

IN THE RACING APPEALS TRIBUNAL

JAMES CHAPMAN
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DECISION

Date of hearing: 8 April 2024

Date of decision: 15 April 2024

Appearances: Appellant – Self represented

Dr A Groves for the Respondent

Decision:

1. The appeal is dismissed.
2. The determination of the Respondent of 29 November 2023 is confirmed.
3. The Appellant is suspended for a period of 10 weeks, commencing on 22 April 2024.
4. The appeal fee is to be forfeited.

INTRODUCTION

1. By a Notice of Appeal filed on 5 December 2023,¹ James Chapman (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 29 November 2023,² imposing a suspension of 10 weeks for a breach of r 141(1)(a) of the *Greyhound Racing Rules* (the Rules).
2. A stay of the Respondent's decision was previously granted by the Tribunal. The appeal is as to the severity of the penalty only.
3. The appeal was heard on 8 April 2024, at which time judgment was reserved. I have been provided with an Appeal Book (AB) containing relevant documentary material, and I have taken into account the submissions of both parties which are summarised below.

FACTUAL BACKGROUND

4. The factual background to the appeal is not in dispute and I draw the following summary from the submissions of the Respondent.³
5. The Appellant has, for varying periods, been registered as a participant in the greyhound racing industry both in New South Wales and Queensland.⁴ On 28 September 2023, "*Dancing Warrior*" (the greyhound), of which the Appellant was the owner and trainer, competed in an event at a race meeting held in Coonamble, New South Wales. The greyhound won the event and was subject to the taking of a urine sample. That sample was subsequently analysed and found to contain Theobromine.⁵ Theobromine is a chemical element of caffeine⁶ and is a prohibited substance under the Rules.⁷

¹ AB 38 – 41.

² AB 35 – 37.

³ AB 42 – 47.

⁴ See [10] below.

⁵ AB 14 – 27.

⁶ T 3.15 – T 3.16.

⁷ Rule 137.

THE NOTICE OF DISCIPLINARY ACTION AND CHARGE

6. On 24 November 2023, the Respondent wrote to the Appellant notifying him of a charge contrary to r 141(1)(a) of the Rules in the following terms:⁸

Charge 1 Rule 141(1)(a) - Particulars:

The particulars of the charge are:

- 1. That you, as a registered Public Trainer and Owner, while in charge of the greyhound Dancing Warrior (“**Greyhound**”), presented the Greyhound for the purpose of competing in race 2 at the Coonamble meeting on 29 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 Theobromine; and*
- 3. Theobromine is a prohibited substances under Rule 137 of the Rules.*

...

You are notified that GWIC is considering taking disciplinary action against you under section 58(3) of the Act, by considering imposing the following disciplinary action referred to in section 59(1) of the Act. The proposed disciplinary action is as follows:

Charge 1 (Rule 141(1)(a), Rules): Four Month Suspension

THE APPELLANT’S RESPONSE TO THE CHARGE

7. Ms Fiona Geary, the Advocacy Manager of the Greyhound Breeders, Owners and Trainers Association (GBOTA), responded on behalf of the Appellant in the following terms:⁹

The NSW GBOTA presents this submission on behalf of participant James Chapman who has reached out to the participant support line after learning of his positive swab to Theobromine.

James has held his trainer's license for a short period of time and has resumed training around May 2023.

How the positive swab occurred-

James has pointed out, that when he was driving to the track he pulled over to buy a cup of coffee. During his trip, some of the coffee spilt and even though he wiped the coffee off the carpet, the greyhound had two licks of the stain on the carpet. James

⁸ AB 1 – 2.

⁹ AB 31.

did not realise at the time that what the greyhound licked would result in a positive swab.

James has agreed that this is a learning curve for him and would never intentionally seek to gain an unfair advantage with his greyhounds. He has since bought a new Van which will help him transport his greyhounds easier free of contaminants.

Plea-

Mr Chapman would like to plead guilty to presenting his greyhound not free of a prohibited substance. He requests if he could have a fine over time and have the hearing conducted in writing based off the information provided in this submission.

THE RESPONDENT'S DETERMINATION OF PENALTY

8. On 29 November 2023, the Respondent wrote to the Appellant¹⁰ advising that it had determined to impose a 10-week suspension commencing on 8 December 2023 and expiring on 16 February 2024. In doing so, the Respondent advised that it had taken into account the Appellant's plea of guilty and the submissions made on his behalf by Ms Geary.¹¹ In that regard, the Respondent's correspondence stated the following:¹²

In taking this disciplinary action, the decision makers considered all evidence, including:

- *Guilty plea*
- *Mr Chapman's short registration history of six months*
- *First offence*
- *GWIC penalty guidelines.*

10. It should be noted at this point that the reference to the Respondent having a "short registration history of six months" was not correct. That error may have come about as a consequence of the reference in Ms Geary's submissions to the Appellant having "held his trainer's licence for a short period of time".¹³ The Appellant's registration history before the Tribunal in fact establishes the following:¹⁴

¹⁰ AB 32.

¹¹ AB 36 at [8].

¹² AB 36 at [9].

¹³ AB 31.

¹⁴ AB 29.

APPLICATION DATE	LICENCE TYPE	LICENCE STATUS	STATE	START	END
19/12/18	Owner	Approved [expired]	NSW	19/12/18	07/04/19
08/04/19	Owner/Trainer	Approved [expired]	NSW	08/04/19	30/06/21
12/04/23	Attendant	Approved [expired]	QLD	12/04/23	27/06/23
28/06/23	Trainer Cl. 3	Approved	QLD	28/06/23	30/06/23
03/04/23	Owner	Approved	QLD	03/04/23	30/06/23

11. As I read that history, save for a period between 1 July 2021 and 11 April 2023, the Appellant was registered in some capacity or other, in New South Wales or Queensland, between 19 December 2018 and 30 June 2023.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

12. For the purposes of the appeal, the Appellant relied on the submissions previously made on his behalf by Ms Geary, particularly as to the circumstances which, on his case, gave rise to the presence of the substance in the greyhound's system.

13. The Appellant explained that at present, he has 2 greyhounds in training, and is the owner of a further 8 greyhounds which are placed with various trainers Australia-wide.¹⁵ Participation in the greyhound racing industry accounts for part of the Appellant's income, outside of which he is employed on a part-time basis working with youths in the community.¹⁶

Submissions of the Respondent

14. On behalf of the Respondent, Dr Groves stressed the penalty guidelines which provide a starting point of a suspension of 4 months in the case of a category 2 substance such as Theobromine. Dr Groves submitted that the suspension of 10 weeks which was imposed reflected the Respondent having taken into account the Appellant's plea of guilty, along with all other components of his subjective case.

¹⁵ T 9.3 – T 9.10.

¹⁶ T 9.23 – T 9.31.

15. Dr Groves expressly acknowledged that the Appellant's history in the greyhound racing industry was more extensive than was understood by the decision-maker(s) to have been the case when making the determination. However, she submitted that in all of the circumstances this did not (and should not) have any impact on the assessment of an appropriate penalty.
16. Finally, Dr Groves drew my attention to previous determinations of the Tribunal, and of the Respondent, in cases of presentation offences involving Theobromine. Dr Groves submitted that the penalty which had been imposed in the present case was generally consistent with those determinations.

CONSIDERATION

17. For the reasons explained in the course of the hearing, it is not incumbent upon me to make a positive finding as to how the substance came to be in the greyhound's system, and I do not do so in the present case. Whilst the explanation advanced by Mr Geary on the Appellant's behalf may well be a plausible one, the more important consideration is that the Appellant has taken steps to address the circumstances which may have given rise to his offending on this occasion. That is obviously to his credit, and is a matter which he is entitled to have taken into account in his favour.
18. The offence to which the Appellant has pleaded guilty is colloquially referred to as a "presentation offence". Accordingly, as I explained to the Appellant in the course of the hearing, it is not suggested that he was deliberately responsible for *administering* the substance to the greyhound. That said, it remains the case that any presentation offence is serious, and liability is absolute. As I have previously observed, offending of this nature must be met with zero tolerance.¹⁷ There is a fundamental need, when assessing penalties for such offending, to ensure that the integrity of, and public confidence in, the greyhound racing industry, and a level playing field, are maintained. As a consequence, general deterrence is an

¹⁷ See *Gatt v Greyhound Welfare and Integrity Commission (Gatt)* (28 March 2024) at [59].

important consideration when determining penalty. In the present case, I am satisfied that personal deterrence is not an issue.

19. The Appellant pleaded guilty at the earliest opportunity, which entitles him to a discount. In addition, he comes before the Tribunal as a person of unblemished character in the industry, with a history which extends over a longer period than that which was taken into account by the decision-maker(s). The Tribunal has previously recognised the importance, when assessing penalty, of a lengthy and blemish-free history.¹⁸ What might be regarded as “lengthy” for that purpose will always be a question of degree. Any period of blemish-free history will be relevant, but as a matter of common sense, the longer the history, the greater the weight which will be attached to it.

20. I have taken into account the Appellant’s personal circumstances. Clearly, a suspension will have some effect upon his personal financial position. At the same time, his work in the greyhound racing industry does not account for the entirety of his income, and he has part-time work available to him which he is pursuing.

