

**DECISION ON AN INTERNAL REVIEW APPLICATION UNDER
SECTION 91 OF THE *GREYHOUND RACING ACT 2017***

Matter for determination	Decision dated 22 September 2021 of the Integrity Hearings Panel, being Chief Inspector David OShannessy, Senior Steward Dean Degan and Acting Senior Legal Officer Alice Stafford under section 59 of the <i>Greyhound Racing Act 2017</i> to issue a \$200 fine and a \$500 fine wholly and conditionally suspended for a period of 12 months on the condition that Mr Irwin not breach Rule 86(f) or any similar Rules during that 12-month period.
Internal review decision date	22 December 2021
Internal review decision by	Acting Chief Commissioner Chris Wheeler Commissioner Peter Collins
Internal review decision summary	Vary the decision of 22 September 2021 of the Integrity Hearings Panel, and instead issue a \$200 fine and a reprimand.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Mr Dave Irwin (“**Mr Irwin**”) for internal review under the *Greyhound Racing Act 2017* (“**Act**”) of a decision of the Integrity Hearings Panel (“**IHP**”), being Chief Inspector David OShannessy, Senior Steward Dean Degan and Acting Senior Legal Officer Alice Stafford of the Greyhound Welfare & Integrity Commission (“**Commission**” or “**GWIC**”). That decision was to issue a \$200 fine and a \$500 fine wholly and conditionally suspended for a period of 12 months on the condition that Mr Irwin not breach Rule 86(f) or any similar Rules during that 12-month period.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As we were not substantially involved in making the reviewable decision, we have dealt with this application.
3. Under section 91(7) of the Act, an internal reviewer is empowered to:
 - Confirm the reviewable decision the subject of the application; or
 - Vary the reviewable decision; or
 - Revoke the reviewable decision.

Background

4. On 10 June 2021 Mr Irwin was issued with a Notice of Proposed Disciplinary Action by the Integrity Hearings Panel (“**IHP**”), charging Mr Irwin with three (3) charges under the GWIC Greyhound Racing Rules.
5. In the IHP decision of 22 September 2021, Charge One, being a breach of Rule 86(g), was found not proven. We note that Charge One has not formed part of Mr Irwin’s application for Internal Review. As such, we will not make any substantive comments on it.

6. The remaining two charges under the GWIC Greyhound Racing Rules (“**Rules**”) were as follows:

Charge Two – Rule 86(p)

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

...

(p) disobeys or fails to comply with the lawful order of a Steward or other person or body having official duties in relation to greyhound racing

Particulars:

That Mr Irwin, as a registered Public Trainer, on 27 January 2021 at the Wentworth Park race meeting disobeyed a lawful order of a GWIC Veterinarian holding official duties at that race meet, with the particulars being:

- (a) On 27 January 2021 Mr Irwin attended the scheduled race meeting at Wentworth Park;
- (b) During the kennelling process Mr Irwin entered the kennel block with his greyhound ‘Nangar Freedom’ (“**Greyhound**”);
- (c) Mr Irwin approached the veterinary examination table to have the Greyhound examined;
- (d) The GWIC Veterinarian conducting the pre-kennelling examination of the greyhounds directed Mr Irwin to step back 1.5 metres from the Greyhound in compliance with Covid-19 protocols;
- (e) Mr Irwin refused to do so and remained standing with his Greyhound until the examination had been concluded.

Charge Three – Rule 86(f)(iv)

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

...

(f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to-

...

(iv) any other person having official duties in relation to greyhound racing.

Particulars:

That Mr Irwin, as a registered Public Trainer, on 27 January 2021 at the Wentworth Park race meeting engaged in the use of contemptuous, unseemly, improper, insulting or offensive language towards a GWIC Veterinarian holding official duties at that race meet, with the particulars being:

- (a) On 27 January 2021 Mr Irwin attended the scheduled race meeting at Wentworth Park;
- (b) During the kennelling process Mr Irwin entered the kennel block with his greyhound ‘Nangar Freedom’ (“**Greyhound**”);

- (c) Mr Irwin approached the veterinary examination table to have the Greyhound examined;
 - (d) The GWIC Veterinarian conducting the pre-kennelling examination of the greyhounds directed Mr Irwin to step back 1.5 metres from the Greyhound in compliance with Covid-19 protocols;
 - (e) Mr Irwin told the GWIC Veterinarian to “*fuck off*”;
 - (f) The GWIC Veterinarian again asked Mr Irwin to comply with the Covid-19 requirements;
 - (g) Mr Irwin replied with words to the effect of: “*Well you can go and get fucked*”,
7. The disciplinary process was conducted in writing in accordance with Mr Irwin’s election.
 8. Mr Irwin denied the charges and his representative provided written submissions on his behalf.
 9. Having considered all the evidence and submissions, on 22 September 2021 the IHP issued a Notice of Disciplinary Action.

Findings

10. Upon review of all the evidence and submissions, the IHP imposed the following penalties:

Charge One – Rule 86(g)	Charge not proven;
Charge Two – Rule 86(p)	Charge proven, \$200 fine imposed; and
Charge Three – Rule 86(f)(iv)	Charge proven, \$500 fine, wholly and conditionally suspended for a period of 12 months on the condition that Mr Irwin not breach Rule 86(f) or any similar Rules during that 12-month period.

11. In imposing the penalty that it did, the IHP took into account the following factors:
 - The objective seriousness of Mr Irwin’s conduct;
 - The length of time Mr Irwin has held a trainer registration in the NSW greyhound racing industry, being since 2015, approximately 6 years;
 - Mr Irwin’s disciplinary history – he has no like matters on his record;
 - Mr Irwin’s denial of all three (3) charges; and
 - The submissions made by Mr Irwin’s representative.

The internal review application

12. On 19 October 2021, Mr Irwin's representative lodged an application for internal review as well as a stay application.
13. The stay application was not opposed by the Commission and as such, the decision of 22 September 2021 has been subject to a stay since that date.
14. The internal review has been conducted on the papers in accordance with Mr Irwin's request.
15. The grounds for review submitted by Mr Irwin's representative were, in summary:

Ground One

That the IHP erred in imposing a 'double penalty' on Mr Irwin by instituting disciplinary action against him in relation to conduct that had already been subject to a penalty imposed by Stewards on 27 January 2021. Mr Irwin's representative submitted that it was neither open to, nor appropriate for, the IHP to impose a further penalty in circumstances where no party applied for an internal review of the decision imposed by Stewards on 27 January 2021;

Ground Two

That the IHP erred in that it was contrary to law and/or public policy for the Commission to impose penalties both by a Steward on 27 January 2021 and by the IHP under Part 6 of the Greyhound Racing Act ("**the Act**") for the same underlying conduct;

Ground Three

That the IHP erred in failing to provide adequate reasons for the central factual findings that Mr Irwin directed offensive language towards the GWIC Veterinarian;

Ground Four

That the IHP erred in finding that Mr Irwin directed offensive language towards the GWIC Veterinarian when it was contrary to the weight of the evidence and not reasonably open, having regard to:

- The fact that the evidence of the Stewards did not allege that Mr Irwin had made the comments on 27 January 2021; and
- The fact that no other person corroborated Dr Crisp's account and that other witnesses present were not asked to give evidence.

Ground Five

Mr Irwin's representatives submitted that the IHP did not reach the correct or preferable decision having regard to the totality of the material before it.

Submissions in relation to Grounds One and Two

16. The Rules provide Stewards the powers to establish an inquiry and lay charges against a person who may have breached the Rules or committed an offence under Rule 86. On 27 January 2021, Stewards issued a formal Notice of Disciplinary Action under Rule 86(g) and determined to issue Mr Irwin with a reprimand.
17. Mr Irwin's representative submitted that this action taken by the Stewards on the night of 27 January 2021 was consistent with the Rules and appropriate in the circumstances.
18. Mr Irwin's representative submitted that the IHP determining to take action under Part 6 of the Act is inappropriate for the following reasons:
 - it creates regulatory incoherence, where a decision of a Stewards Inquiry is implicitly disregarded by another arm of the Commission;
 - the approach constitutes a 'double penalty' for the person the subject of the action, where the person may reasonably have expected the imposition of the first penalty be the end of the matter;
 - no genuinely new information was brought to light during the investigation by the Commission's investigative team to warrant a different penalty. Mr Irwin's representative submitted that the Stewards were in the best position to assess the evidence as they saw the incident first-hand; and
 - The use of Part 6 of the Act in such a way by the IHP and the IHP's actions in revoking the reprimand was submitted as usurping the internal review scheme established by the Act.
19. Mr Irwin's representatives submitted that for the above reasons, it was neither permissible nor appropriate for the Commission to undertake disciplinary action under Part 6 of the Act when the outcome of the Stewards Inquiry on 27 January 2021 had not been disturbed. As such, it was submitted that the IHP erred in reaching the conclusion it did.

Submissions in relation to Grounds Three and Four

20. Mr Irwin's representatives submitted that the IHP failed to provide any explanation as to its central findings that Mr Irwin engaged in offensive language.
21. It was submitted that it was not reasonably open on the state of the evidence to accept the account of the GWIC veterinarian and that the reasons given to Mr Irwin by the IHP were inadequate. Mr Irwin's representatives submitted that the actions of the GWIC veterinarian, in not mentioning the allegations of offensive language, renders it improbable that the comments were made.

Submissions in relation to Ground Five

22. Mr Irwin's representatives submitted to the reviewers that it is not necessary for an error to have occurred in the original decision in order to justify the decision being varied or revoked. It is further submitted that the correct and preferable decision would be to dismiss the charges.
23. In addition, Mr Irwin's representatives noted that a GWIC Inspector gave evidence that he received an unsigned statement from a staff member present at the incident on 27 January 2021. It was submitted that, by failing to provide a copy of this statement to Mr Irwin or to the IHP, Mr Irwin was not afforded procedural fairness.
24. Ultimately, Mr Irwin's representatives submitted that the original decision should be revoked or, in the alternative, varied to affirm the reprimand issued by Stewards on 27 January 2021 with no further penalty imposed.

Decision

25. As reviewers, we have considered all evidence and submissions as part of this matter. This includes the substantive initial disciplinary action as finalised by the IHP on 22 September 2021 and the further submissions and evidence advanced on behalf of Mr Irwin upon review.
26. There is some merit to the submission that the IHP failed to provide adequate reasons on the point that Mr Irwin directed offensive language toward the GWIC veterinarian. It should be noted that under Rule 92(1) of the Greyhound Racing Rules, the Controlling Body may regulate their own procedures and are not bound by formal rules and practices as to evidence. It is clear from the material that the evidence that the IHP relied upon in coming to the determination they did was largely the statement of the GWIC veterinarian. There was no hearing in the matter, and the matter was dealt with on the papers in accordance with Mr Irwin's election.
27. In matters where there is a conflict between two parties in relation to factual matters, a hearing can often assist decision makers in determining what evidence they prefer. The fact that there was no hearing does not mean that there has been any procedural irregularity. However, it has meant that neither the IHP nor Mr Irwin were able to further probe any inconsistencies in relation to the documentary evidence.
28. Sporting disciplinary tribunals, including racing controlling bodies, are not required to provide voluminous reasons surrounding their decisions. They are, however, required to provide sufficient reasons to enable participants affected by decisions to understand with a degree of clarity how decision makers arrive at the decisions they do. This is particularly so where there might be two conflicting views on the evidence and one view is preferred over the other. It was not expressly stated by the IHP that the version of events as described in the GWIC veterinarian's statement was the view preferred by the IHP.
29. Instead, we as reviewers have had to consider the matter on the material and it is apparent by the ultimate decision that the IHP preferred parts of the GWIC veterinarian's evidence over that of Mr Irwin's.

30. We agree with the IHP's decision to find Charge One not proven on the facts. Accordingly, we will not address this charge substantively in this internal review.
31. It is still preferable that decisions provide adequate reasoning to help the reader understand the basis for the decision. Upon review of the material, we consider that the evidence supports a finding against Mr Irwin on Charge Two – that he disobeyed or failed to comply with a lawful order of a person having official duties in relation to greyhound racing. We are comfortably satisfied on the evidence that Mr Irwin refused to comply with the direction to step back 1.5 metres from the greyhound examination table in compliance with the COVID-19 Protocols and instead remained holding his greyhound. As such, we have found Charge Two proven.
32. In relation to Charge Three, Mr Irwin himself provided evidence that he used offensive language and it was reasonably open to the IHP, having regard to Mr Irwin's own evidence together with that of the GWIC veterinarian, to come to the conclusion they did. Whilst the evidence between the GWIC veterinarian and Mr Irwin differ in that the GWIC veterinarian provides evidence that he was told to "*fuck off*" and that he can "*go and get fucked*" Mr Irwin provides evidence that he said that the GWIC veterinarian should "*check [his] fucking dog...*". Whilst the versions between the GWIC veterinarian and Mr Irwin differ it is clear that offensive language was used by Mr Irwin.
33. Mr Irwin accepts that he swore but says that the swearing was not directed at the GWIC veterinarian. We as the reviewers do not accept this submission. In fact, we find and are comfortably satisfied that Mr Irwin swearing could only have been directed at the GWIC veterinarian and as such, the submission that Mr Irwin did not swear at the GWIC veterinarian strains credulity.
34. For the reasons above we find that Mr Irwin did use offensive language and that that was directed towards the GWIC veterinarian. Accordingly, we also find Charge Three proven.

Appropriateness of penalty

35. In moving to determining an appropriate penalty we as reviewers have considered the matter and have determined that in relation to Charge Two, the penalty imposed by the IHP was appropriate. It must be noted that the direction provided by the GWIC veterinarian was during the implementation of the COVID-19 Protocols which were designed to keep racing going when other sports were not in the same fortunate position as greyhound racing. When an official provides a direction for a participant to comply with COVID-19 Protocols, they must be followed without question. At the time, the continuation of greyhound racing relied upon participants complying with the Protocols. It is clear to us as reviewers that the overwhelming majority of participants complied without hesitation with all the Protocols. We consider that Mr Irwin was dealt with, to some degree, leniently and a fine of a higher value was certainly open to be imposed. On review, however, we considered that it is not our place to 'tinker' with the IHP's decision unless we consider that it was a manifestly inadequate penalty. Accordingly, we consider the finding of a \$200 fine to be appropriate.

36. In relation to Charge Three, noting as we have above that there is some conflict in the version of events as to the sequence and use of the offensive language by Mr Irwin, we have considered overall the context in which the offensive language was used. Mr Irwin was trying to convey his concern about this particular greyhound being handled by a person that was unfamiliar with the greyhound. Mr Irwin's behaviour in expressing his concerns leave a lot to be desired. He should have acted far more professionally instead of the argumentative manner in which he conducted himself.
37. We however consider that Mr Irwin does not have any prior matters on his disciplinary record for similar conduct such as offensive comments towards officials. That is not to say that Mr Irwin has a completely clean disciplinary record. In 2017, he was suspended for multiple breaches of the Race Day Hydration Policy. We consider, having regard to all the factors in this matter, that a reprimand is an appropriate penalty and that this will be reflected on Mr Irwin's disciplinary history. Accordingly, we as reviewers determine to vary the penalty imposed in relation to Charge Three from a \$500 fine, wholly and conditionally suspended to that of a reprimand.
38. In accordance with section 91(7)(a) of the Act, having reviewed all of the material and having conducted the internal review on the papers as elected by Mr Irwin, we vary the original decision made by the Integrity Hearings Panel on 22 September 2021, and make the following decision:

Charge Two – Rule 86(p) -

Confirm original penalty of \$200 fine;
and

Charge Three – Rule 86(f)(iv) -

Vary original penalty and impose a reprimand.

Acting Chief Commissioner Chris Wheeler

Commissioner Peter Collins

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