17 December 2024

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**TONY RASMUSSEN**

**Date of hearing:** 25 November 2024 and 26 November 2024

**Date of decision:** 26 November 2024

**Date of penalty reasons:** 17 December 2024

**Panel:** Judge John Bowman (Chairperson), Ms Danielle Hikri and Mr Greg Childs.

**Appearances:** Mr Zero Partos, instructed by Mr Anthony Pearce, appeared on behalf of the Stewards.

Mr Tony Rasmussen represented himself.

**Charges:** Greyhounds Australasia Rule (“GAR”) 141(1) states:

(1) The owner, trainer or other person in charge of a greyhound:

(a) nominated to compete in an Event;

(b) presented for a satisfactory trial or such other trial as provided for by the Rules; or

(c) presented for any test or examination for the purpose of a stand-down period being varied or revoked,

must present the greyhound free of any prohibited substance.

GAR 142(1) states:

(1) An offence is committed if a person:

(a) administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;

(b) aids, abets, counsels or procures the administration of or an attempt to administer a prohibited substance to a greyhound; or

(c) has prior knowledge of a prohibited substance being administered or attempted to be administered to a greyhound,

which is established in any sample taken from a greyhound presented for an Event or when subject to any other contingency pursuant to the Rules.

**Particulars:** **Charge 1: GAR 141(1)**

 1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing South Australia and a person bound by the Greyhounds Australasia Rules.

2. You were, at all relevant times, the trainer of the greyhound “Victa Alby (SKAFP)”.

3. Victa Alby was nominated to compete in Race 7, LAUNCHING PAD, Semi Final, conducted by the Sandown Greyhound Racing Club at Sandown on 30 March 2023 (the Event).

4. On 30 March 2023, Victa Alby was presented for the Event not free of any prohibited substance, given that:

(a) A post-race sample of hair was taken from Victa Alby at the Event (the Sample);

(b) Testosterone Propionate was detected.

**Charge 2: GAR 142(1)**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing South Australia and a person bound by the Greyhound Australasia Rules.

2. You were, at all relevant times, the trainer of the greyhound “Victa Alby (SKAFP)”.

3. Victa Alby was presented for, and competed in, Race 7, LAUNCHING PAD, Semi Final, conducted by the Sandown Greyhound Racing Club at Sandown on 30 March 2023 (the Event).

4. You administered, or caused to be administered, to Victa Alby, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from Victa Alby in that:

(a) You were involved in the making of decisions as to the substances to be administered to Victa Alby;

(b) A post-race sample of hair was taken from Victa Alby at the Event (the Sample);

(c) Testosterone Propionate was detected in the Sample.

**Pleas:** Guilty to Charge 1

 Not Guilty to Charge 2

**DECISION**

Mr Tony Rasmussen is facing two charges. One is pursuant to Greyhounds Australasia Rule (“GAR”) 141(1), which could be described as a presentation charge. It can be referred to as Charge 1. The other is what could be described as an administration charge, which will be referred to as Charge 2.

Charge 1 is pursuant to GAR 141(1). Charge 2 is pursuant to GAR 142(1).

The origin of both charges is a positive swab returned by the greyhound, “Victa Alby”, which competed in Race 7 at Sandown on 30 March 2023, a race in which it ran second. Mr Rasmussen was the licensed trainer of the dog.

A post-race sample of hair proved positive to the prohibited substance, testosterone propionate. The substance can enhance performance. We would refer to the report of Dr Steven Karamatic.

Resulting from the positive finding, the Stewards interviewed Mr Rasmussen and the charges were laid. At all times, Mr Rasmussen has pleaded Guilty to Charge 1. At all times, he has pleaded Not Guilty to Charge 2. In other words, he has accepted that the dog presented with an illegal substance in its system, but has denied that he administered the substance to the dog.

Mr Rasmussen is no longer a participant in the industry. At the time that this matter arose, he was a leading trainer based in South Australia (“SA”) and trained a large number of dogs.

In relation to the individual charges, we shall now deal with Charge 2 – the Not Guilty plea.

However, the following must be stated at the outset. We are not in agreement in relation to Charge 2. Ms Hikri and myself are not comfortably satisfied that Charge 2 has been made out. Mr Childs is so satisfied. We shall turn shortly to his dissenting decision, but shall now set out our reasons for dismissing Charge 2.

As indicated, the required test is one of comfortable satisfaction that a charge has been proven – that is, the Briginshaw test. We repeat that, in relation to Charge 2, two of us are not comfortably satisfied. We turn now to our reasons.

There is no argument as to the adequacy of the testing procedures or the outcome of them. The whole dispute concerns Mr Rasmussen’s alleged involvement and behaviour.

Paragraph 4 of Charge 2 reads as follows: -

“You administered, or caused to be administered, to Victa Alby, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from Victa Alby in that:

(a) You were involved in the making of decisions as to the substances to be administered to Victa Alby;

(b) A post-race sample of hair was taken from Victa Alby at the Event (the Sample);

(c) Testosterone Propionate was detected in the Sample”.

There is no dispute concerning sub-paragraphs (b) and (c) which deal with the taking of the sample and the detection of the testosterone propionate.

We would point out that this Tribunal is bound by the Rules of Natural Justice – see Section 50Q(l)(i) of the *Racing Act* 1958.

Without going into it in great depth, a key Rule of Natural Justice is that the person charged with the offence has the right to know what he or she has allegedly done.

