RACING APPEALS TRIBUNAL

RAT 13/16

DATE: WEDNESDAY, 13 JULY 2016

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

MS LISA MICHALANNEY, GRSA STEWARD, GREYHOUND RACING SA LTD APPEARS FOR STEWARDS

APPELLANT: MR T CAHALAN

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

BREACH OF RULE: GAR 83 (2) (a) which states:

"The owner, trainer or person in charge of a greyhound-
(a)nominated to compete in an Event:
shall present the greyhound free of any prohibited substance".

PENALTY: 15 months disqualification

DETERMINATION

Mr. Cahalan was charged with presenting the greyhound Alderly Reform for a race on 14 September 2015 being not free of a prohibited substance, contrary to Rule 83(2).

Mr. Cahalan pleaded not guilty to the charge.

The pre-race sample taken from Alderly Reform showed a concentration of cobalt of 182 nanograms per millilitre in urine.

Cobalt is a prohibited substance when the threshold exceeds that prescribed by the rules, namely 100 nanograms per millilitre.

At the Stewards' Inquiry Mr. Cahalan raised the possibility of a batch of Sprinter GOLD Results Plus as the cause of the cobalt reading. Some batches of this product contained misleading information.

The Stewards did not accept Mr. Cahalan's submissions for a number of reasons.

They were that he produced an empty container with no batch number, there were no receipts, he couldn't remember where he purchased the product from, and in his earlier discussion with the Stewards he had not identified that product to the Stewards at the time of their inspection of his premises.

Indeed, at that time, he mentioned a different product.

There were four other products all containing cobalt which Mr. Cahalan admitted using on a regular basis.

The Stewards correctly, in my view, said that the cobalt reading could have been obtained from a combination of any of those products or from one product alone, and therefore they dismissed his argument on that basis.

Mr. Cahalan also argued that he wasn't given sufficient notice about the introduction of the rule regarding cobalt and that that should be relevant as to his conviction.

The Stewards found Mr. Cahalan guilty of the offence as charged.

The Stewards, in imposing a penalty, regarded the offence as serious and started with a notional penalty of three years' disqualification.

There was no discount available for a guilty plea because there was a plea of not guilty.

Mr. Cahalan is 73 years old.

He has been in the industry for 56 years with significant involvement at all levels, including as a leading and successful trainer, and he has also performed many voluntary functions during that time.

He is highly regarded in the industry and has an almost unblemished record.

Clearly, the Stewards gave a substantial discount for these reasons and reduced the period of disqualification from the notional starting point of three years to 15 months.

The website gave a warning to those in the industry about the use of products containing cobalt on 24 August 2015.

The rule came into operation on 1 September 2015, and this offence was committed on 14 September 2015.

At the Tribunal hearing I did not understand Mr. Cahalan to go back on anything that he said in the previous hearing, nor indeed on what his submissions were at the previous hearing.

He was clearly putting forward matters which were relevant to penalty as distinct from his conviction.

Mr. Cahalan argued that the disqualification was manifestly excessive and gave examples of much lesser penalties in cases where injections had been used to enhance the performance of greyhounds around Australia.

He rightly submitted that they on the face of it were more serious, but he pointed out the penalties seemed to be less.

As I have said before, it is impossible to compare penalties imposed in different circumstances, although they may be of some guide on occasions.

Such an occasion is the case of Mrs. Isaac.

The essential point is that Mr. Cahalan's offence took place on 14 September, some two weeks after the rule was implemented, and only three weeks after notification to the industry via the 'Kennel Capers' publication.

In my view, the recency of the implementation of the rule is significant as to penalty.

There was, in Mr. Cahalan's case, only 14 days after the commencement of the rule.

As I pointed out to Mr. Cahalan at the Tribunal hearing, it is not relevant to the conviction, but is relevant to penalty.

I held in the matter of Mrs. Isaac which I decided on Friday, 6 May 2016, that the penalty should be reduced because I found that the Stewards did not properly take into account the recency of the implementation of the rule.

Although her situation was more serious than Mr. Cahalan because there were two incidents and with higher readings, it is nevertheless similar.

It is my view that the Stewards erred in their starting point in this matter for the same reason that they erred in the starting point in the matter of Mrs. Isaac.

Therefore their starting point of three years' disqualification was too high.

As a result, the starting point should have been 15 months, not 36 months, and as a result of Mr. Cahalan's standing in the industry - his experience, and, as I say, almost unblemished record - I would reduce that to a period of disqualification of six months.

The Stewards rightly regarded this as a serious offence. I agree with them.

However, for the reasons which I have given, the conviction should stand, but the penalty set aside, and the period of six months' disqualification substituted for the previous 15 months.

The period of disqualification will commence at midnight on Wednesday, 20 July and I order that the bond paid on the lodging of the appeal be refunded to Mr. Cahalan.

I repeat again what I said in Mrs. Isaac's case: "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."

The further the time of the offence is removed from 1 September 2015, the more severe the penalty will become.

I am asked to say something about the lack of information which was provided to people in the industry being apparently limited to the publication of 24 August on the website.

The Victorian experience was much more involved and included consultation and seminars, and it seems that quite a few members of the industry were taken by surprise in relation to the implementation of the rule in South Australia.

I can only suggest that if there is any confusion which still remains, that Greyhound Racing SA consider perhaps holding a seminar explaining the importance of the prohibited substances generally, but perhaps with specific reference to cobalt.

I was also asked to comment on the disparity which apparently exists between South Australia and the other states, but I am not informed in sufficient detail of the incidents interstate, and therefore I can only urge that there be some uniformity between the states, without fully understanding what the other states are doing at the moment.