RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 20 APRIL 2022

APPELLANT TOBY WEEKES

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 106(1)(d)

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
2. **Period of 6 months disqualification imposed**
3. **Appeal deposit refunded**

1. The appellant appeals against the decision of GWIC of 23 February 2022 to impose upon him a disqualification of seven months for a breach of Rule 106(1)(d).

2. 106(1)(d) relevantly provides that:

> "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."

Particulars:

That Mr Weekes, a registered Breeder, Public Trainer and Studmaster, on 30 March 2020 failed to provide veterinary attention when necessary for the greyhound 'Kerrigan Bale' (microchip: 956000008231634; Ear brand: NBFWK) ("Greyhound"), with the circumstances being:

1. On 30 March 2020 the Greyhound was registered as being owned by him and was in his care and custody at his registered kennel address at 1321 Peabody Road, Molong ("Property");
2. On or about 30 March 2020 the Greyhound sustained substantial wounds as a result of a dog fight between several greyhounds;
3. Mr Weekes did not seek veterinary treatment for the Greyhound until the morning of 31 March 2020;
4. The Greyhound was euthanased on 31 March 2021 as a result of the wounds sustained in the dog fight;
5. The likely cause of the euthanasia of the Greyhound was as a result of Mr Weekes failure to provide veterinary attention when it was necessary to do so, in circumstances where:
    - In the expert opinion of Dr Genevieve Liebich, the Greyhound suffered would infection and wound breakdown as a result of substantial dog fight wounds;
    - It is likely that should the Greyhound have been presented on the day of injury to the veterinary clinic the wounds would have been cleaned and sutured appropriately preventing this suffering and the ultimate euthanasia of the Greyhound.
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3. When confronted with the written submission process that the Commission embarked upon, the appellant immediately pleaded guilty and has maintained that plea of admission of the breach on appeal to the Tribunal. This, therefore, is a severity appeal. Therefore, the necessity to examine the evidence in greater detail falls away.

4. The evidence in the proceedings has comprised a 162-page brief served by the respondent. The critical parts of that brief are the detailed occasions on which the respondent wrote to and invited submissions from the appellant, both in relation to an interim suspension and subsequently dealing with the lifting of that interim suspension, and on the adverse finding, and then on penalty. Various statements of witnesses are

contained, but as the admission of the failure is made, it is not necessary to examine any of those other than Dr Liebich's report. The appellant made submissions, and they shall be referred to. And there are some photographs of this greyhound's injuries.

5. In addition, the brief contains evidence in relation to injuries sustained to another greyhound called Splendiforous, which was also under the care of the appellant, but on the occasion subsequent to this injury, Splendiforous suffered injuries, the greyhound was then under the care of employee Bradley Prest.

6. The Tribunal notes two matters from that. Firstly, Bradley Prest was subject to charges and disqualification in respect of his conduct involving Splendiforous. And, secondly, the facts establish that, when Prest reported to the appellant that Splendiforous had been injured, the appellant immediately directed his employee to take the greyhound to a vet for treatment. That is relevant because the issue here is that he did not take the subject greyhound Kerrigan Bale to a vet on the day he discovered the injury. The Tribunal will return to those facts. The other evidence in relation to Splendiforous does not require examination.

7. The key facts upon which penalty is to be determined are these: the appellant was not present but at his employment, leaving a trusted employee – or, then trusted – Bradley Prest in charge of his greyhounds. Prest had placed the subject greyhound Kerrigan Bale in a kennelling area with other greyhounds, unmuzzled. The appellant returned home from his work and observed the greyhounds to be together in the kennelled area. No point of that failure to separate them at that stage has been made in the proceedings and it is disregarded.

8. Subsequently, the appellant became aware that the greyhounds that were kennelled were fighting. He separated them. He immediately removed the subject greyhound from that area and observed that it was injured.

9. His actions then were to, in conjunction with another, bathe the greyhound's wound and suture and/or staple the wound. The evidence is uncertain as to which of those actions the appellant took because he has given slightly varying versions on the various occasions he was spoken to, as was Ms Windiate, who was with him, as to who engaged in what action.

10. Nothing turns substantially upon that, because the appellant, being aware of the injury to the greyhound, did engage in what he believed at the time to be an appropriate treatment of the injury as he observed it. And it is to be remembered that at that point he had had some years of experience with greyhounds, although there is no evidence of his knowledge and experience in relation to greyhounds suffering injuries of this type.

11. The appellant also administered meloxicam for pain relief. It is not an anaesthetic. It is not a substantial pain-relieving medication for the injuries the greyhound suffered. But there is no charge in respect of that and that is not taken as an aggravating factor on objective seriousness.

12. The appellant in his statement indicated that he made sure the greyhound was comfortably wrapped and attended upon it during the rest of that day and in the evening to observe it.

13. The next morning he noticed that the injury was not as he had left it and formed an opinion, not supported by Dr Liebich, who makes no comment about it, that the greyhound had apparently scratched at her wounds and opened them up. Regardless of why the wound was open – and it is only the appellant's evidence to that effect – he formed the opinion that he should immediately take it to, and did take it to, the veterinary practice which he used and the greyhound was there seen by Dr Liebich.

14. It is necessary to refer to her evidence in some detail. She observed significant wounds to the limbs and lateral left thorax. The wounds were infected and some contained maggots. She observed that the wounds had not been clipped around the edges prior to being repaired. She observed suture material and staples in the wound on the left thorax. The greyhound displayed lameness in the hind leg at walk and she presumed that would indicate pain felt by the greyhound. As to pain and suffering, that is the extent of the expert evidence. And the Tribunal notes the words "presumed to indicate pain". There is no charge of permitting pain and suffering and that is not seen as a substantial factor in the matter.

15. The particulars detail Dr Liebich's opinion – and they are just briefly noted in passing again – that there was a failure to obtain appropriate veterinary treatment once the injury was sustained and that if there had been an appropriate presentation to a vet, there would have been an opportunity for the wounds to be cleaned and sutured, and there would not have been wound breakdown, infection and, of course, the subsequent decision made to euthanase the greyhound. The fact that the injuries were of such significance when presented to the vet that euthanasia was the adopted option is a critical factor in this case, on objective seriousness.

16. Those are the facts surrounding the greyhound Kerrigan Bale.

17. The appellant himself has been licensed for a number of years. He has no prior matters similar to this but does have a prior presentation matter from July 2013 for a positive swab for which he received a fine of $2500 and a three-month suspension, which itself was conditionally suspended.

18. As the Tribunal has reflected on a number of occasions, those with no prior matters at all of a serious nature should not expect that those that do

should receive the same extent of leniency as those who have no prior matters. It is not a substantial factor against the appellant but does have an impact upon reductions for subjective circumstances. It does not come into objective seriousness on the facts of this case.

19. The appellant also gives evidence of having taken steps in his operation to ensure mitigation of possible continuation of the type of conduct which he has admitted here. Those steps involved ensuring his staff are appropriately GWIC-trained and understanding of procedures they should undertake if they observe injuries, of the fitting of muzzles in appropriate circumstances, and all of which, the Tribunal accepts, make the likelihood of this type of injury occurring, or of this type of failure to seek treatment, not arising again. On objective seriousness, that is an important finding.

20. The appellant has expressed remorse for his conduct from the very time he came under notice. That again is an important factor in assessing him for the future in determining an appropriate penalty.

21. And the Tribunal again returns to the fact that he was first registered in 2007, and registered as a trainer in 2011, and that is a record of some years he is entitled to call in aid.

22. Those matters provide the point on his evidence for assessment of objective seriousness.

23. In looking to the message to be given, there is also the fact that he has provided references from veterinarians, this being a veterinarian failure-type matter, which are important not only from a subjective factor, to which the Tribunal will return, but in respect of the message that is required to be given to him. The message diminishes, because each of the vets who have spoken on his behalf and who have previously provided services to him, relate to the satisfactory condition in which his greyhounds are presented and maintained and that he of course does seek veterinary attention when it is required, reflected, as the Tribunal has also stated, in respect of the Splendiforous matter.

24. Objective seriousness can be assisted by parity cases. A number have been referred to.

25. In the decision of McDonald, 15 November 2021, the Tribunal set out a number of cases which have been repeated in this matter. McDonald involved conduct where a greyhound suffered permanent damage because an injury had not healed correctly. It was not necessary for that greyhound to be euthanased. And the Tribunal determined that that conduct, where there had been a substantial period of time without treatment, warranted a starting point of eight months.

26. The matter of Cartwright, also a recent decision of the Tribunal, of 8 October 2021, also referred to a number parity cases. There, the greyhound was injured at a track. There was a direction to take the greyhound immediately for treatment. That was not done. The Tribunal examined the reasons around that in substantial detail, and they are not necessary to be repeated. There was 25 days between injury and presentation – and the presentation was for other reasons: desexing. But as a result of presentation for desexing, the nature of the injuries was such that the greyhound was euthanased. There, the Tribunal determined a starting point of 12 months was appropriate.

27. The Tribunal has been taken to the GWIC decision of 28 January 2022 of Hoare, which is subject to appeal at the moment, fixed for hearing but not yet finalised, where there was a euthanasia requirement, where there was a failure to provide necessary care and attention. A 10-month disqualification was imposed.

28. There is then the matter of Kraeft, a GWIC decision of 8 September 2021. Failing again to provide care and led to undue suffering, where a greyhound was not treated for some 15 days and a six-month disqualification was the ultimate outcome. The greyhound was not euthanased.

29. There was then the matter Prest, which relates to Splendiforous, where Prest received a 12-month disqualification, but it is accepted that that had a higher level of objective seriousness, and was dealt with by GWIC on 2 September 2021. The decision is not actually before the Tribunal, but on a plea of guilty, it must have had a higher starting point.

30. The differentiation in these various cases on this is, firstly, that the greyhound was taken for treatment the very day after the injury and there was not some further delay. The extent to which the greyhound may have suffered pain and suffering is diminished by reason of that short space of time and the slight nature of the evidence in respect of it, but certainly not enough to justify a more serious charge as well, as the Tribunal reflected upon earlier.

31. But there is also the fact that this greyhound had to be euthanased, and that distinguishes some of the other cases where there was permanent injury or a substantial period of time under veterinary care and recovery from injury and the like. But the key factor is that there was not a substantial period of time as in Cartwright, although in Cartwright it was the opinion of Cartwright that the greyhound was not in any pain or suffering as such, although the ultimate findings did not support his subjective opinions.

32. And that led to the statement of principle at paragraph 34 to the effect that as important as it is that an experienced trainer is able to assess

injuries and form an opinion, that at the end of the day it is the expert opinions of vets to which the Tribunal must turn in assessing the extent of the failure. It is vets who are vested with the training and experience to assess injuries, and greyhounds should not be deprived of that expertise based upon what turn out to be, as is the case here, wrong opinions of trainers, experienced or otherwise.

33. A further matter in respect of objective seriousness and the necessary messages required turns upon welfare. As the respondent reminds the Tribunal, s 11 of the Greyhound Racing Act 2017 mandates as one of its three key objectives welfare of the greyhound.

34. It is an essential requirement that trainers ensure as a primary object welfare of greyhounds, not only for the benefit of the greyhound itself, which is the key point, but also there is the secondary aspect of the welfare of the industry as such by reason of the requirement that trainers ensure welfare is the primary concern, and if they do not do so, they may lose the very industry for which they have the privilege of a licence.

35. The Tribunal distinguishes Cartwright on the basis of the longevity of the conduct. It finds similarity in Cartwright by the requirement for euthanasia. It distinguishes McDonald because there, there was not euthanasia.

36. It means, therefore – and taking into account the other cases but not summarising them at the moment, again – that the starting point in this matter is between 12 months and eight months.

37. If 12 months was appropriate in Cartwright, the Tribunal is of the opinion that there can be a distinguishing here of these facts because they are less serious. The eight months in McDonald is not considered to be an appropriate period by reason of the fact that in McDonald there was not euthanasia.

38. The Tribunal then, having expressed those remarks, deals with the submission that the appellant's conduct may justify a suspension. The Tribunal does not accept that submission. It is of the opinion that a disqualification is essential for the objective seriousness of the conduct and for the message to be given to this appellant, but critically, the objective message that it is necessary to give to other trainers and to the industry and the community at large, that welfare of the greyhound is paramount and that when a greyhound loses its life by reason of a failure to exercise appropriate welfare, that a loss of the privilege of a licence is the only possible outcome, and that, therefore, is a disqualification.

39. The Tribunal determines the facts warrant a lesser starting point than the respondent considered appropriate. The Tribunal determines a starting point of 10 months.

40. There are then the subjectives.

41. The Tribunal has referred to them in some detail. But the additional matters are that there has been an admission of the breach of the rule for which the respondent considered a 25 percent discount to be appropriate. There is no suggestion to the contrary. The Tribunal is of the opinion, consistent with its prior determinations, that a 25 percent discount is appropriate, and it shall be given.

42. There is then the fact that the appellant has a prior matter, to which reference has been made, which reduces the discount – it does not mean a heavier penalty, but reduces the discount – for his other subjective factors.

43. The other subjective factors involve ill-health and an inability to be a painter and roofer, at times at all, and possibly in the future, substantially.

44. The appellant will suffer financial hardship. Again the Tribunal deals with that only briefly. When a disqualification is considered appropriate, then there is inevitably going to be financial hardship. And the Tribunal, as harsh as it is, reflects that that must be the inevitable outcome of the wrong conduct. That is, financial hardship. It is an inevitable consequence when the facts and circumstances justify it.

45. The appellant, subjectively, also put in place measures to ensure non-repetition, and they are factors, subjectively, which are important as they were in assessing the message to be given to him objectively.

46. He has participated in assistance in the community, motivated to some extent, of course, by his own disability. But that is a matter in which he is entitled to have credit. And it is that he participates in a program with Wangarang, a not-for-profit Australian Disability Enterprise established to provide a range of jobs and training for people with a variety of disabilities throughout the Central West of New South Wales. That program will encourage people with disability to work with animals for many reasons of benefit to those people. The appellant is entitled, when he himself comes under adverse notice, to call in aid the assistance he provides to other disadvantaged people in the community. The Tribunal reflects strongly upon that fact and acknowledges that the respondent also gave substantial credit for that as well.

47. The Tribunal, having considered all of those subjective facts, determines that there will be a further 15 percent discount in addition to the 25 percent discount, to give a 40 percent discount. A greater discount is not appropriate, having regard to objective seriousness.

48. The effect of that – and the figures are rounded down – is that there be a further discount from that starting point of four months. The effect of a discount of four months on 10 months is a disqualification of six months.

49. The order of the Tribunal, therefore, is that the appellant is disqualified for a period of six months.

50. The Tribunal notes various periods of suspension on an interim basis and pending a stay on this appeal. The calculation of dates therefore becomes a matter for the regulator, if necessary in conjunction with the appellant. The Tribunal will not indicate an end date, therefore, for that disqualification period.

51. This was a severity appeal. The severity appeal has been successful.

52. The severity appeal is upheld.

53. Application is made for a refund of the appeal deposit.

54. This was a severity appeal. It has been successful. No submission is made to the contrary.

55. The Tribunal orders the appeal deposit refunded.