4 November 2022

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**ANDREA DAILLY**

**and**

**THOMAS DAILLY**

**Date of hearing:** 26 October 2022

**Panel:** Judge John Bowman (Chairperson) and Judge Katherine Kings.

**Appearances:** Mr Damian Hannan instructed by Mr Anthony Pearce appeared on behalf of the Stewards.

Mr Thomas Dailly and Mrs Andrea Dailly represented themselves.

**Charges:** Greyhounds Australasia Rule (“GAR”) 83(1A) states:

 (1A) A person who –

(a) administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;

 (b) aids, abets counsels or procures any person to administer a prohibited substance to a greyhound; or

(c) has prior knowledge of a prohibited substance being administered to a greyhound

 which is detected in any sample taken from such greyhound that has been presented for an Event or when subject to any other contingency provided for pursuant to these Rules, shall be guilty of an offence.

GAR 83(2) states:

(2) The owner, trainer or person in charge of a greyhound-

 (a) nominated to compete in an Event;

 (b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or

 (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked

 shall present the greyhound free of any prohibited substance.

**Particulars of charges: Andrea Dailly – Charge 1: GAR 83(1A)**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound *“Gypsy Wyong”.*
3. You:
	1. caused to be administered a prohibited substance, being Carprofen, to “*Gypsy Wyong*”,
	2. further and in the alternative, counselled or procured Mr Thomas Dailly to administer a prohibited substance, being Carprofen, to “*Gypsy Wyong*”;

in that:

1. you decided, in consultation with Mr Dailly, that “*Gypsy Wyong*” would be administered Carprofen tablets;
2. you advised Mr Dailly to administer Carprofen tablets to “*Gypsy Wyong*”;
3. Mr Dailly administered tablets containing Carprofen to "*Gypsy Wyong*" on or about 20 November 2021 and 21 November 2021.
4. *“Gypsy Wyong”* was presented for, and competed in, Race 5, Bold Trease Final, S/E Group 1, conducted by the Sandown Greyhound Racing Club at Sandown Park on 26 November 2021 (**the Event**).
5. A post-race sample of blood was taken from “Gypsy Wyong” at the Event (**the Sample**).
6. Carprofen was detected in the Sample;
7. At the time of the relevant conduct described, it was an offence under GAR 83(1A) (as then in force) to engage in the conduct described in particulars 3 to 6.
8. By reason of GAR 2 (as currently in force), the rescinding or variation of the *Old Rules* and commencement of the *New Rules* does not:
	1. affect the previous operation of the *Old Rules* (including GAR 83(1A));
	2. affect any obligation or liability imposed, created or incurred prior to the rescission or variation of the *Old Rules* (including by virtue of GAR 83(1A);
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the *Old Rules* (including a breach of GAR 83(1A)).

**Andrea Dailly – Charge 2: GAR 83(2)**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.

1. You were at all relevant times the trainer of the greyhound *“Gypsy Wyong”.*

1. *“Gypsy Wyong”* was nominated to compete in, Race 5, Bold Trease Final, S/E Group 1, conducted by the Sandown Greyhound Racing Club at Sandown Park on 26 November 2021 (**the Event**).

1. On 26 November 2021, you presented *“Gypsy Wyong”* at the Event not free of any prohibited substance, given that:
	1. A post-race sample of blood was taken from *“Gypsy Wyong”* at the Event (**the Sample**);
	2. Carprofen was detected in the Sample.
2. At the time of the relevant conduct described, it was an offence under GAR 83(2) (as then in force) to engage in the conduct described in particular 4.
3. By reason of GAR 2 (as currently in force), the rescinding or variation of the *Old Rules* and commencement of the *New Rules* does not:
	1. affect the previous operation of the *Old Rules* (including GAR 83(2));
	2. affect any obligation or liability imposed, created or incurred prior to the rescission or variation of the *Old Rules* (including by virtue of GAR 83(2);
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the *Old Rules* (including a breach of GAR 83(2)).

**Thomas Dailly – GAR 83(1A)**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You administered a prohibited substance, being Carprofen, to *“Gypsy Wyong”* in that: you administered tablets containing Carprofen to *“Gypsy Wyong”* on or about 20 November 2021 and 21 November 2021;
3. *“Gypsy Wyong”* was presented for, and competed in, Race 5, Bold Trease Final, S/E Group 1, conducted by the Sandown Greyhound Racing Club at Sandown Park on 26 November 2021 (**the Event**).

1. A post-race sample of blood was taken from “*Gypsy Wyong*” at the Event (**the Sample**);
2. Carprofen was detected in the Sample.
3. At the time of the relevant conduct described, it was an offence under GAR 83(1A) (as then in force) to engage in the conduct described in particulars 2 to 5;
4. By reason of GAR 2 (as currently in force), the rescinding or variation of the *Old Rules* and commencement of the *New Rules* does not:
	1. affect the previous operation of the *Old Rules* (including GAR 83(1A));
	2. affect any obligation or liability imposed, created or incurred prior to the rescission or variation of the *Old Rules* (including by virtue of GAR 83(1A);
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the *Old Rules* (including a breach of GAR 83(1A)).

**Pleas:** Andrea Dailly guilty to all charges.

 Tom Dailly not Guilty to Charge 1.

**DECISION**

1. Background

Mr Thomas Dailly has been charged with a breach of GAR 83(1A). Mrs Andrea Dailly has been charged with a breach of GAR 83(1A) and a breach of GAR 83(2). All charges arise out of the same set of circumstances. Both Mr and Mrs Dailly are licensed greyhound trainers. They operate a very large operation at Anakie. However, they are separately licensed and it is not suggested that they carry out their training tasks and duties in a partnership or the like. Thus, they are charged quite separately, even though the charges arise out of the one sequence of events.

Their cases were conducted in the one sitting of the Tribunal which, given that they arise in the same factual context, was a sensible way of dealing with the matters. All concerned are to be congratulated on the concise and helpful matter in which the hearing was conducted. Mr Damien Hannan of counsel appeared on behalf of the GRV Stewards. Mr and Mrs Dailly were self-represented.

2. The Charges and the factual context in which they arise.

Gypsy Wyong is a successful greyhound, at the relevant time trained solely by Mrs Dailly. The dog was kennelled at Anakie. Whilst separately licensed, Mr and Mrs Dailly both train at the Anakie kennels. As stated, at all relevant times Mrs Dailly was the registered trainer of Gypsy Wyong.

Gypsy Wyong competed in the Group 1 event, the Bold Trease Final at Sandown Park on 26 November 2021, an event which she won. An out of competition sample was taken from Gypsy Wyong on 23 November 2021. On 26 November 2021 post-race urine and blood samples were taken from Gypsy Wyong. The blood sample was the only one to reveal an abnormality. It proved positive to carprofen. It is a prohibited substance. It is a pain-relieving drug used for conditions such as osteoarthritis. It is not suggested that the level of carprofen detected in the blood test was particularly high. Indeed, it was not at a level detected in either urine test. However, as stated in the detailed report of Dr Steven Karamatic, any effect on performance is more likely to be positive, such as producing an artificially pain free state. He viewed administration on or about 21 November 2021, as recorded by Mr Dailly, as being the likely explanation for the reading.

Neither Mr or Mrs Dailly challenged the method of taking the blood sample, the accuracy of the relevant reading or the conclusion reached by Dr Karamatic.

It is also an admitted fact that Mr Dailly gave Gypsy Wyong a 100 mg dose of carprofen in the form of two 50 mg tablets on 21 November 2021, five days before the race.

3. The pleas, the conduct of the hearing, the relevant evidence and our findings.

Mr Dailly has pleaded “Not Guilty” to the charge which he faces, namely a breach of GAR 83 (1A). The charge is based upon his alleged administration to Gypsy Wyong of the carprofen tablets on 20 November 2021 and 21 November 2021, this resulting in the positive finding in the blood test on 26 November 2021.

Mr Dailly in essence challenges none of the factual evidence on behalf of the Stewards. His defence basically is that, when giving the carprofen tablets to Gypsy Wyong on the dates in question, he was not acting in the capacity of the trainer of the dog. His wife was the registered trainer and she directed him to administer the medication. Thus, he argued, he was acting in the capacity of a kennel assistant or staff member. She was the trainer. He was not. He was carrying out the instructions of his wife as the trainer of the dog and not on his own initiative as the trainer of the dog.

We say now that we do not accept this argument, however ingenious it may be. The role of being a licensed trainer is not something like a coat or garment that can be put on and taken off at will when dealing with greyhounds. The responsibilities of being a licensed trainer remain when performing work of this kind, regardless of whether the dog is one for which the person performing it is the registered and licensed trainer. The “trainer’s hat” cannot simply be taken off and replaced by the “employee’s hat” or the “kennel attendant’s hat”.

Further, Rule 83(1A) simply states that it applies to “A person – who administers etc”. Mr Dailly is a licensed person – a trainer – who administered to a greyhound a product which resulted in it proving positive to a prohibited substance. If a licensed trainer took over the preparation of a dog in order to assist a trainer friend suffering from a temporary illness, and, whilst so doing, breached a Rule such as this, it seems to us that such trainer must be held liable. The responsibilities of a licensed trainer do not disappear if such trainer simply “puts on another hat”. In short, we find Mr Dailly guilty of a breach of GAR 83(1A).

Mrs Dailly is pleading guilty to both charges which she faces, namely a breach of GAR 83(1A) and of GAR 83(2). Whilst this results in separate offences, there is very considerable overlapping and this will be reflected in the penalties which we impose. Whilst she supported her husband in relation to his argument as to which “hat” he had been wearing when the offending took place, and that it had been at her request, otherwise she did not have a great deal to say in relation to the penalties to be imposed.

4. Penalties

There is no suggestion of any prior offending of any substance or relevance by either Mr or Mrs Dailly. They have excellent records. They are probably this country’s biggest and most successful greyhound trainers, running a very large operation. We appreciate that the inevitable result of what has occurred is the disqualification of the bitch, Gypsy Wyong, and the amendment of the placings, all of this in a Group 1 event.

However, the responsibility of trainers great and small is to comply with the Rules. When interviewed by the Stewards, Mr Dailly requested some further information as to the level of the offending reading, stating

“….I want to know whether I’ve buggered up giving her those tablets too close to the race…”.

It was Mrs Dailly who instructed Mr Dailly to give Gypsy Wyong the carprofen medication. We would refer to pages 10 and following of the transcript of evidence of 24 December 2021.

Mr Hannan, on behalf of the Stewards, directed our attention to the penalties imposed in relevant cases and particularly to that in the case of GRV v Brook Ennis, which involved a breach of GAR 83(1A). Ms Ennis did have a prior conviction of relevance, so, as fairly conceded by him, the fine imposed in that case should be reduced in the present cases. We agree with his suggested penalties, which we consider to be fair and reasonable. The penalties we impose are as follows:

Mrs Andrea Dailly is fined the sum of $1,000 on Charge 1. On Charge 2, she is fined the sum of $500, but payment of that penalty is suspended for a period of 12 months. It will only become payable if she commits a similar offence during that period. We are confident that she will not.

Mr Thomas Dailly is fined the sum of $1,000.

Gypsy Wyong is disqualified from Race 5 at Sandown Park on 26 November 2021 and the finishing order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal