

5 August 2024

DECISION

GREYHOUND RACING VICTORIA

and

BRIAN TONER

- Date of hearing:** 16 July 2024
- Date of decision:** 16 July 2024
- Panel:** Judge John Bowman (Chairperson) and Mr Josh Bornstein.
- Appearances:** Mr Anthony Pearce appeared on behalf of the Stewards.
Mr Brian Toner did not attend the hearing.
- Charges:** Greyhounds Australasia Rule (“GAR”) 21 (2) states:
(2) A person must exercise the care and supervision necessary to prevent a greyhound under the person's care or custody from being subjected to unnecessary pain or suffering, or from anything which is likely to lead to unnecessary pain or suffering.
- 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(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 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 156(f)(ii) states:

An offence is committed if a person (including an official):

(f) has, in relation to a greyhound or greyhound racing, done something, or omitted to do something, which, in the opinion of a Controlling Body or the Stewards:

(ii) constitutes misconduct or is negligent or improper.

GAR 165(a) states:

An offence is committed if a person (including an official):

(a) 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:

Charge 1: GAR 21(2)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. At all relevant times, leading up to and including on or about 2 September 2022, you had the greyhounds, What's Her Name (VDUHP), Back Jack (VGKUV), Un-named (VHGRD), Un-named (VGKUX), My Uncle Bob (VEIVV) and Un-named (VHGRB) in your care and custody.

3. You failed to exercise such reasonable care and supervision as was necessary to prevent the abovementioned greyhounds being subjected to unnecessary pain and suffering, in that:

(a) A Stewards inspection of your registered premises located in Longford, Victoria on 6 and 7 September 2022 found that the abovementioned greyhounds, following examination by a veterinarian, were experiencing veterinary and husbandry issues, which included;

- Poor body condition.
- Coats matted with faeces.

- Pressure sores.
- Bleeding tail tip.
- Periodontal disease.
- Severe muscle wastage.

(b) A Stewards inspection of your registered premises on 6 and 7 September 2022 found that the abovementioned greyhounds were subject to conditions that did not comply with the 'Code of Practice for the Keeping of Racing Greyhounds 2018', which included:

- No bedding.
- No drinking water.
- Insufficient exercise and behavioural and environmental enrichment.
- Being housed permanently in a dog transport trailer.

Charge 2: 21(1)(d)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. At all relevant times, leading up to and including on or about 2 September 2022, you had the greyhounds, What's Her Name (VDUHP), Back Jack (VGKUV), Un-named (VHGRD), Un-named (VGKUX), My Uncle Bob (VEIVV) and Un-named (VHGRB) in your care and custody.

3. A Stewards inspection of your registered premises located in Longford, Victoria on 6 and 7 September 2022 found that the

abovementioned greyhounds, following examination by a veterinarian, were experiencing veterinary and husbandry issues that required veterinary attention, which included:

- Poor body condition.
- Pressure sores.
- Bleeding tail tip.
- Periodontal disease.
- Severe muscle wastage.

4. You failed to ensure that the abovementioned greyhounds, which were in your care and custody, were provided with veterinary attention when necessary.

Charge 3: GAR 21(3)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. You were at all relevant times a person responsible for the care and supervision of the greyhounds housed at your GRV registered kennelling premises, in Longford, Victoria (registered premises).

3. On 6 and 7 September 2022 inspections conducted on your registered premises established that you caused or permitted conditions at this premises likely to be dangerous to the health, welfare or safety of that greyhound, in that:

(a) Greyhounds were being housed permanently in a dog transport trailer.

(b) Greyhounds located in the trailer were in poor condition, some with body scores of 0.5-1.0.

(c) Greyhounds were being housed in outdoor yards with no shelter, bedding or water.

(d) A deceased greyhound was located behind a refrigerated trailer.

Charge 4: GAR 21(1)(c)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

2. You were at all relevant times, leading up to and including on or about 2 September 2022, a person responsible for the care and supervision of the greyhounds housed at your GRV registered kennelling premises, in Longford, Victoria (registered premises).

3. A kennel inspection on 6 September 2022 identified a failure to provide the greyhounds in your care and custody with kennels constructed and of a standard approved by Greyhound Racing Victoria which are adequate in size and kept in a 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:

- Greyhounds housed in kennels of insufficient size for example, including within a dog transport trailer.
- Greyhounds housed with insufficient or no bedding.
- Soiled bedding from urine and faeces.

