

DECISION IN RELATION TO PENALTY

Presentation of a greyhound other than free of any prohibited substance in breach of rule 83(2) of the GRNSW Greyhound Racing Rules

INQUIRY NUMBER:	17S051
PERSON:	Mr Joseph McFadyen (Participant)
REGISTRATION:	Trainer
GRNSW INQUIRY PANEL MEMBER(S):	Mr Grant Carroll
DATE OF DECISION:	6 April 2018

CHARGE

1. On 14 August 2017 the GRNSW Inquiry Panel (**Inquiry Panel**) charged the Participant under rule 83(2) as follows:

That you, Joseph McFadyen, a registered trainer, while in charge of the greyhound 'Belmont Belle', presented the Greyhound for the purpose of competing in Race ten at Wentworth Park on 7 June 2017 in circumstances where the Greyhound was not free of any prohibited substance (**Charge**).

2. The prohibited substance was arsenic. Arsenic is identified as a category 5 prohibited substance under the GRNSW Penalty System (**Penalty System**).

ADMISSION

3. The Participant, by letter, admitted to the Charge and provided mitigating factors for the Inquiry Panel to consider in relation to penalty.

PENALTY

4. The starting point for the determination of penalty for a category 5 substance under the Penalty System is 12 weeks disqualification.
5. In accordance with the Penalty System, the Inquiry Panel considers a previous positive swab to arsenic on 10 February 2017 as an aggravating factor.
6. In accordance with the Penalty System, the Inquiry Panel considers that the following mitigating factors are present:
 - (a) The Participant's early admission to the Charge;
 - (b) The low level of the prohibited substance detected;
 - (c) The Participant has reviewed and amended his greyhound operating procedures to ensure that no similar breaches occur in the future;
 - (d) The Participant's contribution to the industry having served as the Treasurer of the Tamworth Greyhound Racing Club as well as work conducted alongside the Greyhounds As Pets; and
 - (e) The Participant's significant personal and financial factors which are not published here for privacy reasons.

7. The Participant submitted that the detection of the prohibited substance may have been as a result of contamination during the kennelling process. This included other trainers being allowed to enter the kennel bay post-race, prior to the Greyhound's bedding and water bowl being removed and taken to the secured swab bay.
8. The Inquiry Panel considers the submission of the Participant in relation to his request for information from GRNSW, including CCTV footage and confidential working documents. The Inquiry Panel notes that this information was not provided to the Participant. However, the Inquiry Panel is of the view that the information was either unlikely to materially affect the Charge or irrelevant to the Charge.
9. As a result, the Inquiry Panel considers that there is no evidence before the inquiry that supports the Participant's submission about contamination. Further, the Inquiry Panel notes that it is not for the Inquiry Panel to determine how, when, why or by what route the prohibited substance came to be present in the Greyhound. In this instance, there is no explanation before the Inquiry Panel as to the source of the prohibited substance that the Inquiry Panel can be comfortably satisfied to accept.
10. The Inquiry Panel considers the Participant's submission regarding hardship suffered as a consequence of the breach of the Rules and related penalty. However, the Inquiry Panel considers that, where any penalty is imposed, a level of hardship will naturally flow.
11. The Inquiry Panel also considers the Participant's submission regarding significant personal and financial circumstances that are not published here for privacy reasons. The Inquiry Panel notes that the aim of any penalty system is not of itself to punish those who have breached the Rules, but to ensure compliance with the Rules.
12. Having regard to the totality of the facts, the Inquiry Panel determines that a fine of \$1,000 is the appropriate penalty in the circumstances.
13. As the Greyhound was presented for the Race contrary to Rule 83(2), the Inquiry Panel also determines to disqualify the Greyhound from the Race pursuant to Rule 83(4).

Grant Carroll
Senior Inquiry Steward
GRNSW Inquiry Panel

Tammy Cootes:
Internal review by:
Manager Integrity and Inquiries