

Racing Appeals & Disciplinary Board

Media Release

11th November 2015

Racing Appeals & Disciplinary Board

Date of Hearing: Friday, 9 October 2015
Venue of Hearing: RADB Hearing Room, 46-50 Chetwynd St, West Melbourne.
Panel: Mr. John Wardle (Chairman) and Mr. Terry O'Connor (Deputy Chairman)
Name of Persons Charged: Mr. Kenneth Hodges and Ms. Diane Hodges
Suburb: Garfield
Track: Tooradin Trial Track
Breaches of rules: Mr. Hodges - breaches of Local Rule 18.5 and GAR 86 (af).
Mrs. Hodges - breach of GAR 86(o).

Offences Charged:

- (1) Mr. Kenneth Hodges did, on or about 23 December 2014, at Tooradin use or cause to be used a live animal (namely, a live rabbit which was attached to the lure arm by Mr. Lawrence Cunningham) as a lure for a black greyhound (namely, a black greyhound handled by him) on a Greyhound Trial Track (namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin).
- (2) Mr. Kenneth Hodges did, on or about 23 December 2014, at Tooradin use an animal (namely, a live rabbit which was attached to the lure arm by Mr. Lawrence Cunningham) for a purpose connected with greyhound racing in a manner which was improper, namely, he used that live rabbit as a lure for a black greyhound (namely, a black greyhound handled by him) on a Greyhound Trial Track (namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin).
- (3) Mrs. Diane Hodges did, on or about 23 December 2014, in relation to a black greyhound and in relation to greyhound racing, done a thing which, in the opinion of the Stewards, is improper, or constitutes misconduct, namely, paying the requisite fee to Mr. Lawrence Cunningham, the assistant Manager of the Tooradin Trial Track, for the provision of a live rabbit to be used as a lure for a black greyhound and for the exciting of that black greyhound on a Greyhound Trial Track (namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin).

DECISION:

The Racing Appeals & Disciplinary Board (RADB) is established under section 83B of the Racing Act (1958). The RADB is an independent Board established to hear and determine appeals in relation to decisions made under the rules to impose penalties on persons and to hear and determine charges made against persons for serious offences.

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On 9 October 2015, the RADB heard charges against Mr. Kenneth Hodges and Mrs. Diane Hodges. The charges arose out of the same factual matrix and it was agreed that both matters be heard together. After hearing all the evidence tendered including oral evidence from Mr. Fish, Professor Ronald Slocombe, Mr. Ron Matthews and Mrs. Hodges, viewing video footage and hearing closing submissions from Mr. Holdenson and Mr. Gannon, the RADB reserved its decisions in both matters. The RADB now hand down its decisions.

In respect of Mr. Kenneth Hodges

The RADB finds Mr. Hodges guilty on both of his charges. He has pleaded not guilty to the charges. He did not give evidence at the hearing. Based on the evidence, and particularly the expert evidence of Professor Slocombe which was contested by Mr. Gannon but not in our opinion successfully, the RADB were comfortably satisfied that the rabbit was alive when used as a lure for the black greyhound trialled by Mr. Hodges on 23 December 2014.

The submissions by Mr. Gannon that:

- (a) As Tooradin was a GRV registered trial track it should not have been necessary for Mr. Hodges (or any other participant for that matter) to check the rabbit on the lure to see if it was alive or dead; and
- (b) it was the person tying the rabbit on the lure and not Mr. Hodges who 'used' the rabbit, or 'caused it to be used', as a lure for Mr. Hodges greyhound;

were rejected by the RADB. The RADB confirmed its ruling in a previous matter of Mackie that the offences under LRR 18.5 and GAR 86 (af) are ones of absolute liability. The GRV Stewards did not have to show that Mr. Hodges asked for a live rabbit for the offences to be made out.

Mrs. Diane Hodges

The RADB finds Mrs. Hodges not guilty on her charge. She had pleaded not guilty at the commencement of the hearing. She gave the following evidence at the hearing:

- (a) She attended the Tooradin Trial Track three or four times a year with her husband, generally when she needed to buy things as they live a fair way out of the town. Sometimes she stayed in town, and sometimes she stayed in their car and knitted while her husband trialled the dogs. On the day in question, she went with her husband because she wanted to buy a Tattslotto ticket. Mr. Hodges wanted to trial the greyhound because it had fallen at Tooradin on a previous occasion.
- (b) Although she was not at the relevant time, a registered person, she and Mr. Hodges have been in greyhounds for 45 years. She knew others at the trial track (but, as noted in the footage, she did not greatly socialise with them on the day).
- (c) She was a bystander only at the trial track. She paid \$8 to Mr. Cunningham for the trial. Mr. Hodges usually pays but she got there first and paid on his behalf.
- (d) She claimed not to have specifically seen the rabbit. She didn't think about whether the rabbit was alive or dead, and took it for granted that the rabbit's neck had been broken before the trial.

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The RADB ruled as a preliminary matter that the fact that Mrs. Hodges was not a registered person under the GRV rules did not mean that she could not be guilty of an offence under GAR 86 (o). The case of *Clements v Racing Victoria Ltd* [2010] VCAT 1134 recognises the difference between the rules of a statutory body like GRV or HRV, compared to the rules of RVL which are contractual in nature.

It was not in dispute that Mrs. Hodges paid the fee for Mr. Hodges trial. This is in the Board's view, a sufficient connection with a greyhound or greyhound racing for the purposes of the GRV Rules. However, without more, the act of Mrs. Hodges making payment is considered to be too remote and obscure for it to be regarded as improper or misconduct under GAR 86 (o). Nor is her mere presence necessarily improper. Mrs. Hodges wasn't charged with aiding and abetting Mr. Hodges. To use Mr. Gannon's words, it is in our view 'a leap too far' to regard the payment as improper or misconduct, simply because we find that Mr. Hodges conduct offends LRR 18.5 and GAR 86 (af). The RADB considered that the payment made by Mrs. Hodges was, having regard to the evidence given, not sufficiently proximate to the conduct of Kenneth Hodges for it to be characterised as 'improper'.

The RADB will set down a date to hear submissions concerning the penalty to be imposed on Mr. Hodges. If so minded Mr. Hodges advisors may make written submissions as to penalty to be filed with the RADB and copy provided to the Stewards

Mr. John Wardle (Chairman)

.....End.....

For More Information:

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