14 September 2023

**RULING**

**RACING VICTORIA**

**and**

**FRANK MEYER**

**Dates of hearings:** 22 August 2023 and 30 August 2023

 Ruling handed down on 13 September 2023

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

**Appearances:** Ms Yana Podolskaya appeared on behalf of the Stewards.

Mr Kelvin Noonan appeared on behalf of Mr Frank Meyer.

**Charges and particulars:**

**Charge No. 1 of 6**

Greyhounds Australasia Rule **165 (c) (iv)** reads as follows:

***An offence is committed if a person (including an official):***

***(c) engages in contemptuous, unseemly, improper, insulting, or offensive conduct or behaviour in any manner or form towards, or in relation to:***

***(iv) a Steward or any other official of a Controlling Body or a Club***

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 10th of September 2022, you were subject to conversations and an inquiry concerning the late retrieval of greyhound LITTLE LEO (VIHCF) from the kennels prior to Race 4 at Ballarat.
3. During your interaction with Steward in Charge Max HAYDEN-EVANS your behaviour, demeanour and language was aggressive including pointing your finger towards Stewards, which individually and altogether, was contemptuous, unseemly, improper and insulting towards HAYDEN-EVANS:
4. Mr HAYDEN-EVANS is a steward of the Controlling Body – GRV.
5. GAR 165 (c) (iv) is a Serious Offence.

**Charge No. 2 of 6**

Greyhounds Australasia Rule **156 (f) (ii)** reads as follows:

***An offence is committed if a person (including an official):***

***(f) has, in relation to a greyhound or greyhound racing, done something, or omitted to do something, which, in the opinion of a Controlling Body or the Stewards:***

***(ii) constitutes misconduct or is negligent or improper***

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 10th of October 2022, Investigative Steward Chris Gawne attended at your registered kennel address at 390 Dooley’s Road Maryborough for the purpose of a property inspection and inquiry concerning your conduct at Ballarat races on 10th September 2022.
3. During the inspection your behaviour, demeanour and language was aggressive towards Gawne. Your comments about Race Day and Investigative Stewards was derogatory and offensive, which constituted misconduct.
4. The Investigative Stewards who attended your property on 10th October 2022 are Stewards of the Controlling Body – GRV.
5. GAR 156 (f) (ii) is a Serious Offence.

**Charge No. 3 of 6**

Greyhounds Australasia Rule **164 (b)** reads as follows:

***An offence is committed if a person (including an official):***

***(b) refuses or fails to attend or to give evidence at an inquiry (or at any other disciplinary process, hearing or appeal proceeding) or produce a document or other thing in relation to an investigation, examination, test or inquiry (or other disciplinary process, hearing or appeal proceeding) pursuant to the Rules when directed by a Controlling Body, the Stewards, or another authorised person.***

**Particulars of the Charge being**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria **(GRV)** (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 10th of October 2022, Investigative Stewards attended at your registered kennel address at 390 Dooley’s Road Maryborough for the purpose of opening an inquiry concerning your conduct at Ballarat races on 10th September 2022.
3. You refused to give evidence in the inquiry as required.
4. GRV Investigative Stewards gave you further opportunities to participate in an inquiry with them on Monday 17 October 2022 which you refused to do so. You then later failed to respond to text messages from Investigative Stewards to hold an inquiry with you over the phone on 18 October 2022.
5. GAR 164 (b) is a Serious Offence.

**Charge No. 4 of 6**

Greyhounds Australasia Rule **156 (h)** reads as follows:

***An offence is committed if a person (including an official):***

***(h) disobeys or fails to comply with a lawful order of a Controlling Body, the Stewards, or another person authorised by a Controlling Body with official duties in relation to greyhound racing***

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 21st of October 2022 you were served a lawful order by Investigative Stewards that you “NOT engage in any conduct which would be likely to further breach the Rules of Racing.”
3. On 24th and 26th October 2022 you made a phone call to GRV during which your conduct was improper in that you were abusive and aggressive towards Lexie CLARK an employee of GRV and which resulted in you being charged with a breach of GAR 156(f) (ii).
4. GAR 156 (h) is a Serious Offence.

**Charge No. 5 of 6**

Greyhounds Australasia Rule **156 (f) (ii)** reads as follows:

***An offence is committed if a person (including an official):***

***(f) has, in relation to a greyhound or greyhound racing, done something, or omitted to do something, which, in the opinion of a controlling body or the stewards:***

***(ii) constitutes misconduct or is negligent or improper***

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 24th of October 2022 you made a phone call to GRV Stewards phone line concerning your greyhound GO GO LILIAN (VIHCL).
3. The call was received by GRV employee Lexie CLARK.
4. On 26th October 2022 you made a phone call to GRV Stewards concerning one of your greyhound’s being scratched.
5. The call was received by GRV employee Lexie CLARK.
6. During both phone calls with CLARK you displayed misconduct in that your behaviour, demeanour and language was aggressive towards CLARK and you used profanities being; ‘fuck’ and ‘fucking’ throughout the call.
7. Your conduct caused CLARK to feel intimidated and scared.
8. GAR 156 (f) (ii) is a Serious Offence.

**Charge No. 6 of 6**

Greyhounds Australasia Rule **156 (f) (ii)** reads as follows:

***An offence is committed if a person (including an official):***

***(f) has, in relation to a greyhound or greyhound racing, done something, or omitted to do something, which, in the opinion of a controlling body or the stewards:***

***(ii) constitutes misconduct or is negligent or improper***

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 42987) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 26th of October 2022 you engaged in a phone call with the GRV Integrity Unit – Investigations Manager, Simon MCLEAN.
3. The call was initiated by GRV employee Simon MCLEAN.
4. During the phone call with MCLEAN you were abusive and aggressive in your tone and manner and also used inappropriate language including the following, “I'm 72 bloody years-old, and I know for a fact you've doctored my hearing tape…..” and “You are not fit to be working in GRV - fucking racing. You're a low life scum.”
5. Your conduct towards MCLEAN constitutes misconduct.
6. GAR 156 (f) (ii) is a Serious Offence.

**Pleas:** Guilty to all charges.

**RULING**

A question of law has arisen in relation to the issue of penalty in this matter, in which the evidence has concluded. Mr Meyer has pleaded guilty to six charges, which could be summarised as being improper conduct towards Stewards; failing to attend a Stewards’ inquiry; disobeying an order of the Stewards; and misconduct (three charges).

A plea hearing has commenced. Ms Yana Podolskaya appeared on behalf of Greyhound Racing Victoria (“GRV”). Mr Kelvin Noonan of Noonans Lawyers appeared on behalf of Mr Meyer. A potentially contentious point has arisen. In my opinion it involves a question of law. Pursuant to section 50X of the *Racing Act 1958*, questions of law can only be decided by the Chairperson or a Deputy Chairperson. Accordingly, whilst Dr Gould and myself conducted the hearing of this matter, only I can decide the question of law. However, Dr Gould has been of invaluable assistance during the conduct of the case.

The question of law is this. When a person is suspended or disqualified by the Stewards after the occurrence of an alleged offence, but prior to any penalty being imposed by this Tribunal, should the time “already served” be taken into account when that penalty is so imposed?

The matter has the potential for further complication if, as occurred here, virtually immediate suspension was imposed by the Stewards and has been in place for some months, but the penalty to be imposed by this Tribunal clearly includes the option of disqualification, as opposed to suspension.

If this were a matter of criminal law, the situation would be comparatively clear. I refer to the decision in *RV v Renzella* [1997] 2 VR 88. The Court of Appeal effectively determined that a sentencing court has inherent jurisdiction to take pre-sentence detention into account when sentencing an offender and that, if the court exercises that power, the pre-sentence detention should be so taken into account at the first opportunity.

Of course, in the present situation we are not dealing with a criminal situation, but nevertheless the decision in *Renzella* is of some assistance as to the general approach to be adopted.

I am of the view that this Tribunal at least has the option of taking into account “time served”. That the Tribunal has such a discretion does seem to me to be apparent. Indeed, in her written submissions, Ms Podolskaya referred to GAR 176 and stated, quite accurately, that the discretion which lay with the Controlling Body or the Stewards now lies with the Tribunal. It then becomes a question as to how that discretion is exercised.

The situation is complicated by the existence of two relevant types of penalties – suspension or disqualification. I leave to one side fines. In *Renzella* effectively there was only one category of punishment or penalty being considered – detention in custody.

In the present case, the “time served” to date has been by reason of suspension. However, the penalty option of disqualification is still on the table. If it is found that disqualification is the appropriate penalty, and noting that this carries with it greater restrictions that does suspension, how does the period of suspension already served fit in with the concept of “time served” and the *Renzella* approach?

Logic would seem to suggest that there should be some allowance made for it. Ms Podolskaya in her oral submissions made references to a period of credit and correctly described the situation as “most uncommon”.

The bottom line seems to me to be this. As indicated above, I am of the opinion that, in a situation such as this, as a matter of fairness “time served” is something which should be taken into account. In general terms, the “*Renzella* time” approach should be adopted.

How it operates in this particular case, where potentially there are two different categories of penalty involved, is another matter and may require further discussion.

Mark Howard

Registrar, Victorian Racing Tribunal