IN THE RACING APPEALS TRIBUNAL

CHLOE BILAL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

DETERMINATION OF APPLICATION PURSUANT TO CLAUSE 20 OF THE RACING APPEALS TRIBUNAL REGULATION 2024 (NSW)

ORDERS

1. **The operation of the decisions of the Respondent of 16 April 2025:**

   (i) finding the charge contrary to r 163(b) of the *Greyhound Racing Rules* brought against the Appellant established; and
   (ii) imposing a disqualification of 6 months

   is suspended until the Appellant's appeal is heard and determined.

2. **The Appellant is to file all evidence and submissions in support of the appeal by 5.00 pm on 19 May 2025.**

3. **The Respondent is to file all evidence and submissions by 5.00 pm on 2 June 2025.**

4. **The Appellant is to file any evidence and submissions in reply by 5.00 pm on 4 June 2025.**

5. **The parties are to provide their available dates for hearing to the Appeals Secretary by 5 June 2025.**

INTRODUCTION

1. By a Notice dated 23 April 2025, Chloe Bilal (the Appellant) has appealed against the decisions of the Greyhound Welfare and Integrity Commission (the Respondent) finding her guilty of, and imposing a period of disqualification with respect to, an offence contrary to r 156(b) of the *Greyhound Racing Rules* (the Rules). Those decisions were made following an internal review of earlier decisions made by the Respondent's Stewards. Accompanying the Notice was an application for an order pursuant to cl 20 of the *Racing Tribunal Regulation 2024* (the Regulation) suspending the operation of the Respondent's decisions until the hearing of the appeal.

2. This determination relates to the application for an order pursuant to cl 20 of the Regulation, which is opposed by the Respondent.

3. I note that in setting the timetable for the filing of evidence and submissions in relation to the present application, I made provision, at the request of the Appellant's Solicitor, for the filing of submissions in reply. Having read the Appellant's submissions in chief, along with those of the Respondent, I have concluded that the application for an order pursuant to cl 20 should be granted. It is therefore not necessary to consider any further submissions in reply.

THE CASE AGAINST THE APPELLANT

The facts

4. The Appellant has filed limited evidence (as distinct from submissions) in support of the present application, and has not provided any clear narrative of the relevant facts. Bearing in mind those limitations, my understanding of the case against the Appellant is as follows.[1]

[1] Some of the factual background is drawn from the reasons of the decision maker.

The Appellant's registration

5. The Appellant is a greyhound racing industry participant who has been registered with the Respondent as an Owner/Trainer since June 2021.

The imposition of a condition on the Appellant's licence

6. Correspondence apparently passed between the Appellant and the Respondent in November 2021 in relation to the imposition of a condition on the Appellant's registration(s). That correspondence is said to have arisen out of what have been described as integrity concerns, stemming from a desire on the part of the Respondent to monitor the identity of persons attending the Appellant's kennels and related training areas (the property).

7. I infer from the reasons of the decision maker who determined the application for internal review that:

    (i) the Respondent proposed the imposition of a condition upon the Appellant's registration(s) (the condition);

    (ii) the terms of the condition[2] required the Appellant to:

    (a) install a CCTV system at an agreed location on the property;

    (b) provide footage captured by that system to the Respondent on request;

    (iii) the Appellant agreed to the imposition of a condition in those terms.

8. In November 2021, a condition to the effect of that in [7](ii) was imposed on the Appellant's registration(s). There does not appear to be any dispute that in compliance with that part of the condition in [7](ii)(a) above, the Appellant installed a CCTV system.

[2] Appellant's submissions at [13].

The Respondent's investigation

9. At some time in 2024, the Respondent apparently became aware that a former industry participant who was subject to a suspension (and who was thus prevented, by the terms of that suspension, from attending any place where greyhounds were kept, trained or raced) had attended the property.

10. On 6 May 2024, the Appellant was interviewed by the Respondent's inspectors about the attendance of the person at the property. I have not been provided with a transcript of that interview, but the reasons of the decision maker note that the following exchange occurred between one of the Respondent's inspectors, and the Appellant:

> *Inspector:* *Okay. So, if we did need to come out and have a look at the cameras, for that day, can you make sure that that's not deleted or anything?*
> *Respondent:* *Yep.*

11. On 14 May 2024, the Respondent's inspectors were granted access to the CCTV system at the property, but were unable to obtain the footage sought. The Appellant's Solicitor has provided a copy of a (partly obscured, and thus incomplete) text message, which I have assumed was sent by one of the Respondent's Stewards to the Appellant. It said the following:

> *..... to download data from your cameras. Call me ASAP. We can come back today. .... Hey Chloe I've left a super powerful USB drive so you can figure it out and take it to the stewards at the next race meeting after you get it down. We tried so don't stress we will need to sort it out but have time. Have a chat to the installer and put it on him that's what you've paid for. Last ten days from 4th May.*

12. On 16 May 2024, the Respondent wrote to the Appellant and formally directed her to provide, by 22 May 2024, a copy of all footage captured by the CCTV system between 4 May 2024 and 14 May 2024.

13. On 20 May 2024, the Respondent was granted an extension until 27 May 2024 to comply with the direction in [12].

14. The Appellant's Solicitor then wrote to the Respondent and a copy of that correspondence has been provided to me. The reasons of the decision maker refer to submissions which were made on the Appellant's behalf on 27 May 2024 and I have inferred that this is a reference to the correspondence provided, which includes the following:

> *Pursuant to the condition our client installed the cameras as requested.*
>
> *As you are aware through attending investigators, when they arrived – unannounced – they were led to the equipment and with them so present, they experienced difficulties in relation to recovering the footage pursuant to the condition.*
>
> *Our client has since been in dialogue with her technical advisor who has taken the old hard drive.*
>
> *Our client has complied with the condition by doing all such things and acts to ensure that the condition had been met by installing the equipment and expecting the vision to made available to you upon request, but technical difficulties have intervened and frustrated her attempts to provide same.*
>
> *The attached invoice describes the work done by her technician evidencing the fault, which was not foreshadowed or expected.*
>
> *It may be the case that the Commission can obtain more recent footage of the kennels and related under the existing operational equipment. Further information regarding our clients hard drive can be obtained by Mohamad Arnaout, being the technician. The Commission should not take any action at this juncture where our client had taken steps to comply, but technical difficulties have intervened.*

15. Whilst nothing may ultimately turn on it, the reference in that correspondence to difficulties experienced by the Respondent's inspectors in "*recovering the footage pursuant to the condition*" tends to reflect something of a misunderstanding of the terms of the condition. The condition said absolutely nothing about the Respondent *recovering* footage. Rather, it imposed a positive obligation on the Appellant to *provide* the footage on request.

16. The Appellant's "*technical advisor*" appears to be a Mr Arnaout. I have been provided with a copy of an email sent by a Mr Arnaout to another email address (the owner of which is not identified) which includes the following:

> *CCTV system was installed... in 2021.*
>
> *It was mentioned that the recording was due to a condition placed on (the Appellant's) greyhound licence and I carried out the installation as per requested (sic).*
>
> *The installation does not require any further maintenance. I left the property with all cameras functioning with recording confirmed.*
>
> *I was contacted again in January of 2024 to relocate the CCTV system.... This was a simple relocation and once complete, the CCTV system was confirmed to be recording with no issues.*
>
> *The Appellant contacted me on 14 May advising Inspectors were at the property wanting to download footage.*
>
> *Through a third party I gave them the default password I configure all CCTV system with. From my understanding they had entered it incorrectly 3 times and potentially locked out access to the CCTV system.*
>
> *(The Appellant) then contacted me to come to the property to download the footage. I arrived on 20 May to download as requested.*
> *Upon inspection, I believed the CCTV system to have been affected by some sort of electrical spike. This could have been caused by the use of heavy machinery in close proximity or bad weather.*
>
> *I advised (the Appellant) that she would need a new hard drive and she was happy to proceed after discussing costs. I supplied and installed a brand new hard drive and configured the CCTV system as per requested. The CCTV system was confirmed to be operational and recording before my departure.*

The Notice of charge

17. On 1 July 2024, the Respondent issued a Notice of charge and proposed disciplinary action (the Notice) to the Appellant. The Notice contained two charges. Only one of them is relevant for present purposes, namely a charge alleging an offence contrary to r 156(b) of the Rules which is in the following terms:

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

(a)...

(b) fails to comply with any conditions:

(i) of the person's registration or license as an owner, trainer, attendant or any other category of registration or licence.

18. I have not been provided by the Appellant's Solicitor with a copy of the Notice, nor the particulars of the charge.

The hearing before Stewards

19. The Notice invited the Respondent to attend a hearing, at which a plea of not guilty was apparently entered. The Appellant's Solicitor has provided virtually no details of what took place at the hearing.

20. On 24 October 2024, Stewards wrote to the Appellant's Solicitor (apparently in response to correspondence from the Appellant's Solicitor with which, once again, I have not been provided) apologising for the delay in finalising the matter which was said to be due to a person being on *"unplanned leave"*. The Appellant's Solicitor was advised on that occasion that the Appellant had been found guilty and was invited to provide submissions on penalty. I infer that submissions were made. Once again, they have not been provided to me.

21. On 10 March 2025, Stewards imposed a disqualification of 13 months, backdated to commence on 28 May 2024 (which was apparently the date on which the Respondent imposed an interim suspension on the Appellant) and to expire on 27 June 2025. A period in excess of 8 months therefore elapsed between the date on which the Notice was issued, and the date on which the penalty was imposed.

The internal review of the Stewards' determination

22. On 17 March 2025, the Appellant lodged an application for an internal review of the Stewards' determination, accompanied by an application for a stay. The latter

application was refused on 10 April 2025 by the decision maker. I have not been provided with the reasons for that determination.

23. In support of the application for an internal review, it was submitted that:

    (i) the Appellant had not failed to comply with a condition of her licence;
    (ii) the Appellant had provided access to the footage when the Inspectors arrived;
    (iii) the Respondent's Inspectors had "*tampered*" with the system, and "*locked themselves out*" of the program;
    (iv) the Appellant had subsequently experienced issues downloading the footage;
    (v) the Appellant had engaged Mr Arnaout who was also unable to recover the footage;
    (vi) the technical issue which had been created (inferentially by the Respondent's inspectors) was outside of the Appellant's knowledge and control;
    (vii) for all of these reasons, the offence was not made out.

24. The decision maker accepted that the Appellant had complied with that part of the condition requiring her to install the CCTV at her property, but concluded that she had *"failed to provide footage to (the Respondent) when requested."* The reasons of the decision maker do not appear to have further engaged with the circumstances of the alleged offending, nor do they appear to have further engaged with the issues raised by the Appellant's Solicitor in his submissions. The precise basis of the finding that the Appellant had failed to provide the footage was not made apparent.

25. In terms of penalty, the decision maker found that the offending was objectively serious but reduced disqualification to one of 6 months, commencing on 10 March 2025. Taking into account a period of 87 days which had been served by

the Appellant, the disqualification will expire on 15 June 2025, that is in approximately 5 weeks' time.

THE RELEVANT PRINCIPLES

26. The principles governing the present application were set out at length in *Marshall v Greyhound Welfare and Integrity* Commission.[3] I will not repeat them. They have been applied in reaching my determination. Put simply, I am required to determine whether:

    1. there is a serious question to be tried; and, if so
    2. the balance of convenience favours the order being made.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

27. The Appellant's submissions exhibited something of a tendency to conflate evidence on the one hand, with submissions on the other. Moreover, some of the submissions made incorporate factual assertions which are entirely unsupported by any evidence provided to me. That is a somewhat unsatisfactory way in which to approach an application of this nature. Nevertheless, the following propositions were advanced:

    (i) the condition was *"so vague as to be uncertain"*;[4]

    (ii) it is a "*fact*" that access was provided by the Appellant to the "*database*" when she was asked to do so;[5]

    (iii) the Appellant had complied with the condition and no offence had been committed;[6]

    (iv) the decision maker's reasons were deficient;[7]

[3] A decision of the Tribunal of 21 December 2023 at [15] – [16].
[4] At [25] – [32].
[5] At [33].
[6] At [41] – [58].
[7] At [38].

(v) even if the Appellant had committed an offence, this was a case in which no penalty should be imposed;[8]

(vi) issues of delay impacted upon the assessment of any penalty;[9]

(vii) the Appellant's personal circumstances were such that the balance of convenience weighed in favour of a stay.[10]

28. Shortly put, and to the extent relevant for present purposes, the Appellant's position appears to be that:

(i) there is a serious question to be tried, as to whether:

(a) an offence has been committed; and

(b) the penalty is appropriate, given firstly the asserted circumstances of the offending, and secondly the delay which had been occasioned in the proceedings up to this point;

(ii) the Appellant's personal circumstances put the balance of convenience in her favour.

Submissions of the Respondent

29. The Respondent's submissions may be summarised as follows:

(i) the purpose of the imposition of the condition was to mitigate a potential integrity risk;[11]

(ii) the fact that the Appellant complied with the requirement to install the CCTV reflects her understanding of the condition, an objective fact which tends completely against the proposition advanced on her behalf that the condition is vague and uncertain;[12]

[8] At [59].
[9] At [76]
[10] At [62] -
[11] At [20].
[12] At [22].

(iii) in any event, the terms of the condition are largely irrelevant to the determination I am required to make;[13]

(iv) it was the Appellant's obligation to ensure that she was able to comply with the condition;[14]

(v) whilst the Appellant complied with that part of the condition requiring her to install the CCTV equipment, she did not comply with that part of the condition which required her to provide the footage;[15]

(vi) it followed in these circumstances that the Appellant had failed to establish that there is a serious question to be tried;[16]

(vii) in any event, the balance of convenience weighed against the grant of a stay, particularly given the rationale behind the imposition of the condition in the first instance;[17]

(viii) the Appellant's personal circumstances did not adjust the balance of convenience in favour of the grant of a stay, particularly having regard to the fact that holding a licence is a privilege and not a right.[18]

CONSIDERATION

Is there a serious question to be tried?

30. In determining whether there is a serious question to be tried, I make it clear that I express no view whatsoever as to the ultimate resolution of factual issues, or the Appellant's prospects of success in her appeal. However, the following observations are open.

31. First, in finding the offence established, the decision-maker referred to having "*considered*" the submissions of the Appellant. As I have previously noted in

[13] At [23].
[14] At [25].
[15] At [25] – [30].
[16] At [31].
[17] At [32].
[18] At [34] – [42].

passing, the decision maker's reasons do not reflect any engagement with the submissions, nor do they explain why it was that such submissions were apparently rejected.

32. Secondly, in the course of recounting the facts of the case, the decision maker said:[19]

> *"Whilst [the Appellant] did have a CCTV system installed at the Property,* ***she was <u>unable</u> to provide [the Respondent] with the footage from the CCTV*** *following a legitimate demand ...."* (my emphasis).

33. Later, when considering the question of penalty, the decision maker said:[20]

> *[T]he objective seriousness of this offence is mitigated by (the Appellant's)* ***submissions as to the technical failures of the system, something she was not aware of. I find this to be a strong factor in her favour.***

34. A number of matters of potential significance arise from these passages of the decision maker's reasons.

35. To begin with, the decision maker made reference to the Appellant being "*unable*" to provide the footage. That is, at least in part, precisely the Appellant's case. Specifically, the Appellant asserts that she was unable to comply with the condition due to technical failures which were brought about from the interrogation of the system by the Respondent's inspectors.

36. Four further observations should be made at this point.

37. First, the existence of systemic failures in the CCTV appears to be supported by the evidence of Mr Arnaout.

[19] At [7].
[20] At [35].

38. Secondly, a conclusion that such failures were due to the interrogation of the system by Respondent's inspectors also receives some support in the evidence of Mr Arnaout.

39. Thirdly, even if there is an issue about the *cause* of any systemic failures, their *existence* was clearly accepted by the decision maker.

40. Fourthly, the decision maker found that the Appellant was not aware of those failures and thus (inferentially) was not responsible for them.

41. Bearing all of these matters in mind, and leaving aside any issue as to the asserted deficiency of the decision maker's reasons, there is arguably some tension between:

    (i) accepting:
        (a) the existence of systemic failures within the CCTV installed by the Appellant;
        (b) that the Appellant was neither aware of, nor responsible for, those failures; and
    (ii) concluding that the Appellant committed an offence by failing to comply with a condition requiring her to provide footage obtained from that same (failed) system, upon being requested to do so.

42. If, for example, a conclusion were reached that the (acknowledged) systemic failures rendered it impossible for the Appellant to comply with the condition (a conclusion which finds some support in the evidence), it may be open to conclude (and I put it no higher than that) that the offence has not been made out. In the event that a finding were made that the Appellant committed the offence, the acknowledged failures may nevertheless have a bearing on penalty.

43. There may also be an issue of delay which impacts on the question of penalty, to which the decision maker does not appear to have referred. As far as I can

ascertain, the period which elapsed between the date of the alleged commission of the offence, and the initial determination of Stewards, was more than 8 months. That may (and again I put it no higher than that) attract the application of the principles discussed in *Kwong v Greyhound Welfare and Integrity Commission*.[21]

44. I unreservedly acknowledge that the condition was imposed upon the Appellant out of integrity concerns. I also acknowledge the importance of those concerns to the industry as a whole. However, integrity concerns are not a means to an end. There remain, in my view, issues concerning whether an offence has been committed in this case, and if so, the appropriate penalty to be imposed.

45. For all of these reasons, I am satisfied that there is more than one serious question to be tried. The first requirement for an order pursuant to cl 20 is therefore made out.

Where does the balance of convenience lie?

46. Given the need for the parties to prepare and file evidence and submissions, it is unlikely that the present appeal will be heard and determined prior to the conclusion of the Appellant's period of disqualification, which is a matter of weeks away. A relevant consideration in determining where the balance of convenience might lie is whether an appeal, if successful, may be rendered nugatory if a stay is not granted.[22] In the circumstances I have outlined, there is a clear risk of that eventuating in this case. That circumstance, without anything more, supports a conclusion that the balance of convenience lies in favour of the grant of a stay. That is particularly so in circumstances where there is no demonstrated prejudice to the Respondent in the event of a stay being granted.

ORDERS

47. For the reasons given, I make the following orders:

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[21] A determination of the Tribunal of 17 March 2025 at [37] and following.
[22] See *TCN Channel 9 Pty Limited v Antoniadis [No. 2]* (1999) 48 NSWLR 381; *Newcrest Mining v Industrial Relations Commissioner* [2005] NSWCA 91; *Maund v Racing Victoria Limited and anor.* [2015] VSCA 276.

1. The operation of the decisions of the Respondent of 16 April 2025:
    (iii) finding the charge contrary to r 163(b) of the *Greyhound Racing Rules* brought against the Appellant established; and
    (iv) imposing a disqualification of 6 months

    is suspended until the Appellant's appeal is heard and determined.

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5. The parties are to provide their available dates for hearing to the Appeals Secretary by **5 June 2025**.

THE HONOURABLE G J BELLEW SC

5 May 2025