

23 February 2023

DECISION

GREYHOUND RACING VICTORIA

and

KEVIN McMAHON

- Date of hearing:** 21 February 2023
- Panel:** Justice Shane Marshall (Deputy Chairperson) and Judge Kathryn Kings.
- Appearances:** Mr Anthony Pearce appeared on behalf of the Stewards.
Mr Kevin McMahon represented himself.
- Charges:** Greyhounds Australasia Rule ("GAR") 21(1)(a) states:
(1) A person must ensure that any greyhound in the person's care or custody, is at all times provided with:
(a) proper and sufficient food, drink and protective apparel
- GAR 21(1)(c) states:
(1) A person must ensure that any greyhound in the person's care or custody, is at all times provided with:
(c) kennels constructed and of a standard approved by a Controlling Body which are adequate in size and which are kept in a clean and sanitary condition.
- GAR 21(1)(d) states:
(1) A person must ensure that any greyhound in the person's care or custody, is at all times provided with:
(d) veterinary attention when necessary.
- GAR 21(1)(e) states:
(1) A person must ensure that any greyhound in the person's care or custody, is at all times provided with:
(e) appropriate treatment for the greyhound if the person is in charge of a sick or injured greyhound.

GAR 21(3) states:

(3) A person shall not cause or permit, on any premises owned or occupied by that person, any condition that is likely to be dangerous to the health, welfare or safety of that greyhound.

GAR 86(q) states:

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

(q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

Particulars of charges:

Charge 1: GAR 21(1)(a)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 May 2022, Investigative Stewards conducted a property visit at your residential address.
3. At all relevant times, you had the greyhound "Little Snips" (VCLRJ) in your care and custody.
4. Prior to 27 May 2022, you failed to provide sufficient food and drink for the greyhound Little Snips (VCLRJ).

Charge 2: GAR 21(1)(c)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 May 2022, Investigative Stewards conducted a property visit at your residential address.
3. At all relevant times, you had the greyhounds "Little Snips" (VCLRJ) and "Sound The Bugle" (VIPUG) in your care and custody.

4. You failed to provide these greyhounds in your care and custody with kennels constructed and of a standard approved by GRV which are adequate in size and kept in clean and sanitary condition, in that the kennels were not compliant with the “Code of Practice for the Keeping of Racing Greyhounds 2018”, in particular;
 - (a) the one kennel available to the greyhounds was not adequate in size which provided insufficient protection from the elements;
 - (b) the build-up of faeces and urine at the property resulting in a strong smell of ammonia;
 - (c) a large amount of detritus in the yard, including car body parts, disused lawn mower and assorted rubbish; and
 - (d) the yard being mostly covered in mud and devoid of any grass.

Charge 3: GAR 21(1)(d)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 May 2022, Investigative Stewards conducted a property visit at your residential address.
3. You had care and custody of the greyhound “Little Snips” (VCLRJ) at this property.
4. Little Snips was suffering from anaemia and diarrhoea and was in need of veterinary attention.
5. You failed to provide veterinary attention for Little Snips when necessary.

Charge 4: GAR 21(1)(e)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 May 2022, Investigative Stewards conducted a property visit at your residential address.
3. At all relevant times, you had the greyhound “Little Snips” (VCLRJ) in your care and custody.
4. Little Snips was sick at the time of the property visit and suffering from anaemia and diarrhoea.
5. You failed to provide appropriate treatment for a sick greyhound, Little Snips, which at all relevant times was in your care and custody.

Charge 5: GAR 21(3)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 May 2022, Investigative Stewards conducted a property visit at your residential address.
3. At all relevant times, you had the greyhounds “Little Snips” (VCLRJ) and “Sound The Bugle” (VIPUG) in your care and custody.
4. You have permitted the premises that you occupy to have conditions that are likely to be dangerous to the health, welfare or safety of a greyhound, in that;
 - (a) the one kennel available to the greyhounds was not adequate in size which provided insufficient protection from the elements;

- (b) there was a build-up of faeces and urine at the property resulting in a strong smell of ammonia;
- (c) there was a large amount of detritus in the yard, including car body parts, disused lawn mower and assorted rubbish;
- (d) the yard was mostly covered in mud and devoid of any grass;
- (e) your premises was cluttered with tools, machinery and furniture;
- (f) there was barely any usable floor space within the premises;
- (g) the premises was dirty, unkept, and had numerous hazardous objects on the floor.

Charge 6: GAR 86(q)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 159523) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 31 March 2022, you engaged in an SMS exchange with Jason Formosa concerning the kennelling of two (2) GRV registered greyhounds namely, Sound The Bugle (VIPUG) and Little Snips (VCLRJ).
3. During that exchange you sent an SMS stating, "Shoot Screamer I can't house her here. If GRV bitches then they can find her a home" (sic).
4. By sending this SMS you have engaged in conduct which is detrimental or prejudicial to the interest and image of greyhound racing.
5. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86(q) (as then in force) to engage in the conduct described in particular 3.

6. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
- (a) affect the previous operation of the Old Rules (including Rule 86(q));
 - (b) affect any obligation or liability imposed, created or incurred prior to the rescission or variation of the Old Rules (including by virtue of Rule 86 (q)); or
 - (c) affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86 (q)).

Pleas: Guilty to all Charges

DECISION

1. Mr Kevin McMahon is a registered greyhound owner. He has entered early guilty pleas regarding six charges which Greyhound Racing Victoria (“GRV”) Stewards have laid against him under the Greyhounds Australasia Rules (“GARs”). The purpose of this decision is to set penalties in respect of those charges. We first turn to the charges themselves as particularised by the Stewards. We infer that, by pleading guilty, Mr McMahon is taken to accept the account of the offences as contained in the particulars.
2. Charge 1 is under GAR 21(1)(a), which compels persons who have greyhounds in their care to provide proper and sufficient food, drink and protective apparel to the greyhounds. On 27 May 2022, Investigative Stewards conducted a property visit at Mr McMahon’s residential address, where the greyhound “Little Snips” was in his care and custody. Prior to 27 May 2022, Mr McMahon failed to provide sufficient food and drink for Little Snips. On 27 May 2022 the Stewards observed a pool of water for drinking was covered with green-coloured algae on the sides and bottom. The pool had been contaminated by greyhounds. A veterinary examination on 30 May 2022 showed the greyhound, Little Snips, to have anorexia.
3. Charge 2 is under GAR 21(1)(c). That sub-rule provides that a person who has the care and custody of a greyhound must ensure that kennels are constructed to a standard approved by GRV and which are adequate in size and kept in a clean and sanitary condition. At the

property inspection on 27 May 2022, Stewards observed two greyhounds, Little Snips and “Sound The Bugle”. The greyhounds did not have kennels of the above description. One kennel was inadequate in size and provided insufficient protection from the elements. There was a build up of faeces and urine at the property. There was a strong smell of ammonia. There was also a large amount of rubbish in the yard, including car parts, a disused lawn mower and other assorted items. The yard had no grass and was covered in mud.

4. Charge 3 is under GAR 21(1)(d). That sub-rule compels registered persons who have the care of a greyhound to provide veterinary assistance when necessary. At the 27 May 2022 inspection, Little Snips was seen by the Stewards to have anaemia and be suffering from diarrhea. Mr McMahon failed to provide veterinary assistance which was required to deal with those conditions, and especially anaemia, which does not have a sudden onset. Little Snips was in such a poor condition that Mr McMahon surrendered the greyhound to GRV Stewards.
5. Charge 4 is under GAR 21(1)(e). It compels licensed persons in charge of a greyhound to themselves provide treatment for a sick or injured greyhound in their care. Little Snips was obviously anaemic, but Mr McMahon failed to take action to deal with that condition.
6. Charge 5 is under GAR 21(3). It compels licensed persons having the care or control of a greyhound not to keep a greyhound in conditions which are likely to be dangerous to the health, welfare or safety of the greyhound. The particulars of this charge are the same as those relied on for Charge 2, but are more serious. This is because the conditions on which they rely are that the premises were cluttered with tools, machinery and furniture. They also highlighted the lack of useable floor space for the greyhounds, Little Snips and Sound The Bugle. The premises were dirty, unkept and that there were numerous hazardous objects on the floor.
7. Charge 6 is under GAR 86(q). That sub-rule prescribes conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing. The conduct relied on by the GRV Stewards is the SMS exchange between Mr McMahon and trainer Mr Jason Formosa about Sound The Bugle and Little Snips. In particular, GRV relied on an SMS by Mr McMahon to Mr Formosa saying “Shoot Screamer I can’t house her here. If GRV bitches then they can find her a home”.
8. The message was alleged to be and conceded to be conduct detrimental or prejudicial to the interests and image of greyhound racing. It was a threat to shoot a greyhound under the care and control of Mr McMahon. GAR 86(q), as it then stood, applied to the relevant conduct and is deemed by the new Rule to continue in force for the purpose of disciplinary proceedings.

9. The most serious offences are those under GAR 21(1)(d) (Charge 3) relating to failure to obtain veterinary assistance as necessary and under GAR 21(3) (Charge 5) for failure to keep greyhounds in conditions that are not dangerous. Charge 4 is closely related to Charge 3.

PENALTY

10. In setting penalties, we take into account the early guilty pleas, Mr McMahon's good character and his severe health issues that inhibited his ability to care for his two greyhounds. These include eyesight and mental health issues. We also take into account general deterrence and the importance of animal welfare. We are further informed by penalties in recent like cases.
11. On Charge 3, we impose a disqualification of six months. It is essential that licensed person seek veterinary care for their greyhound before the condition of the greyhound deteriorates. On Charge 4, we also impose a penalty of six months disqualification, but make it wholly concurrent with the penalty under Charge 3.
12. On Charge 5, we impose a disqualification of six months. It is intolerable and amounts to animal cruelty if greyhounds are kept in dangerous conditions. The Stewards requested, and we agree, that the penalty should be served concurrently with the penalty imposed on Charge 3.
13. Charge 1 is a sub-set of Charge 5. We impose a one month disqualification on that charge, but make it wholly concurrent with the penalty for Charge 5.
14. Charge 6 involved a message sent by Mr McMahon in the heat of the moment and when in a distressed state. It is detrimental to the interests of greyhound racing, but an offence on the lower scale of those comprehended by GAR 86(q). On this charge, we impose a \$500 fine.
15. In summary, we impose a total of six months disqualification and a \$500 fine. The disqualification shall commence immediately.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal