

**Non Raceday Inquiry RIU v A H Turnwald - Decision dated 21 April 2021 - Chair, Hon J W Gendall QC**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE**

**HELD AT PALMERSTON NORTH ON 20 APRIL 2021**

**IN THE MATTER of the Rules of New Zealand**

**Greyhound Racing Association**

**BETWEEN**

**Racing Integrity Unit**

SIMON ANDREW IRVING, Racing Investigator

**Informant**

**AND**

ANGELA HELEN TURNWALD of Foxton

Licensed Trainer

**Respondent**

**JUDICIAL COMMITTEE:**

Hon J W Gendall QC (Chair)

Mrs N Moffatt (Member)

**Information No: A14111**

**Present:** dealt with by agreement on the papers

**Evidence and submissions presented by:**

Ms E Smith - Counsel for the Informant

Mr SA Irving - for the RIU

Mr M Branch - Counsel for the Respondent

Ms AH Turnwald - Respondent

**DECISION OF JUDICIAL COMMITTEE DATED 21 APRIL 2021**

1. The Committee has conducted a hearing under Rule 66 of the Rules of Greyhound Racing of an Information presented by the Informant against Ms Turnwald alleging a breach of the Prohibited Substances (Rule 61) in that she, as Trainer of the Greyhound "Zipping Sarah", she failed to produce it for a race at Addington Raceway on 12 November 2020, free of a prohibited substance, Methamphetamine and Amphetamine. With the agreement of the parties the hearing was on the papers presented by the Informant and Respondent.

2. Rule 61 provides, where relevant:

*61.1 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.*

*61.4 Any Greyhound which competes in a Race and is found to be the recipient of a Prohibited Substance shall be Disqualified from that Race.*

Under Rule 61.3 and Rule 62.1 it is a strict liability offence if, in this case, the Trainer, breaches the provisions of the Rule.

3. Ms Turnwald denied the charge until recently, when her Counsel advised that she would change her plea and admit the charge

4. With the agreement of both Informant and Respondent we have dealt with the matter on the papers as Rule 21,1 permits.

### **FACTUAL BACKGROUND NOT IN DISPUTE**

5. The Respondent is a Licensed Trainer of Greyhounds, based in Foxton. One Greyhound trained by her is named "Zipping Sarah" and it is owned by a syndicate of persons. The Greyhound was presented to compete in the "Len, Jane and Penny Hart Memorial Feature" at the Canterbury Greyhound Racing Club meeting held at Addington Raceway in Christchurch on 12 November 2020. It finished first in the race earning a stake of \$4,011. It was subject to post race testing of its urine sample, and on analysis the sample was found to contain the Category B Prohibited Substances Methamphetamine and Amphetamine.

6. When interviewed by the Racecourse Investigator, the Respondent, and her partner, (who is a Licensed Kennel Hand,) could offer no explanation for the positive result. No products likely to contain derivatives of the Prohibited Substances were present at her premises. She said that the greyhound had been transported, together with another greyhound, from Foxton via road and ferry to Christchurch by her partner, during the day of the race. He had stopped for a few hours at a friend's place at Kaiapoi, north of Christchurch. There the Greyhound and its companion were removed from the trailer for exercise., with "Zipping Sarah" being handled by the friend of the Kennel Hand. The Greyhound was later presented to race through the Agent/Employee, Kennel Hand, of the Respondent.

7. No issue was taken over the swabbing process or sample analysis. Ms Turnwald elected to have the "B" sample analysed by the Australian Expert Laboratory (ARFL) which confirmed the positive analysis to both Methamphetamine and its metabolite Amphetamine.

### **THE DEFENCE INITIATELY ADVANCED**

8. The Respondent's case initially was that some syndicate members, or their supporters present to witness the race, touched, or patted the Greyhound, at the winner's podium post race. It was claimed that some of these, but unknown or identified, were said to have smoked Methamphetamine in the afternoon - hours before visiting the raceway. Therefore, they postulated the possibility that contamination of the dog, and its urine, with Methamphetamine residue could not be excluded. And in that case any contamination was post race and obviously did not fall within the Rule.

9. That defence has now been abandoned.

### **THE BACKGROUND**

10. The claimed defence originated from a statement by the organiser of the syndicate of owners in which he said:

- the syndicate had planned 2 separate groups to meet [at the raceway] and on the afternoon before [the race] 2 of the group had consumed [it was said] Methamphetamine. After the win there were pats and hugs and handshakes which, he said, "leads to the possibility that all members in the podium photo, other than those not known to us, being contaminated".
- He said that his statement was made on the "understanding that no identities will be revealed other than myself as organiser".

11. Despite the obvious difficulties arising out of the unsubstantiated anonymous hearsay statement, it could still be admitted to be considered along with all the other evidence at a hearing.

12. So the Informant obtained expert opinion evidence. In summary this was, that there was a timeframe of several hours between the ingestion of Methamphetamine and the taking of the urine sample at the race meeting. This was because Methamphetamine takes time to break down into its metabolite, Amphetamine, and as the metabolism continues greater quantities are excreted into the urine. And in this case the quantitative data was that the vast majority of the Methamphetamine had already been metabolised into Amphetamine – the conclusion being that the animal ingested Methamphetamine "at some time before the race meeting".

13. Faced with that scientific, and expert opinion evidence, the Respondent entered her revised guilty plea. The surmised defence – even assuming there had been human smoking of Methamphetamine as claimed – was untenable speculation.

14. On this point, we need to add that Mr Branch, in his submissions as to penalty contends that the expert opinion evidence of the 2 witnesses dated 19 and 25 February 2021, is not "Evidence as to relevant facts agreed between the parties. so regard cannot be had to it". That legalistic stance is disingenuous, artificial, and not accepted. The statement of the experts filed with the Committee were designed to rebut the surmised defence. The Committee dealt with the intricate claims earlier put forward by Mr Branch that such evidence was inadmissible in the Memorandum Number 6 and ruled it to be admissible. These inquiries are not criminal court proceedings nor is the process involved in the imposition of penalty constrained by such an approach. The Respondent does not have to agree as a FACT what the expert opinion was, but she has pleaded guilty to the charge that the greyhound had pre race ingestion of the drug. She presented no evidence to counter that. The Committee allowed the Respondent time to obtain her own opinion evidence to counter that of the Informant. She did not do so but entered the guilty plea though (her Counsel says) was because of cost factors of

proceeding further. But there was unchallenged evidence which if accepted provided the complete answer to the proposed defence. Whatever the motivation, the fact remains that she has pleaded guilty to the greyhound being presented to race with the Prohibited Substance in its system, (before the race not after). And she could not argue otherwise. It is sophistry for Counsel to now argue that the facts or information that preceded the decision to change the plea is something the Committee cannot take into account, especially where, without challenge, it establishes the Informant's case and rebuts the Respondent's claim, made without cogent evidence.

15. The inquiry into liability and penalty by the Committee may involve it receiving any statement, document, information that may assist it in its task, and the expert opinion which, if accepted, rebutted a claimed defence - and led to the guilty plea - falls into that category.

16. The Committee has received submissions as to penalty as follows:

From the Informant:

(a) The RIU referred to Methamphetamine and Amphetamine being Category 2 Prohibited Substances with the Greyhound Penalty "Guidelines" providing a starting point of 5 years' disqualification., but this does not differentiate between administration and presentation offences.

(b) Methamphetamine is a potent central nervous system stimulant which poses significant animal welfare issues and that the level of Amphetamine (as it metabolised from Methamphetamine) in the sample was particularly large.

(c) The RIU referred to 2 other cases of Toomer (3 November 2020) and Schofield (29 April 2018) where disqualifications of 1 year 2 months and 2 years were imposed for "presentation" offences. However, it accepts that those cases involved facts where there was a connection between some person attached to the stable complex having had a past history of Methamphetamine use – which is not the situation in this case.

(d) The GRNZ Board on 1 September 2014 approved the penalty standards which had been well publicised to everyone involved in the Code.

(e) The sentencing factors of deterrence to others, and condemnation of the breach so as to uphold community confidence in the Greyhound Racing Industry were especially relevant.

(f) Apart from the mandatory disqualification of the greyhound from the race, the RIU submitted that the Respondent be disqualified for 1 year 2 months.

(g) As to costs: The RIU has incurred significant costs up until the Respondent abandoning the defence which it says totalled \$6,341.30.

From the Respondent

(a) Apart from the matters referred to in para 13 above, which we have dealt with, Mr Branch submitted that certain submissions of the Informant relating to alleged happenings at the rest stopover at Kaiapoi were inadmissible, not in the Agreed Facts and had to be disregarded. We accept that the transcript of the interview with Mr Freeman, annexed to brief of evidence as to that event might be relevant, but anything more we ignore. All that matters is that, as must be accepted by the guilty plea, somewhere, somehow, on the journey from Foxton to Christchurch, and before the race, the Prohibited Substance Methamphetamine entered the greyhound's system.

(b) Mr Branch emphasised that the 5 year starting point guidance was not a Rule and must logically be for the most serious offending of administration. He has referred us to the decisions in TOOMER and SCHOFIELD, and that the level of culpability on the part of the Respondent was at the very low end. He says that the RIU "should take some responsibility [to ensure] that between the race and the swabbing that only connected parties have contact [with the greyhound] and because there was contact the RIU was "creating a situation of uncertainty" - that is, the opportunity for someone to raise the sort of claim put forward in this case. Yet we are satisfied it was without foundation.

We have received impressive character references in support of the Respondent and a detailed personal statement, to which we give some weight.

(c) Mr Branch takes issue with the claim for costs and the level, contending that the RIU should have taken steps to rebut the defence claim, as part of the pre-charging process, so that "if the new evidence had been put forward earlier then the guilty plea would have been made and no legal costs would have arisen". He says this would have avoided the Respondent incurring herself \$1,200 costs in obtaining evidence that she and her partner were not drug users. He argues that costs relating to the obtaining of the expert opinion and the RIU legal cost be refused.

(d) Counsel's submission is that a fine at "something less than \$3,000" was all that was required.

## **OUTCOME AND PENALTY**

17. It is mandatory that if a Greyhound competes in a race and is found to have competed with a Prohibited Substance in its system it must be disqualified from that race (Rule 61.4). Accordingly, "Zipping Sarah" is disqualified from first place in the "Len, Jane and Penny Hart Memorial Feature" at the CGRC meeting at Addington Raceway run on 12 November 2020. The Judge's placings are to be adjusted to record the consequentially revised placings. The Stake monies of \$4,011 for first, and other stakes earned for lesser placings, are to be redistributed in accordance with the revised placings. We are told that that stake has not been paid.

18. The issue of penalty or sanction in any case involving strict liability can be vexed. Where, as here, there is no deliberate wrongdoing on the part of a Respondent, he or she may argue that any disqualification is unwarranted. But the purpose of a sanction in such a case, is not so much as to punish, but to provide a deterrence to others participating in the Code so that they must be vigilant and take every precaution necessary to ensure that their greyhound does not ingest a prohibited substance before being presented to race. Issues of Animal Welfare are also predominant as a greyhound racing with prohibited substance in its system may be seriously compromised by the chemical effects of the substance. So strict vigilance is required. In many cases it is not possible to establish how such substance came to be present in the Greyhound. All that can be said in this case is that it entered the Greyhound's system somehow during the time it left Foxton and when it arrived in Christchurch.

19. We do not see that a lengthy disqualification is appropriate in a case such as this. It is important that Trainers take all possible steps to comply with the Rules, and there is crucial need to deter other, and to signal to the Greyhound Industry that Methamphetamine related breaches cannot be tolerated. A fine is not sufficient to meet the various sentencing factors. We conclude that an order for disqualification is necessary.

20. We take as a starting point 8 months disqualification. There are no aggravating factors. We accept, and give credit for, the Respondent's blameless record, over a lengthy period of successfully training Greyhounds. We note that she has paid the winning stake to her syndicate owners and recognise that she is further "punished" through loss of her percentage of the winning stake, she also incurs the reputational loss of being the Trainer of the winner of a Prestige race. For those mitigating factors we allow a significant discount of 50%.

21. Accordingly, the Respondent is disqualified for 4 months, commencing on 30 April 2021 so as to give her time to make arrangements for greyhounds now in her care.

22. Costs:

The Informant has had to incur considerable expense in investigating, obtaining expert and other evidence by reason of the "defence" mounted by the Respondent, or by the owners on her behalf, before the eventual guilty plea was made 3 months later. This amounts to \$6,341.30. We take into account Mr Branch's submissions, but the RIU could not have been expected to initially incur significant expense, involving obtaining expert opinion evidence when there had been no plea or clear advice of any positive defence being advanced. That did not occur until the Committee conference on 21 January 2021 when Counsel advised that the Information would be defended and that the defence would advance that the Methamphetamine and Amphetamine in the dog's urine sample was not because of pre-race ingestion, but by post race events. It was only then that the RIU had to take steps to rebut that signalled defence. Some contribution towards that expense and the RIU legal and preparation costs is justified, as well as the cost (\$1,507) of analysing the "B" sample. We fix the costs payment that is to be made to the RIU at less than half, namely \$3,000 which includes the "B" sample analysis cost.

23. In addition, the JCA has been put to expense in conducting a Conference, issuing 6 Minutes/Memoranda, reviewing witness statements, and considering lengthy arguments as to admissibility of evidence, and delivering a written decision on that issue. Some contribution towards those expenses is proper –and it is only a small percentage - which we fix at \$500.

24. To summarise:

(a) the greyhound "Zipping Sarah" is disqualified from Race 6 at the Christchurch Greyhound Racing Club meeting on 12 November 2020. The winning stake is to be distributed in accordance with the revised placings.

(b) Ms A H Turnwald, Licensed Public Trainer is disqualified for 4 months to commence on 30 April 2021 to 31 August 2021.

(c) She is ordered to pay \$3,000 towards the costs of the RIU, and \$500 towards to the JCA costs incurred in the proceedings.

By the Committee

Dated the 21st day of April 2021

Hon J W Gendall Q C (Chair)

**Penalty:**