That brings us to the present case. Charge 2 involves GAR 142. We shall not set out the Rule here.

That is followed by the particulars of the charge. It is asserted that Mr Rasmussen administered or cause to be administered, this being the wording of paragraph 1 (a) of the charge, a prohibited substance “in that” and the particulars then follow. The first of these is sub-paragraph (a), which is set out above – involvement in the making of decisions as to the substances to be administered to Victa Alby.

In his closing address, Mr Partos made some observations to the effects that the important part of the wording of the charge is the words concerning administration which precede particular 4.

Ms Hikri and myself do not entirely agree. That is the nature of the charge, but it then moves on to the particulars following the words “in that”. The somewhat unusual relevant particular is that of involvement in the making of decisions as to substances to be administered.

The charged person has the right to know the details of the charge faced.

Here, the detail was administration “in that you were involved in the making of decisions as to the substances to be administered”. It is not, for example, that the person involved had a direct “hands on” involvement, but rather involvement in decision making. We repeat that the relevant particular is involvement in the making of decisions.

If that be so, Ms Hikri and myself are far from comfortably satisfied that such a charge has been made out. There is inadequate evidence of any such involvement.

Towards the end of his closing address, Mr Partos seemed to be directing attention away from paragraph (a) of the charge and towards the nature and wording of the charge without the words that follow “in that”. This is no criticism of him, as he presented the case of the Stewards in a thorough and easily comprehended fashion.

However, the wording of the charge cannot be avoided and the foundation of it remains the somewhat nebulous allegation of involvement in the making of decisions.

Mr Rasmussen’s evidence is simply that, at no time, was he aware of or did he participate in the administration of prohibited substances.

Ms Hikri and myself repeat that, if the above be the case, the charge as alleged has not been proven to our comfortable satisfaction. We accept the evidence of Mr Rasmussen.

Even if the above more technical argument did not exist, we are not comfortably satisfied that Mr Rasmussen administered testosterone propionate to Victa Alby as alleged. At all times, he has clearly and forcefully denied it.

According to Dr Karamatic, this substance can remain in a dog’s system for up to 100 days. Mr Rasmussen strongly denies the use of any product containing the prohibited substance. He freely admits that essentially he was the only person who looked after and administered medications, although it may be that his wife occasionally did so. However, he accepted full responsibility for the use of medications. He had no relevant medications in his kennels.

He did refer to people in the industry who were hostile to him, possibly because of his success. His kennels were on a 75 acre block not far from the SA town of Murray Bridge. There was not high security fencing and, at the relevant time, there was a lighting problem. As stated, Mr Rasmussen alleged that some enemies in the industry existed. At all times Mr Rasmussen has pleaded not guilty to Charge 2, and, when interviewed by the Stewards, has asserted his innocence. He has freely admitted that he performed the administration of medications. Indeed, he has pleaded guilty to Charge 1, the presentation charge, which we shall deal with shortly. He is no longer in the industry and has no greyhounds. However, he has, as stated, pleaded guilty to Charge 1, whilst vigorously defending Charge 2.

In the opinion of Ms Hikri and myself, we are not comfortably satisfied that Charge 2 has been proven, and that is leaving to one side our more technical reasons set out previously. A lack of satisfaction also existed in relation to this charge.

Mr Childs does not agree with our decision and is dissenting. He does not wish to set out or read a judgement or decision in this regard. Simply, he is comfortably satisfied that Charge 2 has been proven. He favours and accepts the submissions made by Mr Partos on behalf of the Stewards. He did not find Mr Rasmussen’s evidence to be credible. Mr Rasmussen was in charge of the administration of medications and no other source of the prohibited substance could be suggested. Traces of it had been found elsewhere in his operation, apart from that involved in the testing of Victa Alby.

In Mr Childs’ opinion, no credible alternatives to administration by or for Mr Rasmussen have been established and Charge 2 has been proven to his comfortable satisfaction.

As stated, Mr Childs was given the opportunity of presenting his decision separately and in his own words, but preferred not to do so. His belief is that Mr Rasmussen should be found guilty of Charge 2. Hence, his dissenting decision. However, the bottom line is that the majority decision is that Charge 2 is dismissed.

We shall hear the parties in relation to Charge 1, to which Mr Rasmussen pleaded guilty.

**PENALTY**

In relation to the penalty for Charge 1, we have come to the following conclusion.

A substantial period of disqualification is warranted. This positive finding resulted from testing in relation to a major event. By finishing second, as it did in the race in question, Victa Alby qualified for the final. It did this, having been presented with a prohibited substance in its system. By qualifying for the final, it prevented another dog from so competing. Victa Alby obtained its place in circumstances when it should never have been competing in the heat.

Further, the prohibited substance involved was one that had the potential of enhancing performance. Thus, not only had it competed in an important event when it should not have been racing, but the prohibited substance in question had the potential to cause it to finish ahead of dogs that it might otherwise not have beaten.

We appreciate that you have pleaded guilty and that you are no longer a participant in the industry. The reason for that need not concern us.

You have a history of a long and successful participation.

However, in our opinion a period of 12 months disqualification is appropriate. Accordingly, it is the penalty which we impose in relation to Charge 1.

Charge 2 is dismissed.

Further, Victa Alby is disqualified from Race 7 at Sandown on 30 March 2023 and Race 8 at Sandown on 8 April 2023.

In each instance, the finishing order is amended accordingly.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal