16 January 2025

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**BRENT MERTON**

**Date of hearing:** 16 December 2024

**Date of decision:** 16 December 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson), Ms Amanda Dickens and Ms Maree Payne.

**Appearances:** Ms Amara Hughes instructed by Mr Anthony Pearce appeared on behalf of the Stewards.

Mr Brent Merton represented himself.

 Mr Ben Considine appeared as a witness.

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

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

***156 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**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 316950) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
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. **(Premises).**
3. On 31st of January 2024, you were issued with Lawful Orders by a Steward by way of Directions Notices which directed you, to establish an Establishment Health Management Plan in accordance with the Code of Practice for the Keeping of Racing Greyhounds by 14th of February 2024:
4. You failed to comply with the Lawful Order of a Steward in relation to greyhound racing.

**Charge No. 2 of 5**

Greyhounds Australasia Rule **21 (1) (a),** reads as follows:

***21 Proper care for and welfare of greyhounds***

1. ***A person must ensure that any greyhound in the person’s care or custody, is at all times provided with:***

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

**Particulars**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 316950) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
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. **(Premises).**
3. On 19th of February 2024, GRIU Investigative Stewards attended the premises and conducted inspections at your premises where it was found that the greyhounds in your care or custody where not, at all times, provided with proper and sufficient drink, which included:
	* 50% of greyhounds did not have significant fresh clean water.
	* Water containers were empty.
	* Water which had notable signs of dirt.

**Charge No. 3 of 5**

Greyhounds Australasia Rule **21 (1) (c),** reads as follows:

***21 Proper care for and welfare of greyhounds***

1. ***A person must ensure that any greyhound in the person’s care or custody, is at all times provided with:***

***(c) kennels constructed and of a standard approved by a Controlling Body which are adequate in size, and which are kept in a clean and sanitary condition;***

**Particulars**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 316950) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
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. **(Premises).**
3. On 19th of February 2024, GRIU Investigative Stewards attended the premises and identified a failure to provide the greyhounds in your care or custody with kennels constructed and of a standard approved by Greyhound Racing Victoria which are adequate in size and kept in a clean and sanitary condition, in that the kennels were not compliant with the ‘Code of Practice for the Keeping of Racing Greyhounds 2018’, which included;
	* Kennel Bedding - Greyhounds were sighted laying in broken beds directly on the cement floor. Bedding had visible signs of dirt and grime build-up. They were not clean and dry.
	* The majority of yards had insufficient shading.
	* Insufficient clean freshwater for approximately 50% of the greyhounds housed in the outside yards and kennels. Water receptacles were empty or dirty and had insufficient water.
	* Yard bedding - Greyhounds were sighted laying directing on the ground, in dirt. Greyhounds within the outside yards did not have clean, soft raised bedding.
	* There was no electrical power connected to the kennels, therefore the temperature was not being maintained to an ideal temperature range of 16-24 degrees Celsius.
	* The kennel and yards lacked a minimum of two (2) physical barriers between the greyhounds and escape from the establishment.

**Charge No. 4 of 5**

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

***156 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**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 316950) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
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. **(Premises).**
3. On 26th of April 2023, you were issued with Lawful Orders by a Steward by way of Directions Notices which directed you, to cease kennelling and housing greyhounds within the outside yards and pens located at your premises:
4. On 19th of February 2024, you housed and kennelled greyhounds in the outside yards and pens located at your premises:
5. You failed to comply with the Lawful Order of a Steward in relation to greyhound racing.

**Charge No. 5 of 5**

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

***156 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**:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (GRV) (Member No. 316950) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
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. **(Premises).**
3. On 26th of April 2023, you were issued with Lawful Orders by a Steward by way of Directions Notices which directed you, seek approval from the GRIU Investigations Manager to bring any new greyhound onto your property after 3rd of May 2023:
4. On 19th of February 2024, it was established you had brought six (6) greyhounds onto the premises without approval of the GRIU Investigations Manager:
5. You failed to comply with the Lawful Order of a Steward in relation to greyhound racing.

**Plea:** Not Guilty to charges 1, 2, 3 and 4.

Guilty to charge 5

**DECISION**

1. Mr Brent Merton was until recently a greyhound trainer and owner. His kennels are at Kilmore, where recently he had been training up to 12 greyhounds at a time. He was disqualified for 12 months in April of this year after an inspection by the Stewards revealed that his kennels were of an extremely poor standard. In particular, the charges which he faced at that time included very poor bedding and kennelling arrangements overall, with some kennels in darkness and other kennels with no protection at all from the elements. The Stewards noticed that Mr Merton did not provide sufficient fresh drinking water and the kennels were foul smelling because of faeces and urine throughout them. The dates specified in the previous charges were between 18 January 2023 and 26 April 2023. He was also convicted of failing to comply with directions made by the Stewards in relation to cleaning up these problems.
2. His period of disqualification from that previous hearing ends on 17 April 2025.
3. He now faces a further five charges, which we deal with today. In essence, the charges relate to his failure to rectify the matters set out in the previous decision, which was handed down by this Tribunal on 17 April 2024. These previous charges are not strictly speaking prior offences, as the charges with which we are dealing today relate to the period January and February of 2024 and he was not previously dealt with by the Tribunal until April 2024. However, it is clear that,had Mr Merton rectified those matters brought to his attention by the Stewards, he would not have been brought back before the Tribunal today.
4. In the hearing before us he faces five charges. The first is that he breached an order of the Stewards to have an “Establishment Health Management Plan” by 14 February 2024 (this date was later extended by the Stewards to 19 February 2024).
5. The second is that on 19 February 2024, when the Stewards visited his kennels in Kilmore, he had still not provided the greyhounds in his care with proper and sufficient drink. The Stewards say that, when they observed his greyhounds on that day, half of them did not have significant fresh clean water and that some of the water containers were completely empty.
6. The third charge refers to the same day, 19 February 2024. The Stewards say that on that day the greyhounds which they saw were still not kennelled in kennels constructed to standards approved by GRV. In particular, some greyhounds were lying in broken beds with their bodies directly touching a cement floor. Some of the bedding was not raised. There was no electricity connected to the kennels to allow the temperature to be constant and the kennel and yards lacked a minimum of two barriers between the greyhounds and escape. The surface of the floor of the outside kennels was not impervious.
7. On 26 April 2023 Mr Merton was ordered to cease kennelling and housing greyhounds in the outside yards and pens at his premises. The fourth charge alleges that he continued to do so despite this order.
8. The last charge is a charge that, despite an order made by the Stewards on 26 April 2023 that he not bring any new greyhounds onto his property, he in fact brought six greyhounds on to the premises in breach of that order.
9. Mr Merton pleaded not guilty to the first four charges and guilty to charge five.

**The Establishment Management Health Plan**

1. The Stewards directed Mr Merton on 31 January of this year to lodge a valid Establishment Health Management Plan by 14 February 2024. He did not provide one until the morning of this hearing. Such plans are vital to ensure that dogs are well cared for, which benefits the dogs, their owners and the reputation of the industry.
2. Mr Merton did not give any reason of substance for failing to comply with the Stewards’ order. He said that he had not done so because, after his disqualification in April of this year, he thought that the plan was unnecessary.
3. We therefore find him guilty of this charge.

**Failure to provide proper and sufficient drinking water**

1. We heard evidence from Mr.Ben Considine, who was, at that time, the senior investigator at GRV. We also saw body camera footage and photographs, all taken at the time that Mr Considine and another Steward attended the property on 19 February 2024. Mr Considine gave evidence that up to half of the water containers which they saw, both in the racing kennel and in the outdoor pen, were empty or contained insufficient water. In addition, he described some of the containers as being contaminated with algae and dirt. This was evident in some of those photographs of containers presented to us. Mr Merton said that the property was on creek water and so some contamination was inevitable. He said to the Stewards that he was intending to work for three hours on the day in question and would have filled up the water containers during his lunch time. He told us that he had been called away for an emergency at 4:30am on the morning of the Steward's visit and had not returned before the Stewards attended the property.
2. We are satisfied from the evidence presented that he did fail to provide proper and sufficient drinking water to the greyhounds in his care in accordance with the Rules. We therefore find him guilty of this charge.

**Improper kennelling of dogs**

1. Mr Considine gave evidence and we saw evidence of body camera footage and photographs of the broken and otherwise unsuitable bedding provided for some of the greyhounds in Mr Merton’s care. It was clear from that evidence that the bedding was dirty and unhygienic and that some beds were broken. There was insufficient shade for the outside kennels. The inside kennels had no temperature control, as electricity was not connected to the property. There were holes in the floors of some of the kennels, which meant that there were not the required two physical barriers against escape. There was evidence that some of the beds were not clean.
2. The only significant difference between the condition of the kennels from the time of the last hearing was that there was now no urine or faeces, or any smell of urine or faeces, at the time of Mr Considine’s visit on 19 February 2024.
3. Mr Merton said that he had trouble with his dogs chewing at their beds. He said that he had received some carpet and was about to lay carpet on the raised frames in order to rectify this problem. He had also washed out the kennels with disinfectant.
4. We are satisfied from the evidence that Mr Merton failed to comply with the direction given to him regarding the state of his kennels and therefore this charge is also proven.

