

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-45	
Name	Darryl McGrath	
Panel	Ms Dianne Condon (Acting Chairperson) Mr John McCoy OAM (Panel Member) Mr Daryl Kays (Panel Member)	
Code	Greyhounds	
Rule	Greyhounds Australasian Rule 86(1) Unless otherwise directed by the Stewards, the handler of a greyhound drawn in an Event must present the correct greyhound to the Stewards not later than 45 minutes before the advertised starting time of the first Event of the relevant meeting.	
Penalty Notice number	PN-008576	
Appearances & Representation	Applicant	Self represented
	Respondent	Wade Hadley
Decision Method	Application considered on papers in accordance with section 252AF(1)(c).	
Decision Date	11 August 2023	
Decision	Pursuant to 252AH(1)(c) the Racing decision is set aside and a decision of not guilty is substituted.	
Panel Penalty	Not guilty	
Case references	<i>Rilen v Greyhound Racing Victoria</i> - Racing Appeals Disciplinary Board [2015] VCAT 676 at 38 <i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336	

Reasons for Decision

- [1] The applicant in this matter is Daryl McGrath who is a licenced greyhound trainer.
- [2] By way of a penalty notice (PN-008576) dated 1 August 2023 (which references a decision date of 31 July 2023) the Applicant was charged with a breach pursuant to Greyhounds Australasian Rule 86(1) ('GAR') alleged on 27 July 2023 which provides:

86 Kennelling time

(1) Unless otherwise directed by the Stewards, the handler of a greyhound drawn in an Event must present the correct greyhound to the Stewards not later than 45 minutes before the advertised starting time of the first Event of the relevant meeting.

- [3] He was fined \$200 in accordance with the Penalty Notice.
- [4] The particulars of the charge as set out in the Penalty Information Notice are as follows:
- "Trainer Darryl McGrath was found guilty and was fined the sum of \$200.00 in respect of a charge issued pursuant to Greyhounds Australasia Rule 86(1) for failing to present the greyhound Daysea's Rowdy to the Stewards at least forty-five (45) minutes prior to the advertised starting time of the first Event of the race meeting, with the greyhound subsequently being scratched from Race 7 pursuant to Greyhounds Australasia Rule 86(3)(a) and stood down from racing for ten (10) days pursuant to Greyhounds Australasia Rule 86(3)(b)"*
- [5] This matter has been considered in accordance with section 252AF(1)(c) of the Act.
- [6] The panel has had the opportunity to review the evidence and submissions of the Applicant and Respondent. To determine the Application it is necessary to go through in some details the facts and circumstances those materials disclosed.
- [7] The Penalty Notice does not outline some relevant particulars, but from the materials filed it is not in contest between that parties that the event subject of the charge was race 7 at Albion Park on 27 July 2023 which was the "Get it Gizmo @ Newhaven Stud FFA 600m", a free for all race.
- [8] Pursuant to section 252AB of the *Racing Integrity Act 2016*, the applicant seeks a review of the Steward's decision by way of application filed on 3 August 2023 on the basis that he contests his guilt and the penalty imposed.

Applicant's Material

- [9] In support, in his application the Applicant states:
- "I do not believe I am in breach of rule 86(1) as I scratched the mention greyhound prior to the scratching deadline therefore I had no reason to present the greyhound on race day"*
- [10] Relevantly through all his material, the applicant does not dispute that he that he is Daysea's Rowdy's trainer for the purposes of the GAR.
- [11] His material also consistently references admissions that he did not present Daysea's Rowdy to Albion Park on 27 July 2023.
- [12] Rather, the Applicant's objection to the finding of guilt is that he says that on 24 July 2023 he scratched the dog from race 7 at Albion Park on 27 July 2023 and therefore he had no obligation to present the dog for kennelling on race day.

[13] In support of his contention, the Applicant has provided an email dated 24 July 2023 purportedly confirming his scratching with OzChase for Daysea's Rowdy from race 7 at Albion on 27 July 2023. This email is headed 'scratching request' and at the footer contact details are for 'Qld Scratching Notification'. The reason for the scratching as indicated on this document is provided as:

"Did not nominate for FFA and don't believe it is in the best interests or welfare of this dog as a 5th grade to be drawn in this race"

[14] A submission from the Applicant¹ relevantly this states that the Applicant:

- (a) lodged his scratching on 24 July 2023 after the box draw;
- (b) his belief, given he had submitted a scratching with OzChase, that he was not required to present the greyhound at kennelling on 27 July 2023 unless directed by the stewards; and
- (c) his belief also relies on a precedent where a greyhound (Courageous Carol) was scratched in race 7 at Ipswich on 27 May 2023 without incurring penalty and as such he should be afforded the same outcome.

[15] The Applicant's submission further accounts of a conversation with Mr Paul McLean (for the Respondent) on 25 July 2023. To that the Applicant states:

"It was my belief I made it clear to Mr McLean that as far as I was concerned, I have scratched the dog and stated that what he does with the scratching is up to him ..."

Respondent's Material

[16] The Respondent has filed various material including detailed submissions² and:

- (a) a file note of Mr Paul McLean, Stipendiary Steward, of the respondent QRIC of 4 August 2023; and
- (b) emails of Joel Leonard, Chief Grader, Racing Qld ('RQ') to the respondent of 24 July 2023 and 4 August 2023.

[17] Collectively the emails of Mr Leonard to the Respondent outline:

- (a) The race draw for race 7 on 27 July 2023 was undertaken on 24 July 2023 by RQ and Daysea's Rowdy was properly graded in race 7 as an FFA race in accordance with Greyhound Grading Policy, being that the applicant had not opted out of the FFA by way of any comment on the nomination to the graders;
- (b) Phone contact RQ had with the applicant (date unknown) explaining the Grading Policy to him and advising him that Daysea's Rowdy was appropriately nominated in race 7. In that same phone call the applicant indicated to RQ that he intended to scratch the dog; and
- (c) Mr Leonard's advice to the respondent on 24 July 2023 that the reason the applicant had subsequently lodged in his scratching request was an "unacceptable reason" due to the correct grading of Daysea's Rowdy for race 7 in accordance with the Grading Policy and that the applicant had sought to scratch after the box draw.

[18] Mr McLean's file note of 4 August 2023 outlines that QRIC Stewards discussed RQ's advice to them on the Applicant's scratching request and that they accepted RQ's view that the scratching request as lodged

¹ Received 10 August 2023

² Dated 10 August 2023

was an unacceptable reason for scratching Daysea's Rowdy under GAR 76(7) as per the reasons outlined by RQ to them (at paragraph 17(c) above).

- [19] Relevantly, Mr McLean's file note outlines a conversation he had with the applicant on 25 July 2023 where he conveyed the Steward's position to the Applicant as to his scratching request. Mr McLean's version of that conversation as per the full note is:

"8:40am, I received a returning call from Mr McGrath. Darryl stated he scratched the greyhound as he believed that being a 5th grade dog it shouldn't have been drawn in the race in question and that it was in the best interests for his greyhound not to race against the other class of greyhound. He further added that when he nominated the dog, he didn't choose free for all from the drop-down box and added that trainer Mr John Dart had the 1st reserve for the race and wanted to race so the race would still have a full field.

My response was Darryl, I'm unaware of the nomination process with the drop-down box as I've never had to use it before, however unfortunately due to Racing Queensland's grading policy which states that all greyhound's (5th grade or higher) are included in a FFA unless the trainer states otherwise..... Darryl then replied so what you're going to fine me \$200 in which I replied yes if you want to scratch on those grounds. Darryl raised that another trainer was allowed to scratch penalty free on the same grounds and he would text me which greyhound that was. I then said as the greyhound hasn't come out yet, would you like me to take it out now for you. In which Darryl responded by saying no just leave it. "

- [20] Mr McLean's file note outlines when various outgoing calls and texts took place between he and the applicant in subsequent days, contents of which are not referred to in the file note. The Applicant has provided some screenshots of texts between the two, however they bear no dates or times and moreover their contents are not relevant to the discreet issues subject to determination.
- [21] Relevantly, Mr McLean's file note states that the Applicant did not present for kennelling on 27 July 2023 and outlines eight times Mr McLean attempted to phone the applicant from 4:47pm on 27 July 2023 without success. The file note further outlines that later that night, Mr McLean spoke to Daysea's Rowdy's owner Mr Lee who said he hadn't seen the Applicant and that he was not answering his phone.
- [22] Mr McLean's file note goes on to account that he saw the Applicant on 30 July 2023 at Albion Park and spoke to him regarding Thursday 27 July 2023, saying to him "you didn't turn up" and that Mr McLean had tried to get in touch with the Applicant's wife as an emergency contact. The file note of Mr McLean attributes the Applicant as saying in response: "I scratched with the graders anyway and you did me a favour also, because you put 10 days on that dog it got me out of a bad box a hard race."

Discussion

- [23] The respondent submits that the issue for determination is whether the Applicant's scratching was accepted³ in light of the obligations prescribed under the GAR 76(2) which provides:

76 Scratchings after box draw

(1)....

(2) *In order to withdraw a greyhound from an Event, the owner or trainer or person authorised by either of them must apply to the Controlling Body or the Stewards. The Controlling Body or the Stewards may,*

³ Respondent's submissions dated 10 August 2023 at paragraph 21

once satisfied the application is for an acceptable reason, authorise the scratching of the greyhound and apply an appropriate stand-down period commencing on the date of the Event.

[24] The Respondent's submission further refers the panel to what is commonly known as the 'late scratching rule' at GAR 76(7)⁴ which provides:

(7) An offence by an owner or trainer is committed if, in the opinion of the Stewards, a greyhound is scratched from an Event for an unacceptable reason.

[25] The respondent also refers the Panel to *Rilen v Greyhound Racing Victoria*⁵ which is a breach of the Victorian equivalent of the GAR 76(7), concerning a scratching of a greyhound without an acceptable reason.

[26] Respectfully, the issue as to culpability for a breach of GAR 86(1) is more fundamental than the various issues raised in the parties' material, including considerations as to whether:

(a) Daysea's Rowdy was properly graded in race 7 or that the applicant had no obligation to present the greyhound at kennelling on 27 July 2023, as the applicant contends; or

(b) the respective obligations provided for under GAR 76(2) or whether the applicant's scratching was accepted, as the respondent contends.

[27] GAR 9 provides a definition relevant to 'present' as described in GAR 86(1):⁶

*"**presentation or presented** means a greyhound is presented for an Event as from the time commencing at the appointed scratching time of the Event the greyhound is nominated for, and which continues until the time a greyhound is removed from the racecourse after the completion of that Event with the permission of the Stewards pursuant to rule 94(2), or is scratched with the permission of the Stewards."*

[28] The appointed scratching time was 8:00am for the relevant event.⁷ It is undisputed on the evidence that the Applicant did not attend Albion Park at all on 27 July 2023, including within the period contemplated by the above definition.⁸ The weight of the evidence does not support a conclusion that Daysea's Rowdy was scratched at any time by the stewards. Left there, the applicant was obligated to present the greyhound to the event on 27 July 2023 in the panel's view.

[29] However, a breach under GAR 86(1) can only be made out by its commission by a "handler". Handler is defined in GAR 9 as follows:

*"**handler**, which may include a trainer or an attendant, means the registered person responsible for the physical control, whether total or temporary, whichever the context demands, of a greyhound when presented for an Event."*

(emphasis added)

[30] The particulars of the charge describe the Applicant as "trainer". It is not disputed in the material before the Panel that the Applicant is the trainer of Daysea's Rowdy.

⁴ Ibid at paragraph 26

⁵ Racing Appeals Disciplinary Board [2015] VCAT 676 at 38

⁶ As referred to in Respondent's submissions dated 10 August 2023 at paragraph 8

⁷ GAR 8 'Appointed scratch time'

⁸ Respondent's submissions dated 10 August 2023 at paragraph 38

[31] However, this is not salient to establish a charge under GAR 86(1). As the applicant did not present Daysea's Rowdy at Albion Park at all on 27 July 2023, he was never a handler within the meaning of that Rule.

[32] GAR 8 provides for interpretation matters as to the Rules. GAR 8(1) states:

8 The Interpretation of the Rules

(1) In the interpretation of the Rules, an interpretation that promotes or achieves the apparent purpose of a rule, in the context of the Rules as a whole, is to apply.

[33] GAR 86 is wholly concerned with kennelling times for a race meeting. The rule is entitled "Kennelling time". By virtue of providing for the commission of a GAR 86(1) offence only by a handler, the offence contemplates that they are the person responsible for the *physical control* of a greyhound once presented for the "relevant meeting" and as such, only they may be culpable for any failure to present by the time nominated in the Rule. On a proper construction then, a complete failure to attend the relevant meeting, for example by a trainer, is not punishable under GAR 86(1).

[34] Such a failure is more properly contemplated by the offence provided for at GAR 76(7), the late scratching rule. Indeed, the evidence and arguments advanced by both parties are directed to proof of a charge under GAR 76(7). However, such a charge is not presented by the Respondent and is therefore not subject of the Review Application. Accordingly, it is not relevant for the Panel to consider or determine those issues raised by the parties, including those referred to at paragraph 26 which are not otherwise elements of establishing a GAR 86(1) breach.

[35] Accordingly the Panel is satisfied on the balance of probabilities on the *Briginshaw*⁹ standard that the applicant has not contravened GAR 86(1) as he was not a 'handler' within the meaning of the Rule.

Decision

[36] In accordance with section 252AH(1)(c) of the Act, the Panel's decision is that the racing decision made by the stewards is set aside and substituted by a decision that the applicant is not guilty of a breach of GAR 86(1).

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⁹ (1938) 60 CLR 336