

Non Raceday Inquiry RIU v B L Goldsack - Reasons for Decision and Penalty dated 28 June 2021 - Chair, Hon J W Gendall

QC

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY

IN THE MATTER of the New Zealand Rules of Greyhound Racing

BETWEEN RACING INTEGRITY UNIT

Andy Cruickshank, Investigator

Informant

AND Brian Leslie GOLDSACK, Licensed Trainer

Respondent

Information No: A8722

Inquiry held at Whanganui on 24 June 2021

Judicial Committee: Hon JW Gendall QC (Chair)

Mr LN McCutcheon (member)

Present: Mr A Cruickshank, Informant

Mr B Dickey Counsel for RIU

Mr S Wallis and Mr K Coppins - witnesses

Mr B L Goldsack, Respondent

Ms J Goldsack assisting the Respondent

Supporters of Mr Goldsack attending to observe

REASONS FOR DECISION AND PENALTY OF JUDICIAL COMMITTEE

1. The RIU charged Mr Goldsack with a breach of Rules 61.1 and 61.3 in that: -

"on the 12th day of February 2021 [he] was the Licensed Trainer and person in charge of the Greyhound "Light Cruiser" which was presented for and raced in Race 12 at the Wanganui Greyhound Racing Club meeting [at] Wanganui, failed to present the greyhound free of the Category 5 Prohibited Substance, Diclofenac, being an offence under the provisions of Rules 61.1 and 61.3 and punishable pursuant to Rule 63.1 and 61.4 of the New Zealand Greyhound Association Rules".

2. Rule 61.1 provides that *the owner, trainer, or person in charge of a greyhound nominated to compete in a race shall produce the greyhound for the race free of any Prohibited Substance., and Rule 61,3 says that the person in charge of a Greyhound brought onto a racecourse for the purpose of racing, is guilty of an offence if the greyhound is found on testing to not be free of a Prohibited Substance. It is a strict liability offence.*

3. Diclofenac is a Category 5 Prohibited Substance being a NSAID, (a non -steroidal anti-inflammatory drug/medication) used to prevent or alleviate pain, swelling and inflammation in animals as well as humans. It may be used to treat some eye conditions in greyhounds but is dangerous to the animal if ingested.

4. The general penalty provisions in the Rules provide for penalties of up to \$10,000 fine, suspension, disqualification, warning off, for breaches, (Rule 63.1) as well as for disqualification of the greyhound from the Race in which it competed (Rule 61.4).

5. Mr Goldsack did not admit the charge and the hearing proceeded on a defended basis.

6. At the conclusion of the hearing, and after deliberating, the Committee found the Information to be proved. LIGHT CRUISER was disqualified from the Race, in which it finished 7th in a field of 8. After receiving submission as to penalty from the Informant we imposed a penalty on Mr Goldsack of a fine of \$3,000 and ordered him to pay \$1,500 to the RIU as a contribution towards its costs and expenses and \$500 to the JCA in respect of a portion of its expenses.

7. We record that Mr Goldsack did not choose to make any submissions as to penalty. That was because after delivering the liability finding we asked Mr Goldsack to remain and present his submissions as to penalty as he was entitled to do. But he did not take up that opportunity, instead abruptly departing with a flurry of derogatory, abusive, and obscene outbursts directed at the Committee.

8. We now record our reasons for the finding and penalty.

THE INFORMANT'S CASE

9. It was common ground and not disputed that the greyhound LIGHT CRUISER, jointly owned and trained, by Mr Goldsack was presented by him to compete in Race 12, the "BOOK YOUR FUNCTION @HATRICK C3" at the Wanganui Greyhound Meeting at Hatrick Raceway on 12 February 2021. It was subject to a pre-race swab before the Race. It finished 7th in the field of 8 and did not earn a stake. The urine sample was analysed by the NZ Racing Laboratory and found to be positive to Diclofenac, a Category 5 Prohibited Substance. It is an ingredient of the well known medication "Voltaren". Diclofenac can be administered by such a gel but is commonly used by humans in tablet form for which a Doctor's prescription is required. It is an anti-inflammatory drug designed to reduce pain, swelling and inflammation arising from injury or joint conditions arising out of arthritic or injury changes.

10. The evidence was that when interviewed by an RIU Investigator on 9 March 2021 and informed of the positive test, Mr Goldsack could not explain how the positive test to Diclofenac arose, other than to say his dog must have been "knobbled". He insisted that he had not given LIGHT CRUISER any substance leading up to the Race other than a rub down with a Chinese medicated oil. He told the Investigator that he had previously taken Diclofenac for a back and hip condition for which he was on ACC, showed the investigator the prescription but said that he had not taken any of that medication "for some time".

11. Mr Goldsack then spoke to the Investigator about an event that he said occurred one week earlier, on 5 February 2021. He said that he found a small container labelled Dexamphetamine near his kennels, which he said someone "must have left it there" as he had no knowledge of it. He said he "believed" that someone was trying to "knobble" his dogs. He then, on 5 February 2021 scratched his dogs which were to compete later that day. The container contained 3 pills and when analysed (after being given to the Investigator on 9 March 2021) by the NZ Racing Laboratory they did not contain Diclofenac but were found to contain Amphetamine. The Chinese medicated oil was also analysed and did not contain Diclofenac.

THE RESPONDENT'S EVIDENCE/STATEMENTS TO THE COMMITTEE

12. Mr Goldsack said that he believed some unknown person(s) must have administered the Diclofenac whilst LIGHT CRUISER was awaiting the Race as, he claimed the security at the Raceway was inadequate. Or alternatively he suggested that someone may have got access to his kennels – as he claimed had happened in the past, and administered a substance containing Diclofenac to the greyhound there. At the hearing, he offered a third theory, namely that some person may have got to his vehicle, in which the dog was present, at the Raceway, and "knobbled" it there.

13. He said that he had a week previously told the Stipendiary Steward about the possibility of some others "knobbling" his dogs (with a different substance), so when he presented LIGHT CRUISER to race on this occasion he asked of the Committee, rhetorically, "Why would I want to race the dog with this prohibited substance in it?" The Committee tried to make it clear to him that the charge did not involve any allegation of administering, but simply presenting the greyhound to race with Diclofenac in its system when he was not aware of that fact.

14. Mr Goldsack, in emotional terms, expressed criticism of the Stewards and RIU employees, claiming that for some reason a failure to follow up his claim to possible "knobbling" a week earlier has led to the Diclofenac positive a week later.

15. In his interview with the Investigator on 9 March 2021 Mr Goldsack outlined his feeding regime on racedays and said that his mother helped him because of his back condition.

ISSUES

16. There are only 2 relevant issues. First, did the prerace swab analysis accurately disclose the presence of Diclofenac, a Prohibited Substance, and did the dog race when it had that substance in its metabolism? That is beyond doubt. My Goldsack accepted that fact. It is mandatory that the greyhound be disqualified from the Race (Rule 61.4).

17. The second issue is whether in terms of Rule 61.3 Mr Goldsack presented the greyhound to race when it had the Prohibited Category 5 substance in its system (a strict liability offence) and/or whether that might have occurred through 3rd party behaviour AFTER it was presented and before it raced.

FINDINGS

18. First, LIGHT CRUISER must be disqualified from the Race. As it was unplaced this is of little consequence.

19. There is no evidence or foundation to support any claim by the Respondent that the dog may have surreptitiously been given Diclofenac whilst at Hatrick raceway. We have received and accept the evidence presented by the RIU as to the secure kennels, overseen by a security guard, and CCTV surveillance at the entrance of the kennelling area, whilst awaiting the Race. There is not a scintilla of evidence, nor even a remotely evidential foundation, to support Mr Goldsack's conjecture. The evidence of the two Stipendiary Stewards (Messrs Wallis and Coppins) was persuasive, and we accepted it. There was no possible way that some third party or other dog handler, could have avoided the oversight of the security guards so as to get unlawful access to this dog. Mr Goldsack has simply claimed, without any evidential basis, a contrived or theory he has conjured up.

20. It follows that the greyhound ingested, or Diclofenac entered into its system before, or during, the transportation of it to the Raceway. The claim, or belief advanced by Mr Goldsack that someone must have "got to" the dog at his own kennel block is contrived. Even assuming for the moment an event, he claimed must have had happened the week before, then it would have given rise to security issues at his premises, of which he was aware, he thereafter had a primary obligation to secure the kennel block.

21. But there is an obvious explanation for the positive swab which is based on clear factual evidence. That is, that the Diclofenac in the dog's urine was derived from the Diclofenac medication dispensed to Mr Goldsack for a back and hip complaint (for which he received ACC) pursuant to an October 2020 prescription. It appears clear from the photographs produced that a repeat prescription of the Diclofenac pills medication was obtained on 29 January 2021, 2 weeks before the dog was presented to race. It is a compelling and reasonable inference that we draw that by some error or laxness or oversight on the part of those caring for the dog resulted in, some contamination arising from this Diclofenac product occurred at Mr Goldsack's kennels. The scenario advanced by the Respondent, namely that by reason of past events there was a suspicion that this substance was given to the greyhound by unscrupulous others, we do not accept as plausible, when viewed against the clear fact of Mr Goldsack having prescribed Diclofenac tablets in his possession and available for him to use to treat his back condition.

22. We reached the clear conclusion that somehow the Diclofenac possessed by the Respondent earlier from the prescription and its repeat was the cause of the positive analysis, and an absence of reasonable care occurred. The presentation by him of a different Amphetamine substance to the Steward, has no connection to the positive to Diclofenac which medication was in his possession 14 days before the race. In our judgement, it was used pursuant to the repeat prescription as medication by him at or close to the relevant time. In an exchange with the Investigator, it is recorded:

"[Investigator] My understanding of what Diclofenac is it's a non-steroidal anti-inflammatory.

[Respondent] If it's Voltaren based, I understand that.

[Investigator] ...in terms of medication that you take, is there any anti-inflammatories? You said you've got a back and hip issue?

[Respondent] Yeah, I've got all my pills in there. I'll go and get them out so you can see. When I take my pills in the morning which is around half past six, I take my pills when I get up. come inside, wash my hands. Every morning's exactly the same. That's my procedure that I do every morning". Despite Mr Goldsack initially claiming that he had not taken Diclofenac "for some time" given the date on the medication bottle of the repeat dispensing of it relatively close to the raceday event, it is clear that he must have obtained the repeat for his own medication after 29 January 2021.

23. The offence is one of strict liability. We find by a wide margin and are satisfied and well beyond the required balance of probabilities, that the Respondent presented the greyhound to race on that occasion at Hatrick raceway when it then had in its system the prohibited substance the anti-inflammatory pain suppressing NSAID drug, Diclofenac. It is not necessary for the RIU to establish that he knew this was the case, and indeed the evidence is that he was unaware of that, but he is strictly liable and required to ensure that contamination in some way did not occur. Accordingly, the offence alleged in the Information is proved.

OUTCOME AND PENALTY

24. The Greyhound "LIGHT CRUISER" is disqualified from Race 12, the "BOOK YOUR FUNCTION @ HATRICK C3" at the Wanganui Greyhound Racing Club meeting held at Hatrick Raceway on 12 February 2021.

25. The RIU referred to the Penalty Guide having a "starting point" for a Category 5 Prohibited Substance presentation breach of 6 months disqualification and/or a fine of \$4,000. It referred the Committee to some other cases where fines of up to \$2,500. It submitted that Mr Goldsack has had 2 previous breaches of this Prohibited Substance Rule (in 2009 and 2019) and was well aware of the absolute liability for breaches of this Rule. It said that despite the recommended starting point fine at \$4,000, a fine in this case of \$3,000 was sought.

26. As we have said, Mr Goldsack did not wish to avail himself of the opportunity to make submissions as to penalty. So, we have not heard from him as to matters of mitigation. He cannot claim remorse, insight, or guilty plea in mitigation as there has been none, But we gather from the evidence that his income is from ACC as well as training and racing greyhounds, although he, and his mother,

before departing said he was quitting the Code and deposited his Trainer's Licence on the Committee's table. If that eventuates his finances may be limited. It is aggravating that he has previous breaches of this Rule with fines up to \$2,500.

27. Presenting greyhounds to race when they have in their metabolism a prohibitive substance is, or should be, known to all Trainers to be absolutely outside the Rules. It is to ensure that the integrity of all races is not compromised so that the "contest" is on an even playing field. Stringent care is required in the management, treatment, and care of the greyhound before being presented to race. That is a fundamental obligation and requirement of Trainer, and the integrity of the Code depends on it. Deterrence to others is a significant factor in a penalty sanction.

28. Given the benevolent approach of the RIU we do not impose a disqualification and fix the fine at \$3,000.

COSTS

29. Because the matter was required to proceed on a defended basis, and because Mr Goldsack advanced (amongst other theories) a claim that security at the Raceway was deficient, the RIU has been put to some expense, including having representation by Senior Counsel, and the presence of Stipendiary Stewards. Of course, Mr Goldsack had the right to present a defence, but his conjured up theory having failed to succeed, he must expect to have some costs orders follow. The orders represent only a modest contribution (approximately 60% of actual expenses incurred) to the expenses of the RIU and the JCA.

He is ordered to pay the Sum of \$1,500 towards the costs of the RIU, and the sum of \$500 towards the expenses of the JCA.

RESULT SUMMARY

30. (a) The breach of the Rule alleged in the Information is established.

(b) The greyhound "LIGHT CRUISER" is disqualified from Race 12, the BOOK YOUR FUNCTION @HATRICK C3"at the Wanganui Greyhound Racing Club meeting at Hatrick Raceway on 12 February 2021.

(c) Mr Goldsack is fined \$3,000.

(d) Mr Goldsack is ordered to pay costs of \$1,500 to the RIU and \$500 to the JCA.

Dated at Wellington this 28th day of June 2021

Hon JW Gendall QC (Chair)

Penalty: