RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D. B. ARMATI

RESERVED DECISION

1 MAY 2023

APPELLANT JASON MACKAY

RESPONDENT GWIC

GREYHOUND RACING RULE 139(3)(a) (x2)

SEVERITY APPEAL

DECISION:

1. **Severity appeal upheld**
2. **Penalty of disqualification of 12 months to date from 10 November 2022**
3. **Appeal deposit refunded**

INTRODUCTION

1. The appellant, licensed trainer and studmaster Jason Mackay, appeals against a decision of the GWIC hearing panel of 10 November 2022 to impose upon him two periods of disqualification of two years to be served concurrently.

2. Both charges are under GRR 139(3)(a), which relevantly reads as follows:

> *139(3) When a sample taken from a greyhound being trained by a trainer or in the care of a registered person has been established to contain a permanently banned prohibited substance:*
>
> > *(a) the trainer and any other person who was in charge of the relevant greyhound at the relevant time shall be guilty of an offence*

3. The two charges were particularised as follows: An out-of-competition urine sample was taken from each greyhound on 22 June 2022 at a time that the appellant was the trainer and gonadorelin was detected in the samples, and that is a permanently banned prohibited substance under the rules.

4. The appellant pleaded guilty before the hearing panel and has maintained that admission of the breach of the rule on appeal. No stay application was lodged with this appeal.

5. Being a severity appeal, the necessity to examine large parts of the evidence in detail falls away. The key points of evidence are: The brief of evidence containing the usual documentation going to support the charge; documents relating to an interim suspension; kennel inspection report; report of Dr Karamatic; transcripts of interviews with April Mackay and Dan Russ; text messages; transcript of interview with Andy Lord; transcript of the hearing panel inquiry; the decision of the hearing panel; various records relating to the appellant; records of three prior determinations against the appellant. In addition, affidavits of the appellant's legal representative, Mr O'Sullivan, and of Ms April Mackay were put in evidence. In addition, a number of references. Further, the appellant, his daughter Ms April Mackay and swab steward Ms Rodgers gave oral evidence.

6. By his severity appeal, the appellant does not challenge the fact that :gonadorelin is a permanently banned prohibited substance; that an out-of-competition sample was taken from the two greyhounds; that the substance was found in his two greyhounds; and that he was the trainer of the greyhounds at the time of the sampling. That is each of the ingredients necessary to establish the two charges.

7. The grounds of appeal identify: penalty too severe; insufficient attention to antecedents and disciplinary history as mitigating factors; loss of prize money; insufficient regard to precedent; and insufficient weight to the appellant's evidence that he knew the greyhounds were to be pre-race tested.

8. The Tribunal is not invited to consider legal principles beyond the norm. However, in this case, the following require consideration: Application of the penalty guidelines; parity; deterrence; McDonough principles; hardship.

9. The Tribunal notes that at the time of the hearing panel inquiry the appellant faced a number of other charges for which pleas of guilty were entered and penalties imposed, but no appeal was lodged in respect of those matters and they are disregarded.

FACTS

Subjective Features

10. The appellant has been a licensed person for some 34 years. Greyhound training and his operation of his stud are the sole source of his income and he works in that industry on a full-time basis. At the time of the detection of the positives he had 34 greyhounds in his care and control. He now has no greyhounds as the owners have removed them all from him.

11. He has not taken up interest in greyhounds that he has trained and his sole interest in them is financial, from training and a share of prize money. In that regard it is submitted he is an unusual trainer.

12. He has given confidential figures of his mortgage and the fact that he is in default in meeting that mortgage because he has no income. He is under threat of default notices. His lack of income has also occasioned substantial other difficulties, for example, the hot water system in his home has failed and he cannot afford to have it repaired and for some time there has been no hot water in the home. He is unable to register his greyhound ambulance and it needs a new battery. His motor vehicle is broken down and requires towing and new gears. He cannot afford to pay those expenses.

13. In essence, he gave evidence to the Tribunal that he is living day to day.

14. This fall of grace occurred as a result of this disqualification, which the Tribunal notes took place on 10 November 2022. His fall from grace has been from his status as one of the leading trainers in Australia. He has had four Greyhounds of the Year. He has had some twenty Group 1 winners. In 2013 he was Trainer of the Year. At one stage he got to a win ratio of 47 per cent and is the only person to have done so. His hopes for one day being elevated to the Hall of Fame have now vanished.

15. The appellant has called in aid seven referees.

16. Troy Harley, on 7 December 2022, states he has known the appellant professionally and personally for more than 30 years and he is a person who always goes out of his way to help people. He is a contributor to fundraising and charitable activities and, as a professional person, always gives his time in an effort to promote the industry. He is assessed as a loyal individual.

17. Simon Shields, on 18 November 2022, in his capacity as the manager of a racing syndicate, would see the appellant very frequently. He describes him as a dedicated family man, a respected member of the greyhound community and a hard worker. He says he is an honourable man, willing to share his knowledge and expertise. Mr Shields has concerns for the appellant's welfare. He says he has acted out of character, but he still has the utmost faith in his honesty and integrity.

18. Luke Gatehouse, on 30 November 2022, states he has known the appellant for over 16 years in this industry. He describes him as a leading greyhound trainer. Mr Gatehouse himself is the CEO of a greyhound racing club. He describes the appellant as supporting various feature racing carnivals, and doing so in a very professional manner, a person who is a very devoted family man and always willing to assist others with his immense knowledge of the industry. He describes the appellant as having a great love and affinity for the greyhound and a passion for the industry.

19. Dr John Newell, on 27 January 2023, states he has known the appellant for over 35 years and he is a person who is dedicated to the preparation and training of greyhounds in considerable detail reflected in his success. He describes his facilities as exemplary and says he is a person who is always forthcoming with knowledge and advice to other trainers. He says he has honesty, integrity and dedication.

20. Jeff Collerson, on 22 November 2022, in his capacity as a racing journalist, has known the appellant for over 20 years as one of the leading trainers in the State. He says he is totally honest and always willing to assist the battlers. He says he is an outstanding trainer, but also a close friend.

21. Mr Collerson gave another reference on 30 January 2023 in which he repeats many of the other matters, but also describes the appellant as scrupulously honest and a person of great integrity whose love of greyhounds has been forthright. He describes him as willing to help others.

22. Wayne Billett, undated, has known the appellant for over 30 years through a family involvement in the industry and can attest to his support and investment in the industry. He describes the appellant's substantial investment in the industry where he is well-respected by his peers and first to assist new

trainers in entering the sport, making himself available to the industry in many ways.

23. The appellant has an adverse disciplinary record.

24. On 12 January 2014 he was among the first group of trainers to be detected presenting greyhounds to race with an excess of the new threshold for testosterone. He was fined $2,000. He lost over $100,000 as a result of the disqualification of two greyhounds. He told the Tribunal on oath that he was not aware of the new rule because he did not at the time use a computer to keep himself informed. That substance was a permanently banned prohibited substance under the rules.

25. On 12 April 2021 the appellant was again penalised for a prohibited substance presentation of a greyhound with an anti-inflammatory, but one which was not performance-enhancing. The appellant told the Tribunal in evidence that a greyhound, which was meant to receive a tablet, did not receive it, but it was wrongly given by an employee to the greyhound that was presented to race which was in the adjoining kennel. He was fined $2,225.

26. On 21 October 2021 the appellant was dealt with for three breaches. One involved him permitting an unlicensed person to handle a greyhound. The appellant told the Tribunal in evidence that that person was his 10-year-old daughter who, when he was not in the immediate area, after the completion of a race, found the greyhound to be thirsty, and accordingly his 10-year-old daughter gave it a drink of water, and this conduct was reported to the stewards. He subsequently confronted the two persons who had reported the matter to the stewards and engaged in improper conduct. That conduct involved “several unsavoury and offensive comments”. He was fined, respectively, $500, $500 and $100. The two $500 penalties were wholly suspended for twelve months.

The Drug

27. This case is the first occasion on which the regulator was required to consider this particular permanently banned prohibited substance.

28. As there is no dispute that it is a permanently banned prohibited substance, the need to examine the drug in detail is reduced.

29. Regulatory veterinarian Dr Karamatic provided a report of 29 September 2022. He noted gonadorelin is specifically listed as a permanently banned prohibited substance and described why it is one otherwise. It is a Category 1A permanently banned prohibited substance. Even possession of the substance is prohibited. It has been so banned since about 2010. That arose because there were rumours that it was being used as a doping agent. He noted there are nine APVMA registered products containing the substance.

These are Schedule 4 substances. Dr Karamatic described it as a synthetic form of a natural hormone and one which causes a surge-like release of the gonadotropin hormones, which are used for reproductive disorders. Essentially, in the male dog, they are used for increased testosterone production.

30. He stated the use of such hormones can give an unfair performance advantage to treated animals by increasing muscle mass, increasing endurance and altering the behaviour of a greyhound. Dr Karamatic stated that they may also impact performance. He said they are difficult to detect. In particular, Dr Karamatic said the drug is metabolised and eliminated quickly and can degrade within urine samples, and accordingly, as it has a half-life of very limited time in pigs and humans, it is likely to have a detection time at a maximum of 12 hours in a horse.

31. Dr Karamatic referred to notices to industry on 24 June 2016, 13 July 2018 and June 2019 when participants were reminded that the substance is a permanently banned prohibited substance. It was pointed out that possession and use have no place in greyhound racing at all. The last notice contained a further reminder of these facts.

32. It was Dr Karamatic's opinion that the detection confirmed the recent administration and presence of the substance. It was one capable of affecting condition, behaviour or performance, and any performance affectation was more likely to be positive.

33. Before the hearing panel, in oral evidence, Dr Karamatic confirmed a detection time at a maximum of 12 hours. He thought that a 12-hour window would be generous. He did note, however, that detection time very much depended upon frequency of urination. He agreed that multiple administrations of the drug could cause accumulation and, therefore, it could last longer.

Facts on this Detection

34. The two out-of-competition samples were taken by sample steward Jeanette Rodgers between 6.30 a.m. and 7.00 p.m. on 22 June 2022 at the appellant's training establishment.

35. Those samples were taken as out-of-competition samples because the two subject greyhounds were due to race in feature races on the next Friday night, being two days later.

36. It is common ground, and certainly the case for the appellant and his daughter, Ms April Mackay, that it is common knowledge that if a greyhound is to race in a feature race it will be out-of-competition tested prior to that race. This was also an agreed state of knowledge before the hearing panel.

37. Despite the notices to industry, the appellant says that prior to being notified of the positive he had never heard of the prohibited substance, had never possessed it and never used it. In particular, he was adamant he did not use it on the two subject greyhounds.

38. In addition to that evidence, the appellant says he had no reason to administer the prohibited substance to the two greyhounds.

39. There was substantial evidence gathered by interviews prior to the hearing panel inquiry to see if it could be ascertained whether it could be established that the greyhounds were nobbled. A number of persons were interviewed, and some at extraordinary length, including Ms April Mackay.

40. The appellant attempted to establish before the hearing panel that certain named persons had engaged in such conduct. Lengthy cross-examination took place.

41. At the conclusion of the hearing panel matter, and before the Tribunal, the appellant conceded that he was unable to establish that the greyhounds were nobbled by somebody else.

42. Accordingly, it is not necessary to examine that exceptionally detailed evidence in this decision.

43. The appellant puts his case, and the Tribunal finds, that the appellant is unable to establish how the drug came to be present in the two greyhounds at the time of the sampling.

44. There are two key matters that the appellant seeks to advance to limit his culpability. The first is his knowledge that the greyhounds would be tested and the second is that he was on specific notice of the time of the sampling taking place.

45. The appellant has established the first of those matters. The second of those matters is strongly contested factually.

46. When the kennel inspection was carried out on 6 August 2022 no products containing the prohibited substance or the prohibited substance itself were found. There is no record in relation to that kennel inspection of the appellant disclosing that he had been telephoned the night before the sampling to be advised that the sampling would take place the next day.

47. The appellant did not advance that fact at the interim suspension hearing.

48. Having obtained legal representation, the appellant raised before the Tribunal, on his appeal against that interim suspension, the fact that there had been such a phone call.

49. This appeal was prepared by the appellant on the basis that that fact was not contested, but immediately prior to the commencement of the hearing the respondent notified the appellant that that was a fact in issue.

50. On the first day of the hearing the respondent called the swabbing steward, Ms Rodgers, who gave evidence-in-chief to the effect that no phone call took place the night before the sampling. Ms Rodgers advised in evidence on oath that she had arrived at 6.00 a.m. without prior notice, waited for a period of time and then telephoned the appellant who asked for ten minutes to get dressed because he was still in bed. The samples were then taken.

51. Before the Tribunal on resumption of the hearing, Ms Rodgers again adamantly stated that there was no phone call the day before. In particular, Ms Rodgers gave evidence that she did not use her personal mobile phone nor her GWIC mobile phone to make such a call. Ms Rodgers said that she did not use apps such as FaceTime, et cetera, to make the call and did not know how to use those apps in any event.

52. The Tribunal notes that between the two hearing dates attempts were made to obtain telephone records and, at its highest, the evidence establishes that no phone call was made on the GWIC mobile phone on 21 June and the records in evidence show that no such call was made on her personal phone.

53. In cross-examination Ms Rodgers conceded she was a friend of the family for over 30 years and she was aware that if she had made such a phone call to warn of an out-of-competition sampling she would be in breach of her terms of employment. Despite that cross-examination, the fact is that she remained totally adamant, at one stage in colourful terms, that she had made no such call.

54. As stated, the appellant cannot find records, despite diligent search, to prove that his mobile phone received that call.

55. His daughter, Ms April Mackay, put in evidence an affidavit in which she stated that she was present with her father the evening before and, when a phone call came in, the call was on speaker phone and she was able to hear Ms Rodgers say that she could not come out because of flooding and would come out at 6.30 a.m. the next day.

56. Ms Mackay was called to give evidence before the Tribunal and maintained the correctness of that evidence. Ms Mackay was cross-examined as to why she did not state that in her exceptionally lengthy interview with the stewards on 29 September 2022. The transcript of that interview is 82 pages.

In that interview she stated, at transcript page 65, that her father had told her the day before that the swabbing would take place the next day. She had told her father that she would not be awake and would not assist with it. It is noted there was no reference to a telephone call.

57. In cross-examination Ms Mackay said that there was no reason to mention a phone call because the interview itself required her to deal with, as she described it, a “world of lies”.

58. The Tribunal notes at this stage that it accepts that the nature of that interview, which the Tribunal has read, was such that it was not dealing with this issue but many other issues, and the Tribunal is of the opinion that there was no reason for Ms Mackay to have turned her mind to, nor express a reason for, it being in fact in a telephone call rather than a conversation that she ascertained that the swabbing official was coming the next day.

59. Ms Mackay also stated that she knew that there would be out-of-competition testing and she was expecting the stewards to turn up to do it. She also confirmed, as she did in her interview, that she refused to get out of bed to supervise the swabbing.

60. She also volunteered the fact that she was able to see the name of the caller on the mobile phone of her father.

61. Ms Mackay also gave evidence to the effect that on 21 June it was exceptionally wet, which would be corroborative of the fact that Ms Rodgers could not attend because she was flooded in.

62. In oral evidence before the hearing panel the appellant set out his recollection of the phone call from Ms Rodgers the afternoon before. He set out how it was “too wet”, but Ms Rodgers said she would be there first thing the next morning.

63. In evidence before the Tribunal he repeated that fact.

64. He told the Tribunal under cross-examination that his screen displayed “Jenny the Gardens” rather than the name of Ms Rodgers.

65. He conceded that when Ms Rodgers arrived he was in his pyjamas, but it would only take him one minute to get changed, and he was out there ready for her at 6.30 a.m.

66. On this issue the evidence of the appellant and Ms Mackay does not entirely dovetail. Ms Rodgers was adamant in her evidence. Ms Rodgers was certainly not broken on cross-examination.

67. However, there is an element of certainty about the evidence of the appellant and Ms Mackay and there is the further aspect that the story itself, which involved the inability to attend the day before because of flooding, is consistent with what was taking place at the time with the weather. The evidence does not show why the appellant and Ms Mackay would have got together to concoct such a background to justify their belief that the phone call took place.

68. There is the additional fact that there was a longstanding relationship between Ms Rodgers and the family, and Ms Rodgers was aware that if she gave evidence admitting the phone call she would place her employment in jeopardy.

69. On balance, the Tribunal therefore prefers the evidence of the appellant that there was such a phone call.

70. However, the relevance of this phone call is not able to be linked to any knowledge in the appellant that the detection time for the subject drug was up to 12 hours. That is, if he had advice on the afternoon of 21 June that there would be a swabbing at 6.30 a.m. on 22 June he would therefore be safely able to administer the drug, or something containing it, such that with the passage of 12 hours from the phone call to the swabbing he would be safe in the knowledge that it would not be detected. The Tribunal accepts that the appellant was so totally ignorant in relation to this drug that such knowledge cannot be imputed to him.

71. That finding is not critical to the ultimate determination because there was otherwise certain knowledge that the two greyhounds were going to be tested before the race. In the absence of knowledge of the detection time for the drug, there would be no reason to have sought to use a 12-hour window.

72. There is further comfort in such findings because, the respondent not having to identify how, when, why and by what route the substance came to be present, the appellant is nevertheless entirely unable to establish how the prohibited substance came to be in the dog in any event.

73. Some other less important facts are that, as a leading trainer, the appellant has, not surprisingly, had numerous swabs over long periods of time in which no positives were detected.

74. The Tribunal accepts that the two subject races carried substantial prize money. The Tribunal notes, however, that the appellant's total loss is in the vicinity of only $8,500.

75. The Tribunal notes there were no ancillary concerns such as betting and the like identified in the inquiry.

SUBMISSIONS

Respondent's Oral Submissions

76. The respondent states that there is a penalty guideline for such a permanently banned prohibited substance and it provides for a three-year minimum disqualification period that makes no provision for a lifting of that if there are priors.

77. The respondent notes that the appellant has in fact had a prior disqualification for a permanently banned prohibited substance and calls in aid the *Vanderburg* case (reference below) where the Tribunal stated that such a fact must lead to a disqualification.

78. The respondent concedes a discount of 25 per cent for plea and co-operation.

79. The respondent submits that other discounts must be reduced because of the appellant's prior history.

80. The respondent accepts the severity of the financial consequences for the appellant, but says that must be a consequence of his conduct.

81. The respondent concedes that prize money will be forfeited but says it is nominal here.

82. The submissions continued on an identification of the contested evidence on the phone call, and the Tribunal has dealt with that.

83. The respondent therefore submits that if a starting point of three years' disqualification is considered, and that is said to be appropriate, a one-third discount for subjectives leading to a two-year disqualification is appropriate.

Respondent's Written Submissions

84. The written submissions go to the history of the matter and some more detail to establish the oral submissions already referred to. It is said that the hearing panel correctly ascertained an appropriate penalty.

85. In respect of precedent, and noting there is no prior matter with which the respondent has been concerned, it is said that guidance can be obtained from other jurisdiction decisions.

86. The Queensland matter of *Russell* of June 2022 involved possession and administration of a substance containing this substance where there was a plea of guilty by a trainer of 20 years' standing with no prior breaches and a

twelve-month disqualification for administration and six months for possession concurrent was imposed.

87. The next matter is the Western Australian decision of October 2016 in *Peter Hepple* where there was possession and administration of the same substance as *Russell* with a plea of guilty and a fine of $1,500 for possession and two years for administration, reduced on appeal to 12 months.

88. The written submission then referred to matters relating to the grounds of appeal.

89. The respondent submitted that the penalty was not too severe, that the appellant's antecedents did not justify greater leniency and that prize money, whilst it was lost, was of a minor nature.

90. The submission then turned to other precedent penalties.

91. *Vanderburg*, 25 November 2020, RAT NSW, presentation with a peptide, which is also Category 1A, without explanation but with no disciplinary history in 40 years, was such that with a peptide a disqualification was required and twelve months' disqualification was imposed. That involved a two-year discount for subjectives on a three-year penalty.

92. The next matter is a GWIC decision of *Magri* on 23 April 2021 where cocaine was detected in an out-of-competition sample. A nine-month suspension was imposed. There was a plea of guilty, no priors and personal circumstances.

93. The next matter is a GWIC decision in *Callaughan* in February 2021 where a race-day swab and an out-of-competition swab for the same greyhound produced a permanently banned prohibited substance. Knackery meat was identified as the source, as it had been in respect of a number of matters at that time. There was one prior and the matter was disposed of by way of monetary penalty.

Appellant

94. It was emphasised that the appellant knew he would be tested. It was therefore said it would be absurd for him to have administered the drug to the greyhound in the circumstances that he knew it would be tested. It was submitted that it would not be worth his risk.

95. It was emphasised that the evidence only established a presumption that it might be performance-enhancing and thus the drug was categorised as a permanently banned prohibited substance.

96. Lengthy submissions were made on the telephone call and the Tribunal has already dealt with that.

97. In relation to his priors, it is said that the hearing panel was wrong to give him no discount for his lengthy history because he had three priors.

98. Particular reliance was placed upon his referees.

99. The fact that he had such a long history with only those three priors, for which there was some explanation, is such that leniency should not be lost.

100. Loss of prize money was emphasised.

101. On parity cases it was said that the penalty imposed by the hearing panel was too severe. In addition to *Russell* and *Hepple*, comment was made on *Bell*, a recent decision where there was one prior of a trainer of seven years' standing who suffered substantial financial hardship and for whom the racing industry was his sole income with strong references.

102. It was emphasised that the appellant had been disqualified since 10 November 2022 and a disqualification to conclude today was appropriate.

103. It was said that he was very close to a *McDonough* Category 3.

DETERMINATION

104. The Tribunal has to determine a civil disciplinary penalty having regard to the need for special and general deterrence in the public interest, but only imposing a penalty commensurate with the gravity of the conduct.

105. Absent clear and unambiguous precedent and parity cases, the Tribunal first turns to the penalty guidelines.

106. On objective seriousness, the respondent's submission is that those guidelines provide a disqualification of three years as a starting point. That starting point is said not to be exacerbated by the fact that priors exist.

107. However these breaches occurred on 22 June 2022. The current guideline started in July 2022. The guideline that should have been considered started on 1 January 2022, equating to the old GRNSW table. It provided a starting point of 156 weeks increased for priors to 312 weeks.

108. As neither party addressed this fact and both approached the case on the basis of a three year starting point and the respondent advances a starting point of 3 years there is no need to use that earlier table as a guide.

109. The Tribunal will approach a stating point on the basis of the respondent's case.

110. The substance is a permanently banned prohibited substance and of the utmost seriousness. It can only be presumed to be possibly performance-enhancing because studies have not established that fact. That presumption leads to the categorisation, not necessarily the actual impact, of the substance upon greyhounds presented to race. The deterrence message is strongly activated by those facts.

111. The starting point on objective seriousness in this matter is difficult to determine. That arises because of the facts and circumstances of this case. It is the first occasion on which a penalty has had to be considered in NSW for this substance. The two precedent interstate cases carried a 12 month disqualification although that is not binding. The cases of Magri and Callaughan are too different to be of guidance.

112. Not in the appellant's favour is the fact that he simply cannot establish that he was blameless. He can only establish that his conduct, if established unfavourably, was, as submitted, absurd. he has priors and that does not assist leniency by reducing general deterrence..

113. It is accepted that he knew the greyhound would be tested, although the evidence does not clearly and unambiguously establish that it would necessarily have been on 22 June with the greyhound racing on 24 June. It could have been tested later on the 22nd, or indeed on the 23rd, or at any time up until the commencement to race, or indeed subsequent to presentation.

114. However, having accepted that the appellant and Ms Mackay both knew that these greyhounds were going to be tested, despite the fact that the appellant had no knowledge of the drug itself, nor its metabolisation rate, nor its detection rate, all the more reason is there that it would be absurd for him to have administered the substance or something containing it at or about the time he must have done so to have it detected on sampling at 6.30 a.m. and shortly thereafter on 22 June. That would have meant an administration after 6.30 p.m. on 21 June.

115. The Tribunal understands the appellant's frustration that he is unable to point the finger at those he appears to genuinely believe were involved in the matter. However, the evidence and the concessions made on his behalf are that he cannot establish wrongful conduct by any other person.

116. It is not possible to identify a husbandry failure because at the end of the day the evidence is that the Tribunal simply does not know how, when, why or by what route the subject drug came to be administered to the greyhound.

117. Subjectively, therefore, there is nothing on specific deterrence that would enable the appellant to avoid the extent of the appropriate message by reason of him satisfying the Tribunal it will not occur again.

118. Despite the Tribunal's level of discomfort in an adverse finding on those facts, the Tribunal is left with no other conclusion to be drawn than that, as the appellant cannot establish he was blameless, he must be assessed as a Category 2 under the *McDonough* principles.

119. *McDonough* principles are not to be treated as enshrined principles but rather matters for guidance again. Here it is open to the Tribunal to conclude that the evidence really must fall somewhere between "unable to establish" and "blameless".

120. That does not mean that no penalty is appropriate, nor that a low-level fine be considered, for two reasons. Firstly, no such submission was made and, secondly, it would not be appropriate on the facts for a permanently banned prohibited substance for which there is no explanation.

121. Those facts mean that the Tribunal does not comfortably find that a starting point of a three-year disqualification is appropriate. General deterrence is the main factor but that is reduced for the above reasons.

122. The facts plainly dictate that a disqualification is appropriate, however.

123. The Tribunal determines a starting point of a disqualification of two years.

124. The subjective factors entitle a discount of 25 per cent for the plea and cooperation and, whilst a mathematical formula is desired to be avoided, that means a discount of six months.

125. Aspects of hardship are clearly identified here and, despite the Tribunal's views that hardship may have no part to play, on the facts and circumstances of this case it is satisfied that the level of hardship is high.

126. That arises for two reasons. The first is the substantial fall from grace with its financial consequences that the Tribunal has identified in relation to training, but secondly in relation to the substantial financial impact upon him personally. In this case it is substantial.

127. The Tribunal, in addition, takes into account the assistance he has provided to others in the industry, and is of the opinion that that is a substantial factor which warrants a greater discount than the bare facts would otherwise dictate.

128. He is spoken of highly by his referees and also they confirm his assistance to others in the industry.

129. Those additional subjective facts lead to a further discount of 25 per cent and a further discount of six months.

130. Accordingly, the total discounts are 12 months.

131. That means, from a starting point of a disqualification of two years, a discount of 12 months is given for subjective factors, leaving a period of disqualification of 12 months.

132. The Tribunal does not accept that the facts and circumstances of this case warrant that that period of disqualification only operate from 10 November 2022 until today's date. That is a period of some five months and fourteen days.

133. The Tribunal imposes a period of disqualification of 12 months to commence on 10 November 2022.

134. This was a severity appeal.

135. The original penalty was a disqualification of two years and, in that regard, the appellant has been successful on this appeal.

136. The severity appeal is upheld.

137. The parties left it to the Tribunal to determine whether there was to be a refund or not of the appeal deposit.

138. Despite the fact that the appellant did not achieve the level of penalty that he sought, he nevertheless has succeeded on the severity appeal.

139. The Tribunal orders the appeal deposit be refunded.

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