21. I have had regard to those previous determinations, both of the Tribunal and the Respondent, to which my attention has been drawn. Although, as Dr Groves acknowledged, assessing a penalty is not a comparative mathematical exercise, previous determinations may nevertheless be important to ensure consistency in the application of principle. However, it also needs to be said that because the determinations of the Respondent are expressed in less detail than those of the Tribunal, they may be of less assistance.¹⁹

22. I should make some brief reference to each of those determinations, all of which involved presentation offences involving the presence of Theobromine.

¹⁸ See *Gatt* at [48] citing the previous comments of the Tribunal in *Burgin* (22 November 2023).

¹⁹ See *Gatt* at [33].

23. In *Woods*²⁰ the participant pleaded guilty. In determining that a 6-week suspension was appropriate, the Respondent had regard to the plea, the participant's "registration history, good record and co-operative and forthright evidence", the fact that it was the participant's first offence, the penalty guidelines, and the fact that in decision makers were "confident that a likely cause for the detection of the substance could be determined".²¹ The submissions of Dr Groves noted that the participant in that case had been a registered participant for a period of 7 years.²²

24. *Clarke* was a determination of the Tribunal²³ in which a 4-week suspension imposed by the Respondent was upheld. The Appellant in that case had challenged the issue of both liability and penalty, and was thus not entitled to a discount to reflect a plea of guilty. The Tribunal took into account a blemish-free history of more than 40 years, and the financial impact which would result from a suspension.²⁴

25. In *Stephens*,²⁵ the participant pleaded guilty. In imposing a 4-week suspension, the Respondent took into account the participant's plea, his blemish-free record of being a registered trainer for 29 years and an attendant for 33 years, his personal and financial circumstances, his review of husbandry practices, and his good character.²⁶

26. In *Boersma*,²⁷ the participant pleaded guilty. In imposing a 4-week suspension, the Respondent took into account the participant's plea, his blemish-free history as a trainer of 48 years, his personal circumstances, his explanation of the source of the substance, and his review of his husbandry practices.²⁸

²⁰ A determination of the Respondent of 22 December 2023 commencing at AB 48.

²¹ At [9], AB 49 – 50.

²² Submissions at [29], AB 46.

²³ 2 July 2021 commencing at AB 51.

²⁴ At [65]-[66].

²⁵ A determination of the Respondent dated 22 July 2020 commencing at AB 63.

²⁶ At [6], AB 64.

²⁷ A determination of the Respondent dated 22 July 2020 commencing at AB 65.

²⁸ At [6], AB 66.

27. Finally, in *Beddoes*,²⁹ the participant pleaded guilty. In imposing an 8-week suspension, the Respondent took into account the participant's plea, his blemish-free history of 20 years, his personal circumstances, his review of husbandry practices, and the explanation provided as to the possible source of the substance.³⁰

28. Bearing these determinations in mind, and noting my earlier observations as to general and personal deterrence,³¹ the following matters are relevant to an assessment of the appropriate penalty in the present case:

- (i) the early plea of guilty;
- (ii) the position taken by the Appellant in terms of having the original determination made on the papers;
- (iii) the explanation advanced by the Appellant as to the circumstances which resulted in the presence of the substance in the greyhound;
- (iv) the fact that the Appellant has taken steps to address such circumstances;
- (v) the Appellant's blemish-free history as an industry participant; and
- (vi) the fact that there will be some degree of financial impact from any suspension imposed.

29. Taking all of these matters into account, I have come to the view that a 10-week suspension is appropriate. That suspension takes into account all of the factors to which I have referred at [28] above. True it is that the decision-maker(s) acted under a misapprehension regarding the Appellant's history as an industry participant when imposing the original penalty. However, this appeal has proceeded as a hearing *de novo*, in which I have taken the correct history into account.

²⁹ A determination of the Tribunal dated 22 June 2020 commencing at AB 67.

³⁰ At [6], AB 68.

³¹ At [19] above.

30. Importantly in my view, a 10-week penalty is entirely consistent with the previous determinations which I have summarised above. It is noteworthy that all of the participants involved in such determinations were able to rely upon a substantially longer blemish-free history than that of the Appellant.

31. As a stay was previously granted, the suspension will commence after a short period to allow the Appellant to make any necessary arrangements in relation to the greyhounds which are presently in his care and control, or which are placed with other trainers.

ORDERS

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

1. The appeal is dismissed.
2. The determination of the Respondent of 29 November 2023 is confirmed.
3. The Appellant is suspended for a period of 10 weeks commencing on Monday, 22 April 2024.
4. The appeal fee is to be forfeited.

THE HONOURABLE G J BELLEW SC

18 April 2024