

IN THE RACING APPEALS TRIBUNAL

RODNEY THOMAS DENNIS

Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DECISION

Hearing date: 26 March 2024

Decision date: 2 April 2024

Appearances: The Appellant appeared in person

Mr M Tutt (Solicitor) for the Respondent

ORDERS

- 1. The appeal is upheld.**
- 2. The determination of the Respondent of 31 January 2024 is quashed.**
- 3. In lieu thereof, the Appellant is disqualified for a period of 7 months, commencing on 6 February 2024.**
- 4. The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice dated 6 February 2024, Rodney Dennis (the Appellant) has appealed against a determination made on 31 January 2024 by the Greyhound Welfare and Integrity Commission (the Respondent) imposing a disqualification of 8 months, commencing on 6 February 2024, for a breach of Rule 141(1)(a) of the *Greyhound Racing Rules* (the Rules). The appeal is as to penalty only.
2. It should be noted that a fine was imposed by the Respondent for a second offence but this is not relevant for present purposes.
3. The hearing of the appeal took place on 26 March 2024, in advance of which I was provided with an Appeal Book (AB) containing relevant information. The Appellant appeared at the hearing in person. The Respondent was represented by Mr Tutt, Solicitor.
4. At the conclusion of the hearing, judgment was reserved.
5. I have been provided with a transcript of the hearing to assist me in the preparation of these reasons.

THE CHARGE

6. On 31 January 2024 the Respondent forwarded a Notice to the Appellant setting out an allegation that he had breached Rule 141(1)(a) of the Rules which was pleaded in the following terms:
 1. *That [the Appellant], as a registered Public Trainer, while in charge of the greyhound 'Intense Power' ("Greyhound") presented the Greyhound for the purpose of competing in race 7 at the Richmond meeting on 20 September 2023 ("Event") in circumstances where the Greyhound was not free of any prohibited substance;*
 2. *The prohibited substances detected in the sample of urine taken from the Greyhound following the Event was 5 β -Androstane-3 α , 17 β -Diol at a mass concentration of 15ng/mL; and*
 3. *5 β -Androstane-3 α , 17 β -Diol at a mass concentration greater than 20ng/mL is a permanently banned prohibited substance under Rule 139(1)(t) of the Rules.*
7. A breach of r 141(1)(a) is colloquially referred to as a "presentation offence" and is an absolute offence.

THE RELEVANT PROVISIONS OF THE RULES

8. Rule 139 of the Rules is in the following terms

139 Permanently banned prohibited substances, and certain offences in relation to them

(1) The following prohibited substances, or any metabolite, isomer or artefact of any of them are deemed to be permanently banned prohibited substances:

...

(t) anabolic androgenic steroids excluding those that are defined as an exempted;

9. Rule 140 is in the following terms:

140 Prohibited Substances subject to a threshold

In addition to the exempted substances, a substance is not a prohibited substance for certain offences identified in these Rules if detected at or below the following thresholds in a sample of the specified sample type:

(a) testosterone as evidenced by the presence of 5 β -Androstane-3 α , 17 β -Diol at or below a concentration of 10 nanograms per millilitre in a sample of urine taken from a female greyhound.

10. Finally, Rule 141(1)(a) is in the following terms:

Greyhound to be free of prohibited substances

(1) The owner, trainer or other person in charge of a greyhound:

(a) Nominated to compete in an event;

(b)

(c)

must present the greyhound free of any prohibited substance.

THE SAMPLE AND ANALYSIS

11. At the material time, the Appellant was a registered greyhound racing participant¹ and the trainer of “*Intense Power*” (the greyhound).

¹ AB 58-60.

12. The greyhound, a female, competed in an event on 2 October 2023 at the Richmond Race meeting. She won the event, and was then subject to the collection of a urine sample which was later analysed.
13. On 10 November 2023, a Certificate of Analysis of the sample was issued, which certified that it contained 5 β -Androstane-3 α , 17 β -Diol (to which I will refer by its common name, BaB) at a mass concentration of 15ng/mL, which was greater than 10ng/mL² (that being the prescribed threshold under the Rules).
14. A confirmation of that analysis was issued on 22 December 2023.³
15. There is no issue that BaB is, when detected in an amount above the prescribed threshold of 10ng/mL, a prohibited substance for the purposes of the Rules.

THE APPELLANT'S RESPONSE TO THE CHARGE

10. The notice issued by the Respondent invited the Appellant to attend a hearing. The Appellant replied by writing to Troy Vasallo, the Chief Steward of the Respondent, in the following terms:⁴

I am writing a submission to your email today dated 31 January 2024 in regards to a positive urine sample from my greyhound Intense Power to category 1 substance 5B - Androstane -3a ,17b-Diol .

As I am pleading guilty to all charges I would prefer the matter to be dealt with in writing.

Firstly I would like to state that at know time have I administered or knowingly administered the substance 5B- Androstane-3a,17b-Diol to any greyhound I have ever trained .

I have been a registered owner trainer and public trainer since 1987 some 37 years and been involved in the industry since 1985 .During this time I have never been suspended or disqualified for any reason and no greyhound I have trained has ever returned a positive swab. Although I have know idea how the substance has entered my greyhound I do know I am guilty according to the rules of racing as testing has shown I have presented my greyhound to compete with a banned substance present in her system.

² AB 22.

³ AB 119 and following.

⁴ AB 62 – 63.

I would like noted and considered when determining the outcome of the enquiry that the random urine sample taken on the day I was notified of the positive result only five weeks later turned out to be negative to any banned substances.

Also know injectables, syringes or medications were found during the search of my premises, refrigerator and cupboards.

Also that the 15ng/ml indicated by the test results where a threshold of 10ng/ml would not be seen as an excessive amount of the substance being present. This result in my opinion would point more towards the possibility of the substance being unknowingly administered or ingested at some stage before she competed.

I would suggest that had I been administering Androstane to Intense Power I would have continued to do so and the random test carried out by inspectors would have also returned a positive result. My research indicated that when Androstane is administered either one off use or ongoing use it creates a build-up in muscle and fat tissue as it's an oil based substance and can show up in testing for months later something that the random test result from my greyhound would suggest that it wasn't being administered.

As far as the medical records are concerned I was unaware that wormers were medications and needed to be recorded , in hindsight I should have been more professional and astute with my record keeping. I assumed the veterinary records were sufficient.

Finally I would like the panel when determining the appropriate penalty to take all these things into consideration. That for 37 years I have been a registered public greyhound trainer during this time I have never been brought before stewards , suspended or disqualified for any reason. I have trained winning greyhound s in five separate decades up until now. No Greyhound I have trained has ever returned a positive swab to any illegal substance a greyhound I trained most recently won 10 races and was swabbed on no less than five occasions The welfare and health of all greyhounds in my care has always been my number one priority.

Previous Decisions for category 1 substances where the panel's discretionary powers were used because there was an element of doubt on how the substance entered the greyhound. Also where the same substance was detected on three different occasions and fines were imposed.

Example 1 - 21/8/2020 Daryl Thomas : 20 weeks (wholly and conditionally suspended for 12 months)category 1 substances Ketamine (dissociative anaesthetic) Hydroxy Xylazine (Horse Tranquilliser) Oxazepam-Benzodiazepine (sedative) Example 2. November 2013 : Jason Mackay Substance - 3 charges of 5B -Androstane -3a,17b-Diol . Fines issued on all 3 charges. Over the years I have also taken several retired greyhounds for pets I currently have former million dollar chase finalist Big Butters so my focus is also on welfare for greyhounds not just training.

This has been an extremely challenging and stressful process for myself and family I would appreciate the panels careful and diligent consideration when determining the penalty for this matter.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

16. Aside from what was contained in the Appellant's correspondence to Mr Vasallo in response to the charge, the Appellant provided a further statement in support of his appeal which was in the following terms:

I am writing this letter of apology as a formal submission regarding my appeal on the severity of my decision. I will start by outlining that I am fully understanding and supportive of the importance of having a governing body control the use of banned and illegal substances in the greyhound racing industry. I'm aware that my position as a greyhound trainer the onus is on myself to present every greyhound to the track free from these substances and on this occasion I did not.

In these circumstances, surrounding my greyhound Intense Power, I am unable to provide evidence/reason as to why this was in my greyhound's system at the time of the race, as I have never used or intend to ever use these or any types of prohibited substance. To give a reason would be purely speculation and not based on fact and it was for this reason I pled guilty based on the facts presented to me, in which was the swab that was taken after the race.

I have taken full responsibility for this by doing so, as the onus falls on my responsibilities as a greyhound trainer.

I would like to express my sincerest apologies to the Greyhound Welfare Integrity Commission for this matter, I have never thought in the last 37 years of training greyhounds I would be in this situation. As greyhounds have been a part of my life for as long as I can remember, I currently home 2 retired greyhounds that live inside my house and pride myself on treating both my racing dogs and retired dogs I have had over the years like my family.

I ask that you take this into consideration, along with my other submissions when processing my appeal.

17. In addition, the Appellant relied upon a testimonial from Andrew Couch which was in the following terms:

My name is Andrew Crouch I was employed for 35 years and in charge of waste disposal at Liverpool Hospital. I have known Rodney Dennis for 22 years and since I have known him I have found him to be a very trustworthy person with the highest integrity.

Since 2014 I have been involved in the greyhound industry as a trainer along with my son Adam at any given time we have had 5 racing dogs in our kennels. In 2017 because of mine and Adams work commitments we asked Rodney if he could help out on occasions with our dogs as we knew him as a friend but also as an astute and caring person when it came to greyhounds and their care. We allow nobody else other than Rodney to touch our racing greyhounds we hold him in such high regard. During his time helping us out we have

qualified 2 greyhounds for the million dollar chase final and trained over 100 winners. Rodney has been an integral part of our team over 7 years not only training his own greyhounds but helping us whenever needed.

In 2019 my son Adam started studying to be a paramedic and so that Adam could attend his paramedics courses Rodney would come every morning and look after and tend to our race dogs whenever required even though he has his own greyhounds and family commitments. I hope my reference give an insight into the type of person he is.

18. At the hearing of the Appeal, the Appellant emphasised his history of 37 years in the greyhound racing industry. He explained that during that period, even though he had generally only trained one or two greyhounds at a time, he had enjoyed considerable success, having trained more than 150 winners, including in prestigious events.⁵ He submitted, in effect, that the penalty which had been imposed did not properly reflect his history and stature in the greyhound racing industry.⁶

19. The Appellant also emphasised⁷ that a subsequent sample taken from the greyhound which was analysed was negative, and submitted that this was evidence of the fact that he was not in the habit of allowing his greyhounds to race with prohibited substances in their system.

Submissions of the Respondent

20. On behalf of the Respondent, Mr Tutt acknowledged the Appellant's expressions of remorse, and his unequivocal acceptance of his obligations as a trainer. Whilst Mr Tutt pointed out that part of the Appellant's history included a period as an owner/trainer (as opposed to a public trainer) which would have involved less exposure to the testing regime, he accepted that the Appellant was a person of blemish-free character over a period of 37 years in the greyhound racing industry, and described that record as "exceptionally good"⁸. That said, it was Mr Tutt's overarching submission that the entirety of the Appellant's subjective case had

⁵ At T 10 – 11.

⁶ At T 11.

⁷ At T 11.

⁸ At T 6.

been taken into account by the Respondent in assessing the penalty which was imposed, and that such penalty remained appropriate.

21. Mr Tutt pointed to the fact that the reasons for the presence of BaB in the greyhound remained unexplained, but in doing so acknowledged that the Appellant had not been charged with administering the substance. However, Mr Tutt submitted that it remained the case that BaB is a permanently banned substance in a dosage above the prescribed threshold, and that in these circumstances there was a fundamental need for any penalty to ensure that the integrity of, and public confidence in, the greyhound racing industry were maintained. Mr Tutt submitted that an important part of doing so was to ensure that there was a level playing field amongst competing greyhounds, an objective which was put at risk by the presence of permanently banned substances.

22. In all of these circumstances, Mr Tutt submitted that the objective seriousness of the offending was high.

PREVIOUS DETERMINATIONS OF THE TRIBUNAL

23. Mr Tutt referred me to a number of previous determinations of the Tribunal which, he submitted, supported the conclusion that the appeal should be dismissed. I considered those determinations in an appeal of *Gatt*, which was heard the day before the present appeal. As I observed in that case, whilst it is appropriate that those determinations be considered, it is necessary to bear in mind that no two cases are identical, and that what is sought when determining penalty is not numerical equivalence in the penalty imposed between cases, but the consistent application of principle. Further, for the reasons explained in *Gatt*, previous determinations of the Respondent (as opposed to those of the Tribunal) are subject to the further limitation that they are not required to, and thus do not, set out the entirety of the reasoning process which has been adopted, nor do they enumerate the entirety of the considerations taken into account in determining penalty.

24. With all of those considerations in mind, I repeat the analysis of those previous decisions which I undertook in *Gatt*.

Staines

25. In *Staines*,⁹ a disqualification of 24 weeks (i.e. 6 months) had been imposed by the Respondent following a plea of guilty to a breach of the then equivalent of r 141(1)(a). There were two prohibited substances detected in the relevant sample.

