

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

WEDNESDAY 28 NOVEMBER 2018

APPELLANT JOHN HORAN

GRR 106(1)(d) and 106(2)

DECISION:

- 1. Appeal on breaches dismissed.**
- 2. Appeal on penalty upheld**
- 3. Penalty of 3 years disqualification on each breach, to be served concurrently**
- 4. One-third of appeal deposit refunded**

1. The appellant appeals against the decision of an inquiry panel of stewards of GRNSW of 19 July 2018 to impose upon him two concurrent terms of disqualification of six years for breaches of Rule 106.

2. The relevant parts of Rule 106 in this matter are as follows:

“106(1) A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with-

(d) veterinary attention when necessary.”

The second matter:

“106(2) A registered person must exercise such reasonable care and supervision as may be necessary to prevent greyhounds pursuant to the person’s care or custody from being subjected to unnecessary pain or suffering.”

3. The subject greyhound was presented to race by the appellant on 18 February 2018 at Mudgee. The inquiry panel had before them two charges issued on 2 May 2018, the particulars of which are annexed to this decision and which contain the allegations of the two breaches of Rule 106 and the detailed particulars to support them.

4. In very brief terms, a summary of the matter is that the appellant’s greyhound, It’s Her Shout, suffered from a disability which required veterinary treatment and it was not given that veterinary treatment to a necessary level and in the early hours of 19 February 2018 it died.

5. The appellant denied the breaches of the rules at the inquiry and on his appeal has maintained his denial of the breach.

6. The evidence has comprised the transcript of the inquiry panel’s hearing, together with the exhibits before it. In addition, the appellant has given evidence.

7. The provisions of the rule and its application to this appellant are not in issue. He concedes he is a registered person within the meaning of the rule. He concedes that the greyhound It’s Her Shout was in his care or custody at all times and that he was subject to the rule. And in addition it is noted that he is subject to the code of conduct which applies to licensed persons, which is in similar terms to that provided by Rule 106, in respect of welfare and the avoidance of pain and suffering, to strongly paraphrase the code of conduct.

8. The appellant has been a licensed trainer for some 30 years. He has no prior matters of any relevance, particularly relating to welfare, and he has a limited number of greyhounds at the time of this presentation and he has not

seen in any of his greyhounds in the past the symptoms which were presented.

9. The greyhound was well at the time it arrived at the track to race. After the race, it was otherwise well. It was described in various terms as being a very active greyhound and which was displaying no symptoms which caused the appellant, nor the handler of the greyhound on the evening, Mr O'Neil, any concerns. However, Mr O'Neil noted that there was a substantial bulge, as the Tribunal will describe it, on the side of the greyhound. Mr O'Neil decided that he should recommend to Mr Horan, and Mr Horan agreed, that the greyhound be taken to the regulatory vet on duty at the track. Mr Horan at the time had a back which prevented him from walking with any speed to the office where the regulatory vet was present and Mr O'Neil took the greyhound and engaged in most of the discussions with the regulatory vet, Dr Pinder.

10. Dr Pinder immediately became deeply concerned by the symptoms on presentation and required that the greyhound be taken to a veterinary hospital as she did not have the resources to carry out an examination and any subsequent treatment required for the symptoms she diagnosed. She did fairly say that the dog otherwise presented with unremarkable symptoms, with the exception of some mucus symptoms, but that it was the concern that she immediately expressed that it had a gastric dilation or volvulus, known in the industry as GDV. The greyhound otherwise was tense.

11. The obviously grossly distended abdomen, to quote the veterinary report of Dr Pinder, was such that immediate treatment was diagnosed. She told Mr O'Neil that and Mr O'Neil acknowledges that he was told it was serious. Mr Horan was not then present. Mr Horan arrived and was seen by Dr Pinder only briefly and by steward on duty Mr Cameron. There is a dispute as to what Dr Pinder said to Mr Horan. There is a dispute as to what Mr Cameron said to Mr Horan. Suffice it to say that Mr Horan accepted that he was to take the greyhound to the Mudgee Veterinary Hospital where it transpired Dr Kennedy was the vet on call.

12. When told to do so by Mr Cameron, the appellant indicated that he could not afford to pay veterinary fees. There is then a dispute as to whether Mr Cameron conveyed a phone conversation he had had with Dr Kennedy to the effect that with the issue of payment something could be sorted out in the future and that the hospital was willing to deal with the greyhound at that point in time without payment. Mr Cameron says that was passed on to Mr Horan. Mr Horan, the appellant, denies it in its entirety. Suffice it to say that Mr Cameron was obliged to and gave a direction to the appellant that the greyhound had to be taken to the veterinary hospital in Mudgee to receive emergency treatment. It has to be said that the appellant maintains that he was not aware how serious it was at that time and other than the distended abdomen he was of the opinion that the greyhound was otherwise well.

13. The appellant took the greyhound, together with the other five greyhounds he had taken to the races that day, to the Mudgee Veterinary Hospital. He complied with the direction given by Mr Cameron and it cannot be said therefore at that time he did not ensure that veterinary attention when necessary was made available. None of the evidence indicates at that stage that there was any pain and suffering. Therefore, neither of Rules 106(1)(d) and (2) are enlivened at the track.

14. The appellant arrived to see Dr Kennedy, having travelled directly from the track. There is a complete dispute, in essence, about every key part of Dr Kennedy's evidence so far as the appellant is concerned. Dr Kennedy's written report, which is in evidence and which is undated, contains substantial detail, none of which is accepted by the appellant. She gave oral evidence to the stewards' inquiry. That evidence is also disputed.

15. The key parts of it relate to what happened. There is some evidence not in dispute, that is, that immediately on arrival the appellant indicated he could not afford to pay. The Tribunal accepts that he could not afford to pay. The Tribunal accepts, as it is the evidence of Mr O'Neil, the appellant and Dr Kennedy, that that was expressed on many occasions.

16. Dr Kennedy carried out a superficial examination and determined that it could be GDV. She knew that GDV untreated would be fatal. She determined that a diagnostic and treatment regime was required. There was discussion, which again perhaps in fairness perhaps is not in dispute, about the initial consultation fee, the cost of IV fluids, the cost of pain relief, the cost of radiography and the possible cost of emergency surgery. Figures were bandied about between \$1000 and possibly as high as \$2000. Suffice it to say, the appellant was not going to pay that. He could not.

17. It is said by Dr Kennedy that she discussed on numerous occasions and at length with the appellant the seriousness of the possible condition and the fact it would be extremely painful and life-threatening if not immediately treated. Her report refers on several occasions to the severity of the situation being emphasised repeatedly. Dr Kennedy also says that she discussed euthanasia as a valid treatment option based on humane grounds and that that euthanasia would be provided free of charge.

18. The appellant says that at no stage was he told how serious the situation was. The appellant says that it was he who raised the aspects of euthanasia and on every occasion – and this is corroborated by Mr O'Neil – Dr Kennedy declined to make any form of recommendation and said that her primary concern, to paraphrase her evidence, was the welfare of the greyhound.

19. The fact that the appellant could not and would not pay for the further diagnosis and treatment was such that the appellant indicated he would take the dog away. He says he did so because he had not been told how serious

the situation was, that euthanasia was not given to him as the appropriate outcome and that he essentially was free to leave. He asked, he says, what should happen and he was told that Dr Kennedy would provide some pain relief and that he could go.

20. Dr Kennedy says that she could not provide appropriate pain relief because of prohibitions on prescription for a greyhound not in the care of a vet and all she could give was paracetamol. There is no doubt she was not happy about that. And Dr Karamatic, regulatory surgeon in Victoria, who also gave evidence in the panel hearing, was quite clear that paracetamol might best be described, to paraphrase his report, as useless. One treatment of paracetamol was given and a tablet was given with a suggestion it be administered that night by the appellant to the greyhound.

21. The issue becomes whether, by removing the greyhound, the appropriate veterinary treatment was not given and in addition whether that occasioned pain and suffering.

22. The Tribunal accepts that Dr Kennedy's report and evidence does not indicate that there were substantial pain and suffering indicia which would then have been obvious to the appellant. Examination referred to obvious distress and mucous membranes being cyanotic and that the dog was in discomfort on palpation, but that took place in the examination room, not in the presence of the appellant.

23. The appellant and Mr O'Neil have given evidence that other than that there were no substantial signs of the dog being unwell other than the distended abdomen. Dr Kennedy gave evidence that the removal of the greyhound was against her advice but that she could not prevent its removal.

24. The appellant took the greyhound home. The greyhound displayed no symptoms, other than the distended abdomen, of concern to him. He had raised the issue with the various people with whom he had had discussions about a possibility of a twisted bowel. The appellant undertook some internet research when he got home and looked up the symptoms in relation to twisted bowel and had a knowledge from that point that it could be fatal. He had spoken to friends and others who had indicated to him that essentially there was nothing that could be done, that the greyhound should have been euthanased at the track and that the condition would be fatal.

25. The appellant has said that the greyhound continued to be essentially well. It urinated. It drank. It was not perhaps on its food. It walked about. And it lay down in the laundry, to which it was often placed, without any undue symptoms of any distress. He last saw the greyhound at 2 am.

26. He had given consideration to taking the greyhound to the Dubbo Veterinary Hospital, it being remembered that it was Dr Kennedy's evidence

that he should, as soon as he got home, take the dog to a vet. The appellant quite fairly acknowledges that he was not going to do that because he couldn't afford to do so and that he was hoping that the greyhound would survive the night and he could then take it to a vet so he would not incur, to paraphrase the evidence, after-hours veterinary callout fees. He quite fairly concedes in his evidence that money was placed at that point above welfare.

27. The greyhound was last seen at 2 am and by 6 o'clock, in circumstances unknown, had died. The circumstances in which it died are not known. It is the evidence of Dr Karamatic, which would be consistent with the evidence of Dr Kennedy in any event, that the volvulus, which would have occurred by reason of the twisted bowel, would have occasioned a build-up of gas and other fluids within the greyhound and that build-up would have led to substantial pain and suffering and that in Dr Karamatic's opinion this greyhound would have died in substantial pain and under substantial suffering and that that was unnecessary. It had not had that pain and suffering potential alleviated by the administration of a paracetamol.

28. It is the evidence of Dr Karamatic that the greyhound should have had diagnostic treatments administered and emergency surgery on confirmation of diagnosis. There is no doubt from the autopsy report that the greyhound in fact had, as a result of a twisted bowel, GDV. Therefore, the suspicions of Dr Pinder and Dr Kennedy as to the diagnosis made by observation and limited symptom checking were correct. This greyhound died from GDV and it died in circumstances where, regardless of the strength of the greyhound, it must have occasioned to it pain and suffering.

29. Some other key matters are that the appellant and his family treated this greyhound as a pet, that it was a desire to keep it as a pet and that euthanasia was not desired because of those facts. There is no doubt that this greyhound and all of the others, on the evidence of the appellant, have been treated with the utmost care and attention and treated as family pets – and loved family pets. The appellant has given evidence of the distress occasioned to him, which matters, as necessary, are required to be considered in other circumstances.

30. The Tribunal accepts that this appellant has not intentionally set out to occasion to this greyhound unnecessary pain and suffering and has not set out with his uninformed opinions, misplaced as they must have been, as confirmed by the autopsy, that it did not require the veterinary attention which was apparent.

31. The Tribunal finds that this greyhound required the veterinary attention which was recommended by Dr Pinder and that veterinary treatment required taking the dog to the Mudgee Veterinary Hospital, and it was. The greyhound required a diagnostic assessment by Dr Kennedy and the examination of the greyhound in greater detail than was permitted to her to ensure that her

preliminary diagnosis was not correct such that it was safe for this greyhound to be removed from the Mudgee Veterinary Hospital.

32. The Tribunal is satisfied that at the time the greyhound was in the care of the appellant at his home receiving what the appellant believed to be a fair and humane form of treatment, it did not receive the attention at that time, nor as the evening unfolded, as the appellant became more informed about the symptoms that he himself could now see, that it did not receive that and accordingly, as confirmed by Dr Karamatic, as obvious from the total veterinary evidence here, the greyhound was subjected to pain and suffering.

33. This is not a case where the Tribunal has to definitively set out that an absence of money of itself is not a reason for a failure to comply with Rule 106. However, it is apparent that in taking the privilege of a licence to hold and train greyhounds that that is an issue that cannot be lightly ignored. That if, as a result of the privilege of having a greyhound, which is able to race, there is a requirement for treatment that, despite the apparent harshness of such a determination, the welfare of the greyhound must be paramount and it must be given the treatment that is necessary and it must be given treatment to avoid unnecessary pain and suffering. That is not to say all pain and suffering, only unnecessary pain and suffering.

34. In respect of each of these matters, the respondent satisfies the Tribunal that the appellant has breached each of the rules as particularised.

35. The appeal against a finding of the breach in each case is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

36. The next issue for determination is penalty. The rules themselves under 106, which are the two matters in question, provide no minimum and maximum penalty; there is no penalty guideline as such, as it might otherwise be described, in relation to this particular rule.

37. In respect of the findings made, the respondent submits that the decision of the inquiry panel that in each matter a period of disqualification of six years be imposed concurrently is appropriate.

38. The appellant, by his submissions on penalty, refers to the facts that have been dealt with in the matter as to his belief about seriousness, the fact that he had no money, that the Tribunal has taken his evidence all the wrong way, that it was something he had never seen before, and the Tribunal notes those submissions. No alternative submission is made in respect of what, if any, order should be made.

39. The matter is not assisted by a lack of precedent. The best that can be identified and put to the Tribunal is the matter of Duncan, a decision of this

Tribunal of 21 February 2018, breaches of Rule 106(2) and 106(1)(d), in which periods of disqualification of three years were imposed to be served concurrently. In that case the appellant had appealed on a matter of severity, the breach having been admitted, and the greyhound having been diagnosed by the appellant there with tetanus and the greyhound was killed by him striking it to the head with a hammer. The facts in that matter vary substantially from the facts in this matter. In addition, in this matter there has been no admission of the breach to which any discount might otherwise have been applied and for which the appellant Duncan received a 25 percent discount.

40. Absent precedent, therefore, it is a matter of turning to basic principles. As the Tribunal set out in Duncan, and as been submitted to it here, the focus should be upon the welfare of the greyhound, that that is paramount, that in assessing whether the welfare of the greyhound has been appropriately addressed, that a message must be sent, when a finding is to the contrary, to other licensed persons and importantly to the community at large that the regulator and the Tribunal will not condone failures or actions by licensed persons which do not place the welfare of the greyhound paramount.

41. What then in relation to the facts of this matter that might touch upon a penalty? Firstly, there is the most important factor that absent the distended abdomen, this greyhound was not showing symptoms of pain and suffering. It was not such as in Duncan where the appellant there observed the greyhound to be in considerable pain and action was taken to alleviate that pain by killing it. Here the appellant sought to look after the dog to the best of his ability in his home in a usual way, having regard to what he observed to be the symptoms, and which he maintains were driven by a lack of understanding of the seriousness of the condition, because he maintains no one told him so.

42. What the appellant has not addressed, and the Tribunal did not refer to in its just delivered decision, is what message did the appellant receive from the actions of Dr Pinder in urgently sending him to a veterinary hospital in respect of the condition of the animal? He says he was not told it was serious. Be that as it may, when he had no money and was directed to take it to a vet, alarm bells should have started to ring. Those alarm bells were answered in the appellant's mind by his inability to pay. As he put in his submissions: what should he have done then? That is not a question which the Tribunal has to answer because it has said in its decision, in dealing with the aspects of money, that the welfare of the greyhound is paramount and that taking the privilege of a licence and having racing greyhounds means that aspects of money cannot be seen to avoid the necessity for the alleviation of pain and suffering by proper veterinary treatment.

43. This appellant has a good history of 30 years. That is an exceptionally strong factor to stand in his favour. There has been nothing prior. This was a

much-loved greyhound, the loss of which has occasioned not only the calamitous results that bring this appellant before this Tribunal but a substantial loss to the family. Those are matters which when the subjective circumstances of the appellant are considered in relation to the message to be given to him reduce the severity of the matter. This conduct, should the appellant return to the industry, will not be repeated.

44. The other subjectives are that the appellant, as described in the original decision, had some six greyhounds racing at the time. There is no issue about any of them for welfare or other prior welfare matters. That this is a hobby. That the appellant is not a big punter, not that that has any great relevance to the conduct here, it was not a race-related issue. The retention of greyhounds as pets is also a factor strongly in the mind of the appellant.

45. The issue of penalty is not without difficulty. The penalty of six years essentially considered appropriate by the stewards is unexplained by reason of any application of precedent on their behalf. They made no reference to their thinking in that regard. They certainly referred to all of the matters that they are required to do and took into account all the subjective factors to which reference has been made.

46. Having regard to the key factor here of the lack of symptoms, the Tribunal considers that the message necessary to be given is much less than that which the stewards considered to be appropriate. However, the message that does remain to the community is that when welfare as a paramount consideration is given and a greyhound is otherwise left to die in substantial pain and therefore in pain and suffering, that that cannot be tolerated.

47. In each matter there is to be no discount for early admissions of the breach and the penalty as considered appropriate, by way of a starting point, adequately reduced by a consideration of the subjective circumstances, causes the Tribunal to come to a different conclusion to that of the stewards.

48. The appeal against severity is upheld.

49. In each matter there will be a period of disqualification of three years, to be served concurrently.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

50. Having regard to all of the matters referred to the Tribunal orders that one-third of the appeal deposit be refunded to the appellant.

Charge One

That you, John Horan, failed to provide veterinary attention when necessary to a greyhound in your care or custody on or around 18 February 2018.

Particulars

1. You were the registered owner and trainer of the greyhound "Its Her Shout" (**Greyhound**) on 18 February 2018.
2. On 18 February 2018 at the Mudgee Greyhound meeting (**Event**):
 - (a) At or about 1pm, the Greyhound competed in and won race 4;
 - (b) At or about 2.05pm, the Greyhound was examined by the On Track Veterinarian, Dr Fiona Pinder, and diagnosed with symptoms of life threatening "gastric dilation/volvulus". Dr Pinder advised you that the Greyhound required immediate veterinary attention including the likely need for general anaesthetic and surgical intervention; and
 - (c) Steward Troy Cameron directed you take the Greyhound to the Mudgee Veterinary Hospital (**MVH**) for emergency veterinary attention.
3. You took the Greyhound to the MVH as directed.
4. At or about 3pm, the Greyhound was examined by Dr Lisa Kennedy. Dr Kennedy:
 - (a) Found the Greyhound to be in obvious distress;
 - (b) Diagnosed the Greyhound as being at risk of the extremely painful and life threatening condition "gastric dilation and/or volvulus"; and
 - (c) Strongly recommended that the Greyhound receive immediate veterinary attention at the MVH including:
 - (i) IV fluids-supportive shock treatment,
 - (ii) pain relief,
 - (iii) abdominal radiographs to confirm diagnosis, and/or
 - (iv) possible emergency surgery to decompress and/or correct gastric torsion.
5. Contrary to Dr Kennedy's advice:
 - (a) You declined the recommended veterinary attention for the Greyhound;
 - (b) You transported the Greyhound back to its Wellington kennel, which is approximately a 90 minute drive;
 - (c) You failed to seek immediate veterinary attention for the Greyhound on your arrival back in Wellington; and
 - (d) Apart from half a Panadol tablet, you provided no further veterinary attention to the Greyhound.
6. Between 2am and 6am on 19 February 2018, the Greyhound died at your Wellington home. An autopsy of the Greyhound by the Wellington Veterinary Hospital revealed the cause of death to be consistent with "gastric and splenic torsion".
7. In the circumstances, you did not ensure veterinary attention was provided at all times when necessary to the Greyhound in your care and custody.

Rules of the GRNSW Greyhound Racing Rules contravened

106(1)(d)

Charge Two

That you, John Horan, failed to exercise such reasonable care and supervision as was necessary to prevent a greyhound in your care or custody on the 18 and 19 February 2018 from being subjected to unnecessary pain or suffering.

Particulars

1. You were the registered owner and trainer of the greyhound "Its Her Shout" (**Greyhound**) on 18 February 2018.
2. On 18 February 2018 at the Mudgee Greyhound meeting (**Event**):
 - (a) At or about 1pm, the Greyhound competed in and won race 4;
 - (b) At or about 2.05pm, the Greyhound was examined by the On Track Veterinarian, Dr Fiona Pinder, and was diagnosed with symptoms of life threatening "gastric dilation/volvulus". Dr Pinder advised you that the Greyhound required immediate veterinary attention including the likely need for general anaesthetic and surgical intervention; and
 - (c) Steward Troy Cameron directed you take the Greyhound to the Mudgee Veterinary Hospital (**MVH**) for emergency veterinary attention.
3. You took the Greyhound to the MVH as directed.
4. At or about 3pm, the Greyhound was examined by Dr Lisa Kennedy. Dr Kennedy:
 - (a) Found the Greyhound to be in obvious distress;
 - (b) Diagnosed the Greyhound as being at risk of the extremely painful and life threatening condition "gastric dilation and/or volvulus"; and
 - (c) Strongly recommended that the Greyhound receive immediate veterinary attention at the MVH including:
 - (i) IV fluids-supportive shock treatment,
 - (ii) pain relief,
 - (iii) abdominal radiographs to confirm diagnosis, and/or
 - (iv) possible emergency surgery to decompress and/or correct gastric torsion.
5. Contrary to Dr Kennedy's advice:
 - (a) You declined the recommended veterinary attention for the Greyhound;
 - (b) You transported the Greyhound back to its Wellington kennel, which is approximately a 90 minute drive;
 - (c) You failed to seek immediate veterinary attention for the Greyhound upon your arrival back in Wellington; and
 - (d) Apart from half a Panadol, you provided no further veterinary attention to the Greyhound.
6. Between 2am and 6am on 19 February 2018, the Greyhound died at your Wellington home. An autopsy of the Greyhound by the Wellington Veterinary Hospital revealed the cause of death to be consistent with "gastric and splenic torsion".
7. The Greyhound was subjected to unnecessary pain and suffering from the time you departed the MVH until the time of the Greyhound's death, with the level of pain and suffering experience by the Greyhound reaching a severe level in at least the hour prior to its death.

Rules of the GRNSW Greyhound Racing Rules contravened

106(2)
