2 August 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**CALVEN RUSSELL**

**Date of hearing:** 27 July 2021

**Panel:** Judge John Bowman (Chairperson) and Dr June Smith.

**Appearances:** Mr Damien Hannan, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Mr Calven Russell represented himself.

Mr Gary Harrison appeared as a witness.

Mr Simon McLean appeared as a witness.

**Charge:** Local Racing Rule (“LRR”) 42.9(a) states:

Where a greyhound has died (whether due to natural causes, accident, misadventure, euthanasia or otherwise):

(a) within 2 working days of the date of death (and prior to the disposal of the body of the deceased greyhound), the Owner or person responsible for the greyhound must notify the Board in the prescribed form of the death of the greyhound and provide a veterinary certificate of euthanasia where available (including, without limitation, the written certificate or letter referred to in LR 42.8).

LRR 11.8(b) states:

No person who is Disqualified, Warned Off, Suspended, declared to be a Defaulter or otherwise directed by the Board as falling within this Rule as a result of unacceptable conduct by that person (the “defaulting person”), shall be permitted to transfer any ownership of any greyhound they own, or any training responsibilities for any greyhound they train, to (whether by initial transfer or any subsequent transfer):

(b) any relative, spouse or domestic partner of the defaulting person regardless of whether they reside with the defaulting person.

LRR 11.12(b) states:

Unless the Board or Stewards direct otherwise, a person who is suspended is not, during the period of suspension:

(b) to enter the premises of a club on a day when a meeting, qualifying trial, satisfactory trial, other trial, Event or greyhound training of any type is occurring or would reasonably be expected to occur regardless of whether the meeting, qualifying trial, satisfactory trial, other trial, Event or training is actually occurring at that time.

Greyhounds Australasia Rule (“GAR”) 106(1)(c) states:

A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with –

(c) kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in a clean and sanitary condition.

 GAR 86(p) states:

 A person (including an official) shall be guilty of an offence if the person-

(p) disobeys or fails to comply with the lawful order of a Steward or other person or body having official duties in relation to greyhound racing.

GAR 86(o) states:

A person (including an official) shall be guilty of an offence if the person –

(o) has, in relation to a greyhound, or greyhound racing, done a thing, or omitted to do a thing, which in the opinion of the Stewards, or Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

**Particulars of charges: Charge 1: LRR 42.9(a)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. Between 1 November 2019 and 31 December 2019, you were the owner of, and had the care of, greyhound “Kiltah Magic” (QBBTD) when you found it deceased at your property.
3. You failed to notify the Board within 2 working days of the death of “Kiltah Magic” in the prescribed form.

**Charge 2: GAR 106(1)(c)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. Between 14 February 2020 and 3 July 2020, you failed to provide kennels that were compliant with the ‘Code of Practice for the Keeping of Racing Greyhounds 2018’ (“the code”), in particular;
* The outdoor yards contained kennels which were too small for the number of greyhounds they housed;
* All kennels in the yards were not constructed of impervious flooring and did not have suitable bedding;
* Wire fencing on outdoor yards were in poor repair allowing for possible escape or injury to the greyhounds; and
* Five (5) indoor kennels in a back shed did not have flooring impervious to liquids.

**Charge 3: GAR 86(p)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 14 February 2020, you were issued with a lawful direction by a Steward by way of Compliance Notice No. 1252 which directed you, in part, to ensure by 28 March 2020:
* THAT all greyhound shelters comply with the Code of Practice sections 6.7.2 and 6.7.6.
* THAT all greyhound structures to comply with Table 2 in the Code of Practice.
* THAT all structures, kennels and yards to be cleared of rubbish and obstacles.
* THAT all branches be pruned.
* THAT all lawn in runs and yards to be maintained.
* THAT all fencing in outdoor yards to be repaired and at least 1.5 metres high to prevent escape and injury.
1. You were required to comply with this lawful direction by 28 March 2020 but did fail to comply by this date.

**Charge 4: GAR 86(p)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 30 March 2020, you were issued with a lawful direction by a Steward by way of Compliance Notice No. 1253 which instructed you, in part, to ensure by 14 April 2020:
* THAT all greyhound shelters comply with the Code of Practice sections 6.7.2 and 6.7.6; and
* THAT all greyhound structures to comply with Table 2 in the Code of Practice
1. You were required to comply with this lawful direction by 14 April 2020 but did fail to comply by this date.

**Charge 5: LRR 11.8(b)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 3 July 2020 at 2.45pm, you were personally served with an “Immediate Suspension Notice” pursuant to Local Rule 11.14.
3. On 3 July 2020 at 3.10pm, being a person who was then suspended, transferred 11 x greyhounds that were registered with you for training, to your spouse, Shelly-Anne Warde.

**Charge 6: LRR 11.12(b)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 3 July 2020 at 2.45pm, you were served with an “Immediate Suspension Notice” pursuant to Local Rule 11.14.
3. On 9 July 2020, you were served with a “Notification of Suspension” pursuant to Greyhounds Australasian Rules 92(5)(c).
4. Between 3 July 2020 and 24 July 2020, whilst being a suspended person, you attended various clubs (twice per week) to assist in the trialling of greyhounds including the Shepparton Greyhound Complex on Thursday 23 July 2020.

**Charge 7: GAR 86(o)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 3 July 2020 at 2.45pm, you were served with an “Immediate Suspension Notice” pursuant to Local Rule 11.14.
3. On 9 July 2020, you were served with a “Notification of Suspension” pursuant to Greyhounds Australasian Rules 92(5)(c).
4. Between 3 July 2020 and 24 July 2020, whilst being a suspended person, you attended various clubs and/or trial tracks to assist in the trialling of greyhounds.
5. The assistance in the trialling of greyhounds, whilst being a suspended person, is in the opinion of the Stewards, improper and constitutes misconduct.

**Plea:** Not guilty to charges 1, 2, 3 and 4

Guilty to charges 5, 6 and 7

**DECISION**

Mr Calven Russell, you are charged with seven offences. You are pleading “not guilty” to charges one to four. There is some little confusion as to whether you are pleading guilty or not guilty to charge seven. We will deal with that as being a plea of “not guilty”. You are pleading guilty to charges five and six.

You represented yourself. That is no criticism, but a lot of your questions, mixed with submissions, indicated more that you felt hard done by in being charged with the offences you are nominally contesting, rather than fully contesting what is being alleged.

We find charges one to four proven. In relation to charge one – a breach of Local Racing Rule (“LRR”) 42.9(a) – there is no dispute but that the dog “Kiltah Magic”, which was kennelled with you at your Kyabram property, was bitten by a snake and died. There is no dispute but that you failed to notify Greyhound Racing Victoria (“GRV”) of the death of the greyhound within two working days. That charge is made out.

Charge two involves a breach of Greyhounds Australasia Rule (“GAR”) 106(1)(c). It concerns a failure to provide kennels of adequate size, cleanliness and the like. We are comfortably satisfied that this charge has been made out. You outlined various extenuating circumstances, but the bottom line is that the kennels and yards were in such a condition that the Rule was breached.

Charges three and four concern GAR 86(p), being two failures to comply with a lawful order of the Stewards in the form of compliance notices. Again, we are comfortably satisfied that the charges have been made out. Whilst there are several matters which you drew to our attention concerning your circumstances and the like, the charges have been proved to our comfortable satisfaction.

We also find that charge seven – a breach of GAR 86(o) – has been proven. This concerns your assisting in the trialling of greyhounds whilst you were temporarily suspended.

We will now hear submissions for all charges on the question of penalty.

**PENALTY**

We would make the following general observations before turning to the individual charges.

Firstly, the work of the Stewards is difficult enough without there being a failure by trainers to comply with their requests and notices. General and specific deterrence is important in this regard. The same could be said of the requirement of keeping the Stewards and the administration informed of the movement and deaths of greyhounds. Thirdly, compliance with the specific orders and requests of the Stewards is also very important to the proper and orderly conduct of the industry. Fourthly, animal welfare is of vital importance to the industry, and obviously this includes the provision of and proper maintenance of clean and adequate kennelling. We have borne all of these matters in mind in arriving at appropriate penalties.

We have also borne in mind your record, family circumstances and the like. Your record is very good. You have been involved in the industry for many years, and a full time trainer for approximately 13 years. You also breed dogs and provide facilities for them on your Kyabram property. At the time of the occurrence of these events, there were some 52 greyhounds on the property, approximately 15 of which were racing. There was a number of bitches and puppies and some retired dogs. Approximately 10 or 11 were being lined up for the Greyhound Adoption Program (“GAP”), of which you are obviously a supporter.

Your family situation is that you have a partner and three children, aged 13, 9 and 7. You are educating your children at a private school in Kyabram. The school fees are quite substantial. Your partner is working part time. You do some seasonal part time night work to assist with the finances. You outlaid some $2,000 in relation to concreting at your kennels, and ultimately put considerable effort into making them compliant with the requests of the Stewards. Your partner is also a licensed trainer and became one shortly before the problems which led to the Stewards involvement in early 2020. She takes an active role in the training of dogs.

Another matter that should be mentioned is that, due to your failure to comply with the Stewards instructions in relation to the condition of your kennels and paddocks, you were suspended for a period of approximately six weeks in mid 2020. That is your own fault, but is partly related to these offences.

Bearing all of the above in mind, we consider the following penalties to be appropriate: -

Charge 1: LRR 42.9(a) – a suspension for a period of one month. This is in turn suspended for a period of 12 months. There is also a fine of $500.

Charge 2: GAR 106(1)(c) – a suspension for a period of three months.

Charge 3: GAR 86(p) – a suspension for a period of one month. This is in turn suspended for a period of 12 months. There is also a fine of $150.

Charge 4: GAR 86(p) – a suspension for a period of one month. This is in turn suspended for a period of 12 months. There is also a fine of $150.

Charge 5: LRR 11.8(b) – a suspension for a period of one month. This is in turn suspended for a period of 12 months. There is also a fine of $100.

Charge 6: LRR 11.12(b) – a suspension for a period of one month. This is in turn suspended for a period of 12 months. There is also a fine of $100.

Charge 7: GAR 86(o) – a suspension for a period of one month. This is in turn suspended for a period of 12 months.

Thus, the total result is a suspension for three months and fines totalling $1,000. Further, there are potential suspensions totalling six months, all wholly suspended for 12 months pending no further breach of the relevant Rules.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal