

# RACING APPEALS TRIBUNAL

RAT 19/16

**DATE:** FRIDAY, 3 FEBRUARY 2017

**TRIBUNAL:** **PRESIDENT:** MR T ANDERSON QC

**MS L MICHALANNEY**, GRSA STEWARD,  
GREYHOUND RACING SA LTD APPEARS FOR  
STEWARDS

**APPELLANT:** MR P LENEHAN

IN THE MATTER of an Appeal by **PHILIP LENEHAN** against a decision of Greyhound Racing SA Ltd Stewards

**BREACH OF RULE:** GAR 83 (2) The owner, trainer or person in charge of a greyhound(a) nominated to compete in an Event;- shall present the greyhound free of any prohibited substance.

**PENALTY:** 6 months Disqualification

## DETERMINATION

Mr Lenehan has appealed against a decision of the stewards of GRSA to disqualify him for six months. Mr Lenehan resides and trains at Toolong, which is near Warrnambool in Victoria.

He was charged under Rule 83(2) for presenting a greyhound not free of a prohibited substance, in this case cobalt.

The charge followed the running of a race at Mount Gambier on Sunday, 24 April 2016. The greyhound involved was *Ponting's Nail*, trained by Mr Lenehan.

The threshold level for cobalt is 100ngm per millilitre. The sample contained concentrations of 235 and 234 respectively. The rules regarding cobalt came into operation in South Australia on 1 September 2015, that is, approximately eight months before this offending.

Mr Lenehan pleaded guilty to the charge. He could offer no explanation for the cobalt reading. The stewards rightly regarded this as a serious breach. There were two products containing cobalt located in his kennels. The level of cobalt could have come from either or both of these products but is unexplained.

The stewards took into account in determining the penalty the following matters.

- The serious nature of the breach;
- Mr Lenehan's guilty plea;
- Mr Lenehan's clean record;
- The amount of time Mr Lenehan has held a licence;
- The reference letters provided by Mr Lenehan to the enquiry;
- Mr Lenehan's personal circumstances including his family affairs;
- The need to ensure racing is free from prohibited substances;
- The need for the industry to be a level playing field;
- The need for general and individual deterrents for this type of offence;
- Previous similar cases in South Australia and interstate.

I have previously indicated in other decisions that normally an excess level of cobalt should warrant a disqualification. There may be exceptional cases but this is not one. Sometimes a combination of disqualification and a fine would be appropriate. The stewards decided not to impose a fine in this matter but to impose the disqualification of six months.

Mr Lenehan indicated to the Tribunal that he accepted the decision to disqualify him because he could offer no explanation.

The reason for appealing the penalty was to obtain an exemption from Rule 99(3)(g) which states:

“Unless the Controlling Body in special circumstances otherwise directs, a person who has been disqualified ... is not ... to enter or go or remain on, at any time, any place where greyhounds are trained, kept or raced”.

Mr Lenehan argued that this penalty of six months' disqualification was unduly harsh in his particular circumstances. He and his wife operate a beef cattle business in addition to the greyhounds. The greyhounds occupy a specific fenced off area of the property which is owned jointly by he and his wife. His wife is a breeder of greyhounds. If the rule were strictly enforced, he could no longer live on the property with his wife and therefore not attend to his cattle business. He has agreed to transfer the greyhounds to another trainer on another property. He earns a substantial amount from being a successful greyhound trainer.

Mr Lenehan referred to other decisions in Victoria where he indicated suspension appeared to be the normal result.

Ms Michalanney for the Stewards referred to previous decisions in South Australia where she submitted that disqualification was the norm. I already indicated that I agree with this. She submitted that six months' disqualification was an appropriate penalty, taking into account Mr Lenehan's good record and his guilty plea and cooperation.

If Mr Lenehan serves a period of disqualification, but cannot enter his property to run his cattle business, I would regard that as too harsh a penalty in these circumstances. I am therefore prepared to grant an exemption from the strict operation of the rule.

The area where his wife runs the breeding operation is fenced and can be easily delineated from the rest of the property. Mr Lenehan cannot go into that area while disqualified.

In relation to the actual disqualification, it is my view that six months in the circumstances is perhaps a little high and it would be more appropriate to have a lesser period of disqualification and a monetary penalty. I consider that four months' disqualification plus a \$1,000 fine would be more appropriate in the circumstances of this case.

I therefore grant an exemption from the operation of Rule 99(3)(g) because I consider that there are special circumstances which operate in this case.

Mr Lenehan may remain on the property in which he and his wife have the joint interest whilst he is disqualified. He may also attend the neighbouring property owned by his father.

He is however disqualified from entering that part of the property which is fenced and is known as the kennels. The area has been hashed on an aerial photograph which now forms part of these orders.

In all other respects, he may use the property to carry on his primary production in beef cattle.

All greyhounds trained by him are to be removed by midnight on Sunday, 12 February, when the disqualification takes effect.

The orders of the Tribunal therefore are:

1. The period of disqualification reduced from six months to four months.

2. In addition, I impose a fine of \$1,000. \$500 of that amount is to be paid within seven days of the publication of this determination and the balance suspended on Mr Lenehan's undertaking not to offend against these rules for a period of 12 months for any similar offence.
3. I grant an exemption pursuant to Rule 99(3)(g). Mr Lenehan may therefore remain on the property but not enter the area hashed on the aerial photograph and known as the kennels. He cannot participate in any way in his wife's breeding business.
4. I order the refund of the bond.