

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI**

**EX TEMPORE DECISION**

**FRIDAY 29 SEPTEMBER 2023**

**APPELLANT GARRY COLES**

**RESPONDENT GWIC**

**GREYHOUNDS AUSTRALASIA RULE 141(1)(a)**

**SEVERITY APPEAL**

**DECISION:**

- 1. Appeal upheld**
- 2. Penalty of 7 weeks suspension of licence imposed; commencement deferred until 2 October 2023**
- 3. Appeal deposit refunded**

1. The appellant, licensed public trainer and breeder, Garry Coles, appeals against the decision of the stewards of GWIC, the respondent, of 31 July 2023 to impose upon him a period of suspension of his licence for a period of 10 weeks for a breach of the prohibited substance presentation rule.

2. The notice of proposed disciplinary action of 18 July 2023 set out the charge for a breach of Rule 141(1)(a) as follows:

“You as a registered public trainer and breeder, while in charge of the greyhound Rebel Garth, presented the greyhound for the purpose of competing in race 9 at the Goulburn meeting on 21 April 2023 in circumstances where the greyhound was not free of any prohibited substance, that being theobromine.”

3. The appellant, when confronted with that notice of disciplinary action at a telephone hearing conducted by the stewards, pleaded guilty. He has maintained that plea of guilty on appeal. This is a severity appeal only.

4. The evidence has comprised the brief of evidence, which in this case is particularly brief, containing the formal proofs, together with the transcript of the stewards' inquiry.

5. The appellant's grounds of appeal essentially can be summarised to say that he considers that his licensing history with nothing prior is such that the penalty was too severe.

6. The nature of the evidence before the Tribunal and the submissions made do not require a lengthy consideration of the evolution of the penalty guidelines nor of their application in great detail to this case, nor in respect of case law as such. Accordingly, the Tribunal's remarks are very much truncated.

7. The Tribunal notes in passing that it today, in an appeal of Peter Parker v GWIC, set out in some more considerable detail matters relating to those issues and to how penalty is determined generally. The appellant may be assisted by looking at a copy of that decision on the GWIC website in due course.

8. The first issue is objective seriousness.

9. In that regard, the penalty guidelines, which the Tribunal is not bound to follow, provide for a first offence, as this is, for this category 2 substance, a period of suspension of 4 weeks.

10. When the stewards dealt with this matter, they originally worked on the basis that he had a relatively brief history in the industry. They reconvened and found out that in fact he had been licensed for some eight years. As a

result of evidence before the Tribunal today, the Tribunal has evidence that, roughly speaking, he has been registered as a licensed person, for some periods of his life, for over 10 years.

11. It is not necessary to more precisely analyse the words of the Penalty Guideline for this breach, in a legal sense, the meaning of the expression “a trainer who has been registered for more than 10 years without any breaches of rules relating to prohibited substances is eligible for a further 25 percent discount on the penalty for a first offence after entering an early guilty plea.” That is, in addition to the 25 percent for an early guilty plea.

12. The Tribunal is satisfied that, in applying a purposive interpretation to the guideline, not being a tramline, that the expression “has been registered for more than 10 years” is met on the facts of this case.

13. Therefore, regardless of parity, it is open to the Tribunal to determine, consistent with the approach adopted by the regulator in numerous decisions for theobromine, to determine, firstly, a suspension is appropriate. And, secondly, that, consistent with the guidelines, that its starting point be a 4-month suspension, but that starting point be reduced by 25 percent for the early plea of guilty and a further 25 percent for his past good record. It is a question of whether, on objective seriousness, any other starting point or a lesser starting point than that period is appropriate.

14. These facts are that the appellant is entirely unable to explain this positive. He has had numerous recent swabs, some 20 in the last 12 months, with nothing positive. The facts of this case are he had two greyhounds presenting to race. He could not handle both of them. He asked a young girl, unnamed, aged 16, licensed, to handle the greyhound from the time it was removed from the kennel for presentation to race until after the swab. He has not spoken to that young girl as to whether the presence of the theobromine may be attributable to her in any fashion at all. He is unable to explain it from his husbandry practices.

15. This, therefore, is, without examining it in great detail, McDonough category 2, as the Tribunal finds that the appellant is unable to explain the presence of the prohibited substance. He cannot establish, the onus being upon him, that he is blameless.

16. Accordingly, the penalty appropriate for the matter is the appropriate starting point.

17. Issues of parity are identified, firstly, by the appellant, who identifies the case of Spiteri, 16 June 2022. There, there was a fine of \$2,000 and a 10-week suspension suspended for 12 months. Spiteri can be distinguished. He was licensed for 45 years with no priors and has an extensive association with the industry. Other facts that are similar are he has genuine remorse,

and a distinguishing factor is that here it is only theobromine and not the substance caffeine and other metabolites.

18. The second case is that of Bray, 29 July 2022, a suspension of 10 weeks, 6 weeks of which was conditionally suspended for 12 months,. Unexplained presentation, 54 years, no priors. But there was a likely explanation and he had a substantial contributor to the industry over a significant period of time.

19. Other cases for which greater parity is appropriate involve Cartwright, 30 July 2023, where there was a guilty plea, licensed for 10 years, no prior, a 2-month suspension.

20. Dance, 5 July 2023, guilty plea, registration history not given, contribution to the industry, a 2-month suspension.

21. Others might be noted such as Parker, etc. But the above is a sufficient analysis.

22. The only issue for determination, therefore, is whether, in addition to the two discounts which have effectively been applied by the guidelines themselves, he is entitled to other discounts.

23. The appellant is a hobby farmer. He operates on the basis of a love of the industry. He has three greyhounds at the present time. He does not own them, he trains for others. He is deeply concerned, and understandably so, that he will lose those greyhounds if he loses the privilege of a licence by way of suspension or otherwise.

24. The subjective factors also note that he has had to repay the prize money of \$5,000, and, of course, he will have continuing ongoing expenses.

25. The appellant is entitled to credit in respect of the fact that he does not seek to blame the young girl – indeed he cannot do so because he does not know – in any way whatsoever, and, as it were, takes this matter cleanly on the chin by reason of the fact that it is an absolute liability, as it were, or a prima facie liability, that this rule has been breached by him simply by the presentation and the presence of the prohibited substance.

26. He expresses his remorse and he is obviously a person of good character, although he does not call character in aid.

27. The appellant does not forfeit any right to subjective discounts as such by reason of any factor on objective seriousness. Should he, over and above his guilty plea and his no prior, have any credit for other matters? The Tribunal would consider it unfair if his subjective facts were to be entirely disregarded on the basis there is no reason to disregard them. They are not weighty, but they at least have some measure of weight to be given to them.

28. The Tribunal determined a starting point of 4 months' suspension, and it just notes in passing it does not consider anything other than a suspension appropriate on the facts and circumstances just outlined.

29. The Tribunal also notes that on the guidelines, it had reduced that to a 2-month suspension by reason of those two 25 percent discounts. The Tribunal allows a further one-week discount for subjective facts when considered in isolation.

30. The Tribunal will round down that 2-month suspension to a period of 8 weeks, less that further one week, means a suspension of 7 weeks.

31. The determination of the Tribunal is that the severity appeal is upheld.

32. The appellant is suspended for a period of 7 weeks.

33. The formal order is that there be a period of suspension of 7 weeks, deferred commencement until midnight on 2 October 2023, noting that the appellant has already served a period of one week.

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

35. This was a severity appeal. It has been successful. It is not opposed.

36. The Tribunal orders the appeal deposit refunded.

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