**Failure to comply with Stewards’ direction as to housing greyhounds in outside yards**

1. When the Stewards attended on 19 February 2024, there were two greyhounds kennelled in non-approved outside yards. Mr Merton said that he had done so because the dogs were otherwise housed inside his house and were urinating and defecating in the house. The only person in the house during the day was his 84-year-old mother, and she was not capable of looking after the dogs or cleaning up their mess. He said that he had left the dogs outside during the day and brought them inside when he arrived home from work.
2. The Stewards had ordered that no dogs be kept in the outside kennels, as they were unsuitable and indeed dangerous for the dogs’ health. In particular, they had insufficient shading from the sun and they had no electrical connections. The temperature of the kennels could not be controlled.
3. It is clear from the evidence that Mr Merton was given an order on 26 April 2023 not to keep any dogs in these outside kennels. He has breached the order by doing so, even if the dogs were kept in the kennels only during the day and brought inside at night.
4. We therefore find Mr Merton guilty of charges 1 ,2 ,3 and 4.

**Failure to comply with the direction not to bring further dogs onto the property**

1. The evidence of the Stewards was that Mr Merton had introduced six further greyhounds to his property in contravention of the order made on 3 May 2023. This order had been made as it was the Stewards view that Mr.Merton had too many dogs to care for and needed to sort out his personal arrangements to address this problem before introducing any further dogs on to the property.
2. Mr Merton pleaded guilty to this charge. He acknowledged that he had breached the order, but said that he had to do so because he needed to bring some dogs in that could race and make money for him, as he was not able to otherwise support himself financially.

**Penalty**

1. Mr Merton’s personal circumstances were set out in detail in the Tribunal’s decision dated 17 April 2024 and do not appear to have changed markedly since then. He has decided never to become involved in the greyhound racing industry again. He has obtained full time employment as a truck driver. He has participated in this hearing because his employment involves him driving on occasion to racetracks or delivering horses to stables. Given that he is disqualified from participating in the greyhound racing industry, there are reciprocal provisions in each racing code which mean that he is unable to fulfil these jobs where the destination or pickup point is a racetrack or horse stables, because he is effectively banned from any racetrack or premises at which horses are trained. This has been the case since April of this year and will continue until April 2025. This has caused him some loss of income.
2. We note that, despite this difficulty, he has scrupulously complied with his obligations in relation to his disqualification and has been cooperative with the Stewards in relation to this hearing. In particular, he has accepted that he is at fault for having brought the extra greyhounds on to this property. His plea of guilty to charge 5 must be taken into account in his favour in sentencing him today.
3. We also take into account that it was Mr Merton himself who originally contacted GRV for assistance with the financial struggle that he was having in properly homing his greyhounds. His response to these charges, as to the previous charges, is that he would have done what was asked of him if he had had the money to do it. He blames these proceedings for having left him financially ruined as a result of his inability to comply with the obligations placed upon him.
4. We regard the behaviour comprehended in Charges 1, 2 and 3 as being a continuation of his neglect of his dogs which was first identified in the previous hearing. His conduct in relation to Charges 2 and 3 is aggravated by the fact that he was already on notice from the Stewards about these matters, but we recognise that there is significant mitigation in relation to Charge 2 in that he was called away for an emergency in the early hours of the morning of the Stewards’ visit.
5. We regard the circumstances of Charges 4 and 5 to be the most serious. Mr Merton well knew that he must not kennel any dogs in the outside kennel because it was inadequate for their safety. He also well knew that he must not bring any further dogs on to his property. He disregarded the Stewards’ warnings about both those matters. Such clear breaches of his obligations must attract a stern response from this Tribunal. In delivering this response, we are also mindful of the principle of totality -that is, the need to impose a sentence which adequately reflects the impact on Mr Merton of our sentence when combined with the sentence he is presently serving for related offences.
6. The penalties which we impose are as follows.
7. On charge 1, which is the charge of breaching the order to produce an Establishment Health Management Plan, the penalty which we impose is a fine of $500.
8. On charge 2, which is the charge of not providing the greyhounds in his care with proper and sufficient drink, the penalty wnich we impose is 3 months disqualification.
9. On charge 3, which is the charge of not kennelling the dogs in properly constructed kennels, the penalty which we impose is 5 month disqualification.
10. On charge 4, which is the charge that he failed to comply with the order to cease kennelling and housing greyhounds in the outside yards at his premises, the penalty which we impose is a 12 month disqualification.
11. On charge 5, which is a charge of failing to comply with an order by the Stewards not to bring any new greyhounds onto the property, the penalty which we impose is a 12 month disqualification.
12. We order that the periods of disqualification on charges 2 and 3 be served concurrently.
13. We order that the periods of disqualification on charges 4 and 5 be served concurrently with each other and cumulatively on the sentence in charge 3.
14. We further order that each period of disqualification commence on 17 April 2025.

Mark Howard

Registrar, Victorian Racing Tribunal