

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF  
MR P HOGAN (MEMBER)

**APPELLANT:** ELIZABETH STREMPEL

**APPLICATION NO:** A30/08/549

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR P HOGAN (MEMBER)  
MR W CHESNUTT (MEMBER)

**DATE OF HEARING:** 28 NOVEMBER 2001

**DATE OF DETERMINATION:** 21 FEBRUARY 2002

IN THE MATTER OF an appeal by Elizabeth Stempel against the determinations made by the Stewards of the Western Australian Turf Club on 19 October 2001 imposing fines of \$1,000 and \$2,500 for breaches of Rule 177A of the Australian Rules of Racing.

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Mr G Stempel was granted leave to represent the appellant.

Mr G M Bush appeared for the Stewards of the Western Australian Turf Club.

**INTRODUCTION**

Official trials are provided for by the Australian Rules of Racing. On Monday 16 July 2001, the Western Australian Turf Club held trials at the Lark Hill track. Present on behalf of the Turf Club were a stipendiary steward, Mr Mance, and a veterinary surgeon, Dr Davies. The appellant, Mrs Elizabeth Stempel, had the horse REDIJEV entered in heat 7. It was ridden by Jockey J Noske. What occurred is not in dispute, and is adequately summarised in the Steward's report of Mr Mance. The report is set out below.

"Near the 200m Jockey J. Noske was dislodged when Redijev fell. Shortly after I attended both gelding and rider along with the ambulance officers and Veterinarian, Dr R Davies. It was soon established that

Redijev had fractured both front legs. The gelding was quickly euthanased by injection and placed onto a float.

I advised Trainer Mrs L. Stempel that a urine sample would be taken from the gelding. She stated that Redijev had been treated with Ketoprofen (5mls) on the 12<sup>th</sup> July 2001 and also Broncopulmin Powder.

With myself and Mrs. Stempel present, at approximately 11.18 am, Dr. Davies collected a urine sample from Redijev using a catheter which he grabbed from his vehicle.

The sample was placed in an empty medical specimen container supplied by Dr. Davies and was sealed with a Baldivis Veterinary label signed by all three persons. A list of treatments and other particulars was documented and signed.

The urine sample was in the care of the stewards until returning to the offices of the Western Australian Turf Club where Veterinary Steward Dr. P Symons split the sample in the presence of Stipendiary Steward Mr. G. Bush and myself.”

Both the Australian Racing Forensic Laboratory and the racing laboratory of the Hong Kong Jockey Club reported the presence of the prohibited substances methylprednisolone, ketoprofen and benzhydrol metabolite of ketoprofen.

An inquiry was conducted on 21 September and 19 October 2001. At the conclusion of the evidence, the appellant was charged with two offences under Australian Rule of Racing 177A. The particulars of each charge, as taken from the transcript, were as follows:-

**CHAIRMAN** Mrs. Stempel after considering all the evidence placed before the Stewards to this stage of the Inquiry, we find that the prohibited substance methylprednisolone was administered to REDIJEV prior to it trialling (*sic*) at Lark Hill on Monday the 16<sup>th</sup> of July and as such we believe you should be charged under Australian Rule of Racing 177A which I'll read that Rule to you ... Now we charge you in terms of that Rule in that you as the Trainer of REDIJEV brought that gelding to trial at Lark Hill on the 16<sup>th</sup> of July, 2001 where it was found to have administered to it the prohibited substance methylprednisolone.

**CHAIRMAN** Further to that Mrs Stempel, after considering the evidence placed before the Stewards to this stage of the Inquiry, we find that the prohibited substance ketoprofen was administered to REDIJEV prior to it trialling (*sic*) at Lark Hill on Monday the 16<sup>th</sup> of July, 2001 and as such we believe you should be charged under AR, Australian Rule of Racing 177A, I won't read that Rule again, but that's the same Rule...

Mrs Stempel pleaded not guilty to both charges. She was convicted of both, and it is from those convictions that she now appeals. The appellant sought and was granted a stay of proceedings on the lodgement of the appeal.

The grounds of appeal are as follows:-

1. Breach of chain of custody in handling swab.
2. Breach of procedure in taking swab.
3. Laxity in taking swab and methods used.

In formal terms, what the appellant is challenging is the admissibility of the evidence against her. No challenge is made to the laboratory findings.

The beginning point in considering the appeal is the statutory framework.

### **SAMPLES FOR THE PURPOSE OF DRUG TESTING - THE RULES**

Rule 8(j), provides that the Stewards have power to make or cause to be made any test in their opinion desirable to determine whether any prohibited substance has been administered. After that Rule, there is no provision in the Rules as to how the testing is to be carried out. To conclude the “statutory” scheme, Rule 178D provides for notification and handling procedures between laboratories. It also provides for an evidentiary presumption.

We were informed at the hearing of this appeal that the procedures for how post race testing is to be carried out form what is called “Standard Operating Procedures”. These procedures fill the gap between Rule 8(j) and Rule 178D for samples taken after a race. The Australian Racing Forensic Laboratory determined the procedures, with some amendments made by the Stewards in Western Australia for local conditions. They are published in a document called “Collection of Post Race Drug Samples - Standard Operating Procedures”. The document is annexed to these reasons.

There are also two other prescribed procedures relating to the taking of samples. They are “Veterinary procedures for dead or badly injured horses”. One procedure is prescribed for city tracks, and one for country tracks. The veterinary procedure at city tracks permits the vet on course to collect blood and urine samples if possible. The procedure at country tracks does not require the vet on course to take samples. There are two documents published by the Stewards relating to these procedures. The two documents are also annexed to these reasons. Neither of the two procedures say anything about the steps to be taken in the sampling and handling.

In this case, a urine sample was taken, as is permitted by Rule 8(j). In the taking and handling of that sample, there was no procedure to be followed. The standard operating procedures apply to post race sampling, not the circumstances which occurred here. This was a trial, not a race.

The question on this appeal is what evidentiary weight should be given to the taking of the sample and its result, in light of the fact that the standard operating procedures, or similar procedures, were not carried out.

It is useful first to consider the standard operating procedures, even though they do not apply. That is because they provide an example of a satisfactory system for the taking and handling of samples.

**STANDARD OPERATING PROCEDURES - POST RACE**

These procedures say nothing about the scientific processes to be carried out in the laboratory. That is left to the laboratories themselves. The procedures are written to ensure that the sample is able to be related back to the horse in question, that the content of the sample is what was extracted from the horse and nothing else, and that non contamination of the sample can be demonstrated. Once the procedures are followed, the result is not open to question, except in rare circumstances. That is because Rule 178D(3) provides that the result is prima facie evidence of administration once it has been obtained where the standard operating procedures have been followed.

Procedure A1 requires the selected horse to be accompanied by staff at all times prior to attending the sample collection area. Procedures A2 and A3 require that the trainer's witness is present for the entire procedure, and that the horse is properly identified. Procedure C2 says that the trainer's witness should observe all stages of the procedure. Procedure D contains provisions generally concerned with the packaging of the sample and documentation. If all of these steps are followed, the sample will be able to be related back to the horse in question. The affected trainer would be satisfied that there was no mistake.

Procedure B1 contains provisions regarding sealed sampling kits, and auditing the contents. Procedure C1 requires those involved in the taking of samples to wash their hands, and use disposable gloves. If these procedures are followed, it should be the case that the sample will not be contaminated.

In order to prove that the sample has not been contaminated, Procedure C3(a) requires that prior to collection, the urine collection pan be rinsed with tap water and the water rinsed through the sample bottles and then retained in its own bottle. This then becomes the control sample. If it contains no prohibited substance, then none of the sampling equipment contained a prohibited substance, and the sample taken from the horse is free from contamination.

The standard operating procedures, together with the laboratory's scientific methods, and the provisions of Rule 178D, provide an ideal system for the proving of the presence of a prohibited substance. They protect the interests of the Stewards and the person who might ultimately be accused of an offence. They provide for evidence of continuity, reduce the risk of contamination, and provide for evidence of non contamination.

In this case, there was no attempt to follow the standard operating procedures. They did not have to be followed, because what was taken was not a post race sample. However, there was then no room for the operation of Rule 178D(3). Rule 178D(3) could not operate because there was no relevant control sample. There was a control sample sent to the laboratories, but it was not one taken at the time of sampling. The control sample came from a different process, not connected to the standard operating procedures. The evidence which came back to the inquiry in this case had the appearance of evidence arising out of the carrying out of the standard operating procedures, at least because the evidence from each laboratory included a clean control sample and the card was signed on behalf of the trainer.

**THE FACTS - NON CONTAMINATION**

The catheter which Dr Davies used to extract the urine sample was a blood tube. It was brand new, and Dr Davies took it from its packet. He was satisfied that it was clean when used. The sample was collected directly into a specimen container. It was a once only container and it was sterile. Dr Davies could not recall whether he used gloves. He had no reason to believe that any of the prohibited substances found in the samples had been on his hands.

As to obtaining the catheter and the specimen container, Dr Davies said at T49:-

“It was a new one, because you know, it was still in its packet and I took it out of the packet, out of the car and gathered that plus the bottle and went to collect the sample from the horse.”

As to the specimen bottle, Dr Davies said:-

“I just happened to have one, well we carry them in the vehicle from time to time in case you need to put a specimen in there and they’re a single use container. I mean if you open the container for something you’d throw it away because it wouldn’t, it would no longer be sterile after that.”

As to the possibility of contamination of the sample from other sources, Dr Davies said that there was nothing on his hands which could have caused contamination (T51), and there was no contamination of the catheter from the floor of the float in which the procedure was carried out (T53). In summary, Dr Davies was satisfied that there was no contamination.

The Stewards by their findings were also satisfied that there was no contamination. They were satisfied that the prohibited substances had been administered.

The appellant gave evidence as to the presence of the prohibited substances. She gave a statement to the racecourse investigator, and that statement was read at the inquiry (T13). The statement to the racecourse investigator said in part:-

“Mrs Stempel accepted that she had administered REDIJEV with Ketoprofen three to four days prior to the Lark Hill trial which she understood on veterinary advice as the recommended withdrawal time for this medication. When asked to explain the presence of Methylprednisolone, Mrs Stempel explained that when the horse had come into work, her vet, Dr Trevor Lindsay, had treated the horse’s joints with “depo”. Mrs Stempel stated that was three weeks prior to the trial. Mrs Stempel added that she advised Dr Lindsay of when the horse would be trialing and he determined which medication was to be administered, allowing caution as to the timing of the recommended treatment outside of the horse being trialed or racing.”

The effect of Mrs Stempel’s evidence was that the prohibited substances had not been administered. The drug depomedrol (containing methylprednisolone), and the drug ketoprofen, had been given to the horse well before the relevant withdrawal times. She pleaded not guilty to both charges. There was therefore a



factual dispute between her and the Stewards. Contamination of the sample must have been a possibility on the facts of Mrs Stempel's case.

### **THE FACTS – RELATING THE SAMPLE TO THE HORSE IN QUESTION**

The urine sample, once extracted, was placed in the empty medical specimen container which Dr Davies had collected from his car. It was sealed with a label from Dr Davies' practice. The appellant, Mrs Stempel, was present and she signed the label. The label was also signed by Dr Davies and Mr Mance. The sample was then transported to the offices of the Turf Club. (T8).

The Turf Club veterinary steward, Dr Symons, gave evidence of what occurred at the Turf Club offices. At T9, Dr Symons said:-

“Yes, the sample was brought back in a medical specimen bottle and because the Australian Racing Forensic Laboratory in Sydney require two samples, we split it back at the office. So, under the observ (sic), observation of Mr Mance and Mr Bush I did what we normally do in the swab box, I did a control wash through with two extra bottles and I split the sample that came from Lark Hill, placed it in two bottles, both of which went to the laboratory with one of their ARFL specimen cards, as is the normal procedure they receive samples from us.”

The ARFL specimen card which Dr Symons was referring to was the one provided for by Procedure D5 of the standard operating procedures. However, it had little evidentiary value in the circumstances of this case, because it was not signed by the trainer or his representative at the time of sampling or at all. That is because the sampling was not done according to standard operating procedures. There was no card there at Lark Hill at the time. The ARFL specimen card which was tendered in evidence as exhibit I at the Stewards' inquiry was filled out after the events at Lark Hill, at the Turf Club offices, and signed by the Steward Mr Bush as witness for the trainer, who is the appellant here.

