

IN THE RACING APPEALS TRIBUNAL

ROBERT HOWARD
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Date of hearing: 24 July 2024; 21 August 2024

Date of determination: 4 September 2024

Appearances: Mr J Bryant for the Appellant

Dr A Groves for the Respondent

ORDERS

1. The appeal in relation to Charge 1, which alleged a breach of Rule 145(1) of the *Greyhound Racing Rules*, is allowed.
2. The findings and penalty in relation to Charge 1 are quashed, and the Charge is dismissed.
3. The appeal in relation to Charge 2, having been conceded by the Respondent, is allowed.
4. The findings and penalty in relation to Charge 2 are quashed, and the Charge is dismissed.
5. The appeal in relation to Charge 3, which alleged a breach of r 149(1) of the *Greyhound Racing Rules*, is dismissed.
6. The findings and orders in respect of Charge 3, including the order that the Appellant pay a fine of \$300.00 are confirmed.
7. The appeal deposit is to be refunded.

INTRODUCTION

1. By a Notice of Appeal dated 19 April 2024,¹ Robert Howard (the Appellant) has appealed against determinations of the Respondent in respect of alleged breaches of the following provisions of the *Greyhound Racing Rules* (the Rules), to which he pleaded not guilty:

- (i) Charge 1 – r 145(1);
- (ii) Charge 2 – r 148(1)(a);
- (iii) Charge 3 – r 149(1).

2. The Appellant was found guilty of all 3 charges, but it is noted that at the commencement of the hearing, the Respondent conceded the appeal in respect of Charge 2.² It follows that the appeal in relation to that Charge must be allowed. I have made orders giving effect to that concession at the conclusion of these reasons.

3. In respect of the two remaining charges, the following penalties were imposed:

- (i) Charge 1 – a fine of \$700.00
- (ii) Charge 3 – a fine of \$300.00

4. The parties have provided a Tribunal Book (TB) containing all relevant documentary material.

THE RELEVANT PROVISIONS OF THE RULES

5. Rule 145 of the Rules (being the rule referable to Charge 1) is in the following terms:

145 Treatment prior to an event

(1) An offence is committed if, without the permission of the Stewards, a person administers, causes to be administered, or attempts to administer, any

¹ TB 7 and following.

² Transcript 2.11 – 2.17

treatment to a greyhound at any time on the day of a meeting until that greyhound is no longer presented for an event.

(2) ...

(3) ...

(4) *For the purposes of this rule, “treatment” includes:*

...

(g) any liquid or paste that requires syringing into the oral cavity,

6. It should be noted that although the definition of “*treatment*” is inclusive and not exhaustive, the appeal proceeded on the basis of both parties accepting that in the circumstances of this case, it was necessary for the Respondent to prove that the treatment relied upon fell within r 145(4)(g).

7. Rule 149 (being the rule referable to Charge 3) is in the following terms:

149 Possession of a prohibited substance or an item that could be used to administer a prohibited substance on a racecourse or in certain motor vehicles or trailers

(1) *An offence under these Rules is committed if, without the permission of a Controlling Body or the Stewards, and except in the case of an officiating veterinarian carrying standard equipment, a person has a prohibited substance or a syringe, needle or other instrument which could be used to administer a prohibited substance to a greyhound in their possession, either on a racecourse or in any motor vehicle or trailer being used for the purpose of travelling to or from a racecourse.*

THE CASE AGAINST THE APPELLANT

8. The objective facts surrounding the alleged offending are not in dispute and may be summarised as follows.

9. On 13 October 2023 the Appellant, who is a registered Public Trainer, travelled to Wentworth Park where his greyhound, “*Time To Go*”, was scheduled to compete in race 4. Whilst at Wentworth Park, the Appellant’s vehicle was inspected by an officer of the Respondent who located and seized:

(i) two syringes;

(ii) a bottle of liquid labelled *Glycerine*; and

(iii) a bottle of liquid labelled *Glycerol*.³

10. There is no suggestion that either of the items in (ii) and (iii) above was a prohibited substance.

11. The Appellant attended a disciplinary hearing on 13 October 2023, a transcript of which forms part of the evidence before me.⁴ In the course of that hearing, the following exchange took place between the Appellant and Inspector Turner:⁵

Q13 *All right. I'll read you the relevant rule - - -*

A13 *Yep.*

Q14 *- - - Mr Howard. So, its 145, part one says, "An offence is committed if, without the permission of the stewards, a person administers, causes to be administered, or attempts to administer any treatment to a greyhound at any time on the day of a meeting until that greyhound is no longer presented for an Event." So, you weren't aware of that rule?*

A14 *So, does that mean we can't give them Vitamin C and Vitamin E of the morning of the race with their breakfast?*

Q15 *Any – any treatment.*

A15 *Yeah. But, that's not a treatment it's a vitamin.*

Q16 *Well, we can – we can – we can seek evidence if we need to as to what is a treatment, I suppose. What the definition of a – of a treatment is. But, in respect to the administration of – of Glycerine, do you accept that that's an administration of treatment?*

A16 *Well, it's – it's not a treatment. It's – it's just a prevention. It's – it's not – it's not a treatment.*

Q17 *So, by administering Glycerine, you don't believe in your view, that that's – that's a - - -*

A17 *No.*

Q18 *- - - be defined as a treatment?*

A18 *Definitely not a treatment. No.*

Q19 *So, what is – what is your purpose for administering Glycerine an hour and a half before – sorry. On Raceday, on route to the track to a greyhound, what's the purpose of that?*

A19 *Because, of the sand tracks and that, they get a bit of sand or, you know, in their throat or – just stops irritation of the throat, any roughage.*

³ Photographs of the items *in situ* are reproduced at TB 36 and following.

⁴ Commencing at TB 27.

⁵ Commencing at TB 29.

- Q20** *Right. Okay. And, how much did you administer? And – and, I take it, it was – you administered this to your greyhound, Time To Go that’s the greyhound - - -*
- A20** *Yep. That’s the one.*
- Q21** *- - - you refer to? Yep.*
- A21** *One ml.*
- Q22** *One ml, is it?*
- A22** *Yep.*
- Q23** *And, it’s by way of syringe?*
- A23** *Yeah. That’s why – yeah, it’s a syringe --- I*
- Q24** *Just - just over the tongue, is it?*
- A24** *Yeah Before they have their I give them an egg yolk milky drink after it*
- Q25** *Right. All right. I suppose the other rule, Mr Howard, is 149. And, I’ll also read that to you. “An offence under these Rules is committed if, without the permission of a Controlling Body or the Stewards, and except in the case of an officiating veterinarian carrying standard equipment, a person has a prohibited substance or a syringe, needle or other instrument which could be used to administer a prohibited substance to a greyhound in their possession, either on a racecourse or in any motor vehicle or trailer being used for the purpose of travelling to or from a racecourse.” So, are you aware that you weren’t able to have a syringe in your vehicle on a racecourse?*
- A25** *A needle, yeah. But, a syringe I didn’t realise. Yeah. But, it’s not a prohibited substance. So, I thought it was fine.*
- Q26** *Right. So, you thought perhaps it was – you weren’t allowed a needed. But, you weren’t so sure if a syringe was allowed. Is that - - -*
- A26** *Yeah. Yeah. That’s right. A syringe, I thought because you can measure with a syringe, instead of a spoon I suppose.*
- Q27** *Right.*
- A27** *But, it’s not a prohibited substance, so I didn’t think it was a problem.*
- Q28** *Right. Well, what – what we intend to do, we – Mr Turner’s seized those two bottles.*
- A28** *Yep.*
- Q29** *They will be sent to ...for analysis.*
- A29** *Yep.*
- Q30** *I’ll give you the opportunity, Mr Howard, as I said they will be tested. Is there anything else in those two bottles other than Glycerine?*
- A30** *No. No.*
- Q31** *There’s not.*

- A31 *Glycerine, Glycerine.*
- Q32 *Right. Right. And, you say this has been an ongoing process of yours for over forty years.*
- A32 *Yes. Ever since I've been training.*
- Q33 *To every greyhound that you take to the races, on the way, you will administer one ml over the tongue - - -*
- A33 *Yep.*
- Q34 *- - - on the way to the races?*
- A34 *Yep.*
- Q35 *Okay. I guess what we also have to consider, Mr Howard, is – is whether or not you feel that Time To Go should take its place in the – in the event today, having regard to the evidence before us? Is there any submissions you'd like to make in respect to whether or not Time To Go should remain in the race. Or, that it should be scratched given that the evidence before us is that it's been administered Glycerine on the day of the race meeting today?*
- A35 *Yeah. Well, I can't see why she - it's not a prohibited substance. I mean the vet might be able to verify more. But – and, your quite well to do a pre-race swab as well. If you want to do a pre-race swab when she comes out. If you want to do that. But - - -*
- Q36 *Mr ... is there any questions that you have of Mr Howard?*
- A36 *No. No further questions.*
- Q37 *Is there anything else, Mr Howard, before we consider, whether or not we think the greyhound should take its place in the event or not.*
- A37 *No.*

12. The bolded passages above assume significance for the reasons discussed below.

13. Following this interview, the Appellant was found guilty of both Charge 1 and Charge 3, and the penalties previously set out were imposed. It should be noted that the Appellant sought, and was granted, an internal review of the decision which was unsuccessful. As this appeal proceeds as a hearing *de novo*, it is not necessary for me to canvass any aspect of that review.

14. The Appellant provided a statement for the purposes of this appeal,⁶ in which he said the following:

2. *While travelling to Wentworth Park race meetings I always, as part of my following GWIC Rule 6.4, stopped at the safest spot available which is Mooney Mooney Truck Stop to toilet, exercise and give the dogs a liquid meal with their glycerine in it to prevent dehydration. At the racetrack dogs are locked up in racing kennels, which are small cages measuring approximately 450mm x 900mm, for up to five hours at a time. This can be extremely distressing for the animal, so glycerine helps maintain the fluids in the body. I have always administered glycerine in the milky drink or meal, I have never put glycerine over the tongue of a dog. I obviously misunderstood the question.*
3. *I was extremely confused as I knew I followed all of the rules so did not understand why my dog was scratched. I was traumatised by my dog being scratched because this was my first Group race in 30 years of training that I had had a runner in, and that runner had been one of the favourites. I was heartbroken.*
4. *I had hundreds of things going through my mind and disbelief over what had occurred. I had numerous Stewards putting their opinions across, and Mr Flett Turner present who I had a previous bad dealing with. I do not like Mr Turner.*
5. *I never do public speaking because of my nervousness and inability to communicate when stressed and upset. I suffer from bad anxiety and just wanted it over and done with. I obviously totally misunderstood the Stewards as they kept repeating themselves over and over, which was upsetting me. I was just saying “yes, yes, yes” in the end because I needed to get out of there before I became upset. I felt like bursting into tears as I have always followed the rules and try to help everybody where I can. I felt humiliated and traumatised.*
6. *When I went outside my humiliation turned to disbelief and anger when another trainer told me that the Steward Flett Turner had found a race day treatment in his car called Ice Gel. This contains 20 mg of menthol which is targeted to relieve muscular aches and pains and arthritic pain and is only used for race day treatment. The trainer told me that the Ice Gel was handed back to him and he was told he was fine to have it. I believe that this shows that Mr Turner was acting out of revenge based on previous dealings and failed to do his job by failing to follow race day treatment rules and allowing that trainer to race with no penalties imposed.*
7. *I always try and follow the rules to the best of my knowledge. I was not aware that syringes are banned as Stewards allow them to be sold at race meetings. They even allow the needle part to be sold at the races. I believe that this rule therefore is hypocritical and confusing to trainers and that GWIC have failed in their duty of care to trainers. They allow you to purchase items under their race day care and put them in your car, but then charge you for having those items in your car.*
8. *A syringe is the only accurate way to measure glycerine (Exhibits 2 and 4).*

⁶ At TB 79 – 81.

9. *I purchase my syringes from Newcastle Gardens Racetrack on race day as Trent from Products Direct is on the course selling race day treatments, needles, syringes and injectables all in the presence of Stewards from the governing body, GWIC. The Stewards actually stand next to the van which is parked outside their Stewards' rooms smoking and can see what trainers are purchasing and what has been sold.*
10. *At no time has a Steward ever advised trainers they cannot purchase these items or that they are breaking any rules by purchasing these items. I assumed by these products being able to be sold at a track where GWIC is in charge that there were no rules being broken. GWIC Stewards have a duty of care to advise trainers or request the product company to remove themselves from the track if they are breaking GWIC rules. Otherwise trainers are none the wiser because GWIC are allowing these sales on a track that is under their control.*

15. The Appellant was not cross-examined on the contents of this statement.

CHARGE 1 – THE SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

16. By the conclusion of the evidence, the Appellant's position in respect of Charge 1 had shifted slightly from that which had been articulated in the written submissions filed in advance of the hearing. The Appellant's final position in respect of Charge 1 can be distilled into the following propositions:

- (i) the emphasised passages of what the Appellant said in the disciplinary hearing should not be construed as an admission of a breach;⁷
- (ii) aspects of the questioning put to the Appellant in the interview were, for varying reasons, unfair;⁸
- (iii) in any event, and irrespective of those matters, no offence had been committed because the substance in question was not *required* to be syringed into the oral cavity of the greyhound, and therefore did not constitute a "*treatment*" within the meaning of r 145(4)(g).⁹

⁷ Transcript 16.5; 19.33 and following; Written submissions at [15] – [16].

⁸ Transcript 18.21 and following.

⁹ Transcript 16.19 and following.

Submissions of the Respondent

17. The Respondent's submissions in relation to Charge 1 may be distilled into the following propositions:

- (i) the emphasised passages of the Appellant's interview should be construed as admissions that he administered Glycerine through the greyhound's oral cavity by means of a syringe;¹⁰
- (ii) those admissions constituted an offence contrary to r 145(1);
- (iii) nothing in the Appellant's most recent statement (i.e. the statement prepared for the purposes of this appeal) warranted "going behind" what he had said when interviewed;¹¹
- (iv) notwithstanding the definition of the term "*treatment*", and the use of the word "*requires*", in r 145(4)(g), it remained the case that the Appellant had admitted administering Glycerine to the greyhound, and on that basis the breach was established;¹²
- (v) the Appellant's actions were consistent with an understanding on his part that the administration of the substance by syringe was required r 145(4)(g) and that he had acted in a way which was consistent with that understanding.¹³

CONSIDERATION

18. Even if I were to accept that the statements made by the Appellant when interviewed amount to an admission as to the oral administration of a quantity of Glycerine, establishing Charge 1 depends upon the Respondent satisfying me that the Appellant's actions constitute the administration of a *treatment* within the meaning of r 145(4)(g). For that purpose, I must be satisfied in the circumstances of this case that Glycerine is:

- (i) a liquid;

¹⁰ Transcript at 23.36 and following.

¹¹ Transcript at 24.17 and following.

¹² Transcript 25.11 and following.

¹³ Transcript at 25.22 – 25.41.

(ii) that ***requires syringing into the oral cavity*** in order to be administered.

19. Construing the meaning of r 145(4)(g) must begin and end with a consideration of its text.¹⁴ That text includes the word *requires*. The ordinary English meaning of that word *is* to render something necessary or compulsory.¹⁵

20. There is no expert or other evidence before me which would support the proposition that Glycerine is, for any reason, *required* to be administered by syringing it into the oral cavity of a greyhound, so as to amount to a treatment within the meaning of r 145(4)(g). On the contrary, and as a matter of common sense, Glycerine is a liquid which could be placed in a bowl, mixed with some other liquid (such as water) and presented to the greyhound to drink without the requirement to use a syringe at all.

21. The fact that the Appellant may have chosen to administer the Glycerine by syringe, or the fact (if it be the fact) that his understanding was that it should be administered in that way, is not to the point. The use of the word “*required*” in the rule is directed, not to the subjective understanding of the participant, but to the objective requirement of the administration of a liquid or paste by the use of a syringe.

22. In those circumstances, I am not satisfied that an essential element of Charge 1 is made out. To accept the Respondent’s position would be to ignore the meaning of the word *required* as it appears in r 145(4)(g). That would run contrary to the fundamental principle of statutory interpretation to which I have referred.

23. It follows that the appeal in respect of Charge 1 should be allowed, the findings and penalty imposed at first instance quashed, and the Charge dismissed.

¹⁴ *Thiess v Collector of Customs* (2014) 250 CLR 664; [2015] HCA 12 AT [22] – [23]; *SAS Trustee Corporation v Miles* (2018) 265 CLR 137; [2018] HCA 55 at [20].

¹⁵ Cambridge Dictionary.

CHARGE 3 – THE SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

24. The Appellant's submissions in relation to Charge 3 may be distilled into the following propositions:

- (i) the syringes could not be used as a hypodermic needle;¹⁶
- (ii) the syringes were not the type of instrument that the rule was intended to protect;¹⁷
- (iii) taken to its logical extent, possession of items such as spoons, bowls and measuring cups (which were available, in some form, at many racecourses) would be caught by the rule, leading to an absurd result;¹⁸
- (iv) the Appellant's possession of the syringes was not for any nefarious purpose, in circumstances where the underlying purpose of the rule was to prevent the administration of prohibited substances on race day;¹⁹
- (v) there was no attempt by the Appellant to hide the syringes, or deny being in possession of them.²⁰

25. Despite these submissions Mr Bryant, who appeared for the Appellant, appeared to ultimately concede that the Appellant's possession of the syringes was caught by the rule.²¹

Submissions of the Respondent

26. The Respondent's submissions in relation to Charge 3 may be distilled in to the following propositions:

¹⁶ At [36].

¹⁷ At [42];

¹⁸ At [44]; Transcript at 20.22 and following.

¹⁹ Transcript at 20.33 and following.

²⁰ Transcript at 22.34 – 22.37.

²¹ Transcript at 23.10

- (i) there was clear evidence to establish the fact that the syringes were in the Appellant's possession, without permission;²²
- (ii) there was no basis to construe the rule as being limited to syringes without needles;²³
- (iii) there was an obvious intention on the part of those responsible drafting the rules to, as it were, "cover the field" in respect of the possession of items which could be used to administer substances to greyhounds on race day;²⁴
- (iv) on any interpretation of the rule, the Appellant's possession of the syringes fell within its terms.²⁵

CONSIDERATION

27. As was ultimately (and properly) conceded by Mr Bryant, and based on the Appellant's statements when interviewed,²⁶ it is clear that this offence is made out. Put simply:

- (i) having a syringe, with or without a needle;
- (ii) in a motor vehicle being used for the purpose of travelling to or from a racecourse;
- (iii) without the permission of a Controlling Body or the Stewards,

is prohibited by r 149(1) of the Rules. The reasons for that prohibition are obvious.

28. I accept that there are items which may fall within r 149(1) which may be commercially available at racetracks. For example, spoons obtained through coffee or take away food outlet might be readily available. However, that does not alter the fact that the Appellant's possession of the syringes without permission was clearly caught by the rule. I accept that the Appellant's possession was not for any unlawful purpose. However, the Respondent is not required to establish that fact in order to establish a breach of the rule.

²² At [23].

²³ At [24].

²⁴ Transcript at 26.6 – 26.9.

²⁵ Transcript 26.26 – 26.30.

²⁶ See Q and A 25.

29. For these reasons, I am satisfied that Charge 3 is made out. To the extent that the appeal in respect of Charge 3 encompassed the issue of the penalty imposed, the fine of \$300.00 was clearly at the lower end of the scale, and reflects the decision maker(s) having properly taken into account the subjective matters in [26](iv) and (v) above.

30. It follows that the appeal in relation to Charge 3 should be dismissed.

31. As the Appellant has largely succeeded on the appeal, the appeal deposit should be refunded.

CONCLUSION AND ORDERS

32. For the reasons given I make the following orders:

1. The appeal in relation to Charge 1, which alleged a breach of Rule 145(1) of the *Greyhound Racing Rules*, is allowed.
2. The findings and penalty in relation to Charge 1 are quashed, and the Charge is dismissed.
3. The appeal in relation to Charge 2, having been conceded by the Respondent, is allowed.
4. The findings and penalty in relation to Charge 2 are quashed, and the Charge is dismissed.
5. The appeal in relation to Charge 3, which alleged a breach of r 149(1) of the *Greyhound Racing Rules*, is dismissed.
6. The findings and orders in respect of Charge 3, including the order that the Appellant pay a fine of \$300.00 are confirmed.
7. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

4 September 2024