TASMANIAN RACING APPEAL BOARD

Appeal No 22 of 2015/16

Panel:	**Mr Tom Cox (Chair)** **Ms Kate Cuthbertson** **Mrs Kate Brown**	**Appellant:**	**Mr Brendon Browning**
Appearances:	**Mr Graeme Barber on behalf of the appellant** **Mr Michael Hoyle on behalf of the stewards**	**Rules:**	**Greyhound Rules** **(1) 83(1A)(a)** **(2) 83(2)(a)**
Heard at:	**Hobart**	**Penalty:**	**(1) An 18 month disqualification** **(2) A 12 month disqualification** **(to be served concurrently)**
Date of hearing:	**19 August 2016**	**Result:**	**(1) Upheld** **(2) Upheld**

REASONS FOR DECISION

1. The appellant is a greyhound trainer. He presented a greyhound, *Prince Solo*, to race in Race 9 at the Hobart Greyhound Racing Club on 10 December 2015. *Prince Solo* finished in first place. A post-race urine sample was taken from the greyhound at around 11.10pm. This was then packaged and sealed. Subsequent analysis recorded the presence of Cobalt at a level of 135 nanograms per millilitre in sample "A" and 127 nanograms per millilitre in sample "B".

2. Stewards conducted an inquiry over two days, being 6 and 18 May 2016, which resulted in the appellant being charged and found in breach of the following Rules of Racing:

   GAR83(1A)(a) "*A person who – administers, attempts to administer or causes to be administered a prohibited substance to a greyhound – which is detected in any sample taken from such greyhound that has been presented for an Event or when subject to any other contingency provided for pursuant to these Rules, shall be guilty of an offence*."

   GAR83(2)(a) "*The owner, trainer or person in charge of a greyhound – nominated to compete in an Event – shall present the greyhound free of any prohibited substance*."

3. The appellant pleaded not guilty to both charges, however, the stewards found the charges proved and proceeded to disqualify the appellant for a period of 18 months for the first offence and 12 months for the second offence, with both periods of disqualification to be served concurrently. In the result, the appellant was disqualified for a total of 18 months.

4. The appellant has appealed against the stewards finding that he was in breach of the rule and the length of the disqualification imposed.

5. The appellant has raised numerous grounds of appeal relating to matters of procedural fairness, but, ultimately, the appellant contends that he is not in breach of the relevant rules because *Cobalt* was not deemed to be a prohibited substance in a quantity exceeding 100 nanograms per millilitre until after *Prince Solo* raced on 10 December 2015. At the commencement of the hearing of the appeal, on 19 August 2016, it became apparent that the resolution of this issue should be determined as a preliminary matter and, moreover, that the Board should exercise its powers pursuant to the *Commissions of Inquiry Act 1995* to compel Tasracing to produce to the Board any documentation evidencing the adoption of GAR 83(10), which provides as follows:

"Cobalt at or below a mass concentration of 100 nanograms per millilitre in a sample of urine taken from a greyhound will not breach the provisions of sub-rule (1A) or (2) of this Rule."

6. On 6 September Tasracing complied with that notice and produced to this Board various documents relating to the adoption by the Directors of Tasracing of GAR 83(10). On 7 September those documents were forwarded to the parties with a request that any written submissions attending the preliminary issue be forwarded to the Board by 26 September 2016. Submissions were received from both parties. For the reasons that follow we have determined that at the time *Prince Solo* raced in December 2015 GAR 83(10) had not been formally adopted and, as a result, the appellant neither presented nor administered a prohibited substance contrary to the Rules of Racing.

Determination

7. It is clear from the documents provided by Tasracing that the relevant rule, GAR 83(10), which declared *Cobalt* a prohibited substance in levels exceeding 100 nomograms per millilitre, was not adopted until 23 February 2016.

8. The minutes of Tasracing sub-committee for the Rules of Racing noted the proposed GAR83(10) at a meeting in September 2015, however, the sub-committee did not formally adopt the rule until meeting number 20 on 23 February 2016.

9. At that meeting the minutes recorded:

Resolution "approve the retrospective adoption of all rules previously noted".

10. S. 11(1)(k) of the *Racing Regulation Act 2004* provides that Tasracing is responsible for "*making (by drawing up its own local rules and by adopting Australian Rules of Racing) the rules of racing, having regard to the recommendations of the Director*."

11. The local rules expressly provide as follows:

3 Application of Greyhounds Australasia Rules.
3.1 The GAR as adopted by Tasracing shall apply and form part of these Rules.
3.2 If the GAR are amended in any way from time to time, such amendment must be adopted by a resolution of Tasracing before it is deemed to apply.

12. Accordingly, there can be no doubt that any amendment, in this case by the inclusion of GAR 83(10), shall not apply until it is adopted by a resolution of Tasracing.

13. Although it was not submitted by the stewards that the resolution made at the meeting in February 2016 applied retrospectively, any suggestion that it does must be rejected. There is a common law presumption against the creation of an offence with retrospective application. Moreover, the Rules of Racing, including the local rules, constitute an agreement to which industry participants are bound and, in the absence of local rules making provision for retrospective application, GAR 83(10) cannot be deemed to apply other than as prescribed by rule 3.2 of the local rules.

14. The appeal is upheld.

15. We order that the appellant have his deposit returned to him pursuant to Section 34(2) of the *Racing Regulation Act 2004*. The appeal having been successful we make no order as to transcription costs.

Decision handed down: 4 October 2016