

20th January 2020



PANEL: Mr. T. McGrath (Chair), Ms. T. Johnston, Mr. G. Loch

Reasons for decision – authorised for public dissemination.

On 11th December 2019 Greyhound Racing SA (GRSA) registered trainer, Mr Ronald Schadow, appeared before the Integrity Hearings Panel (IHP) in relation to matters arising from a routine kennel inspection by GRSA Welfare Compliance Officers at his registered address on 18th February 2019.

During the inspection, two fox tails were discovered on the premises of Mr Schadow.

Mr Schadow was subsequently charged by Stewards with the following two (2) offences:

Charge number 1 of 2

Breaching Greyhounds Australasia Rule 86B(1)(b) which reads as follows:

R86B Offences relating to luring and baiting

- (1) A person who, in the opinion of the Stewards or Controlling Body-
 - (b) attempts to possess, or has possession of, or brings onto, any grounds, premises or within the boundaries of any property where greyhounds are, or are to be trained, kept or raced, any live animal, animal carcass or any part of an animal for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it; or

shall be disqualified for a period of not less than 10 years and, in addition shall be fined a sum not exceeding such amount as specified in the relevant Act or Rules, unless there is a finding that a special circumstance exists, whereupon a penalty less than the minimum penalty may be imposed.

Particulars of the Charge

1. Mr Schadow was, at all relevant times, a trainer registered by Greyhound Racing SA and a person bound by the Greyhounds Australasia Rules.
2. GRSA Welfare Compliance Officers conducted a kennel inspection at his registered kennel address on Monday 18th February, 2019.



3. During that inspection, two fox tails were discovered on the premises of the registered kennel address.
4. A fox tail is a part of an animal.
5. Mr Schadow took possession of a fox tail and brought it onto his premises where greyhounds are trained and kept, for the purpose of using it as bait, quarry or lure to entice, excite or encourage a greyhound to pursue it.

Charge number 2 of 2

Breaching Greyhounds Australasia Rule 86B(1)(a) which reads as follows:

R86B Offences relating to luring and baiting

- (1) A person who, in the opinion of the Stewards or Controlling Body-
 - (a) uses in connection with greyhound training, education or preparation to race, or racing, any live animal, animal carcass or any part of an animal whether as bait, quarry or lure, or to entice, excite or encourage a greyhound to pursue it or otherwise; or

shall be disqualified for a period of not less than 10 years and, in addition shall be fined a sum not exceeding such amount as specified in the relevant Act or Rules, unless there is a finding that a special circumstance exists, whereupon a penalty less than the minimum penalty may be imposed.

Particulars of the Charge

1. Mr Schadow was, at all relevant times, a trainer registered by Greyhound Racing SA and a person bound by the Greyhounds Australasia Rules.
2. By his own admission, Mr Schadow used part of an animal, namely fox tails, for the purpose of using them as bait, quarry or lure to entice, excite or encourage a greyhound to pursue.
3. This activity was undertaken whilst a greyhound or greyhounds were being trained or educated on a walking machine located at the registered kennel address.

For reasons that will become clearer below, Mr Schadow was also charged with a third offence:

Charge number 3 of 3

Breaching GAR86(e) which reads as follows:

R86 Offences

A person (including an official) shall be guilty of an offence if the person-

- (e) being an owner, trainer, attendant or a person having official duties in relation to greyhound racing, refuses or fails to attend or to give evidence at an inquiry, or produce a document or other thing in relation to an investigation, examination, test or inquiry pursuant to these Rules when directed by the Controlling Body, Stewards or the committee of a club to do so;



Particulars of the Charge

1. Mr Schadow was at all relevant times, a trainer registered by Greyhound Racing SA and a person bound by the Greyhounds Australasia Rules.
2. Mr Schadow had been advised in a letter dated 14th November 2019 that his attendance was required at an inquiry.
3. That letter stated 'You are further advised failure to attend this inquiry is a breach of GAR86(e), the inquiry may be held in your absence and charges may be laid pursuant to the GRSA Rules of Greyhound Racing.'
4. Mr Schadow failed to attend an inquiry on 26th November 2019 which in the opinion of the Stewards is a breach of the Rules.

By way of provision of a plea notification form delivered to GRSA premises on 9th December 2019, Mr Schadow elected to plead not guilty to each of the three charges.

It is appropriate to note a number of matters regarding Charges 1 and 2:

1. Mr Schadow has been charged under the Greyhounds Australasia Rule 86B which is set out above.
2. GAR6 notes that "In the event of the application of the Local Rules of a Controlling Body other than Greyhounds Australasia Rules, the Local Rules of the Controlling Body shall apply and form part of these Rules. GAR7 goes on to direct that "The Local Rules of a Controlling Body take precedence over the Greyhounds Australasia Rules."
3. GRSA Local Rule LR99(SA) addresses matters that may be appropriately described as being in a similar domain as that which GAR86B seeks to address, namely, "Offences Relating to Live Game" in the former, and, "Offences Relating to Luring and Baiting" in the latter.
4. Where there is inconsistency between the Greyhounds Australasia Rules and Local Rules, it is noted above that the Local Rules will take precedence.
5. It is the firm view of the IHP that there is no inconsistency between the Greyhounds Australasia Rules and Local Rules in respect of the charges that Mr Schadow was directed to address – it is to be made patently clear that LR99(SA) is supplemented by GAR86B.

In relation to Charge 3, it is appropriate to note the following:

1. Mr Schadow was notified that he was required to attend before the IHP on 23rd October 2019 by letter dated 10th October 2019.
2. Mr Schadow, quite reasonably, sought legal advice in relation to the charges.



3. On 18th October 2019 GRSA received communication from Mr Schadow's legal adviser requesting that the matter be adjourned to allow instructions to be taken and advice given. That request was granted.
4. Mr Schadow was subsequently advised that he was required to attend before the IHP on 26th November 2019 by letter dated 12th November 2019.
5. Mr Schadow's legal adviser communicated with the Chair of the IHP via email on 22nd November 2019, indicating that Mr Schadow would not be attending. That indication was supported by a medical report (the IHP formed the view that the basis for non-attendance outlined in the medical report did not provide an adequate explanation.).
6. On 26th November 2019, the IHP commenced the hearing at 1.30 pm. Mr Schadow was not in attendance.
7. The IHP elected to give Mr Schadow a further opportunity to attend. Accordingly, Mr Schadow was advised that he was required to attend before the IHP on 11th December 2019 by letter dated 26th November 2019.
8. On 11th December 2019 Mr Schadow attended before the IHP as requested. An explanation was provided to the IHP for his non-attendance on the last occasion. Of significance, the explanation bore no resemblance to that provided by his legal adviser on 22nd November 2019.

Through his legal adviser, Mr Schadow sought a concession that he be allowed to be independently represented before the IHP. Rules governing representation at inquiries are set out within GAR90, and Local Rules LR117(5), LR81(1)(SA) and LR76(SA). None of these Rules afford the opportunity for Mr Schadow to be independently represented (be that by Legal Counsel or otherwise). However, GRSA LR118(4) allows the Chair of the IHP to give a direction in relation to the "operation or procedure" of the IHP, and mindful of that, it was deemed appropriate to afford Mr Schadow the opportunity to be assisted-supported at the hearing by a licensed person – Mr Schadow elected to be assisted-supported by GRSA registered trainer Mr Giniotis.

At the commencement of the hearing, the Chair of the IHP went to significant lengths to ensure that Mr Schadow was aware of the charges that had been laid. The elements of each charge that the Stewards would be required to address were explained to Mr Schadow. He was given significant opportunity to reconsider his plea in relation to each charge. Mr Schadow maintained his pleas of not guilty to each of the charges.

The IHP heard evidence from the Stewards which was based largely on the materials that had been provided to both Mr Schadow and the IHP prior to the hearing.

Further, the IHP heard submissions from Mr Giniotis, the most significant being the relationship between GAR86B and LR99(SA) and their respective interpretation (discussed above).



Findings:

Having considered all materials provided, and the submissions from both the Stewards, and Mr Schadow (primarily through Mr Giniotis), the IHP found Mr Schadow guilty of all charges.

Penalty:

Prior to the conclusion of the hearing on 11th December 2020, the IHP offered Mr Schadow a period of 7 days within which he could provide written submissions on penalty. That offer was accepted and submissions (including character references) were received within the time provided.

Having found Mr Schadow guilty of all charges, in particular, Charges 1 and 2, the IHP noted that the minimum penalty is a period of disqualification of 10 years, however, should “special circumstances” exist, the IHP has the discretion to impose a penalty less than the minimum penalty.

“Special circumstances” is a term that adjudicating bodies have often been called upon to interpret in many arenas within our community. The preferred view of the IHP, which reflects a contemporary and widely settled view of decision makers throughout Australia, is as follows:

1. Special circumstances cannot be exhaustively defined and must take its meaning and context from the rule it seeks to address.
 - In the context of this matter, it is clear to the industry, and the entire community, that offences falling within the domain of animal welfare, in particular, the domain that encompasses offences related to luring, baiting and live game, are to be treated extremely seriously.
2. Special circumstances contemplates a set of circumstances that take a particular case outside of the contemplated purpose of the rule.
 - GAR86B specifically prohibits the offending for which the IHP have found proven against Mr Schadow. Accordingly, and in light of the submissions and material the IHP have considered, there is nothing before the Panel that could reasonably take this matter outside of what the rule had contemplated.

Following the hearing, Mr Giniotis, on behalf of Mr Schadow, provided a written submission (“Plea for “Special Circumstances””) in relation to this matter. The following comments address the relevant points raised in his submission:

1. A number of non-binding cases were presented at the IHP hearing (Dianne Dooley, Desmond Dooley, Tim Noy, Peter West and Gavin Whitney). Mr Giniotis asked the IHP to consider the more recent matter of Psalias.
 - The IHP has considered that case and remains firm in the view of the appropriate interpretation of special circumstances as discussed above. The views expressed by the RAD Board in the matters of Desmond Dooley and Tim Noy, although non-binding on the IHP as is Psalias, are



considered to reflect the more appropriate approach to be taken.

2. Mr Giniotis asked the IHP to consider the personal circumstances of Mr Schadow.

- The IHP accepts that Mr Schadow has been an exemplary contributor to the greyhound racing industry in South Australia for approximately 45 years. It is accepted that he has an otherwise excellent record within the sport and is a man of good character. It is further accepted that he has quite appropriately gained the respect of many industry participants for the manner in which he has conducted himself in the sport.
- The IHP respects the outstanding contribution to the industry Mr Schadow has given, and his personal circumstances, however neither constitute considerations that could be deemed to be special circumstances.

3. Mr Giniotis submitted that his offending should be deemed to be at the lower end of the spectrum.

- The author(s) of GAR86B make no distinction, in terms of penalty, between any of the matters prohibited by the rule.
- The IHP accepts that within the scope of offences contemplated by GAR86B, the offending in this instance is at the lower end of the scale, however, that is not a special circumstance.

4. Mr Giniotis submitted that Mr Schadow was not aware of the Rules.

- On the evidence provided by the Stewards to the IHP, it is apparent that the Controlling Body has gone to significant lengths to ensure that participants are aware of their obligations under GAR86B and LR99(SA).
- Asserting that Mr Schadow was unaware of the Rules is not a special circumstance.

The IHP received a written submission from Mr Schadow along with a number of references from industry participants. The IHP wishes to reiterate that it accepts that Mr Schadow is a man of good character with an excellent record within the industry.

Noting all of the submissions, and noting the cases submitted for consideration by Mr Schadow and the Stewards, the IHP do not find that special circumstances exist.

In relation to Charges 1 and 2, having found that special circumstances do not exist, the IHP has no alternative but to impose a penalty of a minimum disqualification of 10 years, accordingly it does. Those penalties will run concurrently.



The IHP recognises that the minimum penalty is significant and taking his personal circumstances into account, despite the fact that he elected to plead not guilty to all charges (and thus not entitled to any discount on penalty), the minimum penalty is nonetheless a sufficient penalty.

While adhering to the notice requirements prescribed by GAR89, the IHP exercises its discretion to order that the disqualification will take effect nine days following publication of this decision as per GAR95(5).

In relation to the third charge of breaching GAR86(e), the IHP are mindful that the rule is in place for very important reasons. In particular, it is in place to ensure the orderly and timely consideration of matters critical to the operation of the greyhound racing industry. Accordingly, the Panel imposes a penalty of 6 months suspension (reduced from a period of 12 months disqualification on account of the circumstances of the offence, and the clearly misguided advice they had received in relation to their required attendance) and a fine of \$750 will apply.

Both parties were advised of their right to appeal.

Timothy McGrath
GRSA INTEGRITY HEARINGS PANEL CHAIR