IN THE RACING APPEALS TRIBUNAL

WAYNE VANDERBURG
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR THE DETERMINATION OF AN APPLICATION BY THE APPELLANT PURSUANT TO CL 20(1) OF THE RACING APPEALS TRIBUNAL REGULATION 2024

INTRODUCTION

1. Wayne Vanderburg (the Appellant) was charged by the Greyhound Welfare and Integrity Commission (the Respondent) with a series of offences contrary to the *Greyhound Racing Rules* (the Rules). For present purposes only one of those charges is relevant, namely a charge alleging an offence contrary to r 164(b) of the Rules. To the extent material for present purposes, r 164(b) is in the following terms:

> *164 An offence is committed if a person (including an official):*
> *...*
> *(b) refuses ... or fails to produce a document or other thing n relation to an investigation ... pursuant to the Rules when directed by a Controlling Body, the Stewards or other authorised person.*

2. On 2 May 2025, the Respondent issued the Appellant with a Notice providing the following particulars of that charge:

> *1. At all relevant times [the Appellant] was registered with [the Respondent] as an Attendant.*
>
> *2. On 21 February 2024, [the Appellant] was directed by Steward Van Gestel to produce a pill container that he had in his pocket.*

3. *[The Appellant] refused to comply with the direction and consumed an item contained within the pill container.*

3. The Appellant pleaded guilty to that charge on 27 May 2025 in circumstances where, as noted, the offence occurred on 21 February 2024. The apparent delay in the finalisation of the disciplinary process is not explained on the evidence.

4. On 30 June 2025, the Respondent imposed a disqualification of 27 months on the Appellant.

5. By a Notice dated 5 July 2025, the Appellant appealed against that determination. He also sought a stay pursuant to cl 20(2) of the *Racing Appeals Tribunal Regulation 2024* (NSW) pending the determination of his appeal. On 18 July 2025 I determined that the application for a stay should be refused, and indicated that my reasons for reaching that determination would be provided in due course. Those reasons now follow.

THE CASE AGAINST THE APPELLANT

6. For present purposes a brief summary of the case against the Appellant is sufficient.

7. The Appellant is a registered participant in the greyhound racing industry in the capacity of an attendant. He attended the Wentworth Park Greyhound Track on 21 February 2024 as the handler for the greyhound *Wild Octane* (the greyhound) which competed in race 2. The greyhound was trained by the Appellant's partner, Sarah Fellowes.

8. Stewards were alerted to certain behaviour on the part of the Appellant which had occurred prior to the running of race 2, as a consequence of which they spoke with him in the area of the swab kennels after the race. At that time, the Stewards indicated that they intended to search the Appellant's pockets for the presence of prohibited substances. The Appellant removed a number of items from his

pockets, including a pill container. He was directed by Stewards, more than once, to surrender the container but refused to do so, stating "*it's personal*".

9. The Appellant was then directed to the Stewards' room for the purposes of the conduct of a further search, and an interview. On that occasion, the Appellant surrendered an *empty* pill container, informing Stewards that it was used for medication for greyhounds.

10. Stewards were advised that when the Appellant was moving towards the Stewards' room, he was seen to remove something from his pocket and put it in his mouth. When that allegation was put to him, the Appellant admitted putting his hand to his mouth, but denied swallowing anything. He later told Stewards that when he was initially spoken to, there was a *Viagra* tablet in the pill container which was for his own personal use, the existence of which he did not want made public. Consistent with the particulars of the charge, the submissions filed on behalf of the Appellant include an express concession that the Appellant consumed the pill which was in the pill container before handing it to the Stewards.

11. As I understand it, it is the Appellant's refusal set out in [8] above which constitutes the gravamen of the offence against him. That is not to say that facts other than those set out above may not be ultimately relevant for the purposes of providing some context to the Appellant's offending but that is not a determination I am required to make at the present time.

12. The Appellant served a suspension of 126 days during the period in which disciplinary proceedings (including those relating to this charge) were pending against him. This assumes some significance for the reasons discussed more fully below.

THE PRINCIPLES GOVERNING THE PRESENT APPLICATION

13. There is no issue between the parties as to the principles which are to be applied in determining the present application. Shortly put, the Appellant must establish that:

    1. there is a serious question to be tried; and
    2. the balance of convenience favours the making of an order for a stay.[1]

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

14. The Appellant's submissions as to the issue of whether there is a serious question to be tried may be summarised as follows:

    1. The Respondent has not pointed to anything which might support a conclusion that the disqualification imposed was warranted, or would be the likely outcome following the hearing of the appeal.

    2. It followed from the submission in [1] above that the appeal may be rendered nugatory.

    3. There was "*no real urgency*" in respect of the Appellant's disqualification, becoming effective, given that the offending occurred in February 2024.

    4. The offending occurred over a short period of time.

    5. There was "*no doubt*" that the offending was not motivated by a desire to cheat or otherwise breach the rules.

    6. The objective seriousness of the offending should be regarded as falling at the lower end of the scale because:

[1] See generally *Marshall v Greyhound Welfare and Integrity Commission* (21 December 2023) at [16].

(a) the Appellant's conduct was not an attempt to thwart the investigation which was being carried out, nor was it an attempt to conceal other offending;
(b) the pill container was ultimately produced a short time after the Appellant was directed to do so;
(c) the offending was motivated by a fear of personal embarrassment, as opposed an attempt to conceal nefarious conduct;
(d) admissions were made by the Appellant within a matter of days;
(e) the Appellant had co-operated with the investigation.

7. The Appellant has a strong subjective case, which includes having supported Ms Fellowes through prolonged disciplinary proceedings which had been brought against her.

8. The need for both specific and general deterrence had been met by the suspension already served.

9. Having regard to all of these matters, the Appellant has an arguable case that any penalty to be imposed for the offending *"ought to at least be less than 126 days"*.

15. As to the balance of convenience, the Appellant's submissions may be summarised as follows:

1. Given that the offending occurred in 2024, there was little prejudice to the Respondent if a stay were granted.

2. There was, conversely, considerable prejudice to the Appellant in the event of a stay not being granted, given that:

(a) he presently works full time for Ms Fellowes, who relies on him for the conduct of her training activities which involve more than 40 greyhounds; and

(b) those training activities had already been significantly interrupted by the Appellant's period of suspension.

Submissions of the Respondent

16. The submissions of the Respondent may be summarised as follows:

1. The Appellant had adopted an inconsistent position in his dealings with the Stewards.

2. The Appellant's conduct amounted, in effect, to a breach of his obligation, as an industry participant, to be honest in his dealings with the Respondent.

3. There was, in light of the Appellant's objectively dishonest conduct, a need to impose a penalty which would give proper effect to s 11 of the *Greyhound Racing Act 2017* (NSW), and which would serve to maintain the integrity of, and promote public confidence in, the industry.

4. The nature of the Appellant's conduct, involving as it did inherent dishonesty, was such that there was a necessity to pay particular regard to the need for general deterrence when assessing any penalty.

5. The Appellant's subjective circumstances did not support a conclusion that the penalty imposed was excessive, so as to establish a serious question to be tried.

6. Even if a serious question was found to be established, the fact that the Appellant is a full time attendant for some 40 greyhounds trained by Ms Fellowes was not sufficient to support a conclusion that the balance of convenience weighed in favour of the grant of a stay, as it would be open to Ms Fellowes to find other registered participants who would be able to assist her in conducting her training operation.

CONSIDERATION

17. It is important, at the outset, to understand the basis on which the Appellant puts his case, both on the appeal generally, and on the issue of whether there is a serious question to be tried in particular. Two fundamental propositions are advanced on his behalf in those respects.

18. The first, is that the penalty imposed by the Stewards at first instance is, having regard to all relevant considerations, excessive. I would be prepared to accept that such a proposition is at least arguable.

19. However, the Appellant goes further. His case, both on the appeal and on this application, relies on a second proposition, namely that the penalty imposed "*ought to at least be less than 126 days"* that being the period of suspension that he had served pending the resolution of the charge (which would obviously have to be taken into account in calculating any period of disqualification). On the evidence presently before me, and for the reasons that follow, I am not satisfied that there is sufficient likelihood of the Appellant making good *that* proposition so as to justify the making of the order sought.

20. To begin with there is, to say the least, a considerable gap between the disqualification of 27 months imposed by Stewards, and the period of slightly more than 4 months which was served by the Appellant by way of suspension. Where, within that range, an appropriate penalty for the offence might fall will depend on an assessment of the entirety of the evidence. What needs to be emphasised is that even if the conclusion were reached that the penalty imposed by Stewards was excessive (a proposition which, as previously stated, I accept is arguable) that would not, of itself, lead to the inevitable conclusion that the appropriate penalty is "time served" or, as the Appellant would have it, some period less than that. Contrary to what was put on the Appellant's behalf, the Respondent is not required to establish that "*the disqualification imposed at first instance was warranted, or would be the likely outcome following the hearing of the appeal*". Whilst that appears to be the Respondent's position, rejection of that

position does not lead to a conclusion that the Appellant's position on penalty would, or should, be automatically accepted. It may, for example, be open to me to conclude that a disqualification of something less than 27 months is warranted in all of the circumstances, but that the appropriate period is nevertheless longer than that for which the Appellant contends. In that respect, I should say that I find it difficult to accept the submission advanced on behalf of the Appellant that the imposition of a fine would ever be likely to be appropriate for offending of this particular kind.

21. Further, the Appellant's case on the appeal depends, to a not insignificant extent, upon a conclusion being reached that his culpability should be assessed as falling at the lower end of the scale. That, in turn, depends upon (inter alia) accepting his account of the circumstances in which the offending took place and, more specifically, accepting his account as to what it was that motivated him to act as he did.[2] For reasons which are so obvious that they do not need to be stated, the determination of this application is not the occasion on which to make determinations about matters of that kind. However, on the information which is presently available, I simply make the observation that I find aspects of the factual background to the offending, as well as aspects of the Appellant's explanations, more than a little curious. Whether the Appellant's various assertions ultimately withstand scrutiny and are accepted would seem to loom as a not insignificant issue in the determination of his appeal.

22. Moreover, even if the Appellant's account *is* accepted, and even if a conclusion *is* reached that his level of culpability is low, it does not follow, that if a stay is not granted the appeal will be rendered nugatory. Leaving aside the matters discussed at [20] above, reaching the conclusion that the appeal will be rendered nugatory absent a stay depends upon the acceptance of yet a further proposition, namely that the period of suspension, or something less than that, is the

[2] See the submissions summarised at [14](5) and (6) above.

appropriate penalty. That is a determination which can only be made on the whole of the evidence.

23. I accept that at a threshold level, the evidence identifies subjective factors which must be taken into account in the Appellant's favour in mitigation of penalty. They include his plea of guilty, and what appears to be a favourable disciplinary history. They may also include issues of unexplained delay. Equally, there are other factors which may not favour the Appellant. They include the fact that from the point of view of maintaining the integrity of, and public confidence in, the greyhound racing industry, r 164 is a particularly important provision. It assists in facilitating the conduct of investigations by Stewards, in circumstances where investigative processes are a fundamental component of the proper and effective regulation of the greyhound racing industry. It does so by rendering it an offence when a participant jeopardises, potentially or actually, the efficacy of an investigation by engaging in deliberately obstructive and dishonest conduct of the kind in which the Appellant has admitted engaging in the present case. In that regard, I find it difficult to accept the submission advanced on the Appellant's behalf that he that he somehow *co-operated* with the Respondent's investigation. The evidence presently available would support a conclusion that the Appellant's conduct was, in the main, the complete antithesis of co-operation. It follows from all of these considerations that general deterrence will necessarily be a significant factor whenever a penalty for an offence contrary to r 164 is considered. The present case is no exception.

CONCLUSION

24. Needless to say, none of the observations I have made should be construed as an indication that I have reached any concluded view about any issue, including, obviously, the appropriate penalty. No final view can be formed about any issue until such time as I have had the benefit of hearing, viewing and considering the entirety of the evidence, and the submissions of the parties in relation to it. However, for the reasons given, and bearing in mind the way in which he puts his case, I am not satisfied that the Appellant has established that there is a serious

question to be tried in the sense I have explained.[3] In those circumstances the application must fail and it is not necessary for me to consider where the balance of convenience might lie.

25. It was for these reasons that I refused the application. I note that orders have been made facilitating the progress of the appeal.

THE HONOURABLE G J BELLEW SC

24 July 2025

[3] At [19] above.