

TASMANIAN RACING APPEAL BOARD

Appeal No 14 of 2014/15

Panel:	Ms Kate Cuthbertson (Chair) Mr Rohan Foon Dr Sue Martin	Appellant:	Mrs Margaret Rossendell
Appearances:	Mr Greg Barns on behalf of the appellant Mr Paul Turner on behalf of the stewards	Rules:	Greyhound Rule 83(2)(a)
Heard at:	Hobart	Penalty:	A four month disqualification
Date:	10 April 2015	Result:	Dismissed

REASONS FOR DECISION

1. The appellant is a greyhound trainer. She presented a greyhound, *Janda*, to race in Race 10, the Tattsbet Hobart Thousand Heat 8 Open at the Hobart Greyhound Racing Club on the 11th of December 2014. *Janda* finished in second place. A pre-race urine sample was taken from the greyhound. That urine sample was found to contain a prohibited substance, namely Heptaminol.
2. During the stewards' inquiry, the appellant pleaded guilty to the charge and was disqualified for four months. She is appealing against the severity of that penalty.
3. GAR 83(2)(a) of the *National Greyhound Rules* relevantly provides that:

“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”.
4. Heptaminol is a substance that is found in a product called Kynoselen. It is an over-the-counter product that is frequently used to help greyhounds recover after racing. It has long been accepted by stewards that Heptaminol is not performance-enhancing as such but is a substance that allows a greyhound to perform to its maximum potential by facilitating recovery between races: see *Bullock*, Appeal No. 23 or 2012/13; *Hills*, Appeal No. 10 of 2006/07.
5. During the inquiry, the appellant could not explain how Heptaminol came to be in *Janda*'s system. She did not dispute the finding that Heptaminol was in the urine sample taken from the dog. She told the inquiry that she had not put anything into the dog and queried whether the Heptaminol could have been present in the horsemeat fed to the dogs on a daily basis. She also indicated she did provide supplements to the dogs in her care, one of which was Vitrate. She indicated one container of Vitrate she used was missing a seal and wondered if it had been contaminated. She denied using Kynoselen at all.
6. During the inquiry, evidence was heard from Mr David Batty who is the Laboratory Director at Racing Analytical Services Ltd (RASL). He was asked by the appellant how much Heptaminol was found in the urine sample taken from *Janda*. He was unable to

advise the exact quantity but indicated the amount detected was not a low amount or a high amount. He described the amount of Heptaminol detected as a medium amount. The amount found in the sample was distinguishable from a trace amount and he would have expected much higher levels if the greyhound had only just been given Heptaminol. He also indicated that Heptaminol metabolises out of an animal's system relatively quickly. These matters were particularly relevant given the appellant's questioning whether the Heptaminol was present in the greyhound as a result of consuming contaminated horsemeat. Mr Batty expressed the view that this was an unlikely explanation given that it would require the horse to have been provided Heptaminol or a supplement containing Heptaminol shortly before being euthanised for it to remain in the meat. In his view, it was unlikely that a horse would be treated with such a supplement so soon prior to being euthanised.

7. When addressing the stewards in relation to penalty the appellant raised the following matters:

- At the time of the inquiry, the appellant had six race dogs in her care. Two were not currently racing as one had been injured and *Janda* was not currently racing.
- The appellant did not own any of the dogs that she was training.
- She had been involved in the industry for 35 to 40 years. She had not previously served a period of suspension or disqualification for a prohibited substance offence.
- Her main reason for continuing to train greyhounds was to provide her motivation to "get up of a morning and get her going". Any money she earns is used to fund the expenses associated with the care and maintenance of the greyhounds in her care. She indicated she received no profit from her operation and otherwise relied on government money for income.
- That a disqualification would be devastating to her.

8. In determining penalty, stewards took into account the following matters:

- The appellant's cooperation from the time of the notification of the positive sample through to the inquiry.
- Her guilty plea.
- Her 35-plus years in the industry.
- The amount of starters and the number of times that she has been swabbed over that period.
- The impact of disqualification upon her financially and emotionally.
- That the matter was to be treated as her first offence.

9. Balanced against these matters, stewards also took into account previous penalties that had been imposed for similar offences, and in particular those relating to Heptaminol, together with the need for the penalty to act as a deterrent to other participants to ensure that greyhound racing is conducted in a fair manner and that the integrity of the industry is

maintained to a high standard. They determined that disqualification was appropriate and imposed a period of four months. *Janda* was also disqualified from the race.

10. During the hearing of this appeal, the appellant accepted that disqualification was the starting point for an offence of this type. It was submitted, however, that the four months imposed was excessive. Reference was made to the matters raised in mitigation of penalty during the inquiry. In particular, it was submitted that the impact of disqualification upon the appellant was a significant factor in this case. A letter from the appellant's general practitioner was tendered indicating that she had been prescribed beta-blockers since the time of the positive swab due to her anxiety concerning the subsequent proceedings. It was submitted that the appellant had left her property and moved into her brother's place as a consequence of the disqualification imposed so that the dogs could remain on the property where they were now being trained by her daughter. It was acknowledged that this was a choice made by the appellant. Alternatively, she could have arranged for the dogs to be trained elsewhere.
11. The appellant's counsel referred to the Board's decision in *Pearce*, Appeal No. 17 of 2009/10. In that matter, the Board reduced the four month period of disqualification imposed by stewards to one of three months. A significant factor in so reducing the penalty was that the substance involved was a beta-blocker. Stewards in that case positively found that the appellant had no knowledge that the substance was in the dog's system when he presented her to race and that he had no knowledge of how it came to be in the dog's system. It was also specifically accepted that the appellant in that case did not administer the substance to the dog. Stewards categorised the offence as one at the lower end of the scale for offences of that type. In light of those positive findings and other significant mitigating factors, the Board accepted that a four month period of disqualification was excessive in the circumstances and varied the penalty to one of three months.
12. The circumstances in *Pearce* can be distinguished from the circumstances of this case. Stewards did not make a positive finding that the appellant had no knowledge of the presence of the substance in the dogs system. Notably, however, stewards did not positively find they could not accept her explanation that she had no knowledge. The stewards were silent as to that factor. The substance involved in the *Pearce* matter was one that was acknowledged by all parties to not be performance-enhancing. It was accepted by stewards that the substance involved would likely have had an adverse impact on the dog in question. It was an unusual substance and not one with a known impact on the outcome of races. Heptaminol, on the other hand, is a substance well known to those involved in greyhound racing to be: (a) a prohibited substance; and (b) allowing a dog to race to its full potential. The need for general deterrence is greater in a case such as this when compared with the circumstances involved in the *Pearce* matter.
13. On behalf of the stewards it is submitted that the onus was on the appellant to persuade the Board that the penalty imposed was manifestly excessive. It was submitted that when one looked at the penalties that had been given previously for prohibited substance offences and particularly those involving Heptaminol, a four month period of disqualification was not unreasonable. It was submitted that the stewards had taken into account all relevant circumstances and had balanced those appropriately against the principles of deterrence and the need to apply consistent penalties. It was submitted, with reference to previous decisions of the Board, that it is always a serious matter to breach a duty to present greyhounds drug free and that the penalty imposed must serve as a reminder to others of

the consequences of the breach. It was submitted that the penalty imposed in these circumstances was appropriate and ought not be disturbed.

14. The Board was not persuaded that the penalty imposed in these circumstances was manifestly excessive. Stewards fairly took into account all relevant factors that were put to them regarding the appellant's personal circumstances and the impact of disqualification. There was no specific error detectable in their reasoning for imposing the penalty that they did.
15. This Board has upheld disqualifications of four months in a number of previous cases: *Hills*, Appeal No. 10 of 2006/2007; *Medhurst*, Appeal No. 11 of 1991; *Bullock*, Appeal No. 23 of 2012/13. In one case, the Board has reduced a four month period of disqualification to one of three months: *Pearce*, Appeal No. 17 of 2009/10. In that case, the Board accepted there were some very unusual circumstances that justified a reduction in the penalty that might otherwise be appropriate for such an offence. No such unusual factors are apparent in this particular case.
16. For these reasons, the Board is of the view that the penalty imposed was well within the range available to stewards and could not be said to be so unreasonable and unjust that it was manifestly excessive in the circumstances of the case.
17. The appeal against penalty is dismissed.
18. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A).