

29 August 2024

DECISION

GREYHOUND RACING VICTORIA

and

JASON FORMOSA

Date of hearing: 23 August 2024

Date of decision: 23 August 2024

Panel: Judge Marilyn Harbison (Deputy Chairperson) and Ms Amanda Dickens.

Appearances: Mr Amara Hughes instructed by Ms Yana Podolskaya appeared on behalf of the Stewards.
Mr Jason Formosa represented himself.

Charges and particulars:

Charge No. 1 of 4

Greyhounds Australasia Rule 141(1) reads as follows:

Rule 141 Greyhound to be free of prohibited substances

(1) The owner, trainer or other person in charge of a greyhound:

(a) nominated to compete in an Event;

(b) presented for a satisfactory trial or such other trial as provided for by the Rules; or

(c) presented for any test or examination for the purpose of a stand-down period being varied or revoked,

must present the greyhound free of any prohibited substance.

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound “Orson King”.
3. “Orson King” was nominated to compete in Race 7, AG TYRES & WHEELS, Free For All, conducted by the Bendigo Greyhound Racing Association at Bendigo on 30 June 2023 (**the Event**).
4. On 30 June 2023, you presented “Orson King” at the Event not free of any prohibited substance, given that:
 - (a) A pre-race sample of urine was taken from “Orson King” at the Event (**the Sample**);
 - (b) Cobalt was detected at a mass concentration of greater than 100 nanograms per millilitre in the Sample.

Charge No. 2 of 4

Greyhounds Australasia Rule 142(1) reads as follows:

Rule 142 Administration of a prohibited substance established in a sample taken from a greyhound in connection with an Event

(1) An offence is committed if a *person*:

- (a) *administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;*
- (b) *aids, abets, counsels or procures the administration of or an attempt to administer a prohibited substance to a greyhound; or*
- (c) *has prior knowledge of a prohibited substance being administered or attempted to be administered to a greyhound,*

which is established in any sample taken from a greyhound presented for an Event or when subject to any other contingency pursuant to the Rules.

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound “Orson King”.
3. “Orson King” was presented for, and competed in, Race 7, AG TYRES & WHEELS, Free For All, conducted by the Bendigo Greyhound Racing Association at Bendigo on 30 June 2023 (**the Event**).
4. You administered, or caused to be administered, to “Orson King”, a prohibited substance, being Cobalt, which was detected in a sample taken from “Orson King” in that:
 - (a) You administered a product containing Cobalt, namely ‘Omega-3 Oil’, to “Orson King” on or around 29 June 2023;
 - (b) A pre-race sample of urine was taken from “Orson King” at the Event (the Sample);
 - (c) Cobalt was detected at a mass concentration of greater than 100 nanograms per millilitre in the Sample.

Charge No. 3 of 4

Greyhounds Australasia Rule 141(1) reads as follows:

Rule 141 Greyhound to be free of prohibited substances

- (1) *The owner, trainer or other person in charge of a greyhound:*
- (a) *nominated to compete in an Event;*
 - (b) *presented for a satisfactory trial or such other trial as provided for by the Rules; or*
 - (c) *presented for any test or examination for the purpose of a stand-down period being varied or revoked,*
- must present the greyhound free of any prohibited substance.*

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound “White Shiraz”.
3. “White Shiraz” was nominated to compete in Race 5, BALLARAT TIER 3 ENDURO PRELUDE 8 (0-2 W), Tier 3 – Restricted Win, conducted by the Ballarat Greyhound Racing Club at Ballarat on 14 August 2023 (**the Event**).
4. On 14 August 2023, you presented “White Shiraz” at the Event not free of any prohibited substance, given that:
 - (a) A pre-race sample of urine was taken from “White Shiraz” at the Event (**the Sample**);
 - (b) Cobalt was detected at a mass concentration of greater than 100 nanograms per millilitre in the Sample.

Charge No. 4 of 4

Greyhounds Australasia Rule 142(1) reads as follows:

Rule 142 Administration of a prohibited substance established in a sample taken from a greyhound in connection with an Event

(1) An offence is committed if a *person*:

- (a) *administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;*
- (b) *aids, abets, counsels or procures the administration of or an attempt to administer a prohibited substance to a greyhound; or*
- (c) *has prior knowledge of a prohibited substance being administered or attempted to be administered to a greyhound,*

which is established in any sample taken from a greyhound presented for an Event or when subject to any other contingency pursuant to the Rules.

Particulars of Charge

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound *“White Shiraz”*.
3. *“White Shiraz”* was presented for, and competed in, Race 5, BALLARAT TIER 3 ENDURO PRELUDE 8 (0-2 W), Tier 3 – Restricted Win, conducted by the Ballarat Greyhound Racing Club at Ballarat on 14 August 2023 (**the Event**).
4. You administered, or caused to be administered, to *“White Shiraz”*, a prohibited substance, being Cobalt, which was detected in a sample taken from *“White Shiraz”* in that:
 - (a) You administered a product containing Cobalt, namely ‘Omega-3 Oil’, to *“White Shiraz”* on or around 13 August 2023;
 - (b) A pre-race sample of urine was taken from *“White Shiraz”* at the Event (the Sample);
 - (c) Cobalt was detected at a mass concentration of greater than 100 nanograms per millilitre in the Sample.

Pleas: Guilty to Charge 1 and 3.
Not Guilty to Charges 2 and 4.

DECISION

1. Mr Jason Formosa, a licensed trainer, has been charged with four offences.
2. The first is a presentation offence. It is alleged that when he raced Orson King at Bendigo on 30 June 2023, he presented that greyhound not free of a prohibited substance, in that cobalt over the threshold was found in a pre-race sample of urine.
3. The second is a charge that he administered that cobalt to the greyhound Orson King on the day before the race.
4. The third charge relates to another greyhound, White Shiraz. This charge alleges that on 14 August 2023, Mr Jason Formosa raced that greyhound not free of a prohibited substance, in that cobalt at a level over the threshold was found in a pre-race sample taken from it.

5. Charge four alleges that he administered that cobalt to White Shiraz on or around the day before the race, that is 13 August 2023.
6. The concentration of cobalt in Orson King was found to be 192 ng/ml when it was tested by the Victorian laboratory. It was sent for referee sample testing to a laboratory in Perth. The testing from the Perth laboratory indicated a concentration of 168 ng/ml. For the purposes of this hearing, the Stewards have accepted the concentration to have been somewhere between those two figures.
7. The concentration in the test sample was, by contrast, less than one ng/ml.
8. The level of concentration prohibited by the Rules is a level greater than 100ng/ml. Thus, whether the Victorian analysis or the West Australian analysis is used, it is clear that the concentration of cobalt in Orson King is well over the allowed limit.
9. The concentration of cobalt found in White Shiraz was over 200ng/ml. Once again, the concentration of cobalt found in this dog is well over the threshold.
10. Mr Formosa has pleaded guilty to each presentation charge, and not guilty to the two administration charges.
11. The Stewards inspected Mr Formosa's property, but found no products that would be expected to contain cobalt in sufficient quantities to breach the threshold. This was even though the Stewards took and tested samples of all products regularly fed to the greyhounds at the kennels.
12. A greyhound owned by Mr Jason Formosa's son, Mr Jordan Formosa, Windy Biscuit, was also found to have a high concentration of cobalt. Windy Biscuit was housed at the same kennels and a similar feeding regime was in place for this dog.
13. The Stewards visited Mr Formosa at his kennels at Heathcote on 4 September 2023 after the positive sample from White Shiraz had been identified. Mr Formosa told the Stewards that he had been using omega oil for his greyhounds, but ceased using it on the weekend of 26 and 27 August after he had been advised by the Chief Steward about high levels of cobalt in his greyhounds. This fish oil was later analysed by RASL and found to contain a high amount of cobalt – up to 30ng/ml. Mr Formosa told the Stewards that he applied this oil to his greyhounds' feed up to three times a day. The Stewards say that this fish oil was the source of the excessive cobalt which was found on testing of both dogs.
14. It is Mr Formosa's admitted use of the fish oil in feed that founds the two administration charges.

15. Mr Formosa has contacted the source who provided the Fish oil to ascertain the ingredients in it and has told this Tribunal that he is satisfied as to the bona fides of this person. However, it appears from the guarded nature of the responses from this person to text messages sent by Mr Formosa that he was told very little about the source from which he obtained the fish oil.
16. The Stewards conducted a preliminary inquiry on 31 October 2023. Mr Formosa has been a greyhound trainer for 30 years. He told the Stewards that he had been using omega oil for several years. He had obtained it through Facebook. He had asked the supplier whether it was suitable for greyhounds and had been told that it was. He had found it convenient to order through a supplier that he had met on Facebook rather than using conventional retailers. He had been using this particular supplier for about two years.
17. He had become concerned when the supplier sent him the omega oil in unlabelled bottles, but he still did not realise that the oil contained excessive amounts of cobalt. He continued to use the oil.
18. He told the Stewards that he had never meant to administer cobalt to the greyhounds and was completely unaware that the omega oil contained it.
19. Mr Formosa has pleaded guilty of each of the presentation Charges, namely Charges one and three. It is clear that he, as the trainer of each greyhound, presented that greyhound at the relevant races when each was over the acceptable limit of cobalt.
20. We also find Mr Formosa guilty of each of the administration Charges, namely Charges two and four. Mr Formosa has pleaded not guilty to each of these on the basis that he had no idea when he administered omega oil to the dogs that it contained an unacceptable level of cobalt.
21. We accept that Mr Formosa gave honest evidence as to these matters. However, the offence of administration does not require knowledge of the presence of the offending material.
22. The offence of administration of a prohibited substance does not require the Stewards to prove that the prohibited substance was administered intentionally. Mr Formosa has agreed that he did administer the omega oil to each of these greyhounds. We are satisfied from the scientific evidence that it is most likely that the cobalt was present in extremely high quantities in the omega oil and thus, in administering the omega oil, Mr Formosa unwittingly administered an extremely high dose of cobalt to each dog.
23. Thus, all of the elements of the offence of administration are present and we find the administration charges proved.

24. We now consider the question of penalty.
25. The Stewards submitted to us that we must take into account in assessing penalty the fact that Mr Formosa made inadequate inquiries as to the nature of the oil which he purchased online and as to the honesty and reliability of the supplier. We agree that Mr Formosa's failure to research properly the identity of the supplier and the nature of the oil has contributed greatly to the position in which he now finds himself. He has fed dogs with a substance that was unidentified and which he sourced from Facebook, from a supplier he had not met, and who appears to have been known to him only by his first name. Conduct such as this must be denounced as reckless and so it deserves a period of active suspension to reflect its gravity.
26. However, the fact that he had no way of knowing of the excessive amounts of cobalt in the oil is also a matter of significance in sentencing him today. He feeds only human consumption meat, sourcing all of his ancillary products from the Shepparton Greyhound track and is meticulous in his care for the dogs which he races. We have also taken into account the fact that greyhound racing is his livelihood, and that, despite kennelling up to 100 greyhounds at a time, he has had no significant prior history, having been a trainer for some 30 years.
27. Taking into account all of the circumstances, the penalties which we impose are as follows.
28. On Charge 1, presentation of Orson King, we order a 12 month suspension with 11 months suspended for 24 months, the suspension to commence immediately.
29. On Charge 2, administration of cobalt to Orson King, we order a 12 month suspension with 11 months suspended for 24 months to commence immediately.
30. We order that the penalty on Charge 2 be served concurrently with the penalty on Charge 1, as it arises out of the same facts and circumstances.
31. On Charge 3, presentation of the dog White Shiraz, we order a 12 month suspension with 11 months suspended for 24 months to commence immediately.
32. On Charge 4, administration of cobalt to White Shiraz, we order a 12 month suspension with 11 months suspended for 24 months to commence immediately.
33. We order that the penalties on Charges 3 and 4 be served concurrently with each other and also concurrently with the penalties on Charges 1 and 2, as they arise out of the same facts and circumstances.

34. This results in a total period of active suspension of one month.
35. Orson King is disqualified from Race 7 at Bendigo on 30 June 2023 and the finishing order is amended accordingly.
36. White Shiraz is disqualified from Race 5 at Ballarat on 14 August 2023 and the finishing order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal