

**RACING PENALTIES APPEAL TRIBUNAL DETERMINATION**

**APPELLANT:** MR GRAHAM ELLIS

**APPLICATION NO:** 23/4626

**PANEL:** MR ROBERT NASH (CHAIRPERSON)  
MR PHILLIP GLEESON (MEMBER)  
MS NATALIE SINTON (MEMBER)

**DATE OF HEARING:** 31 OCTOBER 2023

**DATE OF DETERMINATION:** 31 OCTOBER 2023

**DATE OF PUBLICATION:** 18 DECEMBER 2023

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**IN THE MATTER OF an appeal by GRAHAM ELLIS against a determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing to impose a disqualification of 9 months for breach of Rule 21(1)(d) of the Rules of Greyhound Racing**

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Mr Graham Elliss self-represented.

Mr Denis Borovica and Mr Graham O'Dea appeared for Racing and Wagering Western Australia.

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**Determination**

1. This is the unanimous determination of the Tribunal.
2. Mr Graham Ellis is a registered RWWA greyhound trainer. His appeal is against a disqualification of 9 months imposed by the RWWA Stewards for a breach of Rule 21(1)(d) of the Rules of Greyhound Racing (**Rules**). He contends that the penalty imposed was 'very harsh' which the Tribunal understands to be a contention that it was manifestly excessive.
3. After an inquiry by the Stewards on the 5 September 2023, Mr Ellis was charged with breaching Rule 21(1)(d) of the Rules. Rule 21(1)(d) provides relevantly that a person must ensure that any greyhound in the person's care or custody is at all times provided with veterinary attention when necessary. The particulars of the charge were that Mr Ellis, being a licensed person with RWWA, failed to provide veterinary attention to the injured tail of greyhound, DEADLY DATA, when necessary, whilst the dog was under his care.
4. DEADLY DATA subsequently developed sepsis from its tail injury and was required to be euthanised.

5. After the Steward's inquiry, Mr Ellis was charged with the offence and he immediately pleaded guilty. He accepted, with the benefit of hindsight, that his efforts in trying to self-treat DEADLY DATA were plainly inadequate. He accepted the dog should have been taken to a veterinarian much earlier than it was. Mr Ellis demonstrated insight into his failings and remorse for what had occurred. He has a good record with no antecedents for mistreatment of animals in his care.
6. After considering the matter, the Stewards indicated that the starting point for offences of this kind was 12 months disqualification. After taking into account factors in mitigation, the Stewards imposed a disqualification of 9 months.
7. The Stewards made the following observations at paragraphs [2] and [3] in their reasons for penalty which accompanied their letter of 21 September 2023 to Mr Ellis informing him of the penalty imposed:

*“As a licensed trainer, you are afforded an important privilege. The very survival of this industry relies upon those afforded with such privilege exercising the highest level of care for greyhounds in their control. The public does not accept compromise with respect to maintaining the health and welfare of greyhounds used in the racing industry. Trainers are granted a licence on the basis of having skills and experience necessary to deliver these expected high standards. As a trainer of your experience, it was not unreasonable to expect that you would have applied a higher standard of care than you did in the management of what was a not uncommon injury. For an injury such as this, to endure the length of time in question and deteriorate under your supervision to the point it did, where the greyhound had to be euthanised is, in our view, a gross failing of your responsibilities.*

*The welfare of greyhounds is the highest priority to the Stewards when it comes to the wellbeing of the industry. Without very high standards in this area the industry would not be able to continue and flourish.”*

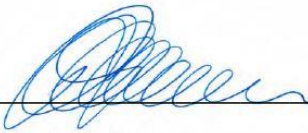
8. In the Tribunal's view, the penalty of disqualification was appropriate and consistent with precedent. The clear message must be that poor care of animals, even if based on a mistaken view as to its treatment needs, will not be tolerated in the racing industry. The industry's very survival and licence to operate relies on the maintenance and enforcement of the highest standards of animal care. Mr Ellis agrees and accepts that his care of DEADLY DATA fell considerably short of what was required.
9. In this case, Mr Ellis argues that a 9 month disqualification is excessive and not necessary for his personal deterrence given his demonstrated insight and remorse for what occurred. The Tribunal accepts that the need for personal deterrence is not a major factor in this case. However, personal deterrence is only one factor to be considered. General deterrence in cases like this is a significant factor, given the public interest in the maintenance of high standards of animal welfare in the racing industry. The industry's ongoing public licence to operate necessitates that any failures by participants in maintaining the highest standards of animal welfare must be seen to be dealt with firmly.
10. It is well established that a penalty will only be manifestly excessive if it is shown to be plainly unreasonable or unjust. The range of penalties customarily imposed for certain kinds of offences is of significance although each case turns on its own facts and circumstances. Sentencing precedents provide a general guide only and serve as one of the factors to be

taken into account. The discretion conferred on the primary decision maker, namely the Stewards, is of fundamental importance and this Tribunal will not substitute its own opinion merely because it would have exercised the discretion differently: See generally, *Houghton v State of Western Australia* [No 2] [2022] WASCA 7, [224] to [228].

11. The Tribunal discerns no error in the Stewards' determination that the starting point for penalties involving a breach of Rule 21(1)(d) of the Rules is a disqualification of 12 months, in circumstances where:
  - a) an animal has been euthanised;
  - b) the euthanasia of the animal is a result of the trainer's failure to obtain veterinary care when it was objectively necessary;
  - c) the trainer's actions did not involve a deliberate act or an act of cruelty that would warrant a higher starting point, and
  - d) the trainer has no relevant history of mistreatment of animals in his care.
12. The Stewards reduced the penalty by three months to take into account the mitigating factors that apply in this case, namely the plea of guilty, the demonstrable remorse of Mr Ellis, his personal insight into his offending, the unlikelihood of him breaching the Rules in this way again, and his demonstrated good character.
13. The Tribunal does not consider there was any error in the process by which the Stewards arrived at a penalty of 9 months disqualification. The penalty imposed has not been shown to be plainly unreasonable or unjust.
14. For the reasons set out above, the appeal was dismissed on 31 October 2023.



**ROBERT NASH, CHAIRPERSON**



**PHILLIP GLEESON, MEMBER**



**NATALIE SINTON, MEMBER**

