RACING APPEALS TRIBUNAL

RAT 4/16

DATE: FRIDAY, 6 MAY 2016

TRIBUNAL: **PRESIDENT**: MR T ANDERSON QC

MR P MARKS, CHAIRMAN OF STEWARDS, GREYHOUND RACING SA LTD APPEARS FOR STEWARDS

APPELLANT: MS L ISAAC

IN THE MATTER of an Appeal by **LEXIA ISAAC** against a decision of Greyhound Racing SA Ltd Stewards

BREACH OF RULE: GAR 83 which states:

"Present a greyhound to a race not free of prohibited substance".

PENALTY: 18 months disqualification

DETERMINATION

This is an appeal against a sentence imposed by the Stewards.

The basis of the appeal is that the penalty imposed by the Stewards was manifestly excessive.

The Appellant, Ms Isaac is a successful trainer in Western Australia, and the dog 'Jamaica the Fun' was brought to South Australia to take part in two races on 3 and 10 September 2015 at the Angle Park Greyhound Raceway in South Australia.

They were both important races.

Jamaica the Fun was tested by urine samples after each of the races it took part in and on both occasions the tests revealed an elevated cobalt level.

A cobalt level in excess of 100 nanograms per millilitre is a prohibited substance in greyhound racing, contrary to rule 83 effective 1 September 2015.

The readings obtained from Jamaica the Fun were 251 and 229 nanograms per millilitre respectively.

These are high readings, and the Stewards treated the matter as serious. I agree with them.

At the Stewards Inquiry the Appellant stated that it was her practice to feed her dogs a commercially available supplement known as ‘Sprinters Gold Results Plus’, which contains cobalt.

The Appellant was charged with two counts of presenting a greyhound to a race not free of a prohibited substance pursuant to Greyhound Racing Rules; in particular, Rule 83(2).

The Appellant pleaded guilty to both counts, and the Stewards imposed two periods of disqualification, one for each offence, of 18 months, those to be served concurrently.

They took into account that the Appellant pleaded guilty to both charges, had been in the industry for 25 years, and was a leading trainer in Western Australia.

They also took into account that she relied on the industry for her livelihood and she produced two character references which were very complimentary of her role in the industry in Western Australia.

The Stewards analysed the evidence called as to the scientific analysis of cobalt and the product ‘Sprinters Gold Results Plus’, and the Appellant’s own evidence as to the events which led up to her being charged with these offences.

The Stewards took into account that the Appellant went against what the Stewards regarded as the advice of the manufacturer; namely, not to administer the product on race day.

There had also been an earlier advice to Western Australian greyhound participants in June of 2015 warning of the risks associated with the administration of products containing cobalt.

The Stewards also took into account that the Appellant’s treatment book was not up to date and therefore it was not possible to accurately determine what other products had been administered to the dog in the time leading up to the offences.

There was some dispute as to what the effect of cobalt is in a greyhound. It is sufficient to say that cobalt increases red blood cells production, thereby increasing oxygen and thereby potentially enhancing performance. That is why it is a prohibited substance.

The Stewards referred to the decision of this Tribunal in the matter of Micaleff in harness racing. In that matter there was no satisfactory explanation for high readings of cobalt.

Mr Micaleff, the trainer was a person of good character with no previous convictions, and the Harness Racing Stewards started with a disqualification of both Mr Micaleff's trainer's and driver's licence for a period of five years.

They then applied discounts to that period in relation to the guilty plea and cooperation with the Harness Racing Stewards and ended up with a disqualification period of two and a half years.

This Tribunal upheld that decision.

The Stewards in this matter reasoned that it was useful to compare the results here with those in Micaleff; namely, that the cobalt readings were approximately double the threshold limit in each case.

The amended grounds of appeal filed by the Appellant concentrated on several matters as follows: 1) that the Stewards made factual errors; 2) that they equated levels of cobalt in greyhounds with levels in horses; 3) that they failed to take into account certain mitigating factors.

In relation to the mitigating factors, counsel for the Appellant, Mr Percy QC, emphasised the recency of the introduction of the rule regarding the prohibited use of cobalt above prescribed levels.

The fact is that the rule only came into operation some two days prior to the first offence and some nine days prior to the second offence.

Mr Percy emphasised that there was no evidence that the cobalt level in a greyhound had the capacity to enhance the greyhound's performance.

I have already dealt with that and considered that the relevant factor is the potential to increase performance by the increase of oxygen and clearly that is why it is a prohibited substance.

Mr Percy emphasised the lack of any sinister or fraudulent intent on the part of the Appellant. None is suggested by the Stewards.

Mr Percy also emphasised the level of cobalt in one batch of the product ‘Sprinters Gold Results Plus’ was 10 times its advertised content.

Mr Mills for the Stewards disputed that it was established that the product which was wrongly marked was in fact used.

This was because of the lack of proper records kept by the Appellant.

Next, Mr Percy emphasised what he called the over-emphasis by the Stewards on the decision in Western Australia in Harper v RPAT.

His argument was that it was an appeal against conviction.

In that matter the Stewards made comments concerning the deterrent effect and importance of that in relation to the industry.

In my view, in this case, the Stewards' reference to the decision, albeit a decision on conviction and not penalty, was appropriate in the context of deterrence which is a relevant consideration in imposing penalty.

Going back to the factual errors that Mr Percy advances, the first was that the product was potentially performance enhancing.

I've already dealt with this to some extent, but the appeal on this ground is not persuasive in my view. It was a prohibited substance above the threshold level and that is sufficient.

The Appellant clearly should have been aware that cobalt was a substance with which she had to take care in administering, and her administration of a product known to contain cobalt was at the very least negligent, especially on the race day contrary to recommendations.

I have already dealt with the fact that it is not suggested that she administered the product intentionally to enhance the performance of the greyhound.

It was also suggested by Mr Percy QC, that the Stewards were wrong in construing her comment "My God, I hope I'm not using this" as an admission.

I think too much was made of this in the appeal, and nothing turns on it in the decision which I make.

The fact that this product was somewhat uncertain in relation to cobalt levels and that it may or may not have been administered in the correct dose are all factors which make for some confusion.

In relation to comparisons between horses and greyhounds, it seems to me that the Stewards were entitled to look at the threshold levels in each code, and the fact that where a reading was double the threshold level there were some similarities in the way in which the matter should be approached.

I can see nothing wrong with this reasoning.

I have decided that disqualification is the appropriate penalty for an offence in which the reading is double the threshold level.

However, I have decided to allow the appeal.

I have decided that the penalty of 3 years disqualification imposed by the Stewards is manifestly excessive.

In my view, the starting point of three years was too high in this matter. I would start at two years.

Overall, the Stewards reduced the period of disqualification from three years to 18 months.

Taking into account all of the matters which the Stewards took into account, but adding one more factor; namely, the recency of the implementation of the rule and the fact that this was the first offence under the new rule, committed within days of its implementation, I think the Stewards could have and should have deducted more.

The reasoning of the Stewards in halving the starting point in my view is not sufficient because they have not adequately taken these factors into account.

I would therefore reduce the period of disqualification to eight months. The Appellant has already served almost two months of this penalty because she commenced her period of disqualification on midnight on 13 March 2016.

The comments I have made are in relation to each offence. I agree with the Stewards that they should be served concurrently.

In addition to the disqualification, it is appropriate that the Appellant be fined on each offence the sum of $2500.00 payable within 28 days.

I order that the bond lodged on this appeal be refunded.

Finally, I would issue a warning to those in the greyhound racing industry that this decision cannot be regarded as a precedent for what will happen in the future for levels which are approximately double the threshold limit.

For the reasons that I have set out earlier, this was an unusual case, as Mr Percy QC called it, and it was an unusual case for a number of reasons which I have described.

It would not be prudent for anyone in the industry to regard it as a norm for future cases when the benefit of arguing recency will not be available and they can expect that the penalties will be substantially harsher.