

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES
TRIBUNAL MR DB ARMATI**

DECISION

WEDNESDAY 11 DECEMBER 2019

APPELLANT CHARLIE MICALLEF

**APPEAL AGAINST DECISION BY GWIC TO SUSPEND
APPELLANTS' LICENCE FOR 10 WEEKS UNDER
GRR 83(2)(a)**

SEVERITY APPEAL

DECISION

- 1. Appeal dismissed**
- 2. Suspension of licence for 10 weeks imposed.**
- 3. Directions on appeal deposit**

1. Licensed trainer Charlie Micallef (“the appellant”) appeals against a decision of the Greyhound Welfare Integrity Commission (“GWIC”) of 25 July 2019 to suspend his licence for 10 weeks.

2. The order was made because of a finding of guilt for a breach of GRR 83(2). It relevantly states:

“83(2)(a)The .. the person in charge of a greyhound -
(a) nominated to compete in an event..
shall present the greyhound free of any prohibited substance.”

3. GWIC particularised the breach as follows:

“That you, a registered public trainer, while in charge of a greyhound presented the greyhound for the purpose of competing in race 9 at the Wentworth Park meeting on 8 December 2018 in circumstances where the greyhound was not free of any prohibited substance , with the prohibited substance being caffeine and its metabolites theophylline, paraxanthine and theobromine.”

4. The appellant admitted the breach to GWIC and has appealed on severity only.

5. The evidence comprises the usual prohibited substance material, a veterinary assessment of the drug, the appellant’s brief email submission and the finding. GWIC dealt with the matter on the papers.

6. The appeal was, by consent, dealt with on written submissions. Each party submitted.

7. The only issue raised by appellant is whether the penalty was too severe.

8. The brief facts are that the appellant regularly gave the greyhound a Woolworths vanilla protein powder. His son inadvertently purchased a chocolate protein powder which was the same brand, with near identical labelling. The appellant stated that he believed they each contained identical ingredients.

9. Chief Veterinary officer for GWIC, Dr Ledger, reported that caffeine is found in chocolate and chocolate products.

10. It is open to conclude that the caffeine and its metabolites (there is no issue that the metabolites were those of caffeine) came from the powder. That of course is speculative as there is no other evidence of how, when, why or by what route the caffeine was administered.

11. There being no other evidence of relevance penalty must be determined on that husbandry failure.

12. On the Kavanagh (VCAT 27.2.18) three categories test those findings do not enable a determination that the appellant’s actions were without blame such that he should be exculpated. They are category two facts meaning the appropriate penalty for the failure must be considered.

13. The appellant submits it was an innocent mistake, which he admits and he apologises for it. It has occasioned him embarrassment. He makes no excuses for his failure and “owns’ it.
14. He has been licensed as an owner trainer, public trainer and breeder since 2003. He has no prior prohibited substance breaches. He has trained over 25 dogs and they have undergone over 100 swabs. He is retired. His family is all involved with greyhound racing.
15. The caffeine parity cases advanced by GWIC are as follows.
16. Field, 2019, 56 years licensed, no priors, a 10 week suspension with 6 weeks suspended on condition.
17. Albon, 2019, 4 years licensed, plea of guilty, no priors, a 14 week suspension.
18. Watson, 2019, 3 years licensed, plea of guilty, no priors, a 14 week suspension.
19. Reid, 2108, 4 years licensed, plea of guilty, no priors, a 12 week suspension.
20. Mulrine, 2018, 36 years licensed, plea of guilty, prior prohibited substance matters (not specified) , a 12 week suspension.
21. The Penalty Guidelines provide caffeine to be level 4 with a starting point of disqualification of 24 weeks.
22. The early “plea of guilty” and cooperation with GWIC attracts a 25% reduction which reduces the period to 18 weeks.
23. There are no aggravating factors.
24. Other factors are the degree of seriousness of the husbandry failure. No parity cases are given. The Tribunal assesses that as at the lower end of any scale of objective seriousness because the purchase was by his son, the wrong product was purchased in error, the labelling was similar, of the same brand and with similar contents.
25. This was a genuine mistake but not an acceptable one having regard to the need for exemplary husbandry practices to ensure animal welfare, integrity of the industry and a level playing field. It being noted that caffeine can improve performance by combatting fatigue, improving stamina, increasing speed and power and relaxing muscles (Dr Ledger).
26. Parity is important as it ensures that where there are similar facts there should be similar outcomes.
27. Here parity would indicate a suspension. A disqualification is the starting point in the penalty Guideline but not applied in the parity cases, not applied by GWIC here and not sought as an outcome on the appeal. Accordingly a disqualification will not be further considered. There is substantial leniency in moving from a disqualification to a suspension factored in to the penalty consideration.
28. Parity would indicate a suspension of not less than 10 weeks (Field) and not more than 14 (Albon, Watson) or not more than 12 (Reid).

29. Each of these is below a period of 18 weeks after allowing for an admission.
30. The subjective facts of the appellant as set out earlier are all taken in to account. The similar subjective factors of the parity cases are only those set out above. Similarity or otherwise to the appellant is not known.
31. The Tribunal does not find that the subjective factors here warrant any substantial reduction.
32. Can those subjective facts in conjunction with the objective seriousness here mean a penalty of less than 10 weeks, as sought by the appellant, is an appropriate disciplinary approach.? It is noted that GWIC submit a penalty of 10 weeks suspension is appropriate.
33. The Tribunal having noted the leniency of a suspension of 10 weeks can find no reason to determine a lesser penalty is correct on these facts.
34. A period of 10 weeks would equate his longevity in the industry to that of Field and that alone would not be correct. The lesser objective seriousness enables a lesser penalty than 12 or 14 weeks, each being below 18 weeks and is coupled with a fair reduction for the subjective facts.
35. The Tribunal imposes a suspension of the appellant's licence to train for 10 weeks.
36. Noting that some days were served on that suspension before a stay was granted means the the end date of that suspension is matter for GWIC.
37. The appeal against severity of penalty is dismissed.
38. The submissions did not touch upon the appeal deposit issue. That deposit is to be refunded or forfeited (in whole or in part) .
39. The appeal has not been successful so ordinarily the Tribunal would consider its forfeiture.
40. However the appellant is granted 7 days from the receipt of this decision to make an application for refund of the deposit and and if such an application is made then submissions in support must be made.
41. If no such application is received then the Tribunal orders that it be forfeited without further order.