

## Appeal decision

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**Decision Date:** 2 June 2016

**Hearing Date:** 21 April 2016

**Code of racing:** Greyhounds

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**Appeal panel:** Mr B Miller, Chair, Mr P James and Mr D Kays

**Appearances:** Mr Richard A Smith of Attwood Marshall Lawyers, solicitor for the appellant Desmond Gilroy  
Mr M J Tutt, Solicitor for Racing Queensland

**Decision being appealed:** 18 months disqualification

**Appeal result:** Dismissed but penalty varied to a suspension of four months

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The appellant was the trainer of the greyhound *Mugged on Tour* when it raced at Ipswich on 29 December 2015. A urine sample was taken from the greyhound and upon testing that sample was found to contain cobalt at a concentration in excess of the allowed maximum under the relevant Legislation.

As a result the appellant was charged with a breach of Rule 83(2) of the Greyhounds Australasia Rules. That Rule identifies that a greyhound shall be presented *free of any prohibited substance* and in sub-section (3) identifies the trainer as one of the people who shall be guilty of an offence on such presentation. The threshold of the concentration of cobalt was exceeded after the testing procedures which would ordinarily mean that a conviction and penalty would follow.

The primary issue in this appeal centres upon the issue of two Certificates of Analysis both by the same drug testing laboratory and the appellant identifies that there is nothing untoward with the provision of the primary sample and its certification but that the second sample can only be properly certified if the Controlling Body considers there is a sufficient reason for seeking the first drug testing laboratory to be reappointed as it were for the purpose of testing the second portion of the sample or specimen. Under local Rule 18(7) *where for any reason the Controlling Body considers sufficient the Controlling Body requests the drug testing laboratory approved by the Controlling Body which has provided a Certificate as described in sub-Rule (1) to provide a further such Certificate*. Much argument was presented on the need for the Controlling Body to provide a Certificate of its Minutes making that determination. In the opinion of this Board the letter from the officer referring the reserve sample for testing by the same laboratory is sufficient to comply with the provisions

of LR18. In the circumstances the Certificate is valid and the finding of guilt in respect of presentation of the greyhound is also valid. The appeal in respect to the conviction is therefore dismissed.

Penalty was considered by the stewards and the extent of the penalty, (disqualification for 18 months) was loudly decried by the appellant and his counsel. The stewards acknowledged that there were no previous cobalt positives in the greyhound industry in Queensland and referred to various matters that involved thoroughbred penalties in Victoria and other States. The stewards raised a number of contentions relating to the need to take into account the views and aims of Racing Queensland in respect to the industry. They imposed the penalty to reflect a need to maintain public confidence in racing in that industry and to ensure the integrity of all persons involved. That is a policy to be admired but in doing so the stewards have an obligation to act fairly and justly.

The appellant acknowledges that the Rule under which he has been charged carries with it a strict liability to impose a penalty. The Rule does not demand that the penalty be excessive or even that there be a disqualification. As an absolute liability rule there have been many negative comments made as to the draconian and blunt instruments nature of the Rule. The penalty as noted however is discretionary and if there is evidence of mitigating circumstances, then the stewards should take cognisance of same and impose a penalty reflective of the mitigating features. The appellant identified the basis upon which the greyhound had been treated. It was also identified that the substance used for treatment contained, unbeknown to the appellant, Cobalt. Had he known of the existence of Cobalt, then this Board believes that a substantial disqualification period would apply. However, the evidence given by the appellant is sufficient to justify to this Board a determination that the appellant has been "caught" by those principles of strict liability and not through any culpable fault on his part.

The appellant did present the greyhound for racing whilst an illegal substance was present. He did so unknowingly but with appropriate foresight he should have made enquiry of all substances that were used by him in the care of the greyhound in question. The fact that he did not do so is sufficient to warrant a penalty of suspension being imposed. The period of disqualification of 18 months is varied to a suspension of 4 months.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)