellant from presenting to race, by way of nomination or attendance and the like. He was, however, able to continue some of his activities, but not all of them. Despite that, Mrs Northfield continued with her voluntary exclusion from the industry. She is not the Appellant. Their personal financial and administrative arrangements as to the operation of this business are not known, but it is an inevitable conclusion available to be drawn by the application of principles of commonsense that that has imposed hardship upon them. To add, therefore, to the hardship, in which the Tribunal previously engaged in an analysis, there is the financial loss which has been outlined but which, for confidentiality reasons, will not be set out in this decision.

49. It might be noted, dealing with principles of civil disciplinary penalties, that the likelihood of this Appellant having reoffended after his first breach was much diminished by reason of the fact that he suffered a substantial financial penalty by that 12-week suspension on the last occasion. That no doubt was a salutary lesson to him. It is an important fact in looking to the future, and no doubt the costs and losses occasioned in this matter will provide the same salutary lesson. It reduces the need for the message to be given to him.

50. The concluding submissions for the Appellant are that rule 98 should be applied. To summarise it, it enables this Tribunal to not proceed to what the rule describes as a conviction and, if necessary, to impose some conditions, whether by way of good behaviour bonds or otherwise, to guide the Appellant in the future. It is said that these facts are exceptional. They are certainly able to be categorised as such. But that exception is greatly diminished by the fact that there is a prior matter and that that was so proximate to this matter, and that these further breach is within so short a period of time of his returning to the full privilege of a licence.

51. It is to be acknowledged, in respect of that prior matter, that the reasons for this presentation could be the same as those when Kingsbrae Chooky was presented in April 2016. But, as has been expressed, the Tribunal is not able to come to that conclusion, nor can it revisit that previous decision, and does not do so. Accordingly, consistent with the types of matters that were set out in Carroll in 2015, the Tribunal considers that it cannot disregard that prior matter. It is of such weight that the Tribunal is of the opinion that rule 98 is inapplicable.

52. This is a severity appeal. Having regard to those matters, the Tribunal not being required to undertake a penalty guidelines type of analysis, has determined that there be a period of suspension.

53. At the outset, the Respondent quite clearly indicated that it was not asking the Tribunal to impose upon this Appellant a greater penalty than that which would have had the effect, if it had been served without a stay, that the stewards found to be appropriate. In October 2017 the stewards backdated their 30-week suspension to 13 July 2017. It would therefore, on a weekly basis, have expired in February 2018. It is not suggested that there be visited upon this Appellant any additional penalty which might equate to the balance of the 15 weeks he did not serve between his backdated suspension and its stay, in any fashion. Because he had the benefit of some rights and privileges of his licence between 25 October and to date, it would be open to suggest that there be some extension by reason of the fact that he has not fully served the type of penalty which was considered by the stewards to be appropriate.

54. There are two conclusions reached by the Tribunal. The first is that it struggles to see why this Appellant was given 30 weeks as against what was previously seen to be a maximum of 24 weeks. As it has tried to analyse, that could only be on the basis of the recency of his prior, but that was not expressed. Secondly, notwithstanding that rule 98 is not be used for the reasons expressed, the Tribunal is of the opinion that the submission for the Respondent at the outset that no additional penalty be visited is appropriate. Accordingly, the existing penalty is one which effectively will have been served.

55. In the absence of any clarity about that 30-week compared to 24-week period, the Tribunal intends to impose, and does, a period of suspension of 26 weeks. That period of suspension will commence on 13 July 2017. To be clear, the Tribunal does not disturb that backdating by any reason of the application of the stay on 25 October 2017.

56. The formal order, therefore, is that the appeal against severity is upheld and the penalty of 26 weeks suspension to commence on 13 July 2017 is imposed.

57. An application is made for a refund of the appeal deposit of $250. The appeal was severity only. It has been successful. Whilst a penalty has been imposed, having regard to all of the facts of this case, I order that the appeal deposit be refunded.