

SOUTH AUSTRALIAN RACING APPEALS TRIBUNAL

DATE: FRIDAY 4 NOVEMBER 22

RAT 14/22

TRIBUNAL: DEPUTY PRESIDENT, MR. MICHAEL KING

**IN ATTENDANCE: MR DEREK KORDICK, Risk & Compliance Manager
Greyhound Racing SA Limited**

MS KATHLEEN JOHNSTONE, APPELLANT

IN THE MATTER of an Appeal by **Ms. Kathleen Johnstone** against a decision of Greyhound Racing SA Ltd Stewards:

BREACH OF RULE: GAR 83 (2) (a) and (3) 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.

PENALTY:

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

DETERMINATION

Ms Kathleen Johnstone (the Appellant) is a trainer licensed by Greyhound Racing SA.

On 8 October 2021 the Appellant presented a Greyhound SANDAVE VISION to race in Race 9, TAB PLAY CENTRAL STAKE at Angle Park.

A post-race urine sample was taken from SANDAVE VISION. Following testing a Certificate of Prohibited Substance was provided to the Stewards.

Upon receipt of the Certificate the Stewards carried out an investigation and laid a charge against the Appellant, namely

Charge 1:

“That on 8 October 2021, at Angle Park in South Australia, Ms Kathleen Johnstone, being the trainer of the Greyhound SANDAVE VISION that was nominated to compete in an event, namely Race 9, TAB PLAY CENTRAL STAKE (530m grade six), presented that greyhound not free of prohibited substances, namely morphine and codeine”.

The charge was laid pursuant to Rule 83(2)(a) and (3) of the Greyhounds Australasia Rules.

The matter came before the Integrity Hearings Panel ("the Panel").

The Appellant plead guilty to the charge.

Submissions as to penalty were made to the Panel by both the Appellant and the Stewards. The Panel was aware that the Appellant had been convicted of an earlier presentation offence.

EARLIER CONVICTION

As the Appellant's earlier conviction formed a significant part of her appeal, I shall set out its history briefly.

The earlier conviction arose following a positive swab taken from a greyhound presented by the Appellant on 1 March 2019. A penalty was imposed by the Panel. The Appellant appealed against that penalty. Pending hearing of her appeal, the operation of the penalty was suspended. On 9 December 2019 the appeal was heard. The decision of the Tribunal was to reduce the fine but maintain the period of suspension. That suspension was for a period of 6 months of which 3 months was suspended on condition that the Appellant not re-offend under that or a similar Rule for a 24-month period.

On 9 December 2019 the relevant portion of this Tribunal's Order was:

“The suspension will take effect on a date to be agreed between the Appellant and the Stewards, but no later than nine days following the publication of this decision.”

That 24-month period was taken by the Panel to commence from 17 December 2019 i.e. nine days after the Tribunal decision.

CURRENT OFFENCE

The positive swab giving rise to the matter before the Panel had been obtained on 8 October 2021, approximately 22 months after the penalty imposed by this Tribunal commenced, and still within the 24 month “non re-offend” period.

In considering the various submissions made as to penalty, the Panel kept clearly in mind that the Appellant’s conviction triggered the activation of the remaining 3-month period of her earlier suspension.

In arriving at an appropriate penalty, the Panel was mindful that this was the Appellant’s second presenting offence within a relatively short period of time. Taking into account the offending, and the Appellant’s personal circumstances and all other relevant matters, the Panel imposed a penalty of three months suspension and a fine of \$700.00.

Recognising the burden which would be imposed on the Appellant by the activation of the earlier 3 months suspension and the new 3 months suspension, the Panel ordered that the two suspension periods run concurrently, in this way effectively imposing no further suspension period on the Appellant than that arising from the triggering of her earlier suspended sentence.

The Appellant appealed to this Tribunal. The Appellant appeared in person to press her appeal and Mr Kordick represented the Stewards.

In making her submissions, the Appellant recognised that the decision of this Tribunal in December 2019 was a final decision from which no appeal to this Tribunal could be made. She recognised that the Order of the Tribunal could not be disturbed at this forum.

She nevertheless argued that this Tribunal could and should review the decision of the Panel to activate the suspended sentence. She based that submission on the following:

- That the time between the swabs giving rise to her two offences was two years and seven months;
- That it was her belief (and she concedes now that it was an incorrect belief) that the non-offending period ran from the time of her original swab and thus would have expired by the time of her more recent offending;
- That the recent offending, whilst under the same Rule, was of a completely different nature to the earlier offence;
- That she was now able to offer an explanation for the earlier presenting offence, which explanation might have led the Panel and/or the Tribunal to impose a lighter penalty.

She further submitted that the penalty fixed for her current offence was harsh and ought to have been wholly suspended.

In support of her submissions, she referred to recent decisions of the Panel and of the Stewards.

In response, Mr Kordick drew the attention of the Tribunal to the only other recent decision which could be located involving re-offending during a "non re-offending" period – a Panel decision in the matter of Hurley.

Mr Kordick acknowledged that the approach of the Panel to the sentencing for offences of this type had varied since the time of the penalty imposed for the Appellant's original presenting offence.

The Appellant also submitted that had her offence occurred after 1 May 2022, the amendments to the Rules would have meant that the test result would not have given rise to the issue of a Certificate of Prohibited Substance. Mr Kordick submitted, and this Tribunal accepts that the amended Rules did not apply in this case and that as the Appellant's case must be dealt with under the Rules in force at the time of her conduct, the subsequent Rule change is merely an additional consideration in the sentencing process.

The Panel, in determining penalty was clearly mindful of the whole of the Appellant's circumstances, the suspension period overhanging from her earlier offending and the penalty considerations appropriate for her second offence. Taking into account all of the circumstances, the Panel could not see a basis upon which the Appellant's re-offending did not trigger the activation of her earlier suspended sentence.

In reaching that view the Panel remained consistent with the approach it had taken in its earlier decision of Hurley.

The Appellant's belief as to when her "non re-offending" period may have commenced, and the length of time between the date of the initial swab and the date at which her "non re-offending" period commenced are not factors which the Tribunal considers call for a decision not to activate the previous suspended sentence. The Appellant was only ever required by the Tribunal Order to achieve one 24 month period without re-offending and she failed to do so.

The fact that the Appellant's re-offending was very late in her "non-reoffending" period was appreciated by the Panel and reflected in the decision to order that her penalties be served concurrently.

This approach by the Panel reflected an appropriate understanding of the Appellant's position both narrowly in relation to the second offence but also more broadly encompassing the hangover of the suspended sentence.

The matters put by the Appellant both to the Panel and again at appeal were considered by the Panel in reaching the decision that it did.

This Tribunal is not persuaded that the Appellant's position calls for further reconsideration of the penalty and specifically the Appellant's submissions do not persuade this Tribunal that the decision to activate the suspended portion of her earlier penalty ought to be overturned.

The decision of the Panel in relation to the Appellant's second offence was within the range of penalties appropriate for that offending. It was towards the higher end of the range to reflect that it was the Appellant's second offence within a relatively short

period of time. To the extent that the Appellant challenged that penalty, the challenge is also rejected.

Consequently, the appeal is dismissed. The Appellant's suspension for 3 months will commence at a date to be agreed between the Appellant and the Stewards, or in any event not later than nine days following the publication of this decision.

I order the refund of the applicable portion of the bond.