3 September 2019

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**MR DAVID GRAHAM**

**Date of hearing:** 29 August 2019

**Panel:** Judge John Bowman (Chairperson) and Ms Julie Nicholson.

**Appearances:** Mr Paul Searle appeared on behalf of the Stewards.

Mr David Graham (Owner) represented himself at the hearing.

**Particulars of charge: (Stewards report)** An Exhibition Trial was conducted by Dusty’s Charlie at Healesville on Sunday 11 August 2019 in the lead up to the National Straight Track Championship on 18 August 2019.

After considering the circumstances surrounding the conduct and nature of the trial, the matter was referred by the Chief Steward to the Healesville Stewards Panel to officially open and hold an inquiry into the performance of Dusty’s Charlie in the trial, with specific regard to Local Rule 39.

39 Trials between Events

39.1 The Board may at any time permit greyhounds to run in a trial in between Events at a Meeting.

39.2 Without limiting LR 39.1 (Vic), any greyhound which runs in a trial in between Events at a Meeting shall be subject to the Rules as if the greyhound was running in an Event. It was found that, in the trial, Dusty’s Charlie failed to pursue the lure as required by Rule 69B.

**Plea:** Not Guilty

**DECISION**

There is a preliminary question of law in relation to this appeal. Pursuant to section 50X of the

*Racing Act 1958* “A question of law arising in a hearing must be decided by the Chairperson or

Deputy Chairperson”. Accordingly, I am Ruling upon it.

The appeal concerns a charge essentially pursuant to LRR Rules 39 (1) and (2). On 11 August 2019 at Healesville a meeting was conducted. Before Race 1 the dog Dusty’s Charlie of which Mr. Graham is the owner, trialled in preparation for the National Straight Track Championships. Without going into details, it did not trial satisfactorily. Again without going through the intervening steps, ultimately a penalty was imposed resulting in the dog being stood down from racing for 3 days and no future nominations would be accepted until Dusty’s Charlie performed a satisfactory trial. The papers were marked accordingly.

It is from this decision that Mr. Graham appeals. Local Rule 39 (1) and (2) provides that greyhounds can run in trials between Events at a meeting and any greyhound which runs in a trial between Events at a meeting shall be subject to the Rules as if the greyhound was running in an Event.

There is no argument but in this case the relevant trial was not run between Events at a meeting. Dusty’s Charlie trialled before the first Event. The Rule is quite clear. It applies to trials between Events at a Meeting. Whatever the purpose of the Rule, that is what it specifically provides.

In the present case the Stewards, for reasons that may have seemed to be adequate, had Dusty’s Charlie trial not between Events at a meeting but before the meeting had started – that is before the First Event. That took it outside the specific wording of the Rule. Whatever occurred, it was not a Trial between Events and therefore not in accordance with the Rules. The Rules are not vague or ambiguous. They are specific.

What then is the effect of this? In my opinion, it means that the behaviour of Dusty’s Charlie did not take place in a trial for the purpose of Local Rule 39 (1) or (2).

I appreciate that the Stewards acted in good faith and for reasons that seemed sound. However, by not having the trial between events, what occurred simply did not fall within the requirements of the Rule.

Amongst other things and without wishing to be too legal, the Latin term of [*expressio unius est exclusio alterius*] applies – when a thing of a class is expressly mentioned, others of the same class are excluded.

A trial between Events falls within LR 39 (1) and (2). Other trials do not and are excluded.

In my opinion the situation is not saved by rule 20, and particularly as argued by Rule 20 (3)(v). It allows the Stewards to determine any matter that arises but is not provided for by the Rules. However, what should have occurred here is simple and is provided for by the Rules – relevant trials should be run between Events. I also note that Rule 20 specifically applies to Race meetings, not necessarily to trials.

Nor does the [Interpretation of Legislation Act 1984] save the day. The Rule in relation to the relevant trials is clear. They are trials run between Events. This one wasn’t. There is no need to turn to the [Interpretation of Legislation Act].

Similarly, the NSW decisions do not persuade me to alter my view. It is not a situation of ambiguity or vagueness needing a common sense interpretation. Rule 39 (1) and (2) are perfectly clear. They apply to trials between Events at the meeting.

Accordingly, my finding is that the Trial involving Dusty’s Charlie on 11 August 2019 was not a trial conducted in accordance with LR 39 (1) and (2).

The appeal is therefore upheld and the penalty is set aside.

Mark Howard  
Registrar, Victorian Racing Tribunal