26 August 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**HARLEY WHELAN**

**Date of hearing:** 12 August 2021

**Panel:** Judge John Bowman (Chairperson) and Dr Andrew Gould.

**Appearances:** Ms Sharn Coombes, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Mr Harley Whelan represented himself.

Dr Shelley Semmens appeared as a witness.

Mr Luke Whelan appeared as a witness.

**Charge:** Local Racing Rule (“LR”) 42.6(c) states:

Minimum requirements for rehoming

(c) Without limiting LR42.6(a), actions that an Owner must take to find a suitable long term home for their greyhound include:

i. a wind down period comprising at least 28 days during which the Owner must ensure that:

(A) the greyhound has not engaged in any racing related activities, including but not limited to) trialling, breaking, education, training or racing; and

(B) genuine and daily efforts have been made to socialise the greyhound to non-training and non-racing settings and environments, and

ii. after the end of the wind down period under LR42.6(c)(i), making at least one genuine attempt of each of the following:

(A) seek to re-home the greyhound with at least two appropriate third parties who are capable of ensuring the welfare and well-being of the greyhound, and

(B) seek the greyhound’s admission to the Greyhound Adoption Program, and

(C) seek to rehome the greyhound’s through at least one other animal adoption, re-homing or rescue agency.

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 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).

**Particulars of charge: Charge 1: LR 42.6(c)**

1. You are, and were at all relevant times, a public trainer licensed by Greyhound Racing Victoria (Public trainer number 238177) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. You were at all relevant times the registered owner and trainer of the greyhound “Zipping Wade” (Ear Brand NHASL).
3. On 11 July 2020, you requested the greyhound Zipping Wade (Ear Brand NHASL) be euthanised at the Gippsland Veterinary Hospital;
4. Prior to the euthanasia you did fail to;

1. Provide a wind down period comprising at least 28 days.

**Charge 2: LR 42.9(a)**

1. You are, and were at all relevant times, a public trainer licensed by Greyhound Racing Victoria (Public trainer number 238177) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. You were at all relevant times the registered owner and trainer of greyhound “Zipping Wade” (Earbrand NHASL).
3. On 11 July 2020, greyhound Zipping Wade was euthanised at your request.
4. You did not notify the GRV Board of the greyhound’s death until 25 days later, when you updated FastTrack on 5 August 2020 to show that the greyhound had been euthanised.

**Plea:** Not guilty

**DECISION**

Mr Harley Whelan, you have pleaded “not guilty” to two charges brought by the Greyhound Racing Victoria (“GRV”) Stewards. They concern the dog, “Zipping Wade”, of which you were the owner and trainer. In this somewhat unusual case, we shall outline the factual background as we find it before moving on to the charges.

Zipping Wade trialled at Sale on the morning of 11 July 2020. It badly injured its hock. You and your brother were at Sale. You have given evidence that the dog was in so much pain that its cries or yelps could be heard across the track. You rang ahead and you and your brother immediately took the dog to the Gippsland Veterinary Hospital, where, after a brief delay, it was seen by veterinarian Dr Shelley Semmens. There was some discussion. Dr Semmens, who gave evidence, was of the opinion – which she placed at a certainty level of 90% - that the dog had fractured its right hock. In a statement to the Stewards, she said that it had a severely swollen right hock and appeared to be in a lot of pain. There was some discussion of x-rays, but ultimately you requested that, given the pain level of the dog, it be put down. This was done by Dr Semmens. There is some dispute concerning the filling in of forms and the like, but in the circumstances and given our finding, we need not go into that.

GRV Stewards have laid two charges against you. The first, which we shall now discuss, is pursuant to Local Racing Rule (“LR”) 42.6(c), which reads as follows: -

“(c) Without limiting LR42.6(a), actions that an owner must take to find a suitable long term home for their greyhound include:

i. a wind down period comprising at least 28 days during which the owner must ensure”

and various other requirements follow.

Paragraph four of the charge against you reads, after amendment: -

 “Prior to the euthanasia you did fail to;

1. Provide a wind down period comprising at least 28 days”.

We are of the view that the laying of this charge pursuant to LR 42.6(c) on the basis of such particulars is misconceived and must fail.

LR 42.6 is headed “Rehoming and notice requirements”. LR 42.6(c) commences under the sub-heading “Minimum requirements for rehoming”. The provision relied upon, being LR 42.6(c), appears under the sub-heading “Minimum requirements for rehoming”. LR 42.6(c) states at the outset “Without limiting LR 42.6(a)”.

The entire Rule, as set out by the Stewards in the charge, deals with matters concerning rehoming requirements, and the sub-rule under which the charge has been laid falls into that category and takes one back to LR 42.6(a) – efforts to avoid euthanasia and find a long term home. The wind down period in sub-rule 42.6(c) is part of that.

For you to be charged with not providing a wind down period of at least 28 days is to employ an inappropriate and inapplicable provision. This was not a wind down period situation, during which, for example, the owner must comply with matters such as genuine and daily efforts to socialise the greyhound – see LR 42.6(c)(i)(B), which is part of the same Rule.

You had a greyhound in great pain with, most probably, a badly broken hock. You did the right thing and rushed the dog to a veterinarian. The issues raised in LR 42.6, much less 42.6(c), did not even arise. The dog was euthanised, at your request and without opposition, given the apparent agony that it was in.

For the above reasons, we are comfortably satisfied that Charge 1 has not been made out. It is dismissed.

We are comfortably satisfied that Charge 2 has been made out. That relates to LR 42.9(a) and the obligation to notify the GRV Board of the dog being euthanised within two working days. It was your responsibility and it was not done by you for some 25 days. You mistakenly left it to the vet to do the notifying.

We shall hear the parties on the question of penalty in relation to charge two.

**PENALTY**

The parties effectively agreed on the appropriate penalty, which we endorse.

You are suspended for a period of three months, which is in turn wholly suspended for a period of 12 months. That penalty will only be activated if you should breach the relevant Rule again in the next 12 months.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal