30 March 2020

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**MS DONNA DEAN**

**Date of hearing:** 11 March 2020

**Panel:** Judge John Bowman (Chairperson), Ms Judy Bourke and Ms June Smith.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Lynton Hogan represented Ms Donna Dean.

**Charge:** Greyhound Australasia Rule (GAR) 83(2) states:

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

1. nominated to compete in an Event;
2. presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or
3. 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 charge:**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria (GRV) and a person bound by the GAR.
2. You were, at all relevant times, the trainer of the greyhound *“Polo Pete”.*
3. *“Polo Pete”* was nominated to compete in Event 10, SPOLLYS (1-4 WINS) HT2, Restricted Win Heat, conducted by the Cranbourne Greyhound Racing Club at Cranbourne on 10 April 2019 (**the Event**).
4. On 10 April 2019, you presented *“Polo Pete”* at the Event not free of any prohibited substance, given that:

(a)A pre-race sample of urine was taken from *“Polo Pete”* at the Event (the Sample);

(b) Arsenic was detected at a mass concentration of greater than 800 nanograms per millilitre in the Sample.

**Plea:** Not Guilty

**DECISION**

Ms Donna Dean has pleaded ‘Not Guilty’ to a breach of GAR83(2). She is the licensed trainer of ‘Polo Pete’, which competed in Race 10 at Cranbourne on 10 April 2019. It is alleged that a pre-race urine sample taken from that dog tested positive to arsenic at a mass concentration of greater that 800 nanograms.

The hearing of this matter commenced on 29 January 2020. In the course of it and after the conclusion of the evidence, Mr Lynton Hogan, of Counsel representing Ms Dean, handed up and spoke to written submissions. Mr Marwan El-Asmar, representing the GRV Stewards, not having seen these submissions previously, then asked for and obtained some time to prepare and present written submissions. A timetable was set for written submissions on behalf of both parties. Mr El-Asmar and Mr Hogan then spoke to these on 12 March 2020. We reserved our decision.

We find as follows. There is no argument but that ‘Polo Pete’ tested positive to arsenic, the sample providing a level of 1,100 nanograms per millilitre of urine. The real dispute is as to the reliability and accuracy of the reading and, in particular, whether it was in any way contaminated.

Particular emphasis was placed upon a letter of 15 November 2019 from Mr Charles Russo, Manager of Operations at the Forensic Laboratory of ChemCentre in Western Australia, to Dr Steven Karamatic, Chief Veterinarian of GRV. That in turn related to the observation of Mr Paul Zahra, Scientific Manager of RASL. The sample taken from ‘Polo Pete’ had been split, with the control fluid being sent to ChemCentre.

ChemCentre reported that arsenic was detected in the control sample at a concentration of less than 50 ng/ml. Both testing laboratories confirmed that the sample contained arsenic well in excess of 800 ng/ml.

That brings us to the letter of 15 November 2019 from Mr Russo to Dr Karamatic. It reads as follows:

“In relation to the email received on 15 October 2019 regarding the reporting of arsenic in the control sample wash 18R0932 (V596877) as <50 ng/ml. This sample can’t be reported simply as ‘negative’ or ‘not detected’ because there are trace elements of arsenic present in the environment. The water used to produce the control wash sample will therefore have trace levels of arsenic but at many levels of magnitude less than the threshold level. Reporting the value as being <50 ng/ml reflects the limit of quantitation (LOQ) of the method which is scientifically the way it should be stated”.

The argument of Mr Hogan is to the effect that the control sample is qualitative assurance in the testing process. That assurance is provided by the complete absence of the prohibited substance in it. He referred to various cases.

In the present case, there is no evidence of contamination of the control sample or that proper procedures were not followed or might not have been followed. Cases such as *Wanless v Queensland Racing Integrity Commission* [QCAT 2019 284] and the appeal of *O’Riley* [2008] VRAT 5 are in reality of very little assistance in this particular case.

We accept that the reference to ‘<50 ng/ml’ is simply seen by Mr Russo as being the strictly correct scientific expression, bearing in mind the trace elements of arsenic present in the environment. Further, the reading actually obtained exceeded that amount many times over, as well as exceeding the prescribed limit by an amount many times over.

Put simply, we do not accept the relevant submissions advanced on behalf of Ms Dean. We note that the submissions of 12 February 2020 state that there is no contest but that the tested sample contained an amount of arsenic above the threshold. In essence, that only leaves the argument referred to above, which we do not accept.

It is doubtless stating the obvious, but we do accept the submissions of Mr El-Asmar on behalf of GRV. The fact that we have not set them out does not mean that they were not appreciated or not persuasive. As is probably apparent, essentially we accept and adopt them.

As a result, and with little else in dispute, we find Mr Dean guilty of the charge of breaching GAR83(2). At a convenient date, we shall hear the parties as to penalty and additional orders sought.

Mark Howard
Registrar, Victorian Racing Tribunal