

IN THE RACING APPEALS TRIBUNAL

BRETT GILBERT

Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DETERMINATION

Date of hearing: 26 August 2024

Date of determination: 16 September 2024

Appearances: The Appellant in person

Ms A Summerson-Hingston for the Respondent

ORDERS

1. The stay ordered on 27 May 2024 is vacated.
2. The appeal against the finding of guilt in respect of a breach of r 156(f)(ii) of the *Greyhound Racing Rules* is dismissed.
3. Such finding of guilt is confirmed.
4. The appeal in respect of penalty is upheld.
5. The penalty imposed by the Respondent is quashed.
6. In lieu thereof, the Appellant is suspended for a period of 2 weeks.
7. The suspension in order [6] shall commence at midnight on 20 September 2024.
8. The decision of the Respondent to activate the suspended penalty imposed on the Appellant on 26 November 2023 is set aside.
9. I decline to take any action in relation to the suspended penalty imposed on the Appellant on 26 November 2023.
10. The appeal deposit is to be refunded.

INTRODUCTION

1. By a Notice of Appeal filed on 15 May 2024,¹ Brett Gilbert (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) finding him guilty of a breach of r 156(f)(ii) of the *Greyhound Racing Rules* (the Rules), and imposing a suspension of 8 weeks. The breach arises out of an incident which occurred on 10 April 2024 at The Gardens Greyhound Club. The Appellant had pleaded not guilty to the breach, and maintained that plea on the hearing of the appeal. At the time of imposing the suspension, the Respondent also activated a conditionally suspended penalty which had been imposed on the Appellant in November 2023 and ordered it to be served cumulatively, resulting in a total suspension of 20 weeks commencing on 22 May 2024.
2. I previously granted a stay of the determination which is the subject of the appeal. The parties provided a Tribunal Book (TB) containing all relevant documentary material.

THE RELEVANT PROVISION OF THE RULES

3. Rule 156 of the Rules is in the following terms:

General offences

An offence is committed if a person (including an official)

...

(f) has, in relation to greyhound or greyhound racing, done something, or omitted to do something, which in the opinion of the controlling body or the stewards:

...

(ii) constitutes misconduct or is negligent or improper.

THE CHARGE AGAINST THE APPELLANT

4. The charge against the Appellant was pleaded in the following terms:²

¹ TB 1 and following

² TB 26.

That [the Appellant], as a registered Public Trainer with the Commission at all relevant times, did a thing which, in the opinion of the Controlling Body, constitutes an offence in circumstances where:

1. *On Thursday 10 April 2024 [the Appellant] attended The Gardens Greyhound Club for the purpose of racing the greyhound Swift Choice.*
2. *Whilst collecting the greyhound in the catching pen following the completion of Race 3, [the Appellant] became engaged in a physical and verbal altercation with participant Mr Allan Woods.*

5. I am compelled to observe that in my view, it is strongly arguable that a charge pleaded in those terms discloses no offence, to the point where the charge could be viewed as a nullity. The terms in which the charge has been pleaded is entirely bereft of any allegation, much less any particularisation, of the gravamen of the alleged offence, namely whether the conduct of the Appellant is alleged to constitute misconduct on the one hand, or whether it is alleged to constitute misconduct on the one hand, or negligence or impropriety on the other. Whilst these three states of culpability may overlap to some degree, they are also quite different. A person charged with a breach of r 156 is entitled to know which alternative is relied upon. The charge in the present case arguably fails to meet that entitlement. It is not sufficient to plead that alleged conduct constitutes an “*offence*”, without stating *what* offence is actually alleged.

6. It is apparent that despite this apparent defect, the point was not taken before the decision makers below. The matter somehow proceeded on the basis of an allegation that the Appellant’s actions amounted to misconduct.³ This appeal has proceeded on the same basis. Notwithstanding that, I repeat my concerns about what I consider to be a fundamental defect in the terms in which the charge was pleaded. Any participant charged with a breach of the Rules is entitled, as a matter of procedural fairness, to know the case against them. In that respect, the circumstances of the present case are not unlike those in *Fellowes v Greyhound Welfare and Integrity Commission*⁴ in which I expressed not dissimilar concerns.⁵

³ TB 24 at [3] and [4].

⁴ A determination of 2 September 2024.

⁵ Particularly at [40] and following.

Those concerns might be drawn to the attention of those decision makers who are responsible for bringing charges, for their assistance in the conduct of future cases.

THE CASE AGAINST THE APPELLANT

7. The Appellant attended a race meeting at The Gardens Club on 10 April 2024. After collecting his greyhound following the running of race 3, the Appellant became involved in an incident with another participant, Allan Woods (“Woods”). That incident arose as a consequence of Woods’ greyhound becoming aggressive at the conclusion of the race.

8. The Appellant and Woods were interviewed jointly following the incident.⁶ Whilst it is a matter for the Respondent to conduct its investigations as it sees fit, there are strong reasons why it would be preferable for participants to be interviewed separately in circumstances such as these. In any event, Woods said that he had seen the Appellant punch his (i.e., Woods’) greyhound (*Happy Potter*) in the face. His account was that he had then said to the Appellant words to the effect “get your hands away from my dog”, following which the Appellant put his hands on his (i.e. Woods’) shoulder and shoved him slightly. Some words were then exchanged and the Appellant and Woods separated. What was actually said between them, and by whom, is not clear on the evidence.

9. The Appellant’s account⁷ was that Woods’ greyhound was attempting to bite and “get” his greyhound (*Swift Choice*), and had had “a couple of digs”. The Appellant admitted⁸ that he may have “pushed” and/or “hit” Woods greyhound. The Appellant admitted putting his hands on Woods’ shoulder, and said he had done so in order to push him away.⁹ Other evidence adduced by the Appellant on the hearing of the appeal supports a conclusion that he found it necessary to act in

⁶ Commencing at TB 6.23.

⁷ Commencing at TB 7.10.

⁸ TB 8.5.

⁹ TB 8.17 – TB 8.19.

that way because Woods was “blocking” his path when he was attempting to exit the catching pen.¹⁰

10. The Stewards spoke with a number of other persons about the incident.

11. Angus Chippendale (Chippendale), a Steward, said that he had observed Woods’ greyhound “growling and getting aggressive”.¹¹ Chippendale said¹² that he heard Woods say words to the effect “Don’t touch my dog” or “Get your hands away from my dog”, following which he saw the Appellant “put his hands on Mr Woods’ shoulder and shove him slightly”.¹³

12. Dawn Barnett (Barnett), a Gardens Club staff member, said that she saw Woods’ greyhound being “aggressive.”¹⁴ She described the greyhound as “really getting into it”¹⁵, and said that she became concerned because “you could just tell from what was going on, the dogs were about to get into it big time and there could’ve been injuries”.¹⁶

13. Barnett then said:¹⁷

Brett Gilbert has come – run into the pen. He’s got to his dog, and he’s grabbed his dog by the rug, and he’s pushed with an open hand, pushed the other dog with the open hand, just really pushed sort of the other dog away from his, because it’s still going at his ... And Allan Woods has seen it and has come running up, and then he said something, whether, “Don’t hit the dog”, or “Don’t touch my dog”, something along them lines. And then Brett said to him, and I seen him, Brett, put his hand on the upper half of Allan Woods and shove him. Whether he was saying that he did, I didn’t hear it clearly. He might’ve just been, in the passion of the moment, saying “I didn’t hit your dog”, because I did hear him say that. “I was trying to get him away”, and I think he may have demonstrated the force of what he used but he did push at ... [contacted] around the chest to the shoulder area. ... Both guys got into a heated argument at that point and the dogs were still –

¹⁰ TB 10.

¹¹ TB 30.24 – TB 30.25.

¹² TB 30.28.

¹³ TB 30.30.

¹⁴ TB 12.26.

¹⁵ TB 12.37.

¹⁶ TB 12.40 – TB 12.,41.

¹⁷ TB 13.6 – TB 13.24.

because they're in such close proximity, the dogs are still trying to get at each other ...

14. Richard Milton (Milton) was also interviewed by Stewards. He said:¹⁸

*As I was coming through the entry gate there was two gentlemen – seeing they're having a little argument. One had an aggressive dog and the other one was trying to protect his dog. [The Appellant] shoved the other gentleman on the shoulder. Just shoved him on. He says “get your dog away from me”. **The other dog was aggressive in the pen with his dog. And I thought, why didn't you just pull your dog away? ... And [the Appellant] was trying to look after his animal while they were having their argument. And I couldn't work out – why would you stand there and argue? Pull your dog away. Meaning [Woods]. But that never happened** (my emphasis).*

15. When asked whether he had observed any provocation, Milton said:¹⁹

It was in regards to the dogs. ... [The Appellant] was pretty upset about the other dog attacking his ... It wasn't a real aggressive thing....

16. The Appellant was interviewed for a second time in the presence of his then Solicitor.²⁰ He described the level of force which he applied to Woods as a “brush.”²¹ He also told the Stewards that he had subsequently attempted to apologise to Woods for what had occurred. That attempted apology was essentially rejected.²² Significantly, the Steward conducting the interview, Mr Adams, said:²³

*We're very experienced Stewards. We see what happens in a catchment pen quite often and it's – it's not isolated to Mr Gilbert's incident. You know --- quite a number of times after a race, there is a – you've got eight dogs are running in a confined area, and – and – **and some are more aggressive than others, and our expectations are that – would be that their handlers or even club staff would – would take possession of any dog who was being aggressive** (my emphasis).*

¹⁸ Commencing at TB 16.3.

¹⁹ At TB 17.13 - TB 17.18.

²⁰ Commencing at TB 31.

²¹ TB 57.13 – TB 57.15.

²² TB 69.130; Transcript 4.19.

²³ TB 62.64 – TB 62.65.

17. In other words, Mr Adams had a legitimate expectation that Woods, as an industry participant, would comply with his obligations and take control of his greyhound who was clearly being aggressive. Clearly, Woods did not meet Mr Adams' expectation.

18. Two further statements relied upon by the Appellant were tendered as evidence in the appeal, without objection. The first was a further statement of Milton who stated that the Appellant had been "*pinned against the fence next to the gate ... with [Woods] blocking his path and making no attempt to move on*".²⁴ The second was that of Robert Kember, who said that he had been told by a Club Staff member (identified as "Kira") that Woods' greyhound had been aggressive.²⁵

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

19. The Appellant's submissions may be summarised as follows:

- (i) Woods' greyhound was being aggressive,²⁶ a fact of which Woods was aware;²⁷
- (ii) Woods failed to take any action to control his greyhound, even though he was observing it engaging in vicious and aggressive behaviour;²⁸
- (iii) he (the Appellant) felt personally threatened by the actions of Woods' greyhound;²⁹
- (iv) Woods' failure to control his greyhound had the capacity to result in injury;³⁰
- (v) he had "slightly pushed" Woods,³¹ but had only done so because Woods would not get out of the way and was blocking the exit from the pen,³² and

²⁴ TB 23.

²⁵ TB 24.

²⁶ Transcript 4.36.

²⁷ TB 7.

²⁸ TB 10.

²⁹ Transcript 4.10 – 4.1

³⁰ TB 17.

³¹ TB 7.

³² TB 16.

in doing so had acted in self-defence because Woods was standing over him;³³

(vi) Woods' lack of vigilance in controlling his greyhound was the effective cause of what had ultimately occurred;³⁴

(vii) Woods himself was being aggressive by raising his voice towards the Appellant.³⁵

Submissions of the Respondent

20. Put simply, the Respondent submitted that the charge was made out on the basis of the Appellant's admission that he had placed his hands on Woods.³⁶ It was submitted that the term "misconduct" was intentionally wide, and was to be given a purposive interpretation. Viewed in this way, it was submitted that the Appellant's conduct fell within the definition of the term.

CONSIDERATION

21. The term "misconduct" encompasses, in this context, conduct which is (amongst other things) properly regarded as "*unacceptable*".³⁷ I am satisfied that the Appellant placed his hand on Woods' shoulder and pushed him very slightly. That was not in accordance with applicable standards of behaviour expected from industry participants. It follows that it amounts to misconduct, and the offence is made out. There are, however, a number of mitigating factors which I have considered when addressing the question of penalty below.

THE QUESTION OF PENALTY

Submissions of the Appellant

22. A number of the submissions of the Appellant which I have set out above go to the question of penalty, and I have considered them further below. In addition to those factors, the Appellant relied upon the fact that any suspension would

³³ Transcript 4.25 – 4.30.

³⁴ Transcript 3.20 – 3.24.

³⁵ Transcript 5.1 – 5.4

³⁶ Submissions at [21].

³⁷ Oxford Dictionary.

adversely impact upon him financially, in circumstances where his income was limited.³⁸

Submissions of the Respondent

23. The Respondent submitted that the penalty imposed on the Appellant at first instance was “*lenient*”.³⁹ Such a conclusion, it was submitted, followed from penalties imposed in other cases involving what were described as “*physical altercations*”.⁴⁰ The Respondent did not specifically refer me to any other case(s) to make that submission good, but indicated that they could be provided if they were thought to be of assistance.⁴¹ Whilst I am always grateful for such assistance as might be able to be gained from previous cases, whether such assistance *can* be gained can only be determined if I am given copies of such cases (or at least the references to them) in the first place. As I was not provided with either, I have made my decision unassisted by any previous determination(s) of the Tribunal. I should also say that for the reasons set out below, describing the Appellant’s offending as involving a “*physical altercation*” has a tendency to overstate what actually occurred.

24. The Respondent also relied upon the Appellant’s disciplinary history, including his breach of the same rule in November 2023. It was submitted that this previous breach had effectively put the Appellant on notice that conduct of this nature is not appropriate, and gave rise to a particular need for personal deterrence.⁴²

25. In all of these circumstances, the Respondent submitted that the appeal should be dismissed.⁴³

³⁸ TB 53.199 – TB 54.206.

³⁹ Submissions at [26].

⁴⁰ Submissions at [26].

⁴¹ Submissions at [37].

⁴² Submissions at [28] – [29].

⁴³ Submissions at [30].

CONSIDERATION

26. Physical and/or verbal interactions between participants undoubtedly have the capacity to affect the integrity of, and erode public confidence in, the greyhound racing industry. For that reason, offences involving misconduct of that kind must, at least at a level of generality, be viewed as objectively serious. That said, any participant who is charged with any offence, and who becomes part of any disciplinary process, is entitled to what might be described as individualised justice. That means, amongst other things, that the level of objective seriousness of the offence must be assessed according to the particular facts of the case. In making that assessment in the present case, a number of matters are significant.
27. First, there can be no doubt that Woods' greyhound was acting aggressively at the conclusion of the race, and was doing so to Woods' knowledge. The evidence in support of each of those conclusions is overwhelming, and does not need to be repeated.
28. Secondly, the level of aggression displayed by Woods' greyhound was high, and gave rise to the clear possibility of injuries being sustained, be it to other greyhounds, or to participants.⁴⁴
29. Thirdly, the Appellant's actions were sparked by the greyhound's aggressive behaviour. The evidence of Mr Milton⁴⁵ supports that conclusion. Importantly, the behaviour of Wood's greyhound was a circumstance which was out of the Appellant's control, but importantly within the direct control of Woods.
30. Fourthly, the Appellant's primary concern was the safety of his greyhound, not becoming involved in an altercation with Woods.⁴⁶
31. It follows from the circumstances described above that a significant level of responsibility for this entire incident must be attributed to Woods. It is clear that

⁴⁴ At [12] above.

⁴⁵ At [15] above.

⁴⁶ At [14] above.

the catalyst for the Appellant's conduct was the aggressive behaviour of Woods' greyhound. Notwithstanding that he was clearly aware of that behaviour, Woods took no steps to intervene and address it. In that regard, the evidence of Mr Adams,⁴⁷ an experienced Steward, is particularly important. The essence of that evidence, which I unreservedly accept and which is directly corroborated by the evidence of Milton⁴⁸, is that Woods had a fundamental responsibility to take control of his greyhound. Discharging that responsibility was hardly onerous. Control could simply have been maintained by Woods by pulling the greyhound away. Woods failed to meet his responsibility in that fundamental respect.

32. Further, and bearing in mind Mr Adams' opinion, I am satisfied that Woods' failure to discharge that responsibility fell substantially short of what might reasonably be expected of an industry participant faced with that situation, and should be seen as the primary cause of what then eventuated between Woods and the Appellant. Accepting all of that to be the case, Woods' failure to take control of his greyhound arguably amounted to misconduct, or at the very least conduct which was negligent or improper. It is somewhat curious, in those circumstances, that Woods himself does not appear to have been charged with a breach of r 156. In any event, the more important consideration is that if Woods had discharged what Mr Adams clearly saw as his obligation to intervene and take control of his greyhound, the incident is unlikely to have occurred at all. It follows that in an indirect sense, Woods' failure to intervene should be viewed as a form of provocation, and the primary cause of the incident which eventuated.

33. Further, the evidence supports the conclusion that any physical altercation between the Appellant and Woods was essentially limited to the Appellant placing his hand(s) on Woods' shoulder. The force with which he did so has been variously described in the evidence as a "*push*", a "*slight push*", a "*shove*", a "*slight shove*", a "*brush*", and an action that was "*not real aggressive*". Whatever description

⁴⁷ At [16] above.

⁴⁸ At [14] above.

might be adopted, the preponderance of the evidence overwhelmingly supports the conclusion that the degree of force the Appellant applied was absolutely minimal. There is certainly no suggestion of any injury being sustained to Woods, nor is there any suggestion that Woods was put in fear of his own personal safety, as a consequence of anything that the Appellant may have done.

34. Further, to the extent that there was any verbal altercation between the Appellant and Woods, its inherently minor nature can be gauged by the fact that the evidence does not even allow me to make a determination of what might have been said, be it by the Appellant or by Woods. There is certainly nothing to suggest that the Appellant's language towards Woods was aggressive.

35. Finally, there is evidence that Woods was blocking the Appellant's path as he (i.e., the Appellant) tried to exit the pen. Whilst I am not satisfied that the Appellant acted in self-defence, the conduct of Woods in this respect was, at least in part, causative of the Appellant's conduct. The evidence supports a conclusion that the Appellant placed his hands on Woods, not out of any aggressive mindset, but to allow a path for him to leave.

36. For all of these reasons, the objective seriousness of the Appellant's offending falls very much towards, if not at, the lowest end of the scale, as does the Appellant's moral culpability. I did not understand the Respondent to argue against those general propositions.⁴⁹

37. Subjectively, the Appellant is not entitled to a discount for a plea of guilty, although that does not mean that any penalty should be increased as a consequence of the fact that he has exercised his right to plead not guilty. I have previously noted that the Appellant attempted to apologise to Woods following the incident. That, along with his statements to me at the hearing of the appeal, leave me in no doubt that he is genuinely remorseful.

⁴⁹ Transcript 7.46.

38. It is also not without significance that there is evidence that on 9 April 2024, the day before the incident giving rise to the charge, a greyhound of which the Appellant was the owner was euthanised as a consequence of injuries sustained from an attack by another dog.⁵⁰ I am prepared to accept that these circumstances may have rendered the Appellant particularly sensitive to the events which occurred, and may have played some role in precipitating his offending.

39. The Appellant's disciplinary history forms part of the evidence before me.⁵¹ He was first registered as an industry participant in 2020. Significantly, on 26 November 2023, he was fined \$1,000.00 and suspended for 3 months, for a breach of the same rule. That operation of suspension was, itself, suspended for a period of 12 months conditional upon there being no further breach(es) of the rule within that period.

40. The incident giving rise to the imposition of that previous suspension was described as follows:⁵²

On Tuesday 3 October 2023, [the Appellant] attended the Gosford Greyhound Club.

During the course of the meeting [the Appellant] became involved in a physical altercation with another participant in the bar area of the club, resulting in an affray which required the intervention of bystanders to deescalate.

41. It might again be noted that the charge brought against the Appellant on that occasion appears to have been fundamentally defective because it did not plead or particularise the gravamen of the offence. Whether the Appellant was found guilty of misconduct on the one hand, or conduct which was negligent or improper on the other, is not entirely clear. No further particulars of the incident, over and above those I have set out above, are available.

⁵⁰ TB 47.

⁵¹ TB 21 – 22.

⁵² TB 62.

42. In any event, and on the face of it, the physical altercation giving rise to the charge on that previous occasion appears to have been of substantially greater seriousness than that which is the subject of the present matter. I draw that inference, firstly from the use of the word “*affray*” (a term which connotes a person being placed in fear of his or her own safety), and secondly, from the reference to the necessity for bystanders to intervene to quell the situation which had arisen. There is no suggestion that the present offending encompassed either of those aggravating elements. That said, it must be recognised that at the time of the imposition of the previous penalty, the Appellant was able to rely upon a blemish-free history as an industry participant. That is not something that is available to him as a subjective factor in the present case.

CONCLUSION

43. In all of the circumstances, I am unable to accept the proposition advanced by the Respondent that the suspension of 8 weeks which was imposed was “*lenient*”. Whilst behaviour of this kind must obviously be affirmatively discouraged, I reiterate that each case must be determined on its own facts, and a penalty assessed accordingly.

44. Put simply, the Appellant’s conduct should be viewed as an inappropriate, but relatively insignificant, response to a set of circumstances which were not of his own making, and which could have been entirely avoided had Woods acted responsibly, and in accordance with what Mr Adams clearly viewed as his obligations as an industry participant. Moreover, as I have set out, there are a number of subjective factors which the Appellant is entitled to have taken into account. Whilst personal deterrence remains a consideration, the level of deterrence which is warranted must be assessed, at least in part, according to the circumstances of what the Appellant did. For the reasons I have set out, the Appellant’s actions fall very much at the low end of the scale of objective seriousness. Were it not for the fact that the Appellant has come under notice for a similar matter in the recent past, this may well have been a case in which no substantive penalty was warranted at all. However, the previous offending cannot

be ignored. In my view, taking all factors into account, a suspension of 2 weeks is appropriate.

45. The remaining question is what, if any, action should be taken in relation to the earlier penalty, the operation of which was suspended in November 2023. In this regard, r 176 of the Rules is in the following terms:

176 Cumulative penalties

If a person or a greyhound:

- a. is disqualified or suspended on any occasion for more than one period; or*
 - b. has been previously disqualified or suspended for any period and during that period is again disqualified or suspended*
- any period of disqualification or suspension other than the first, or any further period of disqualification or suspension, is, if the Controlling Body or the Stewards so directs, to be cumulative.*

46. Obviously, the Appellant has previously been suspended. That suspension was, itself, suspended for a 12 month period which is yet to expire. In those circumstances, r 176(b) applies. It was the Respondent's position that the issue of whether the previously suspended sentence should be activated was a matter to be determined by the decision makers at first instance in the exercise of their discretion. In circumstances where, in determining the present appeal, I stand in the shoes of the decision makers, it must follow that I have the same discretion to determine whether the previous suspension should be activated. I did not understand the Respondent to suggest otherwise.

47. The Respondent submitted that the activation of the previously suspended penalty was appropriate. I am unable to agree. In my view, to do so on the basis of an offence which reflects minimal culpability would bring about an entirely unjust result. I am satisfied that the Appellant understands that conduct of this kind is unacceptable in any circumstances. For these reasons, and in the exercise of my discretion, I do not propose to take any action to activate the previously suspended penalty.

48. Given the decision I have reached, the appeal deposit should be refunded.

ORDERS

49. I make the following orders:

1. The stay ordered on 27 May 2024 is vacated.
2. The appeal against the finding of guilt in respect of a breach of r 156(f)(ii) of the *Greyhound Racing Rules* is dismissed.
3. Such finding of guilt is confirmed.
4. The appeal in respect of penalty is upheld.
5. The penalty imposed by the Respondent is quashed.
6. In lieu thereof, the Appellant is suspended for a period of 2 weeks.
7. The suspension in order [6] shall commence at midnight on 20 September 2024.
8. The decision of the Respondent to activate the suspended penalty imposed on the Appellant on 26 November 2023 is set aside.
9. I decline to take any action in relation to the suspended penalty imposed on the Appellant on 26 November 2023.
10. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

16 September 2024