As said by Dr Symons in his evidence, the sample, in its two parts, the control, and the specimen card were all sent off to the laboratory. On finding the prohibited substance, The Australian Racing Forensic Laboratory sent the reserve portion and the control to the racing laboratory of the Hong Kong Jockey Club. Both laboratories reported back to the Stewards, and their reports came back as exhibits in the inquiry.

The Stewards, by their findings and in reliance on the exhibits, were satisfied that the sample reported on by both laboratories was a sample of the urine taken from the horse at Lark Hill. The Stewards were satisfied that the sample related to the horse in question. Again, the effect of Mrs Stempel's evidence was that the prohibited substances had not been administered to REDIJEV. As well as possible contamination, an incorrect identification of the sample was another possibility based on the appellant's version of events.

**EVIDENCE OF NON CONTAMINATION**

There was evidence of non contamination, because Dr Davies said so at T49, T51 and T53. There was also other evidence of non contamination of the sample, arising out of the level of the ketoprofen, and its metabolite, detected by the laboratories. Mr Vadasz, a chemist at the Australian Racing Forensic Laboratory, gave evidence on the subject.

As to the benzhydrol metabolite of ketoprofen, Mr Vadasz said at T37:-

“You know, if, if metabolites are present we may screen for them, analyse for them in the first place, it eliminates a possible contamination because a metabolite cannot arise by contamination, it has to have passed through the body of the animal ... And secondly, in this particular case, with the metabolite of ketoprofen, it is significant because it's only detectable for the first 24 hours after administration”.

As to the ketoprofen itself, Mr Vadasz said at T38:-

“... The sample when we first screened it was so heavy that it overloaded the detector and shut it down in the instrument, there was so much present. So, it wasn't a trace of ketoprofen that was detected, it was a heavy amount.”

The above evidence was given by Mr Vadasz in the context that the appellant had admitted giving the horse ketoprofen and depomedrol (methylprednisolone).

But none of the instruments used to collect the sample had been rinsed with water, and that water collected as a control sample. Dr Davies said that the catheter he used was sterile (T49). He said that the container he used was not contaminated (T49 to T50). However, Dr Davies also confirmed that no control water sample was taken prior to collection (T47). Collecting a control sample is one of the required procedures for post race urine sampling. It is presumed to have been done when Rule 178D is relied upon. (see 178D(3)).

**DISCRETION NOT TO RELY ON EVIDENCE**

Evidence which is otherwise relevant to an issue in dispute can be excluded or given little weight in the exercise of a discretion. The discretion is most often exercised in criminal cases. (Cross on Evidence Paragraph 11125). In my opinion, the evidence of the taking of the sample and the result from the two laboratories ought not to be relied on in this case. I reach that conclusion for a number of reasons.

Firstly, It would be unfair to the appellant herself that the evidence be relied upon to any significant extent. She was not given the opportunity to have the sample tested herself. She could not effectively test the scientific evidence against her. Further, the appellant could not effectively test the evidence about relating the sample back to the horse. If it had been a post race sample, these considerations would normally not weigh heavily, because conformity with the standard operating procedures and Rule 178D provides safeguards for an accused trainer. However, there were no safeguards here. Both laboratories reported their findings in the absence of a relevant control sample and the

appellant was not present to sign the card when the sample was split at the Turf Club offices.

Secondly as a matter of policy, the evidence should be given little weight. That is because to rely on it here would amount to giving approval to a process which lacks any system and which contains no safeguards for accused trainers. In the absence of any reasonable system, there will never be a control sample or a sample card signed on behalf of the trainer, and the safeguards similar to those in the standard operating procedures will not be available to accused trainers. That there is a discretion in courts to exclude evidence on grounds of public policy has been recognised in such cases as *Ridgeway -v- The Queen* (1994 - 1995) 184 CLR 19, and *Pavic -v- The Queen; The Queen -v- Swaffield* (1998) 192 CLR 656. The rationale behind that policy is that courts have an implied power to protect their processes. (*Ridgeway -v- The Queen* per Mason CJ, Deane and Dawson JJ at page 31). That same rationale and principle can be applied to the processes of this Tribunal, in reaching the conclusion that the evidence in this case ought to be given no weight.

The stringent controls necessary for the maintenance of the integrity of the industry apply as much to the Stewards as to licensed persons. In *Harper - v - Racing Penalties Appeal Tribunal* (1995) 12 WAR, Anderson and Owen JJ said at page 347:-

“It may well be anticipated that unless racing is perceived to be fair and honest, people may be discouraged from betting. This might be thought to justify stringent controls in respect to the administration of drugs to horses and the enforcement of those controls by peremptory means.”

Their Honours further said at page 348:-

“The view may well have been taken that the only practical way to achieve this is by stringent rules which place on persons who wish to participate in the industry quite onerous responsibilities to present for racing only horses that are drug free.”

The nature of the relationship between the appellant and the Stewards on behalf of the club is a contractual one. (*Harper* at page 348). There is no reason in principle, or indeed in law, why both the Stewards and licensed persons should not be subject to stringent controls. On the part of the Stewards, that must mean that they should go about collecting and presenting the evidence in a way which is perceived to be fair to the licensed person who is accused of an offence. For the reasons expressed above, I am of the view that the evidence was gathered and dealt with in a way that was less than satisfactory. For that reason, I would give the evidence little weight in this case.

It is relevant also that there would have been little difficulty for the Stewards to provide for a better system of taking the samples. A kit similar to the one used for the standard operating procedures is an inexpensive item. A vet is present at all trials. At the hearing of the appeal, no reason was advanced as to why there was no system in place at trials for the taking of samples in circumstances that occurred in this matter.

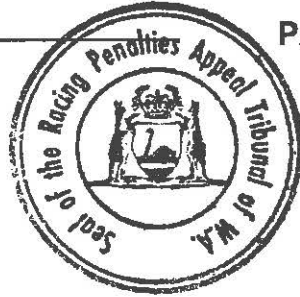


**CONCLUSION**

The evidence of the taking of the sample, and the results reported by the laboratories, should not be relied upon. That being so, there was no other evidence on which the appellant could be convicted of either of the two offences. I would therefore allow the appeal.

*P. J. Hogan*

**PATRICK HOGAN, MEMBER**



**COLLECTION OF POST-RACE DRUG SAMPLES  
Standard Operating Procedures (February 2001)**

**Accompany horse** A. Collecting the horse from the enclosure.  
1. Horses selected for post-race sample collection (SC) should be continuously accompanied by SC staff prior to attending the SC area. They are allowed to drink water from a hose or freshly drawn water in a bucket. They should not be given any medication or drink water from buckets that have been left unattended and possibly adulterated.

**Licensed Witness** 2. SC staff should ensure the trainer's witness is licensed with the WATC (eg strapper, track-work rider) and will stay with the horse for the entire SC procedure. Owners are not permitted to act as witnesses.

**Identify the horse** 3. Horses to be sampled should be identified (usually from a Brands and Markings sheet available from the Stewards) prior to the procedure. Visually confirm the sex of the horse.

*To obtain a urine sample it is important the horse has cooled off, has recovered from the race and is hydrated. Allow the horse adequate water and time to cool off and recover prior to entering the SC stall. If the horse fails to settle or 'sweats up' during SC it can be permitted to leave the stall and walk under supervision.*

**Sampling Kits/Audit Document. Return all SI cards and Tribags** B. Green (Urine) and Red (Blood) Sampling Kits:  
1. All Sample Identity (SI) cards, Tri-Bags and an Audit Document are in Sampling Kits (Green—Urine, Red—Blood).  
2. All samples, all un-used or voided SI cards and Tri-Bags and the completed Audit Document must be returned in the correct Sampling Kit. This ensures the chain of custody.  
3. After opening a Sampling Kit check the Audit Document and note the Sampling Kit Bag and green seal number are correct.  
4. During the day complete the Audit Document. For each SI card record Used, Voided (for SI cards with mistakes or where no urine sample was produced) or Unused.  
5. If a urine sample is not produced blood must be collected using a new SI card from the red Sampling Kit.

**Complete new card for blood** C. Sample Collection  
1. All SC staff including veterinarians should wear a new pair of disposable gloves for collection and packaging of samples (either blood or urine). Hands should be washed prior to the first sample collected on the day.

**Use of gloves** 2. The SC procedure should be explained to the trainer's witness if they are unfamiliar with the procedure. This includes all stages from opening the bag containing the SC bottles to packaging and documentation. The trainer's witness should observe all stages of the procedure.  
3. Collection of urine:  
a) Prior to the SC tap water is used to rinse the collection pan. The same water is then rinsed through all three SC bottles (with lids in place) and retained in the third bottle. This water (control water) is retained as a scientific procedure in case there is a contaminant in the tap water, pan or bottles.  
b) During urine collection the SC bottles should be locked away if the SC staff cannot directly observe them (the Stewards will provide a lockable box for this purpose).  
c) If the horse is quiet let it loose to wander in the stall area.  
d) Collect urine in the collection pan and fill each of the two remaining SC bottles to the start of the bottle neck. If sample is limited fill each urine bottle equally no matter how little is collected ie split any quantity. Secure lids firmly.

**Explain procedure**

**Control Water**

**Securing SC bottles**

**9 blood tubes**

**Correct procedure**

**Verify numbers including Tri-Bag No.**

**Place labels**

**Tri-bag**

**Signing**

**Seal all samples, cards, Tri-bags in Kit. Vet/Sample Collection Incident form**

4. If a urine sample cannot be obtained collect 9 blood tubes using a new SI card/ Tri-Bag from the red Sampling Kit.  
a) Label all 9 x 10ml lithium heparin Vacutainer blood-tubes with the ARFL Sample (SI) card number.  
b) Collect blood. Ask the trainer's witness to verify the blood tube numbers match the SI card numbers. Place three tubes upright in each swab bottle. (Empty the bottle containing the control water).  
D. Sample packaging and documentation.  
1. Correct labelling, signing and packaging of SC bottles, SC labels, SI card and blood tubes (if required) is vital. If in doubt about any part of the procedure consult the Steward in charge of the meeting. For CLIENT on Part C of SI card write WATC.  
2. Ensure the initial details i.e. date, track, horse and horse's sex are correct. Ask the witness to verify these details and that the SC label numbers match the SI card numbers. Include the Tri-Bag number on all relevant parts of the SI card.  
3. All three bottles must be sealed with the SC labels over the top and down the sides of the bottle. The Control label goes on the control water bottle (urine) or any one of the three bottles (blood).  
4. Place the three bottles in the Tri-Bag with the Control sample in the middle. Place Part C of the SI card unfolded, in an end pouch, with numbers facing outwards through the clear side of the Tri-Bag (to make bar-code scanning easier). Seal the Tri-Bag.  
5. After completion of packaging ensure all parts of the SI card are complete. Both the SC staff and witness must sign the SI card. Part A goes to the Stewards. Part B goes to the trainer's witness.  
E. Sample storage on the race-course. Samples are to be retained securely or deposited with the Stewards and preferably kept cool.  
F. Sealing of Sampling Kit. When sampling is completed the samples and all remaining cards should be checked and placed in the Kit. The red seal number is recorded on the Audit Document and the Kit sealed.  
G. Other Matters. Ensure you complete the Vet/Sample Collection Incident form available from the Stewards.  
H. Transport. Samples to be transported upright, secure and cool. Courlered samples must arrive at the WATC offices during office hours with notification to the Stewards so they can be promptly secured.  
I. Storage. Urine should be frozen/blood should be refrigerated prior to despatch to the ARFL

Contact Peter Symons on 0412-197759 for information

<b>Equipment required for urine samples</b>	
Green Sampling Kit containing ARFL SI card (with labels) and Tri-bags	
Urine collection pan	3 ARFL SC bottles with plastic seal lids intact
Disposable gloves	Brands and Markings sheet.
<b>Additional equipment required for blood sampling</b>	
Red Sampling Kit containing ARFL SI card (with labels) and Tri-bags	
Vacutainer needles and holder	Vacutainer tubes (10ml/lithium heparin)
Cotton wool/antiseptic	

OFFICE OF THE STEWARDS  
- 3 DEC 2001

ATTACHMENT - APPEAL 549

## ATTACHMENT - APPEAL 549

### VETERINARY PROCEDURE FOR DEAD OR BADLY INJURED HORSES

#### (A) Getting to the scene of the accident

- (1) Have a vehicle available for transport  
i.e. take it on the wood-chip track to all starts  
including 1400, 1600 and 1800
- (2) Watch the race to observe falls or break-downs
- (3) Have appropriate equipment to deal with any emergency

#### (B) On arrival at the scene

- (1) The vet is the responsible person and must take charge of proceedings
- (2) Make a diagnosis and a management decision. If euthanasia is an option consider the following points :-
  - (i) Is the horse insured?
  - (ii) Consult with the owner or trainer if possible to obtain their opinion and to get permission for euthanasia.
  - (iii) You must be able to justify a decision to euthanase the animal. If in any doubt obtain a second opinion from another veterinarian or refer the animal with appropriate first aid and analgesia.

#### (C) If the horse is to be euthanased

- (1) Remove the horse from the track if at all possible. A float must be available for this.
- (2) If removal of the horse isn't possible, screens should be used.
- (3) The vet is the person responsible for ensuring the animal is humanely euthanased.
- (4) If time and circumstances permit, collect 5 vacutainer tubes of blood for chemical analysis.  
Do not collect blood pre-euthanasia if the delay compromises the animal's welfare.

#### (D) After death

- (1) Collect blood (if possible) and urine samples.  
(bottles and a catheter are in the stewards' cupboard)
- (2) Submit samples to Lab in the normal manner. Indicate on the Analyst's card that the horse died or was euthanased.
- (3) Organise for the horse to be autopsied at Murdoch (protocol and forms for sample submission are in the Stewards' cupboard)  
Simple lower limb fractures may be dissected out at the track to ascertain extent of the injury.

Correct care and management of badly injured horses is vital for racing's image. Please ensure that the horse is humanely cared for, for the horse's and the public's sake.

Please read the following photostats from the AEVA Publication "The Official Veterinary Surgeon at Thoroughbred & Harness Race Meetings"

P.J. SYMONS - Veterinary Steward

## ATTACHMENT - APPEAL 549

### VETERINARY PROCEDURE AT PROVINCIAL OR COUNTRY RACES FOR DEAD OR BADLY INJURED HORSES

(A) Getting to the scene of the accident

- (1) Organise the barrier attendants vehicle to pick you up if a horse breaks down.
- (2) Watch the race to observe falls or break-downs.
- (3) Have appropriate equipment to deal with any emergency.

(B) On arrival at the scene

- (1) The vet is the responsible person and must take charge of proceedings.
- (2) Make a diagnosis and a management decision. If euthanasia is an option consider the following points:-
  - (i) Is the horse-insured?
  - (ii) Consult with the owner or trainer if possible to obtain their opinion and to get permission for euthanasia.
  - (iii) You must be able to justify a decision to euthanase the animal. If in any doubt obtain a second opinion from another veterinarian or refer the animal with appropriate first aid and analgesia.

(C) If the horse is to be euthanased

- (1) Remove the horse from the track if at all possible. A float must be available for this.
- (2) If removal of the horse is not possible, screens should be used.
- (3) The vet is the person responsible for ensuring the animal is humanely euthanased.

(D) After death

- (1) If possible, send a report with a description of the cause of death or type of injury if the animal is euthanased.

Please send to Dr. P.J. Symons  
c/- W.A. Turf Club  
PO Box 222, Belmont WA 6104

Correct care and management of badly injured horses is vital for racing's image. Please ensure that the horse is humanely cared for, for the horse's and the public's sake.

Please read the following photostats from the AEVA Publications "The Official Veterinary Surgeon at Thoroughbred & Harness Race Meetings" and "Euthanasia of Horses".

**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF  
MR D MOSSENSON (CHAIRPERSON)**

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Mr G Stempel was granted leave to represent the appellant.

Mr GM Bush appeared for the Stewards of the Western Australian Turf Club.

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I have read the reasons for determination of Mr Hogan, Member. The facts of the case are comprehensively addressed and the issues fully identified in Mr Hogan's reasons. I cannot usefully add anything by summarising the facts again.

This appeal involves the alleged administration of 2 prohibited substances to a horse prior to it trialing at Lark Hill. Rule 177A of the Rules of Racing makes it an offence for any prohibited substance to be present in horses which are being trialed or raced at recognised training tracks or race-courses. Lark Hill is a recognised training track. For the betting public to have confidence in the propriety of the racing industry this rule must be strictly enforced. When a drug is detected and proven to be present contrary to the prohibition in the rule the offender must be severely punished both for the misdemeanour itself and as a message to others in the industry. Through the sentencing process those in authority must demonstrate they are properly enforcing the rules. The Stewards are authorised to do this



by regulating those licensed persons who fail to adhere to the terms of their licences. Once licensed, participants potentially may derive a livelihood from the sport, subject to continuing to observe the contractual terms of their licences.

Without a licence to train a trainer cannot pursue an involvement in the racing industry. Because of the serious consequences of taking away a trainer's licence both from an industry and an individual perspective Stewards cannot lightly convict. Upon convicting, Stewards have a discretion to deprive a trainer of an income. Other persons are also usually affected by the termination of a trainer's licence including owners and employees of trainers. Those other persons all depend on the integrity of the trainer with whom they are associated as well as continuity of that trainer's licence to enable the training establishment to continue operating. Equally, to be convicted and fined for a drug offence is a serious stain on a trainer's professional record. The adverse repercussions of such a conviction to the standing of a stable and on owners and the betting public at large can be significant.

Trainers themselves, as well as their employees and those owners who entrust their horses to those trainers, are entitled to expect those who make the decisions to convict for drug offences to have reached their conclusions only after first exercising their minds properly following fair hearings. An important element of any such hearing is the ability of the adjudicator to rely on the scientific evidence. There should be no room for substantial inaccuracy in scientific measurement or doubt about the reliability of the analysis process by the laboratories which carry out the testing.

Equally there should be no room for sloppy and problematic practice and procedure associated with the taking and handling of samples prior to them reaching the laboratories for testing.

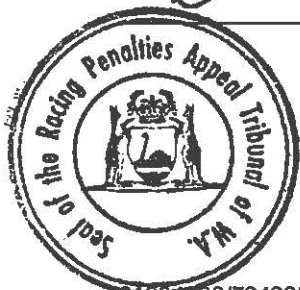
The material before the Tribunal reveals the standard procedures for collection of drug samples are clearly laid out. In fact those requirements are relatively simple to follow. These sensible and fairly obvious practices and protocols have been laid down and applied to ensure the integrity of samples, in the first instance, and the consequent reliability of the testing processes and appropriateness or otherwise of convicting and punishing suspected offenders.

In this case, as Mr Hogan makes clear in his reasons, the collection practices and protocols were not followed. I agree with the Member's conclusion that the laboratory results should not be taken into account in the process of determining whether Ms Stempel committed the offences.

Accordingly, I agree with Mr Hogan's conclusions and I too would allow the appeal.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF  
MR W CHESNUTT (MEMBER)

APPELLANT: ELIZABETH STREMPERL

APPLICATION NO: A30/08/549

PANEL: MR D MOSSENSON (CHAIRPERSON)  
MR P HOGAN (MEMBER)  
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 28 NOVEMBER 2001

DATE OF DETERMINATION: 21 FEBRUARY 2002

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IN THE MATTER OF an appeal by Elizabeth Stempel against the determinations made by the Stewards of the Western Australian Turf Club on 19 October 2001 imposing fines of \$1,000 and \$2,500 for breaches of Rule 177A of the Australian Rules of Racing.

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Mr G Stempel was granted leave to represent the appellant.

Mr G M Bush appeared for the Stewards of the Western Australian Turf Club.

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I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and conclusion and have nothing to add.



WILLIAM CHESNUTT, MEMBER



DETERMINATION OF  
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This is a unanimous decision of the Tribunal.

For the reasons published the appeal is upheld and the convictions quashed.

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*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

