

RACING APPEALS TRIBUNAL

RAT 22/18

DATE: WEDNESDAY, 12 DECEMBER 2018

TRIBUNAL: **DEPUTY PRESIDENT:** MR M KING

IN ATTENDANCE: **GREYHOUND RACING SA LTD:**
MS LISA MICHALANNEY, INTEGRITY MANAGER
APPEARS FOR STEWARDS

APPELLANT: MR ROBERT BARCLAY

IN THE MATTER of an Appeal by **MR ROBERT BARLCAY** against a decision of Greyhound Racing SA Ltd Stewards:

BREACH OF RULE:

GAR Rule 84B,

- (1) *“No person, unless he or she has obtained the permission of the Stewards, shall have in his or her possession, either on a race course or in any motor vehicle or trailer being used for the purpose of travelling to or from a racecourse, any prohibited substance or a syringe, needle or other instrument which could be used to administer a prohibited substance to a greyhound.”*

PENALTY:

Training licence disqualified for six months, with three months of that period of disqualification suspended on provision that the Appellant not reoffend for 24 months.

DETERMINATION

On 21 August 2018, the Appellant Robert Barclay, who was a trainer licensed with GRSA, attended at a GRSA Greyhound Race meeting at Gawler for the purpose of entering a greyhound **GUNNADOO DRIVER** in a race.

Information was provided to Stewards by licenced persons which led Stewards to enquire into the conduct of the Appellant on that day.

The Stewards obtained CCTV footage of the kennels at Gawler, and information from two witnesses.

On 30 August 2018, the Stewards called the Appellant to an Inquiry and asked about the events occurring over the 10 minutes before the running of Race 6, in which **GUNNADOO DRIVER** was entered. It was put to the Appellant that he

was seen placing something in the mouth of **GUNNADOO DRIVER**. The Appellant freely admitted that he had a syringe in his pocket and stated that he had used it to give **GUNNADOO DRIVER** a little squirt of water.

He was shown the CCTV footage of the incident and asserted that he had provided 2-3 ml of water to **GUNNADOO DRIVER** via the syringe. In a later interview, on 31 October 2018, he extended that to indicate that he had provided both water and a "tad of salt".

The Appellant's admissions about his possession of and use of the syringe were open and forthright. For this he must be given credit.

He professed that he had not known it was against the Rules to possess a syringe on the course (without Stewards' permission) and that he did not appreciate he had done anything wrong.

After considering the evidence, the Stewards resolved to charge the Appellant with an offence under GAR Rule 84B, being:

- (2) "No person, unless he or she has obtained the permission of the Stewards, shall have in his or her possession, either on a race course or in any motor vehicle or trailer being used for the purpose of travelling to or from a racecourse, any prohibited substance or a syringe, needle or other instrument which could be used to administer a prohibited substance to a greyhound."

The Appellant pleaded guilty to the charge.

Detailed submissions were put by the Appellant as to penalty. After consideration, the Stewards disqualified the Appellant's licence to train for six months, with three months of that period of disqualification suspended on provision that the Appellant not reoffend for 24 months.

In arriving at that penalty the Stewards took into account that the Appellant was entitled to a discount for pleading guilty, that he had demonstrated a high level of remorse, that he had been forthright, honest and open with the investigation, his age, his period of training and significant mitigating personal circumstances.

However, the Stewards also considered the need for both a general and specific deterrent. The Stewards recognized that the penalty must send a message to the public that the industry recognises that syringes have no place on the racetrack or in its environment.

The Appellant appealed to this Tribunal against the severity of the penalty imposed.

In presenting his submissions, the Appellant was assisted by Mr Matthyssen.

On the Appellant's behalf, Mr Matthyssen submitted firstly that the offence with which the Appellant was charged was a "possession" only offence. He submitted

that comments published by Greyhound Australasia tended to suggest that the Rule would not be breached if the syringe in question was an oral applicator syringe that cannot have a needle attached. With respect of this, this does not appear to be what the Rule states. Further, from the point of view of sentencing, it was not a matter that appeared to influence the Appellant's behaviour at any stage. He did not raise that justification at either of his two attendances at the Stewards Inquiry.

Mr Matthyssen also submitted that, as the offence was a possession offence only, and that the offence could have been avoided by merely seeking permission from the Stewards, then it should be viewed in similar light to other matters for which permission of Stewards is required, and penalized accordingly, (i.e. with a minor fine).

On the Appeal, Ms Michalanney, on behalf of the Stewards defended the sentence imposed.

In the absence of helpful precedents from other codes or jurisdictions, Ms Michalanney placed focus on the issues of deterrence and public perception.

She argued that the offence must be seen in light of its context namely that the syringe was brought in concealed (in a pocket) and was then used to administer an unknown substance. Whilst the Appellant gave evidence at the Inquiry as to what the substance was, that had not been corroborated. Nor was the syringe located. The only clear evidence on that point was that **GUNNADOO DRIVER'S** post-race urine sample was negative.

Ms Michalanney emphasised that a penalty of the nature of disqualification was warranted to serve both as a general deterrence in the racing industry, and as a specific deterrence to the Appellant. She argued that the presence of a syringe (which was used) in the kennels was in a public area observable by members of the public and had the potential to cause serious harm to the image of greyhound racing. On that basis, a penalty less than disqualification should not be countenanced.

In considering the well thought out and well presented arguments of each of the parties, a difficult balance arises.

On the one hand, the Appellant has breached the rule, he says inadvertently and innocently. He points to a range of factors which would normally be significant in mitigation of penalty.

On the other hand, the act that he has performed, bringing on to the racecourse and into the kennels a syringe which he then used in a relatively public place, is so shocking as to require consideration of a serious penalty. Apart from being an extremely unwise action for the Appellant to take, even if innocently, the action also demonstrates an alarming degree of naivety by the Appellant as to the significance of his conduct.

There can be few things more offensive, inappropriate, and potentially damaging to the image of greyhound racing than the presence of an unsanctioned syringe at the racecourse and in the kennels. Whether the Appellant appreciated it or not, engaging in that conduct represented a significant threat to the integrity of the sport.

The potential harm to which the Appellant exposed the industry, however unwittingly, must give rise to a serious penalty.

In the end, while acknowledging that the penalty imposed by the Stewards is severe, I am not persuaded that it was incorrect. In suspending a part of the period of disqualification, the Stewards adequately recognised the factors personal to the Appellant which needed to be taken into account.

The Appellant's appeal against the penalty imposed is dismissed. The penalty of the Stewards will stand namely six months' disqualification, with the last three months of that disqualification suspended on the basis that the Appellant not reoffend for a period of 24 months from the date of his conviction.

There will be an order for a refund of the applicable portion of bond.