- Greyhounds laying on worn and dirty blankets and bedding that was in poor condition.

Charge 5: GAR 156(f)(ii)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 6 and 7 of September 2022, greyhounds owned by you were found to be living in dangerous conditions at your registered premises, in Longford, Victoria which resulted in them enduring unnecessary pain and suffering and not receiving necessary veterinary attention when required.
3. In the opinion of the Stewards, by you failing to ensure the greyhounds were not exposed to the above conditions was negligent.

Charge 6: GAR 165(a)

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 36989) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 6 and 7 of September 2022, greyhounds owned by you were found to be living in dangerous conditions at your registered premises, located in Longford, Victoria which resulted in them enduring unnecessary pain and suffering and not receiving necessary veterinary attention when required.
3. By failing to ensure that these greyhounds were not subject to these conditions, is conduct that has the potential to become known to the broader public, which would be detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

Pleas: Charges 5 and 6 withdrawn by the Stewards
Not Guilty to Charges 1 – 4

DECISION

Mr Brian Toner did not attend this hearing. This was no surprise, as he had indicated in advance that he would not be attending. He has been in ill-health of a sufficient magnitude to have had hospitalisation for a lengthy period. In addition, he expressed to the Assistant Registrar the clear decision at which he had arrived that he would like no further part in the industry or in this hearing. Further, he is a man who has had only 46 starters in the last 10 years. That is no criticism, but is an indication of the level of activity and participation in which he had been involved. In any event, he has stated clearly and more than once that he would not be participating in this hearing.

Mr Anthony Pearce appeared on behalf of the Stewards and put the factual background and suggested penalties to us. This was done in a very fair and comprehensive manner.

The four Charges involved arose from a Stewards inspection on 6 and 7 September 2022. We might add that the delay in bringing this case on is in no way any fault of the Stewards. Mr Toner's lengthy hospitalisation and communication problems were largely responsible for any delay.

In any event, the Stewards inspection, along with an inspection by veterinary surgeon, Dr Madonna Buiter, revealed some five greyhounds and one deceased greyhound on a property in Longford, Victoria. This property was owned by Mr Adrian Smit, a registered trainer. Mr Smit had allowed Mr Toner to move on to part of his property and, ultimately and reluctantly, to bring the six dogs in question with him. Mr Smit was then overseas for at least part of the time when these events unfolded and at the time of the visit by the Stewards and the veterinary surgeon, Mr Smit himself had faced some Charges and been dealt with by the Tribunal.

On 6 and 7 September 2022, the Stewards and Dr Buiter found Mr Toner's greyhounds in very poor condition. They were being kept in a trailer, the type used to convey dogs to the tracks. They were in very cramped space and in very poor condition. We shall not go through the details of the condition of the various individual dogs. Suffice to say that their condition, and the facilities, such as available food and water, were very poor. With the obvious exception of the deceased dog, the remaining five greyhounds were removed by the Greyhound Adoption Program ("GAP").

We have no hesitation in finding that the four outstanding Charges have been proven to our comfortable satisfaction.

In relation to penalty on the four Charges, which overlap to some extent as part of the general scenario prevailing and the condition of the dogs, we accept the recommendation of Mr Pearce, which strikes us as balanced and reasonable. Mr Toner's health, unblemished record over many years, and the general circumstances prevailing have all been taken into account by us.

We also take into account the nature of the offending. Participants in the industry must be conscious at all times of the fact that their conduct is under scrutiny, not just from the Stewards but also from the public and the media. Some considerable assistance has been obtained in this regard by GAP. However, it only takes behaviour and neglect such as in the present case to bring forth public, and sometimes hostile, criticism. The industry is in the spotlight. The proper treatment of greyhounds is of critical importance. Good work, such as that done by GAP, can be rapidly forgotten and overwhelmed.

As stated, we agree with the penalties proposed by Mr Pearce on behalf of the Stewards. They take into account both the importance of animal welfare and the potential damage to the industry. They also take into account the unusual circumstances of this particular case, including Mr Toner's serious health problems and his very good record.

The penalties we impose are as follows: -

On Charge 1, disqualification for a period of 18 months.

On Charge 2, disqualification for six months, to be served concurrently with the penalty imposed for Charge 1.

On Charge 3, disqualification for 12 months, to be served concurrently with the penalty imposed for Charge 1.

On Charge 4, disqualification for six months, to be served concurrently with the penalty imposed for Charge 1.

The bottom line is disqualification for a period of 18 months to commence immediately.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal