6 September 2023

**RULING**

**GREYHOUND RACING VICTORIA**

**and**

**VINCENT MILETO**

**Date of hearing:** 6 September2023

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

**Appearances:** Mr Damien Hannan, instructed by Ms Yana Podolskaya, appeared on behalf of the Stewards.

Mr Archibald Butterfly represented Mr Vincent Mileto.

**Rule:** Greyhounds Australasia Rule (“GAR”) 156(f)(ii) states:

(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.

GAR 165(a) states:

(a) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control, or promotion of greyhound racing.

**Particulars: Charge 1: GAR 156(f)(ii)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 27358) and a person bound by the GRV Rules of Racing, including the Greyhounds Australasia Rules and the Local Racing Rules.
2. On 19 December 2022, you were present at Shepperton Greyhound Racing Club for the purposes of a GRV Race Meeting.
3. You engaged in conduct that in the opinion of the Stewards which constitutes misconduct and was improper, in that:
4. You engaged in a physical altercation with a GRV participant.
5. You were physically and verbally abusive towards another GRV participant.
6. You struck a GRV participant on two (2) occasions with your elbow, using such force to knock them to the ground.
7. The participant suffered a combination of injuries as a result of the assault which was witnessed by other participants.

**Charge 2: GAR 165(a)**

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 27358) and a person bound by the GRV Rules of Racing, including the Greyhounds Australasia Rules and the Local Racing Rules.
2. On 19 December 2022, you were present at Shepperton Greyhound Racing Club for the purposes of a GRV Race Meeting.
3. You engaged in conduct that in the opinion of the Stewards which was detrimental or prejudicial to the interest, welfare, image, control, or promotion of greyhound racing, in that:
4. You engaged in a physical altercation with a GRV participant.
5. You were physically and verbally abusive towards another GRV participant.
6. You struck a GRV participant on two (2) occasions with your elbow, using such force to knock them to the ground.
7. The participant suffered a combination of injuries as a result of the assault which was witnessed by other participants.

**Pleas:** Not Guilty

**RULING**

In this matter, I am asked by Greyhound Racing Victoria (“GRV”), to recuse myself from the ultimate hearing on the merits.

The basis of this application is set out in the written submissions of Mr Damien Hannan, counsel for GRV, such submissions being dating 15 August 2023. The application is opposed by Mr Mileto, who has been represented at all preliminary stages by Mr Archibald Butterfly. On 24 August 2023, Mr Butterfly forwarded brief submissions in relation to such opposition.

The present application dates back to a contested stay application brought by Mr Mileto and heard by me, sitting alone, on 10 January 2023. The application was successful and the stay was granted on 17 January 2023, with the written reasons published on 2 February 2023. Effectively, the stay permitted Mr Mileto to continue his involvement in greyhound racing until there was a full hearing on the merits of the case. I would refer to the published decision.

Put very briefly, an interim suspension had been imposed on Mr Mileto because of his alleged behaviour at the Shepparton greyhound racing track on 19 December 2022. His interim suspension commenced very soon after this. He then sought a stay in relation to this interim suspension until there had been a full hearing “on the merits”.

As stated, the contested stay application was heard on 10 January 2023. The hearing involved, inter alia, the viewing by me of video material of what had occurred at the Shepparton track on the date in question. Essentially the case against Mr Mileto is based upon his alleged behaviour in relation to a disagreement with two brothers, both industry participants, and his physical treatment of one of them.

Having viewed the video and heard submissions, I made a number of factual findings and granted the stay application. I would refer to the written decision and my comments as to the altercation. My observations do not coincide entirely with the interpretation of what can be seen as advanced by GRV.

Potentially there are some differences as to the perceived behaviour of Mr Mileto, the degree of forcefulness involved in his manhandling of one of the brothers, whether punches were landed and the like. I made some specific comments in this regard and this certainly played at least a background role in my ultimate determination as to whether a stay should be granted.

I would refer to the decision of the High Court of Australia in *Johnson v Johnson* [2000] 201 CLR 488 and to the following statement of principle contained therein: -

“…the test to be applied in Australia in determining whether a judge is disqualified by reason of the appearance of bias (which, in the present case was said to take the form of prejudgment) is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the issues to be heard and determined…”.

I would also refer to the decisions of *Livesay v New South Wales Bar Association* [1983] 151 CLR 288 and *Keradeghian v Big Beat (Australia) Pty Ltd* *(No.3)* [2014] NSWSC 1691.

I consider the present case to be a borderline situation. However, I shall err on the side of caution. A fair-minded observer might conclude that, given my earlier description in the stay application hearing of what took place on the occasion of the alleged offence, I might not bring an impartial and unprejudiced mind to the resolution of the issues to be heard and determined. Such observer might conclude that, based on my interpretation of the video evidence of what occurred, I had formed a view in relation to who was to be believed as to what occurred or as to the severity or gravity of it.

Accordingly, even if erring on the side of caution, I shall recuse myself from the upcoming hearing involving the substance of the matter.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal