

RACING APPEALS

DATE: WEDNESDAY 16 AUGUST 17

RAT 23/17

TRIBUNAL: PRESIDENT: MR M KING

MS LISA MICHALANNEY, INTEGRITY MANAGER,
GREYHOUND RACING SA LTD APPEARS FOR
STEWARDS

APPELLANT: MR O CHEGIA

IN THE MATTER of an Appeal by **Mr Oswald Chegia** against a decision of Greyhound Racing SA Ltd Stewards

BREACH OF RULE: GAR 83 (2) (a) which states:

*“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”.*

(3) *The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.*

PENALTY: 6 MONTHS SUSPENSION – with 3 months of that suspended for 24 months on the condition he does not re-offend under the same Rule.

FINE: \$4000.00 fine

DETERMINATION

The Appellant Oswald Chegia is a trainer licensed by Greyhound Racing South Australia.

On 11 January 2017 the Appellant presented a greyhound **SHEZ ROCKING** to race at the GRSA meeting at Angle Park.

A post race urine sample was taken from **Shez Rocking**. Testing of the sample revealed the presence of arsenic at a level in excess of 800 ng/ml.

GRSA Stewards convened an Inquiry and after hearing evidence elected to charge the Appellant with a contravention of GA Rule 83 (2):-

- (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.

- (3). *The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.*

The Appellant pleaded guilty to that charge.

The Stewards then turned to consider an appropriate penalty.

In assessing penalty the Stewards took into account a broad range of relevant considerations including the plea of guilty, the Appellant's lengthy history in the industry, personal circumstances, the levels of arsenic, that the Appellant had a prior breach of Rule 83, that the source of the arsenic was not clear but related possibly to excessive chewing and licking by the greyhound of wooden posts and/or ingestion of substances present at the Appellant's property.

The Stewards also took into account the need for both individual deterrence and general deterrence, and the need to protect the image of the greyhound racing industry.

Having considered these matters, and the Appellant's plea for leniency, the Stewards fixed a penalty namely a suspension of the Appellant's licence for a period of six months (three months of which was suspended for 24 months on condition that the Appellant does not reoffend under the same Rule) and a fine of \$4,000.00.

By Appeal Notice dated 7 June 2017, the Appellant appealed against the penalty imposed stating in his grounds of appeal that the penalty was disproportionate to the offending, and manifestly excessive.

At the hearing of the Appeal, the Appellant was represented by Mr Gottschutke, and the Stewards were represented by Mr S Ward, legal counsel.

The Tribunal is indebted to each of these advocates for their careful and thorough presentation of their arguments and their assistance to the Tribunal in its consideration of this matter.

By the time of the hearing of the Appeal, the Appellant had served most of his period of suspension.

His appeal was directed at the magnitude of the fine. The Appellant argued that the fine was excessive, and disproportionate, and out of line with other penalties under this Rule.

While the fine was a part of the penalty, in considering the fairness of the fine, it was appropriate for this Tribunal to look at the fine not in isolation but in the context of the overall penalty imposed by the Stewards.

In support of his Appeal, the Appellant referred to a range of decisions from racing jurisdictions around Australia.

There was insufficient information to enable a close analysis of those decisions but a general review of them revealed something of a pattern of penalties for first offenders under similar rules to GAR 83 (2).

The pattern appears to be:-

1. In New South Wales, fines in the region of \$750.00;
2. In Victoria, suspensions imposed but wholly suspended and fines in the region of \$1,000.00;
3. In Tasmania – fines;
4. In South Australia, the only authority to which the Appellant was able to point was the decision of the Stewards in South Australia in the matter of trainer Mr S Bartholomew on 25 July 2017, the penalty being a suspension for a period of four months wholly suspended and a fine of \$1,500.00.

The danger of relying on other decisions, particularly where the information regarding the full circumstances of the cases is not available, has been commented on by this Tribunal in other matters.

Nevertheless, a clear and observable point of distinction with most of the decisions cited is that the Appellant here is not a first offender.

The Appellant urged the Tribunal that uniformity of penalties between the States was desirable.

Reference was made to comments of the President of this Tribunal in the matter of Cahalan (RAT 13/16) of 13 July 2016. The effect of the Appellant's submissions was that this State should shift its penalty regime closer to uniformity with other States, none of which, however, are themselves uniform with other States .

Uniformity between the various jurisdictions seems, at present, unattainable. What is both important and attainable is that the Stewards and this Tribunal maintain a consistent approach to sentencing within this State.

On behalf of the Stewards, Mr Ward pressed that the usual penalty for breach of GA Rule 83 (2) in South Australia has been disqualification. He referred to comments of the President of this Tribunal in decisions of Lenehan (RAT

19/16 – 23 February 2017) and Turner (RAT 24/16 – 2 February 2017), both cobalt cases.

The Appellant queried the extent to which the Stewards had notified the industry of the introduction of the arsenic prohibition and the possibility of arsenic being found in treated wooden posts.

The Appellant argued that this offence had occurred within seven months of the introduction of the arsenic prohibition and that the combination of the Appellant's lack of awareness and the relative recency following the introduction of the prohibition should have been factors which weighed on the Stewards' decision making.

However, given that the time length between the introduction of the arsenic prohibition & the offence is approximately seven months it is difficult to attach significant weight to the issue of recency.

Here the Tribunal is considering a case of arsenic presentation not cobalt presentation and it is noted that racing jurisdictions in Australia have struggled over where, in the spectrum of the prohibited substances outlined in the GA Rule 83, arsenic should fit.

But wherever precisely arsenic sits, what is clear is that arsenic can be highly toxic to greyhounds and the Stewards intended to send a strong message to the greyhound racing community that allowing this risk of harm to greyhounds to arise, even inadvertently, is entirely unacceptable, must be vigilantly guarded against, and if discovered by authorities will be treated with utmost seriousness.

Further, arsenic can also act as a stimulant and its presence in a racing greyhound thereby attacks the integrity of the industry in a most fundamental way. Again the message the Stewards sought to send to the greyhound racing community in sentencing the Appellant was that there can be no compromise to the integrity of the industry.

Against that background, the Stewards approached sentencing by fixing a period of suspension (six months) in lieu of disqualification, suspending one half of that period on condition that the Appellant not reoffend against this Rule within 24 months, but increased what might have otherwise been a lower fine to a figure of \$4,000.00.

The penalty was therefore a period of suspension, a suspended sentence of a further period of suspension, and a substantial fine.

Mr Ward on behalf of the Stewards argued that that penalty was appropriate emphasising:-

1. That this was a second breach of this Rule by the Appellant; and
2. That whilst the Stewards accepted that the Appellant had not intentionally presented the greyhound in breach of Rule 83, and that it was an inadvertent presentation, nevertheless there were factors present, such as the Appellant's awareness of the greyhound's post chewing proclivity, & the presence of arsenic in some of the substances present at his property, which suggested a degree of recklessness as to the breach of the Rule which should be reflected in the penalty imposed.

Mr Ward urged, for the reasons outlined above, that the issue of general deterrence i.e. the need for a strong message to be sent, called for a penalty such as this. He argued that, in some respects, the penalty could be seen as lenient.

I accept his submission that a strong message as to the seriousness of a breach of this Rule is called for.

The parties' investigations had not revealed any other instances in Australia where an offender in an "arsenic presentation" breach has actually served a period of suspension or disqualification.

It is a view of this Tribunal that the fact of the Appellant being required to serve three months of a six month suspension satisfies the need for a strong message to the greyhound racing community.

The Stewards' approach of increasing the Appellant's fine to counterbalance the leniency of a limited suspension is understandable, but in this instance, it is the view of the Tribunal that the counterbalancing has been overly harsh on the Appellant and that the fine fixed (\$4,000.00) was excessive.

It is the decision of this Tribunal that the Appellant's appeal against the penalty imposed is upheld to the extent that the fine imposed of \$4,000.00 is to be replaced with a fine of \$2,000.00. In all other respects, the penalty imposed by the Stewards is affirmed.

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