25 October 2023

**RULING**

**GREYHOUND RACING VICTORIA**

**and**

**CALVEN RUSSELL**

**Date of hearing:** 4 October 2023

**Panel:** Judge John Bowman (Chairperson) and Mr Greg Childs.

**Appearances:** Ms Amara Hughes, instructed by Ms Yana Podolskaya, appeared on behalf of the Stewards.

Mr Lynton Hogan represented Mr Calven Russell.

**Charges and particulars:** **Brief 1: Charge No. 1 of 5**

Greyhounds Australasia Rule **86 (q)**,**as in force at the relevant time,** reads as follows:

 *A person (including an official) shall be guilty of an offence if that person –*

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

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On the 27th of July 2021 you were suspended by the Victorian Racing Tribunal for a period of three (3) months which prohibited you from transferring the ownership or training responsibilities of any greyhounds in your name.
3. On the 1st of August 2021 you sent an email to the Chief Steward of Greyhound Racing Victoria, Mr Paul SEARLE that contained swearing and aggressive language in response to not being allowed to transfer a greyhound from your name to another trainer.
4. The language used in the email was:
	1. “So, what do I do with the fucking dogs??
	2. How can u treat owners with such contempt that they can’t even race their dogs despite having nothing to do with any bullshit that has gone on??
	3. What a disgusting deplorable load of shit. As I’ve said before DRUG CHEATS get treated better than me.
	4. Complete joke.”
5. Your behaviour in sending the email is prejudicial to the control and image of Greyhound Racing.
6. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86 (q) (as then in force) to engage in the conduct described in particular 5.
7. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 86(q));
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule 86(q)); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86(q)).

**Charge No. 2 of 5**

Greyhounds Australasia Rule **86 (o)**, **as in force at the relevant time,** reads as follows:

 *A person (including an official) shall be guilty of an offence if that person –*

*(o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.*

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On the 27th of July 2021 you were suspended by the Victorian Racing Tribunal for a period of three (3) months which prohibited you from transferring the ownership or training responsibilities of any greyhounds in your name.
3. On the 1st of August 2021 you sent an email to the Chief Steward of Greyhound Racing Victoria, Mr Paul SEARLE that contained swearing and aggressive language in response to not being allowed to transfer a greyhound from your name to another trainer.
4. The language used in the email was:
5. “So, what do I do with the fucking dogs??
6. How can u treat owners with such contempt that they can’t even race their dogs despite having nothing to do with any bullshit that has gone on??
7. What a disgusting deplorable load of shit. As I’ve said before DRUG CHEATS get treated better than me.
8. Complete joke.”
9. Your behaviour in sending the email is improper.
10. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86 (o) (as then in force) to engage in the conduct described in particular 5.
11. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 86(o));
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule 86(o)); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86(o)).

**Charge No. 3 of 5**

Greyhounds Australasia Rule **86 (p)**, **as in force at the relevant time,** reads as follows:

 *A person (including an official) shall be guilty of an offence if that person –*

*(p) disobeys or fails to comply with the lawful order of a Steward or other person or body having 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. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 24th of August 2021, you were issued with a lawful direction by a Steward by way of Directions Notice which directed you, in part, to ensure by 31st August 2021:
* Mow and clean all outside yards on your property.
* Turn over soil in outside yards to remove odour emanating from area.
* Install soft bedding in required kennel areas.
* Clean the inside of indoor kennels. This includes the removal of excessive dirt, dust and cobwebs.

1. You were required to comply with this lawful direction by 31st of August 2021 but failed to attend to any of the items listed.
2. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86 (p) (as then in force) to engage in the conduct described in particular 3.
3. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 86(p));
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule 86(p)); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86(p)).

**Charge No. 4 of 5**

Greyhounds Australasia Rule **106 (1)(c)**, **as in force at the relevant time,** reads as follows:

 *106 (1) – A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with-*

*(c) – kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in clean and sanitary conditions.*

**Particulars of the Charge being**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On the 17th of September 2021, you failed to provide kennels that were compliant with the ‘Code of Practice for the Keeping of Racing Greyhounds 2018’- the standard approved by GRV,in particular;
* The outdoor yards where several greyhounds were being housed was overgrown with grass and weeds.
* Drinking water for the greyhounds being kept on the property was of poor quality with several of the receptacles containing large amounts of algae.
* A large number of kennels to be absent of suitable bedding.
* Indoor kennels and outside yards to be in poor sanitary condition with faeces, urine, dirt, dust and cobwebs present.
1. You failed to provide kennels that were compliant with the Code of Practice for the Keeping of Racing Greyhounds 2018.
2. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule **106 (1) (c)** (as then in force) to engage in the conduct described in particular 3.
3. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule **106 (1) (c)**);
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule **106 (1) (c)**); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule **106 (1) (c)).**

**Charge No. 5 of 5**

Greyhounds Australasia Rule **86 (p)**, **as in force at the relevant time,** reads as follows:

 *A person (including an official) shall be guilty of an offence if that person –*

*(p) disobeys or fails to comply with the lawful order of a Steward or other person or body having 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. 30661) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 17th of September 2021, you were issued with a lawful order by a Steward by way of Directions Notice which directed you, in part, to ensure by 24th September 2021:
* All areas where greyhounds are kept to have fresh drinking water in clean non spillable containers.
* Removal of all waste products (faeces) from where greyhounds are kept.
* Raised beds and soft bedding for all greyhounds.
* Mow all yard areas containing greyhounds as well as grass in close proximity of yards containing greyhounds.
* Thorough cleaning of indoor kennels including the removal of cobwebs and dirty surfaces. Disinfect floors to remove odour emanating from the kennels.

1. You were required to comply with this lawful order by 24th of September 2021 but did fail to attend to all items listed.
2. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86 (p) (as then in force) to engage in the conduct described in particular 3.
3. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 86(p));
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule 86(p)); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86(p)).

**Brief 2:** **Charge No. 1 of 4**

Local Rule of Racing 42.1, **as in force at the relevant time,** reads as follows:

*It is a Serious Offence if a person keeps a greyhound in conditions which are dangerous or detrimental to the health and safety of a greyhound.*

**Particulars of the Charge being:**

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (Member No. 30661) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You were at all relevant times a person responsible for the care and supervision of the greyhounds housed at your GRV registered kennelling premises in Kyabram, Victoria.
3. On 15th of March 2022, at your kennel address in Kyabram, Victoria, you failed to provide kennels that were safe for greyhounds, in particular the kennels were:
	1. Dark and poorly lit racing kennels, with limited access to natural daylight and poor ventilation.
	2. Kennels and pens with un-even cement flooring, which did not permit adequate drainage of fluids and was not impervious to liquids.
	3. Kennels had a strong odour of urine and ammonia.
	4. Pens without privacy screens at least 1 meter high between each greyhound's sleeping area.
	5. Indoor kennels, whelping areas and outdoor yards in a poor sanitary condition, with faeces, urine, dirt, mould, dust, debris and cobwebs present.
	6. Greyhounds housed with insufficient bedding and housing.
	7. Insufficient fresh and clean water, housed in containers which were not non-spillable.
	8. Insufficient shading.
	9. The pens and yards had fencing with exposed nails and wire which were likely to cause injury to the greyhounds.
	10. The outdoor yards had large holes likely to cause injury to the greyhounds.
	11. The outdoor yards were overgrown with grass and weeds.
4. GRV Vet, Mr Shadi ELBAALI stated:

*“I believe there is significant risk to the physical and mental health and welfare of the greyhounds in this facility. The lack of adequate husbandry practices at this facility are clearly unacceptable and detrimental to their health and safety. The kennels and yards in which these greyhounds are kept had a lack of appropriate hygiene and adequate husbandry practices, as well as a lack of maintenance, which is clearly unacceptable and is detrimental to the health, wellbeing, safety, and welfare of the greyhounds”.*

1. You kept the Greyhounds in conditions which were dangerous and detrimental to the health and safety of the Greyhounds.
2. At the time of the relevant conduct described, it was an offence under Local Rule of Racing 42.1 (as then in force) to engage in the conduct described in particular 5.
3. By reason of Greyhounds Australasia Rules Division 1.2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
4. affect the previous operation of the Old Rules (including Rule 42.1);
5. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of Rule 42.1); or
6. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 42.1).

**Charge No. 2 of 4**

Greyhounds Australasia Rule 106 (1) (c), **as in force at the relevant time**, reads as follows:

*106 (1) – A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with-*

*(c) –* *kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in clean and sanitary conditions.*

**Particulars of the Charge being:**

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (Member No. 30661) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You were at all relevant times a person responsible for the care and supervision of the greyhounds housed at your GRV registered kennelling premises in Kyabram, Victoria.
3. On 15th of March 2022, at your kennel address in Kyabram, Victoria, you failed to provide kennels that were compliant with the ‘Code of Practice for the Keeping of Racing Greyhounds April 2018’’ for keeping of Racing Greyhounds:
	1. Dark and poorly lit racing kennels, with limited access to natural daylight and poor ventilation.
	2. Kennels and pens with uneven cement flooring, which did not permit adequate drainage of fluids and was not impervious to liquids.
	3. Kennels with a strong odour of urine and ammonia.
	4. Pens without privacy screens at least 1 meter high between each greyhound's sleeping area.
	5. Indoor kennels, whelping areas and outdoor yards in a poor sanitary condition, with faeces, urine, dirt, mould, dust, debris and cobwebs present.
	6. Greyhounds housed with insufficient bedding and housing.
	7. Insufficient fresh and clean water, housed in containers which were not non-spillable.
	8. Insufficient shading.
	9. The pens and yards had fencing with exposed nails and wire which were likely to cause injury to the greyhounds.
	10. The outdoor yards had large holes likely to cause injury to the greyhounds.
	11. The outdoor yards were overgrown with grass and weeds.
4. You failed to provide kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in clean and sanitary conditions.
5. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 106 (1) (c) (as then in force) to engage in the conduct described in particular 4.
6. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
7. affect the previous operation of the Old Rules (including Rule 106 (1) (c)),
8. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of 106 (1) (c)); or
9. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule106 (1) (c).

**Charge No. 3 of 4**

Greyhounds Australasia Rule 106 (1) (a), **as in force at the relevant time**, reads as follows:

*(1) A registered person must ensure that greyhounds, which are in the person's care or custody, are provided at all times with-*

*(a) proper and sufficient food, drink and protective apparel;*

**Particulars of the Charge being:**

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (Member No. 30661) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You were at all relevant times a person responsible for the care and supervision of the greyhounds housed at your GRV registered kennelling premises in Kyabram, Victoria.
3. On 15th of March 2022, at your kennel address in Kyabram, you failed to ensure that greyhounds, which were in your care or custody, were provided at all times with proper and sufficient drink. In that:
4. Insufficient fresh and clean water, housed in containers which were not non-spillable.
5. Water which was provided was dirty and full of algae.
6. You failed to provide greyhounds with proper and sufficient drink.
7. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 106 (1) (a) (as then in force) to engage in the conduct described in particular 4.
8. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 106 (1) (a)),
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of 106 (1) (a)); or
	3. affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule106 (1) (a).

**Charge No. 4 of 4**

Greyhounds Australasia Rules 86 (p), **as in force at the relevant time,** reads as follows:

*A person (including an official) shall be guilty of an offence if that person -*

*(p) disobeys or fails to comply with the lawful order of a Steward or other person or body having official duties in relation to greyhound racing.*

**Particulars of the Charge being:**

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (Member No. 30661) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. On 15th of March 2022, you were issued with a Lawful Order by a Steward by way of Directions Notice which directed you, to ensure by 18th March 2022, your kennels located in Kyabram, Victoria, complied with the ‘Code of Practice for the Keeping of Racing Greyhounds April 2018’’, in particular, all aspects of:
	1. Section 6.1.2, Greyhounds must have access to a sufficient supply of fresh clean water at all times at the establishment.
	2. Section 6.7.1, The greyhound establishment must be clean and hygienic at all times.
	3. Section 6.7.2, Minimum housing requirements.
	4. Section 6.7.7, Construction of indoor kennel facilities.
3. You failed to comply with the Lawful Order of the Stewards and did not provide photographs as requested. Items not complied with included:
	1. The shed kennels and racing kennels flooring was uneven and cracked in several locations, causing liquids to pool, the flooring was not impervious to liquids.
	2. Three (3) housing units within puppy yards 11 to 18 did not offer adequate protection to the greyhounds.
	3. Puppy yards 2 to 10 still did not have shading.
	4. Insufficient bedding and poor lighting within the racing kennel. The area is dark and poorly lit.
	5. Cement flooring within both kennels were uneven, allowing for liquids to pool and does not permit adequate drainage of fluids
4. On 11th of April 2022, you were issued with a further Lawful Order by a Steward by way of Directions Notice which directed you, to ensure by 25th of April 2022, which was later extended to the 12th of May 2022, your kennels located in Kyabram, Victoria complied with the ‘Code of Practice for the Keeping of Racing Greyhounds April 2018’, in particular, all aspects of:
	1. Section 6.1.2, Greyhounds must have access to a sufficient supply of fresh clean water at all times at the establishment
	2. Section 6.7.1, The greyhound establishment must be clean and hygienic at all times.
	3. Section 6.7.2, Minimum housing requirements.
	4. Section 6.7.7, Construction of indoor kennel facilities
	5. Section 4.5, Security
	6. Section 6.7.6, Construction of housing pens and yards
	7. Section 3.2.2, Establishments with 51 or more greyhounds
5. You were required to comply with these Lawful Orders by 12th of May 2022, but you did fail to attend to several of the listed items, namely:
	1. Section 6.7.2, Minimum housing requirements.
	2. Section 6.7.6, Construction of housing pens and yards
	3. Section 6.7.7, Construction of indoor kennel facilities
	4. Section 4.5, Security
6. You failed to comply with the Lawful Order of a Steward in relation to greyhound racing.
7. At the time of the relevant conduct described, it was an offence under Greyhounds Australasia Rule 86 (p) (as then in force) to engage in the conduct described in particular 5.
8. By reason of Greyhounds Australasia Rule 2 (as currently in force), the rescinding or variation of the Old Rules and commencement of the New Rules does not:
	1. affect the previous operation of the Old Rules (including Rule 86 (p));
	2. affect any obligation or liability imposed, created or incurred prior to the recission or variation of the Old Rules (including by virtue of 86 (p)); or

affect any penalty incurred, or liable to be incurred, in respect of any offence committed pursuant to the Old Rules (including a breach of Rule 86 (p)).

**Pleas:** Not Guilty to all charges

**RULING**

A further issue has arisen in this somewhat complicated matter.

It concerns whether the finding of guilt on the part of Mr Russell represent breaches of earlier suspended suspensions, thereby activating the penalties imposed in an earlier hearing.

That earlier imposition of suspended suspension occurred on 27 July 2023 – see GRV v Russell (27 July 2023).

Whether the offending for which Mr Russell has now been found guilty results in a breach or breaches of the penalties imposed on 27 July 2023 seems to be a question of law. Accordingly, pursuant to S 50X of the *Racing Act* 1958, in the circumstances of this case it can only be decided by me. However, I acknowledge the very helpful input of Mr Childs into the conduct of this case.

The circumstances of this issue could be summarised as follows. In the decision of 27 July 2023 Mr Russell was found guilty of six charges. Three of these, being charges 2, 3 and 4 were for breaches of the same Rules as some of those involved in the present case. In each instance in the earlier case, Mr Russell had been suspended for 1 month, that penalty in turn being “wholly suspended for 12 months pending no further breach of the relevant Rules”.

There is no argument but that within the relevant twelve month period in the earlier proceeding Mr Russell breached the Rules relevant to Charges 2, 3 and 4. I find that these breaches activated the operation of the suspended suspension, each being for one month.

The present dispute centres upon whether Mr Russell’s conduct and conviction in the present case activated the suspended suspension contained in Charge 1, 5 and 6 of the earlier case. These relate to offences of a different type from those in the present case.

In relation to this particular issue, I am of the opinion that the argument advanced by Mr Hogan on behalf of Mr Russell is to be preferred. It is not contested that the finding of guilt in the present case activated the suspended suspensions of one month relevant to Charges 2, 3 and 4. It is not contested that the relevant offences occurred within the specified 12 month period. Accordingly, there is added to the period of disqualification imposed on Mr Russell a period of suspension for three months.

I am not persuaded that the periods of suspension contained in Charges 1, 5 and 6 should be so treated. These were for totally different matters from those concerning which Mr Russell has been found guilty in the present case. It, for example, in the present case such charges had been heard separately it seems to me to be highly unlikely that breaches of the earlier suspended suspensions could be found to have occurred. The fact that, in the present case, all charges were heard together does not alter the situation. The object of the earlier decision was that, if Mr Russell again breached the particular Rules with which he had been charged, and charged successfully, the suspended suspension would be activated. The order made in the present case related to future breaches of “the Relevant Rules” – that is, the particular Rules the subject of the Orders. Charges 2, 3 and 4 were such Rules. Charges 1, 5 and 6 concern provisions not subsequently breached.

In summary, the penalty imposed for the three breaches is a period of suspension for three months, being one month for each such breach. The activated three month suspension is to commence after the period of disqualification imposed.

Mark Howard

Registrar, Victorian Racing Tribunal