

RACING APPEALS TRIBUNAL

TROY ROBINSON

Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

DETERMINATION

**In the matter of a Stay Application by the Appellant
7 June 2023**

Introduction

1. The Appellant, Troy Robinson (**Mr Robinson**) was, until the decision the subject of the appeal, a registered Public Trainer with the Respondent, Greyhound Welfare and Integrity Commission (**GWIC**).
2. On 6 February 2023, Mr Robinson was issued with a notice of charge and proposed disciplinary action (**Notice**). The Notice evidenced eight charges laid against Mr Robinson for breaches of Rules 21(1)(c), 151(2), 156(f)(g) and (h) of the NSW Greyhound Racing Rules (**Rules**), a summary of which is as follows:
 - (a) Charge 1 – Rule 156(f)(i): on 1 June 2022, Mr Robinson dishonestly reported to multiple GWIC staff the greyhound “Gagen Stacey Lee” as deceased by snakebite, when the greyhound was not deceased and remained in his care and control;
 - (b) Charge 2 – Rule 156(g)(iv): on 1 June 2022, Mr Robinson verbally abused a GWIC Inspector in a telephone conversation;
 - (c) Charge 3 - Rule 156(g)(iv): on 2 June 2022, Mr Robinson did wilfully obstruct, impede interfere with officials of the GWIC by refusing entry to and preventing the inspection of, his registered kennels by two GWIC Inspectors;
 - (d) Charge 4 - Rule 156(h): on 2 June 2022, Mr Robinson failed to reply to a lawful order from a GWIC Inspector by refusing to answer questions regarding the alleged death of the greyhound “Gagen Stacey Lee”;
 - (e) Charge 5 - Rule 156(g)(iv): on 30 June 2022, Mr Robinson did threaten and abuse a GWIC Inspector by calling him a “grub” and a “*little fuckwit terrorist*” and saying words to the effect of “*you will get turned upside down, if you come in here*”;

- (f) Charge 6 – Rule 156(g)(iv): on 30 June 2022, Mr Robinson did threaten and abuse a second GWIC Inspector by calling him words to the effect of “*fucking grub*” and “*simpleton*” and by saying “*You scared...what a bunch of fuckin ’ poofsters*”;
- (g) Charge 7 – Rule 21(1)(c): on 2 June 2022, Mr Robinson’s kennels were not kept in a clean and sanitary condition. On 30 June 2022, Mr Robinson had failed to rectify the deficiencies identified on 2 June 2022 and his kennels were again not kept in a clean and sanitary condition; and
- (h) Charge 8 – Rule 151(2): on 30 June 2022, Mr Robinson failed to produce treatment records for the greyhounds in his care and control when requested to do so by a GWIC Inspector.

4. At a hearing conducted on 24 April 2022, at which he was legally represented, Mr Robinson entered pleas of guilty to Charges 1 and 6 and not guilty to Charges 2, 3, 4, 5, 7 and 8.

5. The GWIC found each of the Charges proved and determined to take the following disciplinary action against Mr Robinson:

- (a) Charge 1: 3-month disqualification;
- (b) Charge 2: 3-month disqualification; with the penalties for Charges 1 and 2 to be served concurrently;
- (c) Charge 3: 3-month disqualification;
- (d) Charge 4: 4-month disqualification; with the penalties for Charges 3 and 4 to be served concurrently;
- (e) Charge 5: 8-month disqualification;
- (f) Charge 6: 5-month disqualification; with the penalties for Charges 5 and 6 to be served concurrently;
- (g) Charge 7: 3-month suspension; and
- (h) Charge 8: \$400 fine.

(Decision)

- 6. In imposing these sanctions, the GWIC noted that its staff perform an important role in ensuring the welfare of greyhounds and the integrity of the industry and that any conduct that directs abuse and threats of violence towards its staff “...*will always result in significant periods of disqualification.*”
- 7. By notice of appeal dated 25 May 2023, Mr Robinson appeals the Decision. The appeal is only as to penalty.
- 8. Mr Robinson has also made an application for a stay which is opposed by the GWIC.
- 9. This is the Tribunal’s determination on Mr Robinson’s application for a stay.

Principles applicable to a stay

10. Regulation 14 of the Racing Appeals Tribunal Regulation 2015 (NSW) (**Regulations**) provides, inter alia, that the Tribunal may, on written application by an appellant, order that the decision appealed against is not to be carried into effect, or is to be carried into effect only to the extent specified in the order pending the determination of the appeal. The Regulation is otherwise silent as to the test to be applied for the consideration of a stay application.
11. The manner in which the Tribunal should exercise its discretion to order a stay has been the subject of prior determinations by the Tribunal and is derived from well-established authorities. Those principles may be conveniently summarised as follows:
 - (a) it is not necessary to make out special or exceptional circumstances for a stay: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694-5;
 - (b) an applicant must show that the appeal raises serious issues for determination and that there is a real risk that they will suffer damage or prejudice if a stay is not granted and will not be redressed by a successful appeal: *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [17]-[20];
 - (c) consideration should be given first, as to whether the appeal raises a serious question to be tried, in the sense of arguable grounds, and if so, where the balance of convenience lies: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [18]; *Vaughan v Dawson* [2008] NSWCA 169 at [17];
 - (d) the applicant must demonstrate a proper basis for a stay which will be fair as between the respective interests of the parties (*Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Adeels Palace Pty Ltd v Moubarak* [2009] NSWCA 130 at [5]; *Bar Association of NSW v Stevens* [2003] NSWCA 95 at [83]);
 - (e) whether an appeal, if successful, will be rendered nugatory if a stay is not granted (*TCN Channel 9 Pty Ltd v Antoniadis [No. 2]* (1999) 48 NSWLR 381; *Newcrest Mining v Industrial Relations Commission* [2005] NSWCA 91); and
 - (f) the mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.

The submissions

12. In support of his application for a stay, Mr Robinson submitted, in summary, that:
 - (a) the Charges are first offences;
 - (b) the conduct in respect of Charges 1, 2, 3 and 4 relate to the same course of conduct by Mr Robinson at an impromptu kennel inspection in the period 1-2 June 2022. That conduct, which Mr Robinson concedes was wholly inappropriate and obstructionist to Stewards exercising their functions to conduct unannounced kennel inspections, did not involve conduct that affected the running of any event nor did it involve any violence or physical altercation;

- (c) the conduct in respect of Charges 5 & 6 relate to the same course of conduct by Mr Robinson on 30 June 2022 in which he used offensive language but did not involve any physical violence;
- (d) the conduct in respect of Charges 7 & 8 took place on the same dates as Charges 1 to 6 however, relate to failures to keep kennels in a suitable standard and to keep proper treatment records greyhounds. The objective seriousness of these matters and charges 1 to 6 are at the lower end of the scale;
- (e) the welfare and safety of the Stewards and the animals in Mr Robinson's care were never placed at risk;
- (f) in these circumstances, it is open to Mr Robinson on appeal to argue that the penalty imposed was manifestly excessive and that such offending is routinely dealt with by way of fine. It is however, conceded that it is open to the Tribunal to consider a period of disqualification being imposed on appeal, but it is at the very least, arguable that a penalty or fine or suspension is the more appropriate sanction, particularly when proper regard is had to the objective seriousness of the offending, Mr Robinson's subjective circumstances and the steps that he has taken since offending to address the conduct;
- (g) the balance of convenience favours Mr Robinson in circumstances where:
- he is a licensed public trainer with 11 greyhounds in his care, 10 of which he owns;
 - he earns approximately \$400-\$600 per week from greyhound racing with total income per week including from greyhound racing between \$800 and \$900 per week;
 - he would be put to the expense of making alternative arrangements for the dogs;
 - his elderly mother has dementia and he lives with her as a full-time carer;
 - he suffers from back problems due to a workplace incident in 2019 for which he has had three surgeries. The greyhounds in his care encourage him to remain physically active;
 - he suffers from depression and the greyhounds encourage him to engage in the racing community which has provided friendship and socialisation and generally improved his mental health;
 - he has taken steps to clean the kennels and carried out further recommendations of the Stewards relating to fire safety; and
 - two character references describe him variously to be "honest", "reliable", "compassionate" and "trustworthy".

13. In opposing the application for a continuation of the stay, the GWIC submitted, in summary, that:

- (a) the principal objectives of the GWIC include both to safeguard the integrity of greyhound racing and to maintain public confidence in the industry;

- (b) Charge 1 is one of dishonesty in which Mr Robinson pleaded guilty to the fact that he knowingly and deliberately provided false information to the GWIC in respect of the death of a greyhound in his custody. A period of disqualification for this charge is necessary to provide specific and general deterrence and to ensure that participants do not provide false information to the regulator;
- (c) Charges 3 & 4 concern that Mr Robinson actively obstructing an investigation and refusing to answer questions when directed to do so. A penalty that provides not only specific but general deterrence is necessary to ensure that other participants do not act in a manner that prevents the regulator from undertaking its responsibilities;
- (d) when considering the objective seriousness of Charges 2, 5 & 6, the imposition of a period of disqualification was appropriate and based upon a consideration of the *GWIC Penalty Guidelines* implemented in July 2022 (**2022 Penalty Guidelines**). Those guidelines indicate a minimum proposed penalty of 9-months disqualification for abuse of GWIC staff by a participant;
- (e) the penalties issued in respect of these charges came into effect on 19 May 2023. A hearing of the substantive appeal could be conducted expeditiously on behalf of the regulator subject to the availability of the Tribunal and Mr Robinson. It is therefore submitted that the substantive appeal could be heard so as to minimise any prejudice suffered by Mr Robinson by any short delay.

14. In reply, Mr Robinson submitted that:

- (a) the welfare of the greyhounds was not impacted by his conduct and safeguarding the integrity of the industry was only tangentially affected by that conduct;
- (b) the alleged “dishonesty” was swiftly addressed by Mr Robinson when he produced the greyhound the subject of the Stewards’ enquiries upon their attendance at his property to demonstrate that it was not deceased;
- (c) he did not “obstruct an investigation” by refusing to answer questions. There was never an investigation on foot but merely an impromptu kennel inspection;
- (d) the conduct alleged occurred prior to the implementation of the 2022 Penalty Guidelines which therefore do not apply. Further, analogous cases are routinely dealt with by way of fine;
- (e) the fact that the penalties only came into effect on 19 May 2023, despite the conduct taking place in June 2022, is a factual circumstance that assists Mr Robinson on the stay application because there has been no similar conduct since that time that might suggest there is any risk of repetition in the period leading up to any hearing of the matter;
- (f) the GWIC does not identify any prejudice that it may suffer if the stay is granted.

Consideration

15. In the consideration that follows, the Tribunal has had regard to all of the submissions made by the parties and summarised in the preceding paragraphs. However, the Tribunal proposes to only refer to such of those submissions which are necessary to explain its reasoning.

16. The application for a stay gives rise to two essential issues. First, whether the appeal raises a serious question to be tried, in the sense of arguable grounds, and secondly, where the balance of convenience lies.

As to whether there is an arguable case

17. Mr Robinson submits that the conduct the subject of the Charges is at the lower end of the scale of seriousness and points, in particular, to the fact that the conduct the subject of Charges 2, 3, 4, 5 & 6 relate to the same course of conduct on the days in question and whilst wholly inappropriate and offensive did not involve conduct that affected the running of any event nor did involve any violence or physical altercation.
18. Mr Robinson further contends that the conduct the subject of Charge 1 was swiftly addressed by Mr Robinson when he produced the greyhound the subject of the Stewards' enquiries upon their attendance at his property to demonstrate that it was not deceased.
19. Mr Robinson argues that the conduct in respect of Charges 7 & 8 took place on the same dates as Charges 1 to 6 however, relate to failures to keep kennels in a suitable standard and to keep proper treatment records for greyhounds and that the objective seriousness of these matters and charges 1 to 6 are at the lower end of the scale.
20. Generally, Mr Robinson submits that the welfare and safety of the Stewards and the animals in his care were never placed at risk.
21. A central plank of Mr Robinson's contentions is that conduct such as that the subject of the Charges and, in particular, Charges 1 to 6 and 8, are routinely dealt with in analogous circumstances by the imposition of a fine. He properly concedes, however, that it is open to the Tribunal to consider a period of disqualification being imposed on appeal but that it is at the very least arguable that a penalty or fine or suspension is the more appropriate sanction, particularly when proper regard is had to the objective seriousness of the offending, Mr Robinson's subjective circumstances and the steps that he has taken since offending to address the conduct.
22. Mr Robinson has not, however, identified analogous circumstances in which either the Tribunal or the GWIC has imposed a fine in respect of conduct such as those the subject of the Charges.
23. Further, Mr Robinson disputes the applicability of the 2022 Penalty Guidelines because they were not in place at the time of the offending. Assuming that to be the case, the *GWIC Penalty Guidelines, December 2021 (December 2021 Guidelines)* was in place at the time of the conduct the subject of the Charges.
24. It contains a similar penalty guideline to the 2022 Penalty Guideline in respect of "Abuse of Staff of the controlling body" relating to a breach of Rule 86(g), the predecessor to Rule 156(g). It provides a minimum 9-month disqualification in respect of a first offence. Whilst not bound by these guidelines, the Tribunal would be informed by them in determining any penalty for Charges 2, 3 and 5.
25. Charge 1 is a serious matter even though it was, according to Mr Robinson, swiftly addressed when he produced the greyhound the subject of the Stewards enquiries upon their

attendance at his property to demonstrate that it was not deceased. The GWIC rightly expects participants to be honest in their dealings with the regulator.

26. The facts the subject of Charges 3 and 4 are serious matters as the GWIC rightly expects participants to engage with it honestly and with candour in the exercise of its functions as regulator.
27. Charge 7 is also a serious matter as it impacts the welfare of the greyhound.
28. Whilst the Tribunal finds that there may be arguable grounds impacting the severity of the penalty, it is not persuaded on the arguments presently advanced that a period of either disqualification or suspension would not be warranted in this case especially when regard is had to the objective seriousness of the conduct the subject of the Charges and the December 2021 Guidelines in respect of Charges 2, 3 & 5 notwithstanding Mr Robinson's subjective circumstances and the steps that he has taken since offending to address the conduct.

As to the balance of convenience

29. The Tribunal is satisfied, for the reasons articulated by Mr Robinson, that the balance of convenience favours him. GWIC does not contend to the contrary nor can it point to any prejudice that it will suffer as a consequence of the stay being granted. Any ongoing prejudice to Mr Robison can best be addressed by a hearing taking place as soon as possible in accordance with the requirements of Regulation 12.

Determination and Order

30. The application for a stay of the Decision is refused.

A.P. Lo Surdo SC
Acting Racing Appeals Tribunal