RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

RESERVED BREACH DECISION

FRIDAY 15 OCTOBER 2021

APPELLANT RODNEY MCDONALD

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 106(1)(d) and 106(2)

DECISION:

1. Appeal on breaches dismissed
2. Stood over generally for penalty hearing

1. The appellant, licensed trainer Rodney McDonald, appeals against a decision of GWIC of 8 July 2021 to impose upon him a period of disqualification of six months.

2. Two charges are the subject of this appeal. There were four charges before GWIC. Two of those are not subject to appeal. The two matters that remain are, as they were then described, Charges 1 and 2. Each is in respect of Rule 106.

Charge 1 is 106(1)(d), which is in the following terms:

> "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."

That was particularised as follows:

> "(1) That you as a registered public trainer and breeder between 17 February 2019 and 1 June 2020 failed to provide veterinary treatment to a greyhound with the circumstances being:
>
> > (a) between 17 February 2019 and 15 June 2020 an unnamed greyhound (microchip number given) was registered as being owned by you and in your custody;
> >
> > (b) the greyhound sustained an injury to her leg during the time that she was in your care;
> >
> > (c) you did not seek medical advice nor provide the greyhound with any pain relief once you became aware of the injury;
> >
> > (d) you failed to provide veterinary attention to the greyhound in circumstances where:
> >
> > > (1) in the expert opinion of Dr Toni Nguyen the injury sustained by the greyhound was a transverse fracture of the radius and ulna with a bony fusion; and
> > >
> > > (2) in the expert opinion of Dr Toni Nguyen the injury sustained by the greyhound would have required immediate pain relief."

Charge 2:

> "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.”

Particulars:

“(1) That you as a registered public trainer and breeder between 17 February 2019 and 1 June 2020 failed to provide veterinary treatment to a greyhound with the circumstances being:

(a) between 17 February 2019 and 15 June 2020 and unnamed greyhound (microchip number given) was registered as being owned by you and in your custody;

(b) the greyhound sustained an injury to her leg during the time that she was in your care;

(c) you did not seek medical advice nor provide the greyhound with any pain relief once you became aware of the injury;

(d) you failed to exercise reasonable care and supervision that was necessary to prevent the greyhound from being subjected to unnecessary pain or suffering in accordance with Rule 106(2) in circumstances where:

(1) in the expert opinion of Dr Toni Nguyen the injury sustained by the greyhound was a transverse fracture of the radius and ulna with a bony fusion; and

(2) in the expert opinion of Dr Toni Nguyen the injury sustained by the greyhound would have required immediate pain relief.”

3. The appellant pleaded not guilty before GWIC and has maintained on appeal to this Tribunal that he did not breach the rules.

4. The evidence has comprised the detailed brief, including various statements and interviews to which the Tribunal will return in detail. Oral evidence was given by Ms Jumikis, Dr Nguyen, the appellant and Rebecca Edenborough.

5. The Tribunal conducted the first day of the hearing and took evidence on 14 October and delivers this decision on 15 October.

6. The issues for determination comprise the necessary ingredients obviously as particularised. But in respect of each of the charges, particulars (1)(a) and (1)(b) are not in dispute. In each matter, particulars (c) and (d) are in dispute.

7. This being a civil disciplinary hearing, it is necessary for the Tribunal to determine the evidence to the Briginshaw standard. That is, that it has the necessary comfortable satisfaction on the evidence adduced that the charges are made out.

8. At the conclusion of the matter, in submissions for the appellant, the issue of Proudman v Dayman was raised.

9. The appellant also raised aspects of character established by various witnesses on the question of whether or not the rules were breached.

10. The facts here are somewhat muddied. They are not certain; they are not straightforward. They are contested in a number of critical areas.

11. The key facts are these: the appellant has been a licensed trainer for 27 years; he is currently 46 years of age; he has grown up in a history of the industry with family members prior to him being associated with the industry. It is his primary source of work and he has necessary experience because of the numbers of greyhounds that he has had at various times.

12. In his oral evidence, he advised the Tribunal that five years ago he had up to 70 greyhounds in his kennels. He also described that he was familiar with previous injuries to greyhounds, including fractures. And also that, based upon his experience, if he believed that a pup had suffered an injury, he would ring for advice and, if necessary, take the greyhound to a vet. In particular, if he felt a greyhound had a fracture, he would take it to a vet.

13. He is corroborated in that evidence by his now wife Rebecca Edenborough, who stated that the appellant takes care of his greyhounds and has a great enthusiasm for them. He was supported in that by Mr Patrick Edenborough, a nephew of Rebecca Edenborough, who stated that the appellant takes good care of his greyhounds and also, in particular, the subject greyhound, which is known as Wonky, and was subject to the same care for that greyhound as he did under Mr Edenborough's observations of his other greyhounds.

14. As stated, the appellant has experienced injuries, not surprisingly, in his kennels of greyhounds and has taken them for veterinary treatment. That was corroborated by the vet to whom he says he takes his greyhounds, Dr Austin.

15. Dr Austin was interviewed by Inspector Barrow on 2 July 2020. The inspector was inquiring about the desexing of a greyhound and asked him whether Dr Austin had noticed an injury to the left front leg when he undertook that procedure. He said that when that procedure was

undertaken on 15 May 2020, he did not notice any issue with the leg. He then went on to say:

> "I am Rodney's regular vet and I don't have any record of that dog in our system presenting with a fractured leg. It couldn't have been too bad."

And later:

> "McDonald often calls the surgery to report an injury and asks what to do."

And Dr Austin said:

> "Usually I will address the initial injuries and Rodney will provide follow-up treatments."

And interestingly in relation to the subject greyhound, he said:

> "The important thing to remember here is that the leg has healed, it just hasn't healed well."

16. The appellant also gave evidence in respect of his treatment of the greyhounds in the following terms:

> "Dr Austin is my local vet. He is based in Cowra. I have a long-standing professional relationship with him. I have a protocol with him where I am able to and do telephone him for advice about anything I am concerned about as it concerns the greyhounds I have care and custody for."

He continued:

> "Dr Austin offers me advice over the phone and if the issue is not one which requires emergency treatment, then Dr Austin and I will discuss the issue, work out what to do in response and I will monitor the situation and report back as needed."

17. The appellant is corroborated by a number of character referees, and as indicated, they have been called in aid of the issue, not just of character on the issue of penalty, but character on the issue of whether he would breach the rule or not. There are a considerable number of referees and for this purpose they will only briefly be described.

18. Adam Gambrill. Compassion and care towards greyhounds. Seen him go above and beyond on many occasions to ensure his animals are given the highest levels of treatment and care.

19. Rodney Oakman. It would be out of character of Rod at all times. I've seen the condition of all his dogs. He is a very caring man, passionate towards the greyhounds.

20. Paul Francis. Caring, reliable and responsible concern for his greyhounds. Cares for the greyhounds as if they were humans.

21. Phillip Reid. Rod's dogs are always well presented and in good order. His dogs are checked regularly. There is no way Rod would not provide the best care for one of his dogs.

22. Kel O'Rourke. High regard of care factor for the animal.

23. Each of those establishes that the appellant does have care for and concern for the welfare of his greyhounds.

24. As to the subject greyhound, it became known as Wonky. That name was given by Rebecca Edenborough but not because of the injury which is the subject of these proceedings.

25. The appellant in his statement of 27 April 2021 says the following:

> "I recall that on around 2 November '19 I was feeding the puppies that I have care and custody for at my property. I noticed that the greyhound was lame. I examined the leg of the greyhound. I applied pressure to the affected leg and conducted an examination of the leg to ascertain whether there might be any broken bones. The examination I performed was based on my significant experience in excess of 20 years in the care of greyhounds throughout my years in the industry.
>
> On examination, the greyhound did yelp but I did not consider it to be an extreme yelp or one that might be considered out of the ordinary warranting an emergency response. I observed the greyhound and after my examination I did not see or consider there to be any broken bones."

He continued:

> "On the basis of my examination and based on my knowledge of greyhounds, I genuinely did not believe the greyhound had broken its leg and did not consider it to be an emergency situation.
>
> After discussing my observations with Dr Austin, it was decided that the greyhound should be placed under observation and removed out of the yards in order to monitor the leg. The purpose of removing the

greyhound out of the yards was to ensure rest, restricted movement and further observation.

> I administered the greyhound aspirin to assist with any pain. This was done on advice of Dr Austin at the level and timing suggested by him. However, my observations were that, apart from when I examined the leg, the greyhound was not showing visible signs of pain and I thought the placement of the greyhound into the kennels and restricting its movement would assist with any necessary recovery."

26. The appellant was interviewed by Inspector Barrow. That took place on 6 August 2020. In the course of that interview, the appellant was asked:

> "Tell me how the injury to the leg came about."

Appellant:

> "We just went in there to feed her and we noticed she was lame. So I rang the vet and he said, 'keep it locked up' and it just healed that way. Yeah, we don't know what happened or how it happened."

And he continued:

> "I don't know what actually is wrong with her. I touched the elbow and she gave a bit of a yelp and he said, 'Just give her a minimum amount of movement"."

That reference being, of course, to Dr Austin.

It was put to him:

> "She was holding the leg up, you touched her on the elbow, she yelped, which indicated she was in a bit of pain, yep."

To which the appellant replied:

> "Yeah, but it didn't feel broken or nothing."

27. In his oral evidence, the appellant said that "the leg appeared different to normal. She was walking funny. She had a bit of a limp."

28. In respect of veterinary consultation, the appellant said in his statement of 27 April 2021, as read out earlier:

> "After discussing my observations with Dr Austin it was decided the greyhound should be placed under observation and removed out of the yards in order to monitor the leg."

29. To Inspector Barrow he said:

> "I rang the vet up and we spoke on the phone, which we do a lot."

30. He could not remember off the top of his head what month it was, but "the greyhound was still a pup". Inspector Barrow asked:

> "Do you believe she needed any veterinary treatment?
>
> Answer: I don't think so 'cause I done what he said and she come good. She seemed to be fine. She walked all right.
>
> Question: So that's after a six-week period she was walking?
>
> Answer: She was walking fine after about three weeks."

And later in that interview:

> "Question: When you spoke to Stuart, he was happy for the dog not to come in?
>
> Answer: He said 'play it by ear and see how things are going'. I often do that. If I find one holding its foot up and I've got a spare kennel, it goes in there. It might only be in there for a day or two and it's back out."

31. Dr Austin, as stated, and read out earlier, was also questioned by Inspector Barrow and, as stated, he says he did not have any record of the dog in the system presenting with a fractured leg. "It couldn't have been too bad." And, as stated earlier, he confirms that it is not unusual for the appellant to telephone him and for Dr Austin to provide telephone advice.

32. It is then noted that after the inspector's inquiries of Dr Austin on 1 October 2020, he sent an email confirming essentially that evidence. He described having only seen Wonky once for desexing, but at that time nothing was mentioned about a front leg issue. And then critically he said this:

> "No discussion took place between myself and Rodney McDonald about Wonky at any time or for any reason that I can recall prior to your first correspondence."

And that was the correspondence from the inspector to him.

33. What then of the treatment given to Wonky based upon the history up to that point?

34. In his statement of 27 April, bearing in mind what he said the advice given to him was, and as set out earlier, he administered aspirin on the advice of Dr Austin, no visible signs of pain, and placing the greyhound into the kennels and restricting its movement would assist with any necessary recovery. He continued as follows:

> "The greyhound was placed into kennels for observations and I did not observe any visible or audible signs of distress. The greyhound was observed approximately four times daily and was able to self-toilet, did not require assistance to move outside and after a few days was able to place further pressure on the leg. I was satisfied with the daily progress of the greyhound but based on the observations I had performed, that further physical veterinary attention was not necessary at that time."

He continued:

> "I kept the greyhound under observations for weeks and it continued to improve and by about approximately three weeks or so the greyhound was moving freely and placing normal pressure on the leg. After approximately six to eight weeks of observation, rest and restricted movement, I moved the greyhound back out into the yard where she ran and played freely with other dogs."

And he continued:

> "I commenced pre-training. The greyhound was not displaying any audible or physical discomfort. I did not consider it to be in distress. The training was at the local dog track. Wonky was not able to corner very well, although she never pulled up lame or sore after a run."

35. When interviewed by Inspector Barrow, he gave evidence in similar terms, which does not require repeating. In his oral evidence to the Tribunal he gave similar evidence, which also does not require repeating.

36. He is corroborated in that evidence by Rebecca Edenborough, who recalls the appellant saying to her words to the effect of:

> "One of the pups has hurt itself. I have put it in the kennel and rest and observe it. I spoke to Stuart and if it gets worse I will take her in."

Ms Edenborough then refers to her observations:

> "She was favouring her leg. I cannot recall which it was. But she was not cowering in the corner, yelping or showing other visible or audible

> signs of distress, just that it appeared sore. I thought she might have hurt herself when playing with other pups."

And whilst the Tribunal will return to it, she continued:

> "I know that initially Rod did administer some pain medication. I think it was aspirin. Rodney said to me that Stuart had recommended it initially."

She continued:

> "Over the following weeks I observed Wonky. She was self-toileting, she was eating and drinking normally and was beginning to walk and run normally. There was no yelping or crying."

She continued:

> "The appellant kept the greyhound separated and it was later on running around like normal and seemed normal and would run and play with the rest of the dogs."

Critically, she said:

> "I did not consider the greyhound needed veterinary attention."

37. The Tribunal pauses to note that in or about November 2019 Ms Edenborough herself became a registered trainer.

38. Mr Patrick Edenborough also provided corroborating evidence. He describes having been informed by the appellant that it appeared to have a sore leg but he did not know what happened or how it hurt itself. Mr Edenborough describes observing the appellant himself observing the greyhound regularly and taking it out of the yard and allowing it to rest. That he would attend to the greyhound several times a day. It was able to self-toilet, able to place pressure on its leg and walk around and this improved as time passed. He observed no visible or audible signs of distress from the greyhound other than it was clear that it was reluctant to place pressure on the leg initially, "but this seemed to be improving the more and more it was able to rest and I thought that further rest and recuperation was sufficient".

He also states that he recalls the appellant giving some medication, which he had been told by the appellant was recommended by the local vet, but he could not recall what the medication was. Critically, he said:

> "At no time did I think the greyhound had broken its leg. At no time did I think that the care and treatment of the greyhound was insufficient or that it was being subjected to unnecessary pain."

39. There was then an issue of the treatment given and that, on the appellant's evidence, was aspirin. The appellant says that Dr Austin recommended aspirin. There is, however, no evidence from Dr Austin that he at any time uses or recommends, generally, or did in this case, a treatment of aspirin for this greyhound. In essence, he had no recall of any such discussion. And that is a critical piece of evidence.

40. The appellant when spoken to by Inspector Barrow was unable to produce his treatment records. That is, a requirement to keep and produce to an inspector a record of any medication provided to a registered greyhound. And in that interview he was unable to remember what in fact the medication he gave was. And that was on 6 August 2020. The incident, of course, having occurred on 2 November 2019. So there was a not insubstantial period of time from the time the aspirin would have been administered until the time he was required to remember what it was.

41. And his evidence to Inspector Barrow was this:

> Question: Was she provided with any pain relief?
>
> Answer: I'd say he would have give me something but I can't remember off the top of my head."

And in relation to the pain relief, he was questioned:

> "You can't remember what it was?"

And he said:

> "Yep. Yep. But I can't remember the name of the stuff."

42. On 21 August the appellant emailed to the inspector a treatment history. That treatment form is in evidence. The appellant was cross-examined in respect of that form. It was put to him that he created it at a later date and after his conversation with the inspector. He denied that. It was put to him again that he did and he denied it. He had not been asked any questions in chief about that orally.

43. The Tribunal itself questioned the appellant on the Tribunal's own concerns about that form and the suspicions the Tribunal formed about it. The handwriting is exactly the same, although it recorded treatment on different days. There was no reference to the name of the greyhound in a place on that form where that should have been entered. Questioning by the Tribunal was to the effect that does he always write in his handwriting exactly the same way and he said he did. And, secondly, as to whether he had multiple forms contained in a book format for each of his greyhounds, to

which he replied he downloaded the form from the Internet, with surprise when it was pointed out to him the name of the greyhound was not on it, and that was the extent of the evidence.

44. There was no further cross-examination by the respondent based upon the Tribunal's questions. There was no submission to the Tribunal by the respondent that that should otherwise be otherwise treated as suspicious in the way it had been written up and when it was written up. Such that it was not put to the Tribunal that it should determine that aspirin was not given, or was not given in accordance with the schedule which is described, and it is therefore that the Tribunal is not able, based upon the totality of the evidence and the submissions made to it, to come to a conclusion that it should reject that evidence as being of recent invention.

45. It is, therefore, that it shows that for a period of time the subject greyhound was given aspirin between 2 November, the date the appellant says the injury occurred, and up to 6 November. The form itself says under "Name of person authorising treatment – Stuart Austin" that the person administering it on each of the five occasions listed was the appellant and it was half a tablet morning and night orally administered. The appellant confirmed those matters in his oral evidence.

46. It is necessary to turn and consider at this stage the issue of aspirin in a greyhound. Bearing in mind that there is no evidence from Dr Austin as set out that that was an appropriate pain relief for the symptoms described by the appellant as he said he described them. And no evidence from anyone on the appellant's side that aspirin is an appropriate treatment for the subject injury. It is simply the appellant's belief but supported by his conversation with Dr Austin.

47. Dr Nguyen is the vet to whom the greyhound was subsequently taken after it was surrendered for rehoming, and the Tribunal will return to that evidence. Dr Nguyen is a vet of 13 years' experience and is the head vet at the subject practice in which she works.

48. Dealing purely with the issue of aspirin at this stage, that for a fracture it was her opinion that strong pain relief was required. She did not consider that aspirin was sufficient for a fracture. A fracture would require strong pain relief such as meloxicam, an anti-inflammatory, or a strong opioid such as morphine or methadone. That would be, in her experience, the common practice for the administration of pain relief for a fracture. Aspirin would not be her first line of treatment.

49. She personally does not use it in dogs. It would, however, in her evidence, be sufficient to give mild pain relief to a mild soft tissue injury but not a fracture. It was her opinion that for a fracture, a stronger and more immediate and injectable form of treatment was required.

50. She was not aware whether country vets prescribed aspirin and no evidence has been called by the appellant to prove that country vets prescribe aspirin generally or for injuries.

51. Dr Nguyen fairly conceded she did not know what other vets do. And, as stated, it was not something that she would prescribe. And it was conceded that in some cases alternatives to drugs such as meloxicam might be required because of particular diagnoses of other symptoms such as kidney disease in a greyhound might lead to other types of treatment which could include aspirin but not for pain relief.

52. The appellant then having, on his evidence, self-assessed, spoken to the vet, treated the greyhound as set out in detail and formed an opinion that the greyhound was improving and, as stated, commenced to pre-train the dog. He said the greyhound was not able to corner very well, although she never pulled up lame or sore after a run. He then continued in his statement of 27 April in the following terms:

> "Given that the greyhound was unable to corner very well, I decided it was best that the greyhound was rehomed."

53. In respect of the issue of rehoming, it was a common practice for the appellant to do so. He was well known to Ms Jumikis, who was an employee at Greyhound Rescue. She would often ring him and ask him if he had greyhounds to surrender. He would surrender greyhounds to Greyhound Rescue. He was a regular donor to Greyhound Rescue.

54. There is a strong discrepancy in the evidence of Ms Jumikis, the appellant and Ms Edenborough. It could be seen to be critical evidence. And the issue is did the appellant state to Ms Jumikis the following:

> "Question: Does Wonky have any injuries?
>
> Answer: Yes. She broke her leg when she was around eight months old.
>
> Question: What bone was broken?
>
> Answer: One of them. I'm not sure.
>
> Question: Has she been to the vet?
>
> Answer: No. She runs around fine on it."

55. The appellant, corroborated by Ms Edenborough, says that conversation did not take place in those terms. It is said that the appellant, corroborated by Ms Edenborough, did not use the expression “broke her leg”.

56. There was then an issue about whether also there was a statement “when she was around eight months old”.

57. The evidence of Ms Jumikis is that on 1 June she was at work and the appellant arrived with five greyhounds. That is an agreed fact. The greyhounds were removed from the vehicle at about the kennel area and it is uncertain precisely what happened on this occasion but, regardless of uncertainties, there is no doubt that the greyhound was presented and accepted.

58. There is an issue about when forms were filled out and also about what was stated.

59. The reason for that is that it is Ms Jumikis’ certain, unqualified and unbroken evidence under cross-examination that as she received the dog she completed the form known as Animal History. The animal history form was partly completed by the appellant in his hand and he wrote certain things which are not critical on the document.

60. Ms Jumikis did not give evidence that at the time the appellant filled out the animal history form she then immediately filled out the animal history form as well. She said, however, it was done at the same time as the assessment was undertaken. She wrote on the form:

> “Broke front right humerus around eight months old. No vet treatment given. Leg bows outwards. But runs freely without issue”.

61. And the appellant wrote the dog had a very good temperament and it appears it may be in Ms Jumikis’ handwriting the word “timid” was written on the document.

62. Another document was completed called Greyhound Rescue Inc Animal Release Statement, partly completed by the appellant as to details and subsequently signed by Ms Jumikis in a different pen to that used by the appellant. The appellant signed the form and Ms Jumikis wrote on it her signature and name, the time is unknown, and concedes she later wrote in a blue pen “Donation received $100”, the remaining writing on the forms being in black.

63. Ms Jumikis’ evidence, as stated, was clear and the Tribunal formed the opinion she was a highly credible witness.

64. The appellant says that no such conversation referred to by Ms Jumikis took place either at the time of the taking of the animal history or later. The appellant and Ms Edenborough's statements are silent as to the time at which they say the appellant uttered certain words about injury. The appellant's statement is 27 April 2021. He did not say anything to Inspector Barrow about when it took place. That bearing in mind Ms Jumikis said this conversation occurred whilst she was receiving the greyhound, that it is the evidence of the appellant and Ms Edenborough that no such conversation took place at that time. No such writing was effected by Ms Jumikis on the animal history form. That as they were leaving and getting towards the departure gate, there was a conversation and each of them say, the appellant in these terms:

> "One of the pups has hurt itself. I have put it in the kennel and rest and observe it."

65. In his statement of 27 April 2021, the appellant says he said the following words to Ms Jumikis:

> "The greyhound has injured herself as a pup and I have decided to rehome her instead of racing her because I do not think that would be fair on the greyhound and she would be better as a pet."

66. He continued that Ms Jumikis made no observations about any such injury and did not raise any concerns with him about the care and treatment of the greyhound and did not say anything about having concerns he had not treated it for a broken leg.

67. Ms Edenborough in her statement of 27 April 2021 also said that the appellant did not say words to the effect of the greyhound had broken its leg to Ms Jumikis but did say words to the following effect:

> "The greyhound had injured itself. I formed the view that the greyhound would be better as a pet rather than the greyhound."

She continued:

> "He did not say at any time the greyhound had broken its leg."

And there was then other conversation about other greyhounds.

68. It is noted that on 15 June, Ms Jumikis not being able to do so any earlier for various reasons, took the greyhound to the Alexandria Veterinary Hospital to be examined by Dr Nguyen.

69. In respect of that examination, Dr Nguyen has made a statement. She examined the dog and states the following:

> "It had an abnormal gait of the left foreleg. I performed a radiograph which revealed a transverse fracture of the radius and ulna with a bony fusion between these two bones which is consistent with an inappropriately healed old fracture. This kind of injury would require immediate pain relief for a period of time afterwards. Any severe injury to the limb like this can change how the animal carries it and make it more prone to earlier onset degenerative joint diseases."

70. Dr Nguyen's Patient History Report is in evidence. It is necessary to have regard to all of it:

> "History of broken left foreleg. Old injury. However, it does walk with an abnormal gait and also has an abnormal bit of bone protruding from 1/3 distal of elbow. Examination. Stilted gait. Non-painful protrusion bone in proximal antebrachium. Quick lateral conscious x-ray. Appears to have had a transverse fracture in proximal third of antebrachium extending through ulna and radius and has healed with new bone forming and causing a rough fusion between ulna and radius in area. Bone still has a roughened edge so possibly still healing. Carpus normal. No DJD. To monitor. Unlikely will need any action at this point. This area, however, could be prone to refracturing in the future and causing bone fragments. Prone to DJD in the future."

And DJD, as confirmed by the statement, is Degenerative Joint Disease.

71. X-rays are in evidence. They show, as best as Dr Nguyen can recall, the bony protrusion to which she made reference in her reports.

72. Just in respect of that issue of the future, it is noted that her oral evidence was that the dog would have reduced use of the leg and would suffer disability in its other legs because of the compensatory way in which it was now required to walk.

73. It is necessary to have regard to Dr Nguyen's oral evidence as to the cause. Conceding she had no proper history, she could not say for one hundred percent. However, she did say with a very high likelihood of a prior fracture, and that was an assessment based on her observations and the x-rays. Therefore, the likely cause was a fracture. She was quite confirmed in that by reason of the protruding bone and its location as depicted on the x-rays. It was displaced.

74. She was asked whether there could have been a fracture without displacement. About that she was not certain but said that there would have to have been, to have the indicia of the x-rays, some sort of bone tumour, and there was not any evidence of that so that that new bone growth would,

in her opinion, had to have been caused by a fracture and the bone repairing from that fracture.

75. She was questioned at length about the possibility of a greenstick fracture rather than the fracture of the type she described. Her evidence was qualified by the fact that she had not seen greenstick fractures in pups of that type such as she was able to form a confirmation. It is noted the appellant did not call any expert evidence to the effect that this injury might be a greenstick fracture. Therefore, the cross-examination that was adduced is only to the extent that there can be greenstick fractures in eight-month-old greyhounds, but here she was of the overall opinion that that was not the cause. It was her opinion also that the fracture should have been apparent at the time it occurred. She conceded, however, that there was no evidence of any rupturing of the skin or the like, obviously not possible at the time she conducted the examination.

76. In relation to the bony protrusion, the evidence establishes that would not have been apparent to the appellant at the time of the injury, that that would have taken at least four months for that type of outcome to have started to have taken effect.

77. As to what was apparent, or should have been apparent, because she had not examined the dog at the time, and that is obvious, that there could not be a great certainty about her evidence of what the appellant would have seen.

78. She was asked about the treatment that was given, and the Tribunal has made reference to her opinion about aspirin. But she did in cross-examination concede that some of the treatment provided would have had a beneficial effect, that is, rest and observations.

79. Those then are the key aspects of evidence.

80. The first matter for determination is the nature of the injury.

81. The Tribunal accepts the evidence of Dr Nguyen that the leg was fractured. Dr Nguyen has given evidence about the impact of that and the Tribunal notes the appellant’s evidence, to which it has referred, about the yelping and his answers to questions from Inspector Barrow about lifting of the leg.

82. The Tribunal notes also that the effect of that injury was such that at the end of the day the greyhound could not, when being pre-trialled, corner properly and, indeed, because of that it was sent away for rehoming. And it is quite apparent from Dr Nguyen’s evidence that the greyhound has suffered and will continue to suffer ongoing disabilities.

83. The Tribunal cannot accept, therefore, that this greyhound suffered a mild form of lameness.

84. The Tribunal accepts the appellant had a capacity to analyse by reason of his experience an injury to a greyhound and notes the observations that he made, supported by Ms Edenborough and Mr Edenborough.

85. The Tribunal accepts the character evidence and the evidence of the appellant and Ms Edenborough and Mr Edenborough that the appellant had concerns for the welfare of his greyhounds and would ensure that they received the best treatment.

86. The appellant did seek veterinary treatment. Despite the evidence of Dr Austin, he had no recall of it. A failure to recall is not an emphatic statement that something did not occur. And there was some confirmation in that by, again, Ms Edenborough and Mr Edenborough.

87. What then of the treatment?

88. The respondent’s case is that aspirin is an insufficient form of treatment for a fracture.

89. The appellant does not establish, on the totality of the evidence, that the appellant was so certain of the evidence that it was purely a limp for which aspirin was sufficient. The Tribunal accepts that some medication was given for the reasons expressed. The appellant’s evidence on this was nevertheless weak.

90. For example, he could not recall to Inspector Barrow what type of pain relief he had administered. Or, indeed, did not even establish what types of pain relief he had at his kennels other than apparently aspirin.

91. The Tribunal has said it had genuine doubts about the treatment form that he filled in but for the reason expressed could not conclude that was a recent invention.

92. The Tribunal accepts that the treatment regime that his evidence referred to was followed by him and it is therefore that it is able to be found it was based upon what Dr Austin told him to do, even though it was not corroborated by Dr Austin. The Tribunal accepts that there was some beneficial effect of the treatment regime upon which he embarked, as corroborated by Ms Edenborough and Mr Edenborough by their observations of the greyhound’s recovery, corroborative of the appellant’s.

93. But Dr Nguyen’s evidence establishes that that treatment regime, including the aspirin and the observations, rest, etc was not sufficient for the

fracture in fact that existed. And that is established by the long-term disability to which Dr Nguyen has made findings.

94. The issue arises then whether he knew or should have suspected a fracture. That then needs consideration of the evidence of Ms Jumikis. As the Tribunal has said, it has found her to be a very credible witness, completely firm in her recall and a cross-examination did not remove that.

95. However, some doubts arise by the timings on the completion of the forms. For example, some was completed later. Different pens were used. She made an error in respect of reference to left or right leg. And Ms Jumikis does not establish in her evidence that the appellant and Ms Edenborough actually watched Ms Jumikis write down on the form, only that she did it at the time of the receiving and completion of the animal history form.

96. The Tribunal has reflected on the fact that the appellant and Ms Edenborough had every opportunity in their statements prior to the hearing to correct their evidence about when the conversation actually took place. It was a critical challenge to Ms Jumikis' statement and a very important piece of evidence.

97. The Tribunal did not find Ms Edenborough's evidence in answer to its questions to be satisfactory on this issue about when she recalled that the words "at eight months" came to be in existence. That is, as to when Ms Jumikis gleaned the evidence of an injury at or about eight months. And that is because in their earlier evidence neither the appellant nor Ms Edenborough said anything about eight months on what they said took place.

98. But it was on the form. Where did it come from? The Tribunal does not find that the appellant and Ms Edenborough can blame their legal advisers for such an omission. The burden was on them to put all the appropriate evidence in their statements and they have not done so. That provides some corroboration of Ms Jumikis' evidence that she wrote the history as it occurred, because there is nothing else to indicate where the eight months came from other than its subsequent recall, and the Tribunal accepts with the passage of time that not everyone can recall at earlier times every piece of evidence that took place and suddenly evidence which becomes critical can be recalled. The Tribunal accepts that, and that was Ms Edenborough's response to the Tribunal.

99. At the end of the day, despite the strength of Ms Jumikis' evidence, the Tribunal does not have that level of comfortable satisfaction, despite the weakness in the appellant's own case and that of his witness, that there is that level of comfortable satisfaction that there was that reference to the

broken right front humerus for the reasons on the doubts of her evidence to which reference has been made. It is not, however, a critical finding.

100. The Tribunal needs to be careful it does not assess the duty on a trainer to be so high that any niggling injury imposes a burden to seek veterinary treatment. The welfare obligations cast upon trainers, and for which the regulator has a statutory obligation, do not mandate that that must be done. The Tribunal recognises that experienced trainers can in appropriate cases themselves assess an injury as not requiring veterinary examination.

101. The Tribunal has recently reflected in the decision of Cartwright on 8 October 2021, in a not dissimilar case, of a failure under 106(1)(d) to seek veterinary treatment in the following terms:

> "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."

102. The Tribunal notes that that was a finding on the facts in that case. That is, it preferred the expert evidence to the trainer's evidence.

103. But the principle that it does establish is that weight must be given to the expert opinion of veterinarians as against the experienced but not expert opinions of trainers. Welfare considerations in this day and age mandate in appropriate cases, therefore, that the veterinary treatment should be obtained.

104. The Tribunal concludes here that the appellant was wrong. It was not some mild injury, the leg was fractured. The greyhound is permanently damaged.

105. Accepting the observations and assessment of the experienced appellant was to the contrary and there were not a number of indicia that might have been obvious to him, and his belief that his treatment was directed and appropriate, he was wrong.

