

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

Matters for determination	Decision dated 30 July 2023
Internal review decision date	25 September 2023
Internal review decision by	Mr Brenton (Alby) Taylor Chief Commissioner, GWIC
Internal review decision summary	Confirm the decision made by the Decision Makers on 30 July 2023

REASONS FOR DECISION

1. These are the reasons for the decision following an application by Mr Shane Cartwright (**Mr Cartwright**) for internal review under the *Greyhound Racing Act 2017 (Act)* of a Commission decision. That decision was to find Mr Cartwright guilty of a breach of Rule 141(1)(a) of the Greyhound Racing Rules. The disciplinary action imposed was recorded as “*a suspension of two months, to commence midnight Tuesday 1 August 2023 and end midnight Saturday 30 September 2023*”.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. I confirm I was not involved in making the original decision, and I am a qualified person in accordance with section 91(5) of the Act. I lastly confirm I have dealt with this application for review.
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. Mr Cartwright was a registered Public Trainer within the greyhound racing industry at all material times.
5. On 14 March 2023 Mr Cartwright presented the greyhound ‘Daisy’s Gold’ (**Greyhound**) to race in race 6 at Grafton. Following the race, the Greyhound was required to undergo a post-race swab due to finishing first. Upon analysis that swab was found to contain a prohibited substance, being theobromine. Theobromine is a prohibited substance pursuant to Rule 137 of the Greyhound Racing Rules.

6. On 20 June 2023 Mr Cartwright was issued with a Notice of Charge and Proposed Disciplinary Action (“**Notice**”) charging him with a breach of Rule 141(1)(a). The rule reads:

Rule 141(1)(a), Rules

- (1) The owner, trainer or other person in charge of a greyhound
 a. nominated to compete in an Event;

...

must present the greyhound free of any prohibited substance.

...

- (3) The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence.

7. Mr Cartwright attended a hearing on 30 July 2023 with Stewards. At the hearing, Mr Cartwright entered a plea of guilty to the charge and made oral submissions in respect of that plea.
8. The Stewards formally found Mr Cartwright guilty of the charge and determined to impose a period of suspension. The period of suspension, as reflected in the disciplinary action decision, records that a suspension of two months would be imposed, “*to commence midnight Tuesday 1 August 2023 and end midnight Saturday 30 September 2023*”.

Internal Review Application

9. On 10 August 2023 Mr Cartwright submitted an application for an internal review of the decision made by the Stewards. Mr Cartwright also requested a stay of the decision pending the finalisation of the internal review. On 14 August 2023 I granted a stay of the decision.
10. Mr Cartwright seeks an internal review in respect of the penalty imposed. The internal review has been conducted on the papers.
11. As the internal reviewer, I have had regard to all the evidence considered by the Stewards, together with the internal review materials provided by Mr Cartwright. The material I have had reference to includes:
- Application for internal review dated 1 August 2023;
 - Notification of detection of irregularity in sample dated 2 May 2023;
 - Notice of charge and proposed disciplinary action following ‘B sample’ confirmation, and brief of evidence including:
 - Sample identity document V792785;
 - Racing Analytical Services Ltd (“RASL”) Kit Audit document 23/0549;

- Greyhound sample collection operations sheet and chain of custody document dated 14 March 2023;
- Kennel bay seal record from Grafton dated 14 March 2023 and copy of seal;
- Security bay seal record from Grafton dated 14 March 2023 and copy of seals;
- RASL sample receipt dated 22 March 2023;
- Results from race 6 at Grafton dated 14 March 2023;
- A Sample: Certificate of analysis from RASL dated 28 April 2023, with cover letter dated 28 April 2023;
- Copy of letter from GWIC to Mr Cartwright notifying of detection of prohibited substance and inquiry dated 2 May 2023;
- B Sample: Certificate of analysis from the Racing Chemistry Laboratory dated 13 June 2023, with covering letter of RASL dated 13 June 2023;
- Licence, registration and disciplinary history of Mr Cartwright.
- Transcript of hearing dated 30 July 2023;
- Email received from RASL the clarifying why an amended certificate of analysis was issued dated 9 August 2023;
- Notice of disciplinary action, with the following annexures:
 - Summary of decision;
 - Suspension fact sheet.

Issue One: Amendment of incorrect particulars

12. The charge brought against Mr Cartwright was unfortunately particularised to reflect that the swab taken from the greyhound 'Daisy's Gold' was undertaken prior to the race commencing. This is incorrect.
13. I take this opportunity to amend the particulars of which Mr Cartwright was found guilty to read as follows:
1. That Mr Cartwright, as a registered Public Trainer at all material times, while in charge of the greyhound 'Daisy's Gold' ("**Greyhound**"), presented the Greyhound for the purpose of competing in race 6 at the Grafton meeting on 14 March 2023 ("Event") in circumstances where the Greyhound was not free of any prohibited substance;

2. The prohibited substance detected in the sample of urine taken from the Greyhound after the Event was theobromine; and
 3. Theobromine is a prohibited substance under Rule 137 of the Greyhound Racing Rules.
14. I consider that by virtue of his plea of guilty it has been accepted by Mr Cartwright that a swab was taken from the Greyhound and attributed the reference number V792785.
 15. I am satisfied that the amendment to the particulars does not alter the intention of Mr Cartwright's plea of guilty, in that he entered a plea of guilty to the swab taken on 14 March 2023 from the Greyhound at the Grafton racecourse which returned a positive result.
 16. Accordingly, I find that Mr Cartwright breached Rule 141(1)(a), in accordance with the amended particulars set out at paragraph [13] above. I confirm the acceptance of Mr Cartwright's plea of guilty to the charge, and confirm that he will be afforded the associated discount of penalty.

Issue Two: The Amended Certificate of Analysis - ChemCentre Laboratory

17. Mr Cartwright in his application for review indicates that one of the reasons he is seeking a review is:

"I have concerns with the element of 'doubt' involved in this case. The certificates used in this case has a certificate replacing another certificate where it alludes to a positive test in the control. Can certificates simply be changed without a legal JP overlooking such changes? Why was this certificate not questioned in the brief of evidence?"

18. In relation to this issue, the original certificate issued by the ChemCentre laboratory on the 9 June 2023 included the words "Not Confirmed" in reference to whether the substance had been detected in the control sample results. When this matter was queried by the Racing Operations Manager at Racing Analytical Services, ChemCentre clarified that an error was made in using the wording "Not Confirmed" on the original certificate, and that the wording "Not Detected" should be substituted. Accordingly, a replacement certificate containing the correct wording was then issued, replacing the original certificate.
19. I am satisfied that this was simply an administrative mistake, for want of a better word a 'typo', and nothing more. I consider that the replacement of the original certificate with an amended certificate was an appropriate course of action and does not impact the veracity or accuracy of the analysis.

Issue Three: The bone fides of the Swabbing Attendant

20. Mr Cartwright in his application for review indicates that the second of the reasons he seeks a review is:

“The swabbing attendant [redacted] had carried out this swab. It is believed [redacted] had been tampering with swabs and control solutions and has since been terminated from [their] role at the Grafton Greyhound Racing Club. Does this bring any positive swab carried out by this official now into being questionable?”

21. In relation to this issue, I am unable to comment or form a view as to the bone fides of the swabbing official.
22. In my view, the question as to the legitimacy of the swab or sample taken in this particular matter, is the primary issue for consideration. In that regard, I note that Mr Cartwright signed the Sample Identity Document reference V792785 where he attested the following:

“I Shane Cartwright being the person responsible (Registered No. 211000 if applicable) have been in charge of the above animal and did witness the collection, packaging and sealing of the sample collected from this animal. I confirm that the seals, packaging and sample identity document all bear the same sample number. I am satisfied' with the procedure I have witnessed and have signed the document in the designated area below as witness for the trainer.”

23. Mr Cartwright duly signed attesting the above declaration. As Mr Cartwright himself confirmed his witnessing and satisfaction with the process and procedure, I find it difficult to accept a later concern from him as to the veracity of the sampling process.
24. In addition, I note that the receiving Steward, Mr Ken Storck, happily received the samples collected at that race meeting and noted no deficiencies or irregularities with the samples or seals, as did no other person on the journey and chain of custody of the sample from the Grafton Races through to its ultimate reception at the analytical laboratory.
25. On this basis. I do not accept Mr Cartwright's assertion the sample and the process in which it was taken was “questionable”.

Decision

Relevant considerations

26. A breach of Rule 141 (as outlined at [6] above) is an absolute liability offence. In competitive sport, both human and animal, various substances are prohibited to ensure a fair playing field, protect the health and welfare of athletes (including canine athletes), and to protect the sanctity of the sporting contest.

27. In human sport, it is well recognised that the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen will constitute an antidoping rule violation, and it is an athlete's personal duty to ensure that no prohibited substance enters their body. In the case of greyhound racing, this duty of course falls to the owner or trainer who presents the dog to race. It is thus the owner or trainer who is responsible for a breach of the Greyhound Racing Rules if any prohibited substance, or its metabolites or markers are found to be present in their greyhound's bodily specimens when the greyhound is presented to race, 'in competition'.¹
28. The absolute liability nature of Rule 141 creates a position where an owner or trainer is in automatic violation of the rule when a prohibited substance is found in a greyhound's sample. There is no need to prove intention, knowledge, negligence, or any other variety of fault, in order to establish a breach of Rule 141.
29. The justification for this approach is that when a prohibited substance is present in a canine athlete's body, that greyhound may have an unfair advantage against "clean" greyhounds. Of course, the reverse circumstance applies where a prohibited or banned substance is introduced into the greyhound's system to inhibit a greyhound's performance, either to improve the chances for another greyhound to win, or to improve the betting odds of the 'doped' greyhound, in a future race, where it enters the competition 'clean' from any inhibiting substance. In both circumstances, the question of how the substance may have entered the greyhound's body is irrelevant.
30. The concept of absolute and strict liability offences has long been the subject of discussion and conjecture in human sport and was considered by the Court of Arbitration of Sport in *Quigley v UIT*² which provided the rationale that:
- "[14] It is true that a strict liability test is likely in some sense to be unfair in an individual case...where the athlete may have taken a medication as the result of mislabelling or faulty advice for which he or she is not responsible...but it is also in some sense unfair for an athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of competition be altered due to the unfairness. Just as the competition will not be postponed to await an athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption..."*
31. In human sport it has long been recognised that in cases involving anti-doping rule violations it will be very difficult, if not impossible, to prove that the athlete involved acted with fault or negligence. Athletes would simply say that they have no knowledge or insight as to how the substance got into their bodies. If this was to be accepted as an excuse or explanation, then these athletes would go unpunished, rendering anti-doping rules unenforceable and useless.

¹ Or the detection of any permanently banned prohibited substances whether detected in or out of competition: see Rule 139 of the Greyhound Racing Rules.

² *USA Shooting & Q. v Union Internationale de Tir (UIT)*, Arbitration CAS 94/129.

32. The principle of absolute liability creates a situation or a positive obligation whereby athletes must do everything possible to make sure they are clear of prohibited and banned substances in accordance with the anti-doping rules of their sport. To put it simply, the onus is upon an athlete to know the rules of their sport and he or she must implement necessary measures to make sure that they do not allow prohibited substances to enter their bodies. When considering this obligation in the context of greyhound racing, it is clear, that the obligation rests with the greyhound's owner or trainer.
33. Having said that, a doping rule violation does not automatically lead to a punishment or sanction. It may be the case that an athlete will be able to avoid or reduce a sanction, if he or she can establish to the satisfaction of a decision maker how the substance entered their system and can demonstrate that they were not at fault or, in certain circumstances, did not intend to enhance or inhibit their sporting performance. In greyhound racing, a participant who is able to establish blamelessness is said to fall into Category Three of the McDonough principles, and may face a nominal penalty, or even no penalty at all. Again, in greyhound racing, establishing such facts falls to the person charged with the breach, usually the trainer of the greyhound. Where an owner or trainer can provide no insight as to how the violation occurred, then no concession can be provided for matters of unknown circumstance. This is the most common occurrence, whereby there is no evidence of administration, but no ability to establish blamelessness. This is classified as Category Two of the McDonough principles.
34. Although the concept of absolute liability is severe and exacting, it is the only viable option available to regulators such as GWIC, to combat doping and ensure compliance with the rules of the sport. Doping is a significant challenge for greyhound racing, and extreme measures must be taken to overcome and resolve this problem and ensure the integrity and continuance of the industry.
35. What then flows from this is as follows:
- Mr Cartwright presented the greyhound 'Daisy's Gold' to compete in race 6 at Grafton on 14 March 2023 (**the Event**);
 - The Greyhound then competed and placed first;
 - Following the Event, a urine sample was taken from Daisy's Gold by a registered official of GWIC, in accordance with standard protocols;
 - The post-Event swab revealed the presence of theobromine;
 - Theobromine is a prohibited substance under Rule 137 of the GWIC Greyhound Racing Rules;
 - At a hearing conducted by GWIC Officials on the 30 July 2023, Mr Cartwright entered a plea of guilty and made verbal submissions.

Penalty

36. With Mr Cartwright having entered a plea of guilty, and as this violation is an absolute liability offence, the question then turns to whether the participant is able to provide a satisfactory reason as to how the prohibited substance entered the greyhound's system, such that Mr Cartwright is able to demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound. Mr Cartwright during his hearing with the GWIC Stewards on multiple occasions indicated his ignorance as to how the dog came to have the prohibited substance within its system.
37. Accordingly, the question then turns to penalty. The GWIC Penalty Guidelines (dated July 2022) provide advice to participants about the penalties that may be imposed where a disciplinary action offence is proven. For prohibited substance penalties, the guidelines distinguish three categories. Theobromine is a substance that falls into Category Two, which includes substances that are stimulants, depressants, anti-depressants, and bronchodilators.
38. The Penalty Guidelines outline that a minimum starting point following the detection of a Category Two substance is a four (4) month suspension. For that reason, my starting point for penalty is that of a four (4) month suspension.
39. I note the GWIC Penalty Guidelines provide for a reduction of 25% to be applied to the minimum starting point for an early guilty plea. Mr Cartwright by entering a guilty plea at the first opportunity, is entitled to this discount. This brings the penalty to a period of a three (3) month suspension.
40. I also recognise that Mr Cartwright has no previous rule violations recorded for prohibited substance offences. As such, Mr Cartwright is entitled to a further 25% reduction in penalty in accordance with the second limb of the GWIC Penalty Guidelines. This further reduces the penalty to a period of a two (2) month suspension.
41. Punishment by definition, is the imposition of an undesirable or unpleasant outcome upon an individual, meted out by an authority as a response and deterrent to a particular action or behaviour that is deemed undesirable or unacceptable. Moreover, the imposition of a penalty upon a person who has offended is justified on a number of bases including:
 - (a) to ensure the person is adequately punished for the offence;
 - (b) to prevent violations by deterring the person concerned and deterring other persons from committing similar offences;
 - (c) to protect the community from the person;
 - (d) to promote the rehabilitation of the person;
 - (e) to make the person accountable for his or her actions;

(f) to denounce the conduct of the person; and

(g) to recognise the harm done to any victim or the community more generally.³

42. For the greyhound racing industry an additional basis and consideration is to ensure the integrity of greyhound racing and to provide for the protection and promotion of the welfare of the greyhound.
43. I note the submissions surrounding penalty and 'deterrence'. The NSW Government no doubt considered all the above impacts in authorising GWIC to impose penalties and sanctions.
44. In considering the administration of civil penalties by regulators, the High Court in *Australian Building and Construction Commissioner v Pattinson*⁴ held that the object of civil penalties is entirely protective, in that they are aimed at promoting compliance through general and specific deterrence to promote the public interest in compliance. Indeed, the Court went further stating that a regulator is at liberty to impose the maximum penalty for less serious contraventions, if it is necessary, to deter further contraventions by the contravener or by other members of the industry. At present the prevalence of greyhounds testing positive to prohibited and banned substances is a matter of significant concern and something which must be addressed and deterred across the industry. It is with all of these considerations in mind that I further consider penalty in this matter.
45. The submissions made by Mr Cartwright at the Stewards Hearing establish that Mr Cartwright is unable to provide any satisfactory reason as to how the prohibited substance entered the greyhound's system. Moreover, Mr Cartwright cannot demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound.
46. On the facts of this matter, Mr Cartwright is unable to establish that he is blameless. Accordingly, he must be assessed as a Category Two under the McDonough principles. Even if it is accepted that Mr Cartwright is somewhere between Category Two - being 'unable to establish' and Category Three - 'blameless', this does not, in fact, mean that a nominal penalty is appropriate. General deterrence is a factor that must be considered.
47. I turn to the submission in respect of the financial impact any period of suspension will have upon Mr Cartwright. It is my view in general, that the greater a participant's reliance on any revenue derived from racing greyhounds, the greater the safeguards which a participant should put in place to protect their revenue and minimise any risk or threat to that revenue.
48. A professional driver of a truck or taxi for example, has a higher need to maintain the currency of their driver's licence compared to a citizen who uses their driver's licence solely to commute from place to place. For an ordinary citizen, losing their driver's licence, and the

³ *Crimes (Sentencing Procedure) Act 1999* (NSW), s3A.

⁴ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

right to drive, will constitute an inconvenience. For a professional driver, as described above, not only will that person suffer a personal inconvenience, but they will also inevitably lose access to whatever revenue or income they derive from operating as a professional driver. For this reason, it is my view, that a professional driver should implement best practice to ensure they neither accrue demerit points nor commit any offence which places their driver's licence in jeopardy.

49. What follows from this is, that a professional greyhound trainer, or a person who relies heavily upon the income they derive from their sport, has a significantly greater need to ensure they have taken all possible steps to protect their entitlement to 'race' or compete.
50. I do not accept the almost contrary view, that a greater need or reliance on being able to participate in greyhound racing, creates a justification for a lesser penalty compared to a participant who is less reliant on the income which flows from racing. To impose any such test, in my view, would be to not impose sanctions across the sport equably across all participants. Accordingly, I reject the suggestion that a lesser penalty is appropriate due to Mr Cartwright's greater reliance on the sport to support his life and/or lifestyle.
51. I have also had consideration of the remaining subjective factors that Mr Cartwright has raised in mitigation of any ultimate penalty that might be imposed upon him. Those factors include Mr Cartwright's medical history and the fact that he is a recipient of a disability pension as well as his financial position and the detrimental impact the loss of racing income will have upon that.
52. In assessing those subjective factors I do not consider them to be such that any further discount of penalty should be awarded to Mr Cartwright. It is an established principle that hardship that flows from any appropriate penalty imposed for offending conduct is a necessary consequence of that penalty. Furthermore, whilst I acknowledge that Mr Cartwright is in receipt of a disability pension, the summary of his financial position that he has provided for me to consider, is not such that I contemplate he would be placed under any real duress as a result of a period of suspension.
53. Finally, I then turn to Mr Cartwright's disciplinary history. Mr Cartwright has already been afforded the appropriate discount for a lack of prohibited substance related offending within the 10 year period leading to this offending. In addition, Mr Cartwright's disciplinary history does not aggravate the penalty to be imposed. However, Mr Cartwright has more than a dozen rule breaches recorded upon his history since 2015. This record does him no favours when considering leniency. When considering the objective seriousness of this matter, one must have regard to specific deterrence, and appropriately so. On the basis of his disciplinary history, Mr Cartwright loses leniency in respect of his subjective factors outlined above that he might have otherwise been entitled to, if this was the first or second time that he was to come to the attention of the Regulator, but for his antecedents, then the story might well be different, but this is simply not the case. Indeed, the Racing Appeals Tribunal has commented

on the need for a participant with prior disciplinary matters as a person who has identified themselves as having a need for more specific deterrence as an objective consideration.⁵

54. Having regard for all these matters, I believe that in the totality of the circumstances an appropriate penalty is a suspension of eight (8) weeks. I note that Mr Cartwright has already served a period of two (2) weeks suspension in respect of this disciplinary action, and take that into account. I therefore confirm that Mr Cartwright will serve the balance of the original two (2) month suspension issued by the Stewards, which is to commence on the 26 September 2023 and conclude at 11:59pm on 6 November 2023.

55. In accordance with section 91(7)(a) of the Act and having considered all of the evidence and submissions made by Mr Cartwright, I confirm the decision of the Stewards made 30 July 2023 and issue a period of suspension of eight (8) weeks.

Brenton (Alby) Taylor, MPPA, Dip Law (LPAB), GDLP, GCAM, GAICD
Chief Commissioner

⁵ Racing Appeals Tribunal decision of Ms Charmaine Roberts delivered 7 December 2022 at [67] – [68].