RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

FRIDAY 8 OCTOBER 2021

APPELLANT SHANE CARTWRIGHT

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 106(1)(d)

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
2. **Penalty varied to 8 months disqualification**
3. **Appeal deposit refunded**

1. The appellant, public trainer Mr Shane Cartwright, appeals against the decision of GWIC of 21 July 2021 to impose upon him a period of disqualification of nine months.

2. That disqualification flowed from a finding of a breach of Rule 106(1)(d), which relevantly states as follows:

> "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."

GWIC particularised the charge, and in summary terms it is that between 19 December 2020 and 12 January 2021 the alleged failure took place on the basis that on 18 December 2020 the subject greyhound Ivy Rose injured her right hind hock during a race at The Gardens and was then assessed by GWIC on-track veterinarian Dr Crisp, and the evidence particularised is that Dr Crisp gave the appellant written and verbal directions to present the greyhound for treatment at a veterinarian within 24 hours and that the appellant did not seek such an assessment until 12 January 2021, on which date the greyhound was euthanased.

3. The appellant, when confronted with that allegation at GWIC's inquiry, admitted the breach of the rule by entering a plea of guilty and has maintained the admission of that breach on appeal. This is a severity appeal only.

4. The evidence has comprised the standard form of brief of evidence and the critical factors contained in that are various veterinary treatment records, including the subject form provided to the appellant on the night by Dr Crisp, and veterinary reports on behalf of Macleay Valley Veterinary Services of 6 January 2021 and 12 January 2021, together with a transcript of a preliminary inquiry conducted by steward Mr Hynes on 23 January 2021, an interview of the appellant of 23 February 2021, the transcript of the hearing of 21 July 2021, and the statement of Dr Crisp of 24 January 2021. They are the key evidential matters.

5. The appellant has maintained at all times a denial of certain of the evidence of Dr Crisp. The fact it is a severity appeal, and therefore an admission that there was the failure particularised, is such that a closer analysis of the contested evidence is not required. It does, however, require some analysis to determine the severity of the breach.

6. The Tribunal's function in determining this severity appeal is to principally have regard to welfare of the greyhound. That arises because section 11 of the Greyhound Racing Act places a mandate on the regulator to ensure that the welfare of the greyhound is paramount. The appellant does not suggest,

in his submissions or in any of the occasions on which he was interviewed or spoke, to the contrary.

7. It is first necessary to determine objective seriousness. That requires an assessment of the evidence to which the Tribunal has made reference. Here, the objective seriousness advanced on behalf of the regulator is that this matter is to be viewed most seriously because of the importance of maintaining welfare of the greyhound, not only for the benefit of the greyhound but for the benefit of the industry, because it is a statutory function.

8. The objective seriousness must, of course, be determined on the facts of this case. The regulator submits that this case has the relevant seriousness found by its inquiry which led to a nine-month disqualification, which is maintained on appeal as being the appropriate penalty. And further that subjective facts should not diminish from what is considered to be the appropriate penalty.

9. The Tribunal must determine this civil disciplinary matter based on a protective order and not by way of punishment of the appellant. The outcome of punishment, of course, is a consequence of a protective order in many cases but is not the primary determinant.

10. To put the case in context, it was some 25 days from the time the greyhound was injured until the time it was euthanased. No veterinary care was sought between 18 December and 6 January. This is not a case where it is alleged against the appellant that there was pain and suffering such as might have attracted a charge under 106(2). There is no evidence of pain and suffering referred to by any of the vets – and there are three – which would necessarily flow from the injury which the greyhound suffered. It is, therefore, as particularised, and as alleged under the subject 106(1)(d), that the failure is that veterinary care was not taken.

11. The evidence in detail, then, establishes that at the meeting in race 4 the greyhound suffered the injury, but, as the appellant pointed out, it was able to complete the race. It was brought in for assessment by Dr Crisp as the on-track veterinarian and he carried out an examination and provided treatment.

12. He provided painkillers with methadone and treatment with meloxicam. He bandaged the injured leg. He assessed it as a dislocated central tarsal bone on the off side, which was not compound and not easily reducible, but upon examination he was able to determine a definitive lump. The appellant says greyhounds have lumps there in any event.

13. The evidence diverges. Dr Crisp said that he said to the appellant that he must present the greyhound to a veterinarian of his choice for further

assessment and treatment within 24 hours. The appellant denies that. He says he was told if the greyhound showed signs of pain and suffering he should take it to a vet. Dr Crisp wrote on the subject form, which he handed to the appellant, the instruction that follow-up was needed within one day by taking the greyhound to the regular vet at Kempsey for x-ray and assessment, consistent, Dr Crisp says, with the advice he gave to the appellant.

14. After treatment, Dr Crisp went out to the appellant's car with the appellant and the appellant's brother-in-law was present. The brother-in-law has given no evidence. The appellant says that the greyhound walked out to the car and was showing no pain and suffering, no indicia that it would immediately require, in the appellant's opinion, further treatment.

15. The appellant, as directed, took the dog home and observed it. He says that the dog was happy, it was not showing signs of pain and suffering. He therefore determined that, with his belief as to what he was told, he did not have to take the dog to a vet. He concedes that the form he was given was crunched up by him in the rain and thrown into part of his vehicle. He did not read it. He did not read it until some days later when he was spoken to by an officer of the regulator, when he then saw the words written and realised he should have provided treatment in accordance with the written direction.

16. The appellant continued his observations and was of the opinion that the dog was happy and not requiring treatment. It is interesting to note that Dr Chapman, when she examined the greyhound on 6 January, made a notation that the dog was happy and interactive, although lame. That is consistent with what the appellant has said were his observations of the greyhound and that it lived, as it were, normally without displaying any indicia requiring medical treatment. He says he provided antibiotics. It is unclear as to why antibiotics, which were prescribed for another greyhound, were provided to this greyhound.

17. Critically, Dr Crisp, consistent with his belief as to what he had written and said, commenced procedures of following up the appellant. Again, the evidence diverges. It appears that the phone conversation – and the first of them – took place when the appellant was driving and telephone reception was poor and there may have been a misunderstanding. That may be the appellant's opinion, but it is not that of Dr Crisp.

18. Dr Crisp was adamant that he asked whether, to paraphrase the evidence very much, the dog had been taken to a vet and it is Dr Crisp's evidence that he was told by the appellant that the greyhound had been taken for veterinary assessment within the 24 hours directed and that it was to Dr Edwards at the Macleay Valley Veterinary Services and he said it was about 9 am and the greyhound remained there for two hours, it was assessed and treated and x-rays taken and, critically, it is Dr Crisp's

evidence that the appellant said the dog had been “seduced” for that procedure, and Dr Crisp says he took that to be “sedated”.

19. That is a critical piece of evidence. It is hard to imagine that Dr Crisp has made up a reference to seduction as against sedation and it provides strong corroboration of Dr Crisp that that conversation took place despite the adamant denials of the appellant that it did not. The appellant stated that more bandaging was applied and there was to be a follow-up visit in a week or two.

20. Consistent with his concerns, Dr Crisp attempted to contact Dr Edwards, to be told he was on holidays, but that the practice had no record of the appellant attending with that greyhound, or any other greyhound, at or about that time.

21. Consistent with Dr Crisp’s evidence and his concerns, he therefore contacted two other practices in the area to be advised that they had not seen the appellant nor the subject greyhound.

22. Consistent again with Dr Crisp’s evidence and concerns, he again attempted to contact the appellant by telephone without success and text messages came to be exchanged, text messages which the appellant submits comprised harassment and intimidation of him.

23. The Tribunal does not accept that a trainer who has an injured greyhound can complain that a regulatory vet in the circumstances here was harassing or intimidating. The fact that certain threats which were within power were made, such as reporting etc, are consistent with that vet’s regulatory responsibilities as a vet for the regulator.

24. Photographs were sought. There were issues about that that do not need examination. Photographs were provided. Dr Crisp was concerned it was the same bandage that was displayed that he had placed on the greyhound, which was not consistent with it having been re-bandaged and re-treated, as the appellant told him he had done, with Dr Edwards.

25. Consistent again with his concerns, Dr Crisp telephoned Dr Edwards on 4 January to be told by Dr Edwards that he had not treated the greyhound nor seen the appellant in respect of those matters. A database search was undertaken by Dr Edwards to ensure no other vet had done so.

26. Dr Crisp concedes that the appellant was upset with his approaches to him and notes the denials of the appellant that he had had the conversations suggested by Dr Crisp and he was advised by the appellant he was going to discuss the matter with his solicitor.

27. Subsequently, the appellant presented the greyhound to Dr Chapman on 6 January for the purposes of a life check, it being a concern of Dr Crisp that the dog had been destroyed at some stage. That obviously provided that the dog was still alive; as reflected earlier, was lame but happy, and radiographs and splinting were suggested and some provision made for that with bandaging. A splint was given, as said. There were concerns for the long-term implications of the hock due to the poor compliance of appropriate veterinary care and treatment recorded by Dr Chapman. She says that the appellant had told her nothing about the injury on presentation.

28. A week later, the greyhound was presented for desexing, as had been prior arranged. At that stage Dr Edwards determined that radiography was required and found a crush injury to the central and third tarsal bones with return to function not possible, and various options, including amputation, arthrodesis or euthanasia were discussed, and euthanasia was determined upon and on that date the greyhound was euthanased. And it is to be noted the reason for the euthanasia was that there was a crush injury which would not enable return to prior function. What the evidence does not establish is whether any veterinary treatment provided between 18 December and 12 January would have led to any other outcome.

29. The appellant is adamant that the greyhound was well and did not require veterinary treatment. The appellant says that he has had, out of his numerous dogs over the years, some nine or 10 which have had hock injuries and he has always provided them with treatment. He was of the opinion , on his training experience, that treatment was not required here.

30. It is quite apparent from the medical assessments by Dr Crisp, Dr Chapman and Dr Edwards that the appellant was misplaced in that opinion. The Tribunal accepts, however, that he did form that opinion. There is no evidence that he has formed any other opinion, it has not been adduced in evidence to the contrary.

31. The Tribunal reflects upon the difficulty that an appeal body which has not had the benefit of seeing and hearing from witnesses has in determining which version must be accepted. For the purposes of determining objective seriousness, and on the facts available to the Tribunal based upon the written evidence and the submissions upon it, it finds there are aspects of corroboration of Dr Crisp in respect of the totality of his evidence as it has been summarised.

32. The key points in making that determination are the following-ups of the appellant that he immediately engaged in, consistent with what had been required, and the actions he then took to follow up, and the aspect of “seduction” versus “sedation”, to which the Tribunal has made reference.

33. It is, therefore, that there must be a determination that it should have been uppermost in the appellant's mind that he should have taken the greyhound to a vet, not only based upon what Dr Crisp said but based upon the injuries the greyhound had in any event. There is some amelioration of the gravity of that determination by reason of the experienced trainer/appellant's opinion that the greyhound was walking normally, that it was okay and there was no reason for it to be taken to a vet, and was otherwise happy.

34. But it is the Tribunal's conclusion that those observations and beliefs of the appellant must be displaced by the fact of the veterinary assessments and evidence, which the Tribunal prefers, to the lay assessment of the appellant as to the gravity of the symptoms and the necessity for veterinary treatment. It was, after all, and is, an inescapable fact that the injury was such that the greyhound, for the reasons set out, had to be euthanased.

35. It also is to be noted that Dr Crisp gave the appellant advice, written on the form and which was in the appellant's possession, about the rebate scheme available to him for free treatment for an injury at a track in a race. It is, therefore, that there was no reason financially for the appellant not to take the greyhound to a vet.

36. The Tribunal also accepts the appellant's evidence that he placed the form, without reading it, in his vehicle. However, it is the Tribunal's opinion that the failure of itself to give due regard to the form given to him is, in a civil disciplinary sense, in respect of a subsequent failure to obtain veterinary care, an inexcusable failure of an experienced trainer to do that which any other responsible trainer would have done.

37. The Tribunal therefore determines, consistent with the submissions for the respondent, that the failures were serious.

38. In those circumstances, there must be a starting point, on a welfare consideration, of a disqualification.

39. The appellant's submissions that no action be taken, or a possible fine, or that if there is to be any penalty it be a lesser one of suspension, do not have the support of the Tribunal on those objective findings.

40. The Tribunal will return to starting points and end points.

41. It is necessary to have regard to the subjective circumstances of this appellant.

42. He has pleaded guilty. He has admitted the breach and done so and cooperated fully. He is entitled to the benefit of that and that will lead to a 25 percent discount, without other considerations, from any starting point

penalty, noting the respondent's submission that there should be no discount for subjective factors because of seriousness.

43. There is a loss of some further discounts by reason of the fact that he has a prior prohibited substance matter. That occurred early in his training career, he having been training for 17 years, either in 2004 or 2005. The Tribunal has nothing from the respondent in relation to that offence. The only evidence it has about it is that which the appellant volunteered at his inquiry and that he provided tea to a greyhound, consistent with some practice. Apparently, that led to some undisclosed prohibited substance being present, possibly theobromine, but the Tribunal guesses and does not know, and he received a three-month disqualification.

44. The Tribunal has consistently stated that trainers who have prior matters cannot expect to be treated as leniently as those with a long history in the industry who have not transgressed against matters as serious as a prohibited substance presentation.

45. But there are some lessening factors of gravity: the age of the matter, the uncertainty of the facts surrounding it and the relatively limited penalty imposed. The loss of further discounts, therefore, is much lessened by those few factors. It does not play an important part in the Tribunal's determination.

46. The appellant states that greyhound racing is his primary source of income. The impact of any penalty upon him will therefore be crushing. The Tribunal understands that but has reflected now for many years that if that is the consequence of improper conduct, then if in the appropriate case it is required, then those losses of income and consequential losses of the ability to have greyhounds and the like must follow.

47. The appellant has reflected strongly on the family nature of his participation in the industry and the importance to him personally and to his family members of his participation.

48. He is a professional trainer, on his evidence, and he had at the time of the stewards' inquiry some five greyhounds in his possession.

49. Those subjective factors, in the Tribunal's opinion, do entitle this appellant to a reduction from what the Tribunal considers to be an appropriate starting point. How is that to be determined?

50. These matters are not contained in the penalty table of the regulator. It is therefore that the general penalties provided by the rules, in particular, Rule 95, and the range of penalties are activated, the Tribunal having indicated it is only looking at a disqualification, for the reasons expressed earlier.

51. Parity is raised. The appellant has sought, and the Tribunal commends him for it, to find other parity cases, but the evidence he has provided about those has not assisted the Tribunal. The respondent relies upon four cases.

52. Kraeft, 8 September 21, undue suffering, 106(2), injury requiring active treatment by a veterinarian for 15 days, plea of guilty, 6 months' disqualification. It is to be noted it is a different rule.

53. Prest, 1 September 2021, undue suffering, 106(2), led to euthanasia of the greyhound, a plea of guilty, 12 months' disqualification. The Tribunal pauses to note that there there was undue suffering and euthanasia. Here there is euthanasia but no evidence of undue suffering. The 12 months' disqualification, therefore, even though it was under a different rule, must be seen to be at the upper end of the scale of possible ultimate outcomes. There there was a plea of guilty. There is no reflection in the brief notes given to the Tribunal whether there was a higher starting point which was then reduced to 12 months by reason of subjective factors. It is not known.

54. Next there is the matter of McDonald, 8 July 2021, a 106(1(d), the same rule as here, for failing to provide veterinary treatment, leading to a permanent disfigurement of the greyhound. No evidence of undue suffering. A plea of not guilty. A six-month disqualification. A matter subject to appeal.

55. The last matter the regulator relies upon is Wilson, 25 November 2020, failing to provide necessary care to prevent undue suffering, again a 106(2) matter, and a necessity for the greyhound to be treated by a veterinarian for those injuries, a plea of guilty and a four-month disqualification with two months of that suspended. Again, it is uncertain whether there was a higher starting point reduced because of the plea of guilty, it is simply not expressed. There, however, there was undue suffering but only treatment required and euthanasia not necessary.

56. Having regard to the subjective facts of this case, and having regard to the parity cases to which reference has been made, the ultimate outcome would not be a period of disqualification greater than 12 months, nor would it be a period of disqualification less than six months. The Tribunal disregards Wilson as not providing an appropriate guidance for parity purposes on the facts here.

57. The key distinguishing factors are that there is no evidence of undue suffering. That, in the Tribunal's opinion, strongly reduces the culpability, objectively considered, of this appellant, notwithstanding the fact that, because of the injuries, Ivy Rose had to be subsequently euthanased.

58. There is one further factor to which the Tribunal did not refer earlier, and that is on subjective facts, and that is that this appellant is the curator of the

Kempsey Macleay Greyhound Racing track. He is a volunteer. Two things. Firstly, the fact that he works within the industry for its betterment and, secondly, he does it on a voluntary basis are strong subjective factors. It is said nobody else can do it and he is invaluable, and possibly without him there might have to be a cancellation of trial dates.

59. That reference by the secretary of the club, whose signature is indecipherable, but on the Kempsey Macleay Greyhound Racing Club Inc letterhead, is dated 22 July 2021. Relatively recent but not updated. As to the capacity to replace him or whether he continues to do so because he received a stay is not known. That is a strong subjective factor to be taken into account together with the others.

60. The Tribunal is of the opinion that in this matter it is not necessary to determine a precise starting point and then a discount point. The regulator submits that the disqualification of 9 months is appropriate. To come to that, it would seem to the Tribunal that a starting point of 12 months would be appropriate because he would get 25 percent for a plea discount and nothing else for his other subjective factors. That, to the Tribunal, does not fairly reflect his other factors which have been set out. He will receive the 25 percent plea discount. He will also receive a discount for his other subjective factors.

61. The end result is that, having regard to the total facts here, the Tribunal determines that there be a starting point of a 12-month disqualification for which there will be a deduction of four months for subjective factors. That is a 33.3 percent discount.

62. The Tribunal orders that there be a disqualification of 8 months.

63. This was a severity appeal. It has been successful. The severity appeal is upheld.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

64. The appeal having been successful, there being no objection by the respondent, the Tribunal orders the appeal deposit refunded.
