4 February 2022

**RULING**

**GREYHOUND RACING VICTORIA**

**and**

**RICHARD GRAY**

**Date of hearing:** 24 January 2022

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

**Appearances:** Ms Lyndall Kennedy appeared on behalf of the Stewards.

Mr Richard Gray represented himself.

**Charges and particulars:** N/A

**Plea:** N/A

**RULING**

This is an unusual matter. It raises an issue as to the jurisdiction of this Tribunal. The Response of the “GRV” Greyhound Racing Victoria Stewards to the application and appeal of Mr Gray raises this squarely. I say now that, if jurisdiction exists, it would be hard not to have considerable sympathy for Mr Gray and to consider whether the somewhat unrelenting approach adopted by GRV towards him could not be modified so as to bring about a more practical, equitable and sympathetic outcome.

However, the question of jurisdiction looms large.

In general terms, the matter concerns an edict by GRV to the effect that that no person will be allowed into a race meeting without wearing a fitted face mask. This includes the use of face masks “even when they are not mandated by the generic Pandemic Orders issued by the Victorian Minister for Health” - see paragraph 16 of GRV’s written submissions of 18 January 2022.

I would emphasise at the outset that Mr Gray’s problem with this requirement is not as a matter of principle in relation to vaccinations, restrictions and the like. As I understand it, he has been fully vaccinated. His problem with masks, to which I shall turn shortly, involves his health and the breathing difficulties which he has.

There was no real challenge to the issues of Mr Gray’s background; his history of some forty years involvement in the industry, primarily as a trainer; his excellent record, free of any blemish of significance; the importance of greyhound racing in his life; or the major health problems from which he suffers.

I shall turn now to Mr Gray’s health. I accept, and there was no real challenge to this, that he suffers from chronic emphysema. He has also had cancer cells in his throat burned off. He has restricted breathing. He is limited in his walking capacity outdoors. He placed in evidence a brief report or certificate from his treating general practitioner, which report outlines his problems.

Because of his health problems, Mr Gray has problems walking when masked. Apart from his general concerns in this regard, his great worry centres on his inability to walk with his dogs to the starting boxes. Again, there was no real challenge as to this. He is reluctant to hand over duties such as this to some other person. All of this is fully understandable.

I might add that this is not a hypothetical situation. Apparently, an unmasked Mr Gray was refused entry, with his dog or dogs, at the gate at the Shepparton meeting on the Thursday before the hearing of this case.

However, the dispute before me is a jurisdictional one raised by GRV.

The jurisdiction of this Tribunal is found essentially in Section 50C of the Racing Act 1958. It can hear and determine certain matters. These include a charge made against a person for a serious offence – see Section 50C (c). To state the obvious, Mr Gray has not been charged with any offence, much less a serious one. That avenue of obtaining a hearing at first instance is not available.

Another means of invoking the jurisdiction of the Tribunal is pursuant to Section 50C (a). That concerns an appeal under Section 50K in relation to a decision made under the rules to impose a penalty on a person. Whilst that may appear arguably to apply to the order made in relation to compulsory masking, if that be considered a penalty, Section 50K (1)(a) must then be considered. That section specifically states that a person may appeal to the VRT against a decision made under the rules to impose a penalty on the person if the penalty is a suspension, disqualification or warning off. The order made in relation to compulsory masking, whether viewed in general terms or in its specific application to Mr Gray, does not fall into any of those three categories.

Reference is also made to Section 50A (1) of the Act, which contains a definition of “penalty”. The relevant part is as follows:-

“…(b) the imposition of the following penalties under the rule that prevents participation in racing in any capacity-

1. a suspension;
2. a disqualification;
3. a warning off;” (my underlining)

Apart from the fact that this definition might be seen by some to blur in part the distinction between suspension and disqualification (I refer to the impact and effect of the underlined words), it lends strong support to the proposition that the meaning of “penalty” is confined to the three penalties listed and does not have broader application.

By way of contrast, Greyhound Australia Racing Rule 1 contains the following definition of “penalty”:-

“penalty” means a fine, disqualification, suspension, warning off….and other detriment, decision, order or other matter imposed or made pursuant to these Rules by which a person or greyhound suffers or incurs a disadvantage, detriment or any restriction whatsoever. (my underlining)

It may be that Mr Gray is suffering a penalty within the meaning of the Rules. However, that does not mean that the jurisdictional problem has been overcome. The jurisdiction of the Tribunal in relation to appeals remains confined to that set out in Section 50A (1). No charge of a serious offence has been laid. Accordingly, the problem of a lack of jurisdiction remains. The problem is one of an administrative nature.

The arguments advanced by Mr Gray focused more upon his health, his record and the situation in which he finds himself. His submissions did contain references to jurisdiction, but I prefer and accept the legal arguments on behalf of GRV.

I would add this, even if it lacks any legal force. If what Mr Gray states about his situation and health is correct (and there was no challenge to it), it is a very unfortunate situation. Problems such as his can arise from “hard and fast, no exceptions” regulations or pronouncements. I would hope that some practical solution could be found. However, that is not a matter for this Tribunal.

The Ruling of the Tribunal is that it has no jurisdiction to deal with the problem in relation to which Mr Gray seeks some relief.

Mark Howard
Registrar, Victorian Racing Tribunal