

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-53	
Name	Stephen Neary	
Panel	Mr Kerry O'Brien AM (Chairperson) Ms Skye Bogenhuber (Panel Member) Mr Edwin Wilkinson (Panel Member)	
Code	Greyhound	
Rule	Greyhound Australasian Racing GAR 141(1)(a) 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.	
Penalty Notice number	PN-008746	
Appearances & Representation	Applicant	Self-Represented
	Respondent	Queensland Racing Integrity Commission
Hearing Date	11 September 2023	
Decision Date	14 September 2023	
Decision	Pursuant to 252AH(1)(a) the Racing decision is confirmed.	
Panel Penalty	N/A	

Case References

Reasons for Decision

Introduction

- [1] Mr. Stephen Neary is a licenced greyhound trainer. In particular he is the trainer of the greyhound Cake Is Good, which competed in and won race three at the Brisbane Greyhound Racing Club on 20 April 2023.
- [2] The pre-race and post-race urine samples collected from Cake Is Good revealed the presence of the prohibited substance Ketorolac.
- [3] Following an Inquiry by Stewards on 31 August 2023, Mr Neary was found guilty of an offence against Greyhound Australasia Rule GAR 141(1)(a). That rule provides as follows:

141 Greyhound to be free of prohibited substances

(1) The owner, trainer or other person in charge of a greyhound:

(a) nominated to compete in an Event;

(b) presented for a satisfactory trial or such other trial as provided for by the Rules; or

(c) presented for any test or examination for the purpose of a stand-down period being varied or revoked,

must present the greyhound free of any prohibited substance

(2) It will not be a breach of subrule (1) of this rule if there is established in a sample a prohibited substance at or below a level stated in rule 140.

(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.

(4) A greyhound presented for an Event in circumstances where subrule (1) of this rule has been breached must be disqualified from the relevant Event and from receiving any benefit derived from the relevant trial, test or examination.

(5) Where an Event is being or has been conducted as a Series, if upon a single analysis a prohibited substance is detected in a sample taken from a greyhound:

(a) the greyhound must be disqualified from the Event at which the sample was taken and will not be eligible to compete in any further Event in the Series; and

(b) if the greyhound has competed in any further Event of the Series the greyhound must be disqualified retrospectively from the Event.

A prohibited substance for the purposes of GAR 141(1)(a) is defined to mean a substance as defined by Rule 137 of the Greyhound Australasia Rules and includes a 'permanently banned prohibited substance', which in turn is a substance defined in Rule 139(1).

- [4] The term '**presentation**' or '**present**' means:

A greyhound is presented for an event as from the time commencing to the appointed scratching time of the event the greyhound is nominated for, and which continues until the time the 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.

[5] The particulars of the charge against Mr Neary were as follows:

As the trainer of the greyhound Cake is Good, did present the greyhound to compete in Race 3 at the Brisbane Greyhound Racing Club on 20 April 2023 with a prohibited substance in its system, namely Ketorolac.

[6] Mr. Neary pleaded 'not guilty' to the charge and pursuant to section 262AB of the Racing Integrity Act 2016 he now seeks a review of that determination of guilt. Mr. Neary asserts that he did not breach the Rule of Racing and the grounds upon which he seeks the review are laid out in his Application in the following way:

1. Kennel staff do not wear gloves
2. Stewards do not wear gloves
3. Kennel staff with no gloves open kennel door for the greyhound to enter.
4. What list of medications do stewards declare
5. What list of medication do kennel staff declare
6. What list of medication do the vets declare
7. What list of medication do swab officials declare.
8. Albion Park unable to provide CCTV footage that my greyhound was provided safe and untampered environment prior to the running of his race.

The Evidence

[7] The urine samples collected from Cake Is Good were analysed firstly at the Queensland Racing Integrity Commission's Racing Science Centre. These analyses were subsequently confirmed by testing undertaken by Racing Analytical Services Limited (RASL). Both of these laboratories have produced a certificate, exhibited in these proceedings, which identifies the presence of ketorolac in the samples. The associated Chain of Custody documents are contained within the material which was before the Stewards' Inquiry and also before this Panel. There is no challenge to either the integrity of the sampling process or the sampling analysis.

[8] There is evidence before the Panel from Dr Shawn Stanley, Director of the Analytical Services Unit which establishes that ketorolac is a prohibited substance as defined by GAR 137(a). Dr Stanley deposes¹:

The presence of the prohibited substance Ketorolac was confirmed in urine samples 538663 and 536263 collected on 20 April 2023.

Ketorolac is a prohibited substance, as defined by GAR 137(a), because it is a substance capable at any time of causing either directly or indirectly an action or effect, or both an action or effect, within one or more of the mammalian body systems described in GAR 137(a).

¹ Affidavit of Dr Shawn Stanley affirmed 8 September 2023.

Ketorolac is a substance which has an action or effect, or both an action and effect, on the musculoskeletal system.

Ketorolac is a nonsteroidal anti-inflammatory drug (NSAID) that is a substance that falls within 137(b) categories x, xxii, xxvi.

NSAIDs are medicines used to relieve pain and reduce swelling (inflammation). Examples include aspirin, ibuprofen and meloxicam.

Ketorolac is used in humans to treat moderate to severe pain, and can be taken in oral form, through eye drops, or by injection.

Ketorolac is a prescription only drug marketed in products under brand names such as Toradol and Acular.

- [9] The material before the Panel includes a recording of an interview conducted with the Applicant on the return of the urinalysis results, and a recording also of the Applicant's evidence before the Stewards' Inquiry on 31 August 2023. He has at all times denied any knowledge of the drug Ketorolac and is at a loss to explain how it is that his greyhound might have acquired the substance.
- [10] A letter from his veterinarian, Dr Ann Williams, confirmed that she has at no time dispensed, prescribed, or administered to any of the Applicant's dogs medication containing Ketorolac. The Applicant maintained in his evidence before the Stewards, as he has maintained in his submissions to this panel, that there must have been some contamination, even if inadvertent, through veterinarians, kennelling staff or other officials or equipment after Cake Is Good was presented at the Greyhound Racing Club. There is no video footage, he argues, that establishes that his dog was held in a safe and tamper free environment prior to the race.

Discussion

- [11] It is submitted for the Respondent that GAR141(1) is a provision of strict liability as the wording of sub-rule 3(i) provide that the owner, a trainer or person in charge of a greyhound presented contrary to sub-rule one (The Rule) shall be guilty of an offence. The offence is not one of administering a prohibited substance, which is dealt with in other Rules such as GAR 142 and GAR 143.
- [12] It is not necessary to show, the submission proceeds, an administration or an intention on the part of the Applicant to enhance the greyhound's performance or to show that a performance advantage was in fact obtained.
- [13] The Applicant here is not legally represented and legal argument on the ambit of GAR141(1) has therefore been limited. The argument that the provision is one of strict liability appears to have been accepted by this Panel in the recent decision of Thompson -v- The Queensland Racing Integrity Commission².
- [14] As with that case however, the resolution of the present case can be found by recourse to other evidence.
- [15] Firstly, there is the evidence of Mr Daniel Aurisch, the Deputy Chief Steward, Greyhounds at the Queensland Racing Integrity Commission. In his Affidavit³ Mr Aurisch deposes:

² RAP-43, 10 August 2023.

³ Affidavit of Mr Daniel Aurisch affirmed on 7 September 2023 paragraphs 4, 5, 11, 12, 13 and 14.

I am aware of the cleaning practices at Brisbane Greyhound Racing Club based on my personal knowledge as the Deputy Chief Steward, Greyhounds.

After every race meeting there is a full commercial clean using high pressure hoses through the kennels, the kennel bays and swab bays. The kennels are then locked until the next racing day.

Based on my personal knowledge as the Deputy Chief Steward, Greyhounds I am aware of the processing of greyhounds for racing at Albion Park from arrival, including weighing, vet checking, kennelling, pre-race sampling and post-race sampling.

A greyhound is examined by a veterinarian during the pre-kennelling inspection. Veterinarians wear gloves for the purposes of this inspection.

As a general practice, all staff who are required to touch a greyhound wear gloves.

The trainer/handler is present with the greyhound during the weighing, vet checking, kennelling, pre-race sampling and post-race sampling.

[16] There is in addition the further evidence of Dr Stanley⁴ that in his experience, Ketorolac is not a substance commonly detected in race day samples. Dr Stanley observes that he is aware of only one other reported positive sample of this prohibited substance in Queensland, that being in a horse sample in 2016. He also notes that no prohibited substance, other than Ketorolac, was found in Cake Is Good's urine sample.

[17] In his evidence before this Panel Dr. Stanley was asked about the likelihood of the substance having been inadvertently transferred to Cake Is Good through contact with other objects at the greyhound racetrack. His evidence was as follows:⁵

Ms Ballard: In your professional opinion, what is the likelihood that the positive pre-race and post race samples detected could be caused by contamination by the kennelling staff touching the handles of the door?

Dr Stanley: I think this is a very unlikely scenario. There are a couple of things that need to happen for a dog to pick up something as contamination in its environment. There needs to be sufficient quantity of the substance accessible to the dog, and then it needs to be absorbed into the system. That takes time to happen. There's also the distribution phase where it goes through the blood system and travels round the various tissues, and then you have metabolism which follows after that, and that results in it being excreted in urine. All of these processes take time to happen. So with this pre-race sample, the dog is presented and a pre-race sample is collected. This is normally a very quick process. It doesn't take very long for a dog to provide a urine sample, because they've travelled. So therefore, I don't think there's a good likelihood that this (contamination) is the source of the detection in the urine sample.

[18] In the light of this evidence there remains no evidentiary basis to support the Applicant's contentions that environmental contamination was responsible for the positive sample detected in Cake Is Good. His assertions in that regard are based on little more than speculation and conjecture.

⁴ Affidavit of Dr Shawn Stanley affirmed 8 September 2023.

⁵ Testimony of Dr Shawn Stanley 11 September 2023.

- [19] Having regard to these matters the Panel is satisfied on the balance of probabilities applied in accordance with the *Briginshaw* test⁶ that the Applicant has contravened GAR141(1)(a). The elements of that offence are established to the Panel's satisfaction.
- [20] It might be added that the Applicant has not sought to appeal against the penalty imposed on him of a \$2,000 fine.
- [21] The penalty is identified in the Greyhound Racing Industry Penalty Guidelines as the starting point for a first offence against GAR 141. It was in fact the penalty imposed in the case of *Thompson*⁷, referred to above for a very similar offence. That was clearly an appropriate penalty in this case, appropriate to the level of deterrence required even allowing that the Applicant does have a previous entry for having breached Rule 141 some seven or eight years ago.
- [22] As a final matter, the Panel was informed that, at least in the past, CCTV footage from greyhound meeting clubs is only kept for a period of three months. Where a positive result is returned for a prohibited substance, efforts should be made to ensure that any such recordings are retrieved by the regulatory authority and made available at any subsequent Stewards' Inquiry.
- [23] This should be a fundamental investigative process and is clearly one which may assist in avoiding any of the contentious questions that arise in cases such as these.
- [24] The Order of the Panel is that pursuant to Section 252AH(1)(a) the racing decision subject to this Application is confirmed

⁶ *Briginshaw -v- Briginshaw* 1938 60 CL 336

⁷ RAP-43, 10 August 2023