26. The Tribunal observed that it was not incumbent upon the Respondent to establish “how, when, why or by what route” the substances came to be present in the greyhound.¹⁰ The Tribunal found¹¹ that there was no evidence of how the substance came to be administered.

27. The Tribunal noted that the relevant guideline at that time provided a starting point of a disqualification of 52 weeks¹². It was acknowledged that the Appellant had been a trainer for 43 years, 32 of which were (essentially) blemish-free.¹³ The Tribunal concluded¹⁴ that the Appellant’s career must have involved “numerous tests by swabbing of greyhounds” which had resulted in “no prior positives”. The Appellant also relied on independent evidence of his prior good character¹⁵ although it must be said that such evidence appears to have been more limited than that which is before me in the present case. The Tribunal took into account the Appellant’s “contribution to the community”¹⁶ along with the fact that the level of the substances detected was low.¹⁷

28. Leaving aside the discount for the plea, the Tribunal made a number of observations¹⁸ concerning the application of percentage discounts to reflect subjective circumstances. For the reasons I expressed in *Gatt*,¹⁹ that approach is contrary to principle and should not be followed.

⁹ A decision of 11 February 2019.

¹⁰ At [13].

¹¹ At [14].

¹² At [20].

¹³ At [32].

¹⁴ At [24].

¹⁵ At [26]-[27].

¹⁶ At [29].

¹⁷ At [29].

¹⁸ At [32].

¹⁹ At [47]-[48].

Arietos

29. The offender in this case²⁰ was charged with administering a prohibited substance, as well as a presentation offence equivalent to that to which the Appellant has pleaded guilty. The administration offence was dismissed. In respect of the presentation offence, the Respondent imposed a penalty of 10 months. The substance in question was BaB²¹ in an amount more than double the permitted threshold.²² The offender, who had been a registered trainer of 31 years without any relevant history, had pleaded guilty.²³ At that time, the relevant guideline prescribed a starting point of a 12 month disqualification.²⁴

Comito

30. The offender in this case²⁵ pleaded guilty to a presentation offence arising from the detection of BaB of approximately double the permissible threshold.²⁶ He had held a trainer's licence for a period of 11 years without any prior offending.²⁷ A 9 month disqualification was imposed.²⁸

Scott

31. The offender in this case²⁹ was charged with a presentation offence arising from the detection of BaB. The offender pleaded guilty and a disqualification of 9 months was imposed.³⁰ In reaching its determination, the Respondent took into account the fact that the offender had been registered for less than a year without any disciplinary history, along with the fact that she had "changed her husbandry practices".³¹ The Respondent also referred to having taken into account in relation

²⁰ A decision of the Respondent dated 31 January 2020.

²¹ At [3].

²² At [18].

²³ At [18].

²⁴ At [18].

²⁵ A decision of the Respondent dated 2 February 2021. The offender also pleaded guilty to another offence which is not relevant for present purposes.

²⁶ At [7].

²⁷ At [7].

²⁸ At [7].

²⁹ A decision of the Respondent dated 25 June 2021.

³⁰ At [7].

³¹ At [8].

to the offender’s “*personal, financial and medical circumstances*”.³² No further detail was provided of those circumstances.

Norman

32. The offender in this case³³ was charged with a presentation offence, the substance being BaB. He had been a registered trainer for 31 years, and had pleaded guilty.³⁴ His record as a trainer was not blemish free, having been found guilty of a prior presentation offence (albeit in 2008).³⁵ A disqualification of 8 months was imposed.³⁶

Burgin

33. The Appellant in this case³⁷ had pleaded not guilty to a presentation offence which involved the detection of a number of substances, including BaB.³⁸ He was found guilty at first instance and disqualified for a period of 12 months.³⁹

34. The Tribunal dismissed the appeal as to the finding of guilt.⁴⁰ The appeal against severity of penalty was also dismissed.⁴¹

35. In addressing the question of penalty, the Tribunal observed⁴² that permanently banned substances have a marked impact on the integrity of greyhound racing and that offending of this kind required the imposition of a “substantial protective order”. It was noted⁴³ that the Appellant had been “associated” with the greyhound racing industry for 10 years, 5 of which were as a public trainer and breeder. He had incurred penalties for two prior breaches in that time, for which he was suspended (in the first instance) for a period of 14 months, and (in the

³² At [8].

³³ A decision of the Respondent dated 2 March 2022.

³⁴ At [6].

³⁵ At [6].

³⁶ At [5].

³⁷ A decision of the Tribunal of 22 November 2023

³⁸ At [3] – [4].

³⁹ At [1].

⁴⁰ At [31] – [32].

⁴¹ At [73].

⁴² At [41].

⁴³ At [48].

second instance) fined.⁴⁴ Importantly, the Tribunal observed⁴⁵ that a person with a lengthy and blemish free history in the greyhound racing industry has a legitimate expectation that, in the event of the commission an offence, he or she will be dealt with more leniently than a participant who's history is less creditable. As I explained in *Gatt*⁴⁶ I agree with that proposition, and it should be applied in the present case.

36. Finally, the matter of *Gatt* itself has a number of similarities to the present case. Like the present Appellant, the Appellant in *Gatt* had a blemish free record, although over an even longer period of 47 years. The present Appellant, like the Appellant in *Gatt*, is obviously remorseful, and has adduced evidence of his positive good character in the form of the testimonial from Mr Crouch. The reasons for the presence of the substance in the greyhound in *Gatt* were similarly unexplained. The amount of the substance detected in *Gatt* was substantially greater than is the position in this case.

37. In *Gatt*, I ultimately came to the conclusion that a disqualification of 6 months was appropriate.

CONSIDERATION

38. In *Gatt* I set out a number of considerations relevant to the assessment of penalty in a matter of this nature.⁴⁷ Those considerations can be summarised as follows:

- (i) the principal objectives of the Commission under the Act are to
 - (a) promote and protect the welfare of greyhounds;
 - (b) safeguard the integrity of greyhound racing and betting; and
 - (c) maintain public confidence in the greyhound racing industry.
- (ii) any presentation offence necessarily has the fundamental capacity to adversely affect, and possibly erode, each and every one of those objectives;

⁴⁴ At [50].

⁴⁵ At [52].

⁴⁶ At [48].

⁴⁷ Commencing at [49].

- (iii) it follows that any presentation offence will, by its very nature, be regarded as objectively serious;
- (iv) the degree of objective seriousness of any offence will always be a matter to be determined according to the facts and circumstances of a particular case;
- (v) relevant considerations bearing upon that determination in the case of a presentation offence may include the nature and amount of the prohibited substance relative to the applicable threshold, and whether it was administered on veterinary advice;
- (vi) relevant to the protection of the integrity of the greyhound racing industry, and to the need to maintain public confidence, is the promotion of a level playing field; and
- (vii) general deterrence remains a paramount consideration in the determination of penalty for an offence of this kind.

39. The seriousness of the Appellant's offending must be regarded as high, particularly having regard to the level of the substance which was detected, which was almost one and a half times the prescribed threshold.

40. I am satisfied that the Appellant is genuinely remorseful, and his plea of guilty must attract a discount of 25%. Over and above that, he is entitled to have the manner in which he has approached this matter taken into account in his favour. He has, from the outset, unequivocally acknowledged his guilt, and his pragmatic and remorseful approach to the resolution of the matter has saved the time and effort of a disciplinary hearing. Personal deterrence has no role to play in the assessment of penalty in this case.

41. Overall, the Appellant has a strong subjective case supplemented by independent evidence, which I accept, of his prior good character. There is no doubt that the Appellant takes his responsibilities as a trainer seriously. He is entitled to be given full credit for all of those matters. In particular, for the reasons I have stated, he

has a legitimate expectation that he will be treated in a more lenient way than a person who does not have such a creditable history.

42. However, as I observed in *Gatt*,⁴⁸ it is not permissible to allow the weight ascribed to an offender's subjective case to result in the imposition of a penalty which is not properly reflective of the objective seriousness of an offence. It remains of the utmost importance that any penalty imposed for offending of this nature act as a deterrent to those who might be minded to act in a similar way, and that it give effect to the Respondent's statutory objectives.

43. For all of these reasons, the offending must meet with a period of disqualification. In my view, taking all relevant factors into account, and having regard to the previous determinations of the Tribunal which I have considered, the appropriate period of disqualification is one of 7 months.

44. As the Appellant has been successful in his appeal, the appeal deposit should be refunded.

ORDERS

45. For the reasons given, I make the following orders:

1. The appeal is upheld.
2. The determination of the Respondent of 31 January 2024 is quashed.
3. In lieu thereof, the Appellant is disqualified for a period of 7 months, commencing on 6 February 2024.
4. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

2 April 2024

⁴⁸ At [59].