

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL**  
**NEW SOUTH WALES**

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ASSESSORS: MR A. G. MULLINS**  
**MR K. RUSSELL**

**APPEAL OF MR OWEN LANGLEY**

**DECISION**

The Tribunal is considering a severity appeal by Owen Langley (the Appellant) against a disqualification of three months, imposed by the stewards, following an inquiry conducted on 30 March 2009.

The Appellant was the owner and trainer of the dog Pop Rocker, which successfully competed at Wentworth Park on 19 January 2009. The urine sample from the dog disclosed the presence of pholcodine.

He was charged as follows:

***Re: Notice of Charge - Rules of Greyhound Racing New South Wales – Rule 83(2)(a)***

*You are hereby notified that you are charged with an offence pursuant to Rule 83(2)(a) of the Rules of Greyhound Racing. You are required to attend before an Inquiry to be conducted by Stewards, at the offices of Greyhound & Harness Racing Regulatory Authority, 22 Meredith Street, Bankstown on the 10<sup>th</sup> March, 2009 at 11.00 a.m. to answer a charge pursuant to Rule 83(2)(a) which provides:-*

***R83 Racing greyhound to be free of prohibited substances***

***(2) The owner, trainer or person in charge of a greyhound –***

***(a) nominated to compete in an Event;***

***shall present the greyhound free of any prohibited substance.***

*Particulars:*

*That you did on 19.1.09 present the greyhound 'POP ROCKER' for an event being Race (5) The Sports Factory Stake held at GBOTA (Wentworth Park) other than free*

*of prohibited substances in that the race day urine sample taken from the said greyhound has returned on confirmatory analysis positive to PHOLCODINE (Rule 83(2)(a) Rules of Greyhound Racing).*

The stewards tendered various documents, by way of a Sample Identity Card, a Sample Kit Audit Document, the Australian Racing Forensic Laboratory certificate in relation to the urine testing, and a certificate of a confirmatory analysis undertaken by the Racing Science Centre, Queensland.

Also tendered was a letter from Dr Craig Suann, Chief Veterinarian of Racing NSW. Dr Suann commented:

*Pholcodine is a drug according to the Australian Greyhound Racing Rules since it has actions principally on the central nervous system (CNS) and the respiratory system. An opioid chemically related to morphine, pholcodine is a cough suppressant and has a mild sedative effect which relieves local irritation of the respiratory tract. Pholcodine acts primarily on the CNS causing depressing of the cough reflex which is due partly to the direct effect on the cough centre in the medulla. Pholcodine has little or no analgesic action.*

Pop Rocker won race 5, starting at a quote of \$7, having opened at \$4.50. When asked to provide an explanation as to how the urine sample contained pholcodine, the Appellant responded:

*I have got here what I have been using for years, Duro-Tuss. That is the bottle that I normally get. I asked the chemist for the one with the green label; they have given me this one, which has gone from glass to plastic and the colours are a bit different, and I just thought they had repackaged it. That's the one I've given, with the pholcodine in it; that one there doesn't, and it's perfectly legal.*

*... I've used, and it's perfectly legal. That's all I have got left of the one that I did use. As I said, I just thought they had repackaged the bottle. It has gone from glass to plastic, and the colour is a bit different on the label. They are both green. I asked for green, and they have given me the lime green by mistake.*

He went on to say that he had not administered any cough mixture within 48 hours of the race, and in this case it would have been closer to 60 hours. He maintained that the use of the prohibited substance was an accident, and that he used the preparation he had normally administered for some 15 years, without offending.

The Appellant was at pains to explain that he did not realise that he had acquired the bottle containing the offending substance by mistake, and that he had not realised that he had been given a bottle, different from the one that he normally purchased. In fact, the containers were a different shape and colour, albeit there were substantial similarities. However, he maintained that he believed it was the same product and that it had been repackaged.

He usually used a product Duro-Tuss Chesty Cough Liquid Forte. However, when he sought to obtain a further supply, he asked the chemist for the green-labelled Duro-Truss product. However, he was given a product Duro-Truss Cough Liquid Expectorant. The Duro-Truss he normally used had a dark green cap with a dark green label which contained the word "Forte". The Duro-Truss product he received had a light green cap and a light

green label, with "Expectorant" in the position where "Forte" appeared on the dark green label. There was no evidence before the stewards or before this Tribunal that the expectorant product had any pharmaceutical advantage.

It is the Appellant's evidence that he is not a punter. Presently aged 57, he principally relies on prize money and fees for his livelihood. He has 12 kennels and normally has 6 to 8 dogs in training. His net income is in the vicinity of \$30,000 to \$40,000 per annum.

He entered a plea of guilty before the stewards.

When considering the question of penalty the stewards took into account his record, which disclosed that in the 20 years he had been licensed there was only one matter involving a positive finding. He was placed on probation for 12 months, and no penalty was imposed. Apparently, the matter did not involve the administration of a prohibited substance. He stated that over the years he had been swabbed some 200 times without any offending substance being detected.

The Tribunal was told that the disqualification of the dog resulted in the Appellant losing \$3,000 in prize money. He believes that there is a substantial prospect that a disqualification will result in him losing the dogs in his care to other trainers and that he will have no income during such disqualification.

The Tribunal appreciates that disqualification will have a profound social effect upon him. His reputation will be affected, as will his standing in society. It stands to his credit that he had given a forthright account.

This Tribunal is aware that the Appellant is a successful career trainer, with many years devoted to the industry without any serious transgression. The Tribunal, however, as did the stewards, considers that there is a heavy onus on trainers to ensure that preparations administered to dogs do not contain prohibited substances.

The offence does not necessarily involve a deliberate breach of the rule. Nor is it necessary to establish a high degree of negligence or carelessness. Extreme caution must be exercised to prevent a dog being presented for racing when it is not drug free. A plea that it was not expected that the substance would be present is simply unacceptable. It must not be used in such a manner that it is within the dog when presented for racing. Trainers, owners, punters and the public are entitled to see that dogs racing on a level playing field. No hindrance or enhancement is permitted.

A penalty of disqualification will act as a denunciation of the Appellant's conduct and as a clear signal to other trainers of the heavy responsibilities imposed upon them by the rules—rules which must be adhered to if the industry is to maintain credibility and respectability.

The circumstances in this matter as to how the substance came to be administered, and the fact that it was a therapeutic drug and not a performance-enhancing drug, are matters to be considered.

There is no tariff in relation to these matters. However, a three-month disqualification is normally imposed, even in the case of a most mistaken or inadvertent administration of a prohibited substance. That is the penalty which must be anticipated as a minimum for breaches of Rule 83(2)(a).

The Tribunal, however, is prepared to find that in this case there are exceptional circumstances that take it out of the common breach of the rule. It accepts that the substance was purchased by mistake, albeit that it involved some carelessness, it takes into account the Appellant's frankness before the stewards and before the Tribunal, and his good record over some 20 years stands substantially to his credit. Accordingly, the Tribunal will ameliorate the penalty.

The disqualification is reduced from three months to two months. That period of disqualification is to commence from 17 April 2009.

The appeal deposit is forfeited.

J. C. McGuire, Judge  
20 April 2009