

**Non Raceday Inquiry RIU v J McInerney - Decision dated 21 September 2019 - Chair, Mr S Ching**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE HELD AT ADDINGTON**

**IN THE MATTER** of the Rules of Greyhound Racing New Zealand

**IN THE MATTER** of Information No. A09901

**BETWEEN MR R QUIRK** Stipendiary Steward for the Racing Integrity Unit

**Informant**

**AND MR J MCINERNEY**

Licensed Greyhound Trainer

**Respondent**

**Date of Hearing:** 13 September 2019

**Venue:** Addington Raceway

**Judicial Committee:** S Ching (Chair)

O Jarvis (Member)

**Present:** Mr R Quirk, the Informant

Mr D Wadley, the Registrar

Mr J McInerney Jnr, agent for the Respondent

**Date of Decision:** 21 September 2019

**DECISION OF JUDICIAL COMMITTEE**

**The Charge**

[1] Information No. A09901 alleges that:

*On the 10th September 2019 Mr McInerney allowed "SOZIN'S ONYX" to be drawn into the field at both Southland GRC's and Christchurch GRC's meetings on the same day. This necessitated the scratching of SOZIN'S ONYX from Christchurch GRC's meeting which does not constitute a valid reason for scratching.*

[2] The information was served on Mr McInerney Jnr, kennel representative, on the day of the meeting. Mr McInerney Jnr had signed the Statement by the Respondent at the foot of the Information indicating that he did not admit the breach of the Rule. Mr McInerney Jnr confirmed to the hearing that he understood the charge and rule it was bought under. He also confirmed that he did not admit the breach. Mr J McInerney Jnr represented the kennel at the hearing.

[3] The charge was heard prior to the scheduled start of the meeting of the NZMTC Harness Meeting at Addington on Friday 13 September 2019.

**The Rule**

[4] Rule 40.3 and 40.4 read as follows;

40.3 If a Greyhound is withdrawn without valid reason after the Box Draw, or after qualifying for a Semi Final or Final of a Totalisator Race, the Owner or Trainer of the Greyhound shall be guilty of an Offence.

40.4 When more than one Totalisator Meeting is held on the same day, being drawn into a field at one Totalisator Meeting, (whether as a result of competing in qualifying Races or otherwise) shall not constitute a valid reason for withdrawal of the Greyhound from the Race at another Totalisator Meeting. Such Greyhound shall incur a 28-day suspension effective from the day following the Meeting.

#### **Evidence of the Informant**

[5] 1. The Christchurch GRC conducted a meeting at Addington Raceway on Tuesday 10 September 2019. On the same day the Southland GRC conducted a meeting at Ascot Park.

2. SOZIN'S ONYX, trained by J McInerney, was nominated for both of these meetings and was included as a Reserve at these meetings. The definition of "Field" as per the GRNZ Rules, means the Greyhounds in a Race, including Reserves.

3. On Sunday 8 September, the Secretary of the Southland GRC, Mrs Bronwyn Eade, received a scratching of the dog "COMING OF LOVE" from Race 14. Mrs Eade then contacted the McInerney kennel at 11.25am advising that the dog "SOZIN'S ONYX" had gained a start in that Race.

4. There had been an opportunity for SOZIN'S ONYX to be withdrawn under Rule 39.10 (the 100KM Rule) before 11.00am however that option had not been utilised. A copy of that Rule is attached to this evidence submission.

5. Mr McInerney Jnr then sent a text to the Christchurch GRC on Monday at 7.51am. This text read as follows; "Can I withdraw Sozin's Onyx from Tuesday please he was a reserve. And he has gained a start at Southland".

6. There were further scratchings at the Christchurch meeting which meant that SOZIN'S ONYX would have gained a start in Race 12 had it not been starting at Southland. As a result, a field of 7 raced and another dog (namely OPAL NORA or LITTLE LOTTIE) was denied the opportunity of gaining a start.

7. Rule 40.3 (copy attached) is very clear in its wording. It states "If a Greyhound is withdrawn WITHOUT VALID REASON after the Box Draw, the Owner or Trainer SHALL be guilty of an Offence.

8. Rule 40.4 (copy attached) states "When more than one Totalisator Meeting is held on the same day, being drawn into a field at one Totalisator Meeting... shall NOT constitute a valid reason for withdrawal from the Race at another Totalisator Meeting. Such Greyhound shall incur a 28-day suspension effective from the day following the meeting".

9. In summary, the only reason SOZIN'S ONYX was withdrawn from the Christchurch meeting was that it had gained a start at Southland. This is further confirmed by the text from Mr McInerney Jnr to the Christchurch club on Monday morning. The McInerney kennel had the opportunity to withdraw the dog from Southland under the 100KM Rule prior to being advised of gaining a start but had not availed themselves of this opportunity. Therefore, this scratching is a clear breach of Rules 40.3 and 40.4.

#### **Evidence of the Respondent**

[6] Mr McInerney started by pointing out that LITTLE LOTTIE had in fact, started in Race 4 at the meeting and was not denied a start. This was acknowledged by Mr Quirk. He also said that OPAL NORA, also trained by their kennel, did not gain a start. He added that there were 2 races that day with 7 dog fields, the second race where there was a late scratching after 7.30am which also denied OPAL NORA a start. Mr Quirk stated that if SOZIN'S ONYX had not been a reserve in all the races at Addington, OPAL NORA would have been a chance for a start at the meeting.

[7] Mr McInerney stated that on the Wednesday the nominations closed for the Southland meeting and they had nominated 76 greyhounds. 60 of them gained starts with a number of reserves. SOZIN'S ONYX was first reserve in one race out of 15 races, his being the last race. He stated that out of the 8 dogs in that race, their kennel had 7 of them, so there was only one other dog that could have been scratched. Mr McInerney stated that they did not withdraw SOZIN'S ONYX because they believed that their other dogs in the field were healthy and fit and not going to be scratched.

[8] Mr McInerney said that the next day, Thursday, was when the nominations closed for the Christchurch meeting. He said that because he thought SOZIN'S ONYX was not going to get a start at the Southland meeting, he had to do the best for the owner of the dog to get him a start for the week. He stated that the only other opportunity for a C1 dog was at Christchurch on the same day the following week. So therefore, he said, he nominated him for that meeting. When he did not gain a start, being first reserve for a number of races, they left him in both meetings hoping he would get a start. Mr McInerney said the main reason for nominating at both meetings was to gain a start.

[9] He said he did receive the notice of the scratching of COMING OF LOVE, at Southland, on the Sunday and he did try to call Tony Music at approximately 6pm, but did not leave a message, and did not receive a call back from Mr Music, from his missed call. Mr McInerney stated that he did text Mr Music at 7.51am the next morning, Monday, to withdraw SOZIN'S ONYX as he had gained a start at Southland. Mr Music replied to that text with an "ok" on the same day and did not seem to have an issue with the withdrawal.

[10] He stated that it is a 7 to 8-hour drive to Invercargill so the dogs racing on the Tuesday at Southland, leave on the Monday morning to stay the night in Invercargill. Mr McInerney stated that Mr Music called him later in the day to let him know that because

SOZIN'S ONYX had been withdrawn, the number 10 dog, MAISIE BAXTER would make the field in Race 12 at Addington.

[11] Mr McInerney then quoted Rule 39.8 as follows;

39.8 Where a Greyhound is a Reserve Greyhound for more than one Race and a withdrawal occurs in more than one Race, the Greyhound shall be placed in the Race with the first withdrawal subject to Rule 39.9 of this Rule.

Mr McInerney stated that there was a scratching at Southland and SOZIN'S ONYX then went into that meeting.

Mr Quirk explained that Rule 39.8 is designed for application where a dog is entered and is a reserve at a single meeting.

[12] Mr McInerney then referred to Rule 39.10 which reads;

39.10 For the purposes of Rule 40.3 it shall be deemed a valid reason for the withdrawal of a Greyhound after the Box Draw, if the Greyhound is drawn as a Reserve Greyhound and is usually kennelled at a place outside a radius of 100kms from where the Meeting is being held and is withdrawn before the Greyhound is included in the draw pursuant to Rule 39.5. The Trainer of the Greyhound is responsible for contacting the Club as soon as practicable to confirm the withdrawal and immediately he/she is aware that it is not the intention to fulfil the Greyhound's engagement. For the purpose of this Rule, a Greyhound can only be withdrawn within 48 hours of the start of the Meeting.

[13] He stated that once he was accepted at Southland SOZIN'S ONYX was unable to be scratched from that meeting. The dog was then on the road to Invercargill when further scratching's allowed SOZIN'S ONYX to enter the field at Addington which was an impossible situation for the connections. He argued that SOZIN'S ONYX was over 100km from the Christchurch meeting when he gained a start at that meeting.

[14] Mr Quirk replied that Mr McInerney had until 11am on the Sunday (when the dog gained a start in the field), within the 48 hours before the meeting at Southland, to scratch under the 100km rule, which is when he should have made a decision on where the dog should elect to try and gain a start. Once SOZIN'S ONYX had gained entry into the race at Invercargill, inside the 48-hour deadline for the 100km rule, the dog could not be scratched from the Addington meeting with valid reason as per Rule 40.4. Once SOZIN'S ONYX gained entry into the race at Addington, Mr McInerney was in breach of the rules 40.3 and 40.4.

[15] Mr McInerney said that the Rule was a very old rule and due to the number of meetings, this situation could arise more often with 2 meetings on the same day with dual nominated dogs for both meetings. He stated that technically speaking the definition of "Field" in the rule book states means greyhounds in a race including reserves. He submitted that in Rule 40.4 the word "field" was in lower case and he did not believe that lower case "field" included reserves.

[16] Mr McInerney stated that he would not have been here today had SOZIN'S ONYX drawn 4 at Invercargill as he would have been in the field and he would not have nominated the dog for Addington. The only reason he put the dog in at Addington was to give the dog every opportunity to gain a start.

[17] He believed that Rule 40.1 is relevant as he withdrew the dog prior to 7.30am on the day of the meeting. He added that the 100km rule in this instance is ineffective because had the dog got a start at Addington on the Monday night, the dog would have been in Invercargill. He said you can't withdraw the dog under the 100km rule even though the dog is further than 100km away when kennelled in Invercargill the night before the races.

[18] He submitted that the reason for him defending the charge was to bring the issue to Greyhound Racing's attention. He did not agree with these particular rules and believed they needed changing. Mr McInerney stated that going forward he wanted the rules changed to reflect the current racing conditions with more meetings occurring during the week and therefore make it more reasonable for trainers to do the best for their dogs in gaining starts without penalty. In conclusion his defence was that he challenged these particular rules and the interpretation of them.

## **Decision**

[19] Mr Quirk's evidence and submissions in this matter were concise. He stated that SOZIN'S ONYX was entered for 2 meetings, being Southland and Christchurch, on the same day and gained a start, when notified at 11.25am, on the Sunday prior to the meeting. Mr McInerney had until 11am on the Sunday (when the Southland Club was notified of a withdrawal from the race) to exercise his option to scratch under Rule 39.10, the 100km rule, from Southland but did not take up this option. Once he was informed by the Southland Club at 11.25am on Sunday, that SOZIN'S ONYX had gained a start, it was too late to withdraw at that meeting. Mr McInerney had taken a gamble that SOZIN'S ONYX would not gain a start at Christchurch, therefore not in breach of rule 40.4. Mr McInerney stated that he tried to call Mr Music at the Christchurch Club to withdraw SOZIN'S ONYX but did not leave a message. The next morning, at 7.51am, he texted Mr Music to withdraw the dog which was answered with an "ok". SOZIN'S ONYX was withdrawn from the meeting at Christchurch on the Monday but would have gained a start in Race 12. Therefore, under rule 40.4, the withdrawal of SOZIN'S ONYX, was not a valid reason for scratching of the dog for the Christchurch meeting where he had gained a start.

[20] Mr McInerney used his interpretation of the rules in question as his defence. He stated that the 100km rule should be from where the dog is at the time of opportunity to withdraw. He questioned the meaning of "Field" in the rules and interpreted that when it was

spelt in lower case in another rule, it had a different meaning. We find this reasoning without foundation. Mr McInerney did not dispute the evidence, conceding that the timings of the facts, were correct with his own evidence. He openly admitted to the hearing that he was using this case as a forum to bring his issues with these particular rules to the fore and be noticed by the industry participants.

[21] We find the facts in this case very clear. Although we have some sympathy for the McInerney's, with the way this rule can affect their ability to place their dogs at meetings to give them every opportunity to gain a start, we are however, here to determine this case on the facts and apply the rules accordingly. We determined that this is not the correct forum for Mr McInerney to raise his objection to this rule and encourage him to pursue appropriate avenues to gain support for the change they desire. This Committee found that Mr McInerney entered SOZIN'S ONYX for Southland and Christchurch meetings to be held on the same day in order to give the dog every opportunity to gain a start. We find that SOZIN'S ONYX did gain a start at the Southland meeting and Mr McInerney was notified by the Club at 11.25am on the Sunday. At that point SOZIN'S ONYX had gained a start a start at Southland and was reserve for several races on the same day at Christchurch. Mr McInerney then withdrew SOZIN'S ONYX from the Christchurch meeting at 7.51am on the Monday but was unable to use the 100km rule to withdraw, as their kennel at Darfield was inside the 100km from Addington. Although SOZIN'S ONYX was withdrawn from the Christchurch meeting, when still a reserve, the dog was still recognised as in the field, as per the rules, and due to other withdrawals, would have gained a start in Race 12 , therefore was in breach of Rule 40.4, as this was not a valid reason for withdrawal of the dog as described under this rule. We therefore find the charge proved.

[22] We find the charge proved.

[23] Submissions on penalty are required to be with the JCA by 27 September 2019, for the Informant and 4 October 2019, for the Respondent.

S Ching      O Jarvis  
(Chair)      (Member)

**Penalty:**