18 October 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**LUCKIE KARABITSAKOS**

**Date of hearing:** 28 September 2021

**Panel:** Judge John Bowman (Chairperson).

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

Mr Lynton Hogan represented Mr Luckie Karabitsakos.

Mr Simon McLean appeared as a witness.

Mr Luckie Karabitsakos attended the hearing.

**Charge:** Greyhounds Australasia Rule (“GAR”) 92(5)(c) states:

(5) Pending the decision or outcome of an inquiry, the Controlling Body or Stewards may direct that-

(c) a licence or other type of authority or permission be suspended.

**Particulars of charge:** On 23 August 2021, Greyhound Racing Victoria (“GRV”) suspended the licence of Mr Luckie Karabitsakos. The suspension imposed is to remain in effect until charges have been heard and determined by the Victorian Racing Tribunal (“VRT”).

**DECISION**

Mr Luckie Karabitsakos, you have been charged with seven offences.

The first two of these occurred on 12 August 2021 and involved your alleged behaviour at the Cranbourne trials on that day. The Rules allegedly breached and the relevant behaviour could be summarised as follows:

1. Greyhounds Australasia Rule (“GAR”) 86(h) – preventing the Stewards from collecting urine samples from either of two unnamed greyhounds.
2. GAR 86(f) – directing improper, insulting or offensive language towards the Stewards.

The remaining five charges involve matters that allegedly occurred at your Pearcedale kennels on 14 August 2021 and could be summarised as follows:-

1. GAR 86(h) – preventing or interfering with the Stewards in relation to the collection of urine samples.
2. GAR 86(f) – improper etc. language as in Charge 2 above.
3. GAR 79A(7) – having a prohibited substance, namely cannabis, in your registered kennels.
4. GAR 86(p) – failing to comply with the lawful request of the Stewards to produce the cannabis.
5. GAR 86(o) – misconduct, in the form of telling your partner to throw out the cannabis.

It is emphasised that the above is a very much a summary of the charges for the present purposes.

On 19 August 2021, you apologised to the Stewards for certain aspects of your alleged behaviour.

On 23 August 2021, you were issued by Investigations Manager, Mr Simon McLean, with a Notice of Immediate Suspension. The power so to do is found in GAR 92(5)(c). You are now appealing that decision and effectively seeking to have that Notice overturned.

Another matter of potential practical relevance is that the charges against you should be able to be fixed for hearing in the next six weeks. Whilst final positions have not been identified, I shall treat the situation as being that you are pleading “Not Guilty” to all charges.

In relation to the present appeal to overturn your immediate suspension, Mr Lynton Hogan appeared on your behalf. Ms Sharn Coombes appeared on behalf of the Stewards. Evidence was taken from Mr McLean, who was also cross-examined. Both Mr Hogan and Ms Coombes made thorough and helpful submissions. I shall not set them out in detail.

The power of the Stewards to impose immediate suspension pursuant to GAR 92(5)(c) and pending the outcome of a final hearing is one that is used sparingly. The same could be said in relation to similar provisions affecting the other codes. Major situations of animal welfare have been seen to attract such an imposition. The same could be said of grossly bad behaviour towards Stewards, other circumstances which have the potential of bringing a code into major public disrepute, or where prompt action is required in order to prevent ongoing and substantial damage to a code or its image.

GAR 92(5)(c) reads as follows :-

“(5) Pending the decision or outcome of an inquiry, the Controlling Body or Stewards may direct that-

(c) a licence or other type of authority or permission be suspended.”

At the time of hearing the arguments in this preliminary matter, charges were yet to be laid – a factor which received considerable attention. That situation has since been remedied, with the seven charges summarised above having been laid. There appears to be little in the charges that had not been ventilated in earlier interviews or that could be said to be a surprise.

Mr Hogan made a number of submissions, some of which could be summarised as follows. There is no set of principles concerning interim suspensions in or associated with the Rules. Reference is made to various provisions contained in the *Racing Act* 1958 and particularly to Sections 50Q and 50ZE. You are a licensed person with rights, and you have not had a chance to present your defence. There is a presumption against penalty prior to there being an adjudication of the facts. The burden of proof is on the Stewards. There has to be a serious risk of a further breach of the Rules. No risk to the industry or its image has been identified. Guilt cannot be assumed.

The submissions of Ms Coombes could be summarised as follows. The suspension is a protective measure, given the relevant conduct on two separate days. There are some similarities to the situation in bail cases. The Stewards have a strong prima facie case. There are two separate incidents in the presence of three witnesses involving, amongst other things, aggressive behaviour directed at the Stewards.

Turning to my finding, Rules or provisions, such as GAR 92(5)(c) always need to be approached with caution and it is no surprise that they are applied somewhat sparingly. It “goes against the grain” to approve the imposition of what is in essence a penalty relating to charges which are not yet proven.

However, GAR 92(5)(c) cannot be ignored and it envisages such an outcome. Such a result can be obtained in the other codes. Some parallels can be found in relation to bail and pre-trial detention in criminal cases. The question then becomes whether a period of immediate suspension is appropriate in your case.

After some consideration, my opinion is that it is so appropriate. The conduct alleged against you, and I emphasise “alleged”, is essentially as follows: -

1. Preventing the stewards from carrying out their duties on two separate occasions, two days apart.
2. Directing improper and insulting language at them on two separate occasions, two days apart.
3. Having a prohibited substance at your kennels.
4. Refusing to produce that substance when requested to do so.
5. Telling your partner to dispose of the prohibited substance.

What is alleged is not an isolated incident of “spur of the moment” hot-headedness or misunderstanding. What is alleged is abuse and interference with the Stewards in the conduct of their business on two occasions. What is alleged is having a prohibited substance at your kennels, refusing to produce it to the Stewards and telling your partner to get rid of it. That seems to me to be conduct justifying the imposition of immediate suspension and that is my decision.

As a footnote, I would also repeat the following practical aspects of the situation. As stated, when this matter was argued before me, the actual charges had not been laid, but that situation has been remedied. Secondly, the case can be fixed for hearing within the next six weeks.

However, as a matter of principle, interpretation of the Rule, and in the circumstances of the alleged factual context, the appeal is dismissed and the decision of the Stewards of 23 August 2021 remains in force.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal