

HEARING DETAILS

Date	24 th February 2023
Time	5.00 PM AEST
Venue	Via Zoom
Tribunal Panel	<ul style="list-style-type: none"> ▪ Greg Bisinella (Chair) ▪ Craig Burnett ▪ Julie Green
Appellant	Mark Hipworth
Independent Observer	Taylah Perry

PROCEEDINGS

Opening Summary	5.00pm	Matthew McDonough – Via Zoom
Hearing Procedure/Overview	5:15pm	Panel Chair – Via Zoom
Chief Steward		Written statement
Witness 1		Graeme Goldsworthy (verbal statement)
Appellant		Mark Hipworth
Panel Deliberations		Panel – Via Zoom
Finding		Panel Chair – Via Zoom
Hearing Closed	7:00pm	

HEARING MATTER

Appeal from Athlete/Trainer Mark Hipworth against the **conviction and the severity** of the sanction provided by the Chief Steward Robert Lehmann at the VAL sanctioned Keilor Gift Meeting held 18th February 2023.

The charge as attached is an offence listed under Section 16 of the VAL regulations (refer link below for full regulations)

Charge

- 16.13 A person shall comply with an order or direction given by the Stewards
 16.15 A person shall not abuse, intimidate or be deliberately obstructive of the Stewards.

Charge Notes per attached VAL Charge Sheet.

Penalty

1. Fine \$150 - Upheld
2. Suspension – 2 Meetings – Overturned, suspended sentence of 4 weeks

Dispute

Per rule 19.11 (b) an appeal cannot be made against the decision of the Stewards in relation to a fine of less than \$250 thus the matter for consideration is in relation to the additional sanction imposed of 2 Weeks and was that warranted based on the charges laid

VAL REGULATIONS

<https://www.val.org.au/Portals/0/downloads/VAL%20REGULATIONS%20FINAL%20-%20NOV%202022.pdf?ver=Q4g-OfR4bLGJsn8wHQfRVQ%3d%3d>

Applicable sections of the VAL Regulations:

SECTION 15: STEWARDS - RESPONSIBILITY AND DUTIES

15.13 *The Stewards shall not be required to make any explanations to any individuals as to any action taken*

SECTION 16: OFFENCES

16.13 *A person shall comply with an order or direction given by the Stewards*

16.15 *A person shall not abuse, intimidate or be deliberately obstructive of the Stewards.*

SECTION 17: PENALTIES

17.1 *One or more of the penalties set out below may be imposed on an Athlete, Trainer, other person, or body who is found guilty of an offence under these Regulations:*

- a) *a fine within the limits fixed by the VAL, but in any event no greater than \$10,000;*
- f) *conditional or unconditional suspension for a period;*

17.10 *Before an offence is found proven, the following conditions shall be satisfied:-*

- a) *the offender shall be afforded reasonable opportunity to cross examine witnesses, make submissions, present evidence to the VAL, VAL Tribunal, or the Stewards as the case may be;*
- b) *those submissions or evidence shall be taken into account;*
- c) *evidence relied upon in establishing the offence shall be identified;*
- d) *in a matter before the Stewards, those Stewards who finally determine that an offence has been committed shall be present during the whole of the proceedings.*

SECTION 19: APPEAL PROCESS AND VICTORIAN ATHLETIC LEAGUE TRIBUNAL

19.11 *Except as provided by Regulation 19.12, an appeal cannot be made against the decision of the Stewards or the VAL in relation to the following matters or circumstances:*

- b) *where the penalty is a fine of less than \$250.*

19.18 *The VAL Tribunal may in its absolute discretion and subject to such conditions as it thinks fit suspend in whole or in part the operation of the decision which is the subject matter of the appeal to the VAL Tribunal pending the determination of the appeal*

19.14 *Any person charged by the Stewards with a minor offence may exercise the right to have the charge further examined by the Race Day Referee. Where an Athlete waives this right, the penalty issued in the charge shall stand and no further right of appeal is available.*

19.29 *The VAL Tribunal may dismiss a proceeding without a hearing if it is satisfied that the proceeding is frivolous, vexatious, misconceived or lacking in substance*

19.30 *At a hearing or inquiry conducted under these Regulations:*

- a) *a person or body is entitled to have a representative present in the room or place where the inquiry is being conducted;*
- b) *a person under the age of 18 must be represented by an agent or parent;*
- c) *a person with an English language disability may be assisted by an interpreter;*
- d) *a club or other body may be represented by a member or official;*
- e) *where scientific, medical or other expert questions arise a person affected may have present an adviser in such a field to hear evidence and to assist in the framing of questions and submissions and at the discretion of the stewards to question a witness;*
- f) *written or oral evidence may be tendered;*
- g) *a written or oral opinion on legal, scientific, medical or other expert matters may be tendered in evidence*

19.31 *Subject to Regulation 19.33, no member of the legal profession will be permitted to represent an appellant in any hearing conducted under these Regulations*

19.37 *The VAL Tribunal may in the hearing or determination of any matter:*

- a) *draw inferences of fact;*

- b) penalize any person, and for that purpose a reference in the Regulations to any penalty by the Stewards or the VAL includes a penalty by the VAL Tribunal; and
 - c) give any judgment or decision or make such order as in the VAL Tribunal's opinion the justice of the case requires.
- 19.38 Without limiting Regulation 19.37, the VAL Tribunal may in hearing an appeal:
- a) confirm, set aside or vary the decision appealed against;
 - b) quash, set aside, mitigate, reduce, alter, vary, increase or add to the penalty imposed by the Stewards or the VAL in exercising any power conferred on Stewards by the Regulations; and
 - c) refer the matter on appeal back to the Stewards or the VAL for rehearing or reconsideration of the decision

HEARING FINDINGS

1. The Appeal Panel were in receipt of written submissions from the Chief Steward Rob Lehmann and Appellant Mark Hipworth.
2. The Appeal Panel heard verbal submissions from the Chief Steward outlining his account of events. He supported his written submission outlining his instructions to the appellant and his belief that he felt intimidated. He indicated that the actions of the appellant were in breach of VAL regulations 16.13 and 16.15.
3. Handicapper Graeme Goldsworthy presented a verbal submission to the panel. He indicated that, from his position near the Chief Steward, he heard the Chief Steward direct the appellant to leave the ground on 3 or 4 occasions. He indicated the appellants voice was clearly audible from some distance away.
4. The appellant provided documents to the panel in relation to previous correspondence with the Chief Steward pertaining to a NAP given to one of his athletes. The tribunal gave little weight to this evidence given the timing and appellants acceptance that he was aware that he was largely familiar with the VAL rules. He also agreed that the VAL has a process for communicating with the League and its Officials.
5. The appellant provided verbal submissions indicating that he did comply with the directions of the Chief Steward and did not act in an intimidating manner towards the Chief Steward. He indicated that the Chief Steward acted in an aggressive manner towards him and that he appealed to the Chief Steward to stop being aggressive.
6. In considering the matter the panel found that the appellant was in breach of the VAL regulations 16.13 and 16.15. Specifically, that he did not immediately comply with the directions of the Chief Steward and to a lesser extent intimidated the Chief Steward.
7. The panel formed the opinion that the appellant had approached the Chief Steward and failed to immediately comply with his instructions to leave the ground. Whilst we accepted that he may have been moving away, he did continue to remonstrate with the Chief Steward putting himself in breach of the regulation 16.13.
8. The panel also agreed that the Chief Steward could have reasonably felt intimidated by the actions of the appellant.
9. The panel decided to uphold the decision of the Chief Steward.
10. In consideration of the outstanding record of the appellant and his contribution to the sport of professional running as an athlete and trainer the panel deemed it would be reasonable to allow him to continue to coach and compete without immediate suspension.
11. Consequently, the Panel have decided to retain the \$150 fine and provide a suspended sentence.
12. Should the appellant breach regulations 16.13 or 16.15, or any other related regulation within the next 12 months, he will be subject to a 4-meeting suspension.
By way of clarification the trigger for the suspension would not include an NAP, or any other breach of regulations pertaining to his athlete performance. The panel has set the parameters for the suspension trigger to be a related action to ensure the action does not re occur. Similarly the panel does not want the 4 meeting suspension to be triggered as a result of a running performance or a minor misdemeanour.