106. The fact that Dr Austin could not recall a conversation with the appellant does not mean it did not take place as the appellant has stated and as supported by Ms Edenborough and Mr Edenborough. But the precise words that the appellant uttered to Dr Austin could not have in fact sufficiently conveyed the true extent of the actual injury.

107. The observations of the appellant, which have been referred to, should have rung louder alarm bells in him.

108. The Tribunal concludes, on the totality of the evidence, that the appellant should have taken the greyhound to Dr Austin.

109. The welfare considerations implied by the two rules in 106 place the onus on a trainer at this level. A telephone call was insufficient for a proper veterinary assessment of the injury. No criticism is directed to Dr Austin, he has no recall of it, it is not known what he was precisely told.

110. as to charge 1 it is necessary to have regard to the particulars. It is said against him "you did not seek medical advice". Those words must be read in conjunction that he failed to provide the necessary pain relief. The Tribunal is of the opinion that the advice and attention sought were inadequate in all the circumstances of this case, based upon the evidence of Dr Nguyen.

111. This is a racing jurisdiction, it is not a criminal trial nor a civil trial in that sense where strict pleadings are mandated. The Tribunal is satisfied that the wordings of the particulars as set out, although they could have expressed the case in different terms, were sufficient to raise the necessary welfare facts and are considered sufficient for the case that is being established. Neither party in fact argued anything about the adequacy or otherwise of the particulars.

112. The pain relief sought was inadequate. Aspirin was inadequate for a fracture. It is found aspirin was given and it would have been adequate for a mild strain. This was obviously not, in the Tribunal's opinion, a mild strain.

113. It is also determined in the same way that aspirin is not an immediate pain relief for a fracture as of the type found by Dr Nguyen and as particularised in (c) and (d) of each of the particulars.

114. In those circumstances, the Tribunal is satisfied that he did not seek the appropriate medical advice, nor did he provide the appropriate pain relief. The fact that it is pleaded he simply did not seek medical advice must be in the context of the totality of the factual circumstances and, it might be implied, appropriate medical advice, that is, taking the greyhound to a vet for assessment, and appropriate pain relief, because it was totally inadequate for the type of injury the greyhound in fact had. And there are symptoms which the appellant should have observed, consistent with what turned out to be the subsequent injury.

115. Charge 2 requires an establishment of the failure to provide reasonable care and supervision to prevent unnecessary pain or suffering. It is to be accepted as the observations of the appellant, confirmed by Ms Edenborough and Mr Edenborough, that the greyhound did not appear greatly affected. But the appellant did describe certain observations that he made of yelping, not weight-bearing, the difficulty of gait, a limp, and even though the fracture was not apparent to him, there were injuries that, as it

turns out, were not inconsistent with a fracture. The aspirin was not sufficient for a fracture. It took three weeks for the walking process to return to normal.

116. The focus on the particulars must be on the treatment needed at the time of the injury. It was a fracture and mild pain relief was insufficient. The Tribunal accepts that he did provide some care and supervision but it was inadequate. It was therefore not reasonable. And the symptoms at that time have, on the evidence of Dr Nguyen, established unnecessary pain and suffering. Aspirin was insufficient. Immediate and proper pain relief was required, as described in Dr Nguyen's evidence.

117. Therefore, the Tribunal is satisfied that it was not a reasonable care to provide aspirin and that of itself has occasioned unnecessary pain and suffering which in accordance with 106(2) is an occasioning of unnecessary pain or suffering.

118. In each case, therefore, it is open to the Tribunal to find the particulars as alleged established. The appellant, however, raised in submissions Proudman v Dayman. There has been no submission made in this case as to whether mens rea is required or this is a strict liability or absolute liability offence. The Tribunal will nevertheless assess the Proudman v Dayman arguments on the basis that this might be a strict liability offence. It makes no such determination but deals with the argument that it might be.

119. The appellant needs to establish an honest and reasonable belief in a mistake of facts, sufficient to render his acts innocent and excused. It is noted the onus is on him. It was only a very limited submission and it was not examined in detail.

120. The Tribunal can find it was subjectively an honest belief. That is, a belief it was only a strain, requiring a phone call, some aspirin, rest and supervision. That is his subjective test and he meets it.

121. But the Tribunal cannot be satisfied on the objective test that it was reasonable in all the circumstances. And that is based upon the observations that he himself made at the time of noticing the greyhound injured for the first time and in respect of the reasons canvassed in detail in this determination.

122. Therefore, the Proudman v Dayman submission, faint as it was, is not found in favour of the appellant.

123. The conclusion, therefore, the Tribunal draws is that the respondent satisfies the Tribunal to the Briginshaw standard that each of the particulars has been established and that in those circumstances each of charges 1 and 2 are established.

124. The appeal against the findings of a breach of the rules is dismissed.

125. Charges adjourned for penalty hearing on a date to be fixed.