

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: SEAN ROBERT CASEY

APPLICATION NO: A30/08/667

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

DATE OF HEARING: 1 May 2007

DATE OF DETERMINATION: 1 August 2007

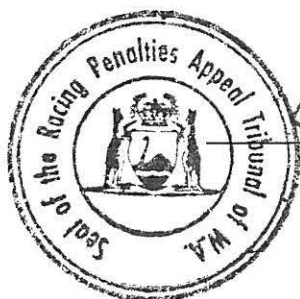
IN THE MATTER OF an appeal by Sean Robert Casey against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 12 February 2007 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

Mr S R Casey appeared in person.

Mr J Zucal appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This is a unanimous decision of the Tribunal.

The appeal against both conviction and penalty is dismissed.



DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)

APPELLANT: SEAN ROBERT CASEY

APPLICATION NO: A30/08/667

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

DATE OF HEARING: 1 May 2007

DATE OF DETERMINATION: 1 August 2007

IN THE MATTER OF an appeal by Sean Robert Casey against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 12 February 2007 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

Mr S R Casey appeared in person.

Mr J Zucal appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

On 18 October 2006, licensed trainer Mr S R Casey was interviewed by Stipendiary Steward J Timperley who was accompanied by the Racing and Wagering Western Australia (RWVA) Industry Veterinarian Dr J Medd regarding a notice of irregularity concerning a post race sample. On 14 November 2006 the RWVA Stewards of Thoroughbred Racing commenced an inquiry into a report received from the Racing Chemistry Laboratory in Perth that the post race urine sample taken from POLOIBIRD, after it won Race 7 over 1200m run at Belmont

Park on 14 September 2006, contained hydrocortisone at a mass concentration in excess of 2.00 micrograms per millilitre of urine. Mr Casey in his capacity as the trainer of POLOIBIRD was called to the inquiry. This was the first time Mr Casey, who enjoyed over 20 years experience in the industry, had appeared before the Stewards in relation to a drug related matter. The record of the October interview was introduced early in the Stewards' proceedings and eventually marked Exhibit J much later in the inquiry (at page 102 of the transcript (T102)).

At the initial inquiry some documentary evidence was introduced. Exhibit A, Sample Identity Card No. W16779 – POLOIBIRD (T5) requires no comment. Exhibit B, Report of Analysis of Racing Chemistry Laboratory 18 October 2006 (T6), is the letter received from the Chemistry Centre in Perth addressed to Mr J Zucal, Chairman of Stewards, attaching the report. The Report specifies *"The presence of hydrocortisone at a concentration greater than 2 micrograms per millilitre was confirmed in the sample of urine."* The Report went on to state that the control sample had been dispatched to the Australian Racing Forensic Laboratory with the request that the sample be analysed for the presence of hydrocortisone in excess of 1 microgram per millilitre of urine. The report notes *"The samples were received in good order with the seals intact ..."* Exhibit C, External Confirmation Test Certificate dated 19 October 2006 (T7), includes the certificate from the independent laboratory. The Australian Racing Forensic Laboratory in New South Wales specified that the sample contained *'...hydrocortisone at a concentration of greater than 2mg/L. The above prohibited substance was not detected in the corresponding control sample'*.

During the initial hearing before the Stewards Mr C Russo, Manager Racing Chemistry Laboratory Perth, gave evidence that normally there is a natural level of hydrocortisone within an animal's body (T12). The level can increase or decrease depending on a number of things like stress. In addition, Dr Medd gave evidence that under the Rules of Racing there was a specified threshold for hydrocortisone to avoid horses with levels below the threshold being treated as positive due to their natural levels of hydrocortisone. The Stewards were told this threshold was set internationally. Further the level set was robust, holding up well under scrutiny simply because a horse's average level when tested was about a twentieth of the threshold. In other words the threshold was deliberately set at quite a high level to allow for wide fluctuations in the natural endogenous cortisone levels (T14).

Mr Casey made it clear to the Stewards at the initial proceedings (T8) that he was questioning all aspects of the analysis of the sample taken from POLOIBIRD. The initial part of the inquiry was a short affair, at the conclusion of which, proceedings were adjourned until 5 February 2007 to enable the raw data in relation to the testing to be produced at the request of Mr Casey. At the resumption of the inquiry the following further exhibits were produced:

Exhibit D: Raw Data - Racing Chemistry Laboratory, Perth (T2)

Exhibit E: Raw Data – Racing NSW (T3)

Exhibit F: Documentation re Chain of Custody (T3)

Exhibit G: Facsimile from Mr S. Casey (T3)

Exhibit H: Further information from Chemistry Centre WA dated 3 January 2007 (T3).

During the adjournment, Mr Casey was provided with copies of the exhibits as well as the transcript of the initial hearing. Armed with that material, Mr Casey consulted two experts in the United States, namely Dr Thomas Tobin and Dr Andres Lehner. Dr Tobin is a well known veterinarian, pharmacologist and toxicologist. Dr Lehner is Section Head of Toxicology, University of Kentucky Livestock Disease Diagnostic Centre. Dr Tobin produced a report which incorporated Dr Lehner's report (marked Exhibit I (T 83)). Dr Tobin's report contained a summary of his opinions followed by details of the facts supporting each opinion and closed by repeating the summary. The summary reads:

'The veterinary/sample collection report form shows that the individual who witnessed the sample collection for the WA Racing Authority failed to sign the procedures, used fresh rubber gloves, and had no topical medications. His/her failure to sign this declaration shows that the authority cannot guarantee that he/she followed these important procedures, thereby invalidating this entire forensic process.'

The entire documented procedure presented to my colleague and I fails completely to identify the procedures followed concerning the collection of the critical 'control' or 'wash' sample, the procedures followed in collecting, sealing and transfer of the sample, and indeed this sample does not appear anywhere in the SOP or chain of custody record until it suddenly appears in the second analysis. We respectfully submit that no generation SOP or chain of custody evidence whatsoever for this critically important control has been presented, again invalidating this sample and therefore this forensic analysis.

The critical audit seal number D89465I is also not recorded in the sample transfer process, but appears mysteriously, reportedly colored blue, in one of the reports of the Racing Chemistry Laboratory. Lack of recorded transfer to the laboratory of the container bearing this seal number, which seems to be a master seal number for the entire transfer process, again casts very substantial doubt on the integrity of yet another step in the chain of custody of this forensic process.

Additionally the 'inventory of samples to be delivered document' is not signed by the receiving officer in the appropriate place, and it is also unclear how one single number is appropriate for all the urine samples received, again casting very substantial doubt the integrity of another step in the chain of custody in this forensic process.

The matter of the actual rule being applied is also unclear. The Western Australian analysis reports and asks for confirmation of concentrations in excess of 2 mcg per ml, raising the question of whether or not the rule is being applied fairly and equally, since those samples which read between one and 1.99 mcg per ml are presumably in violation but not being regulated. This is ultimately a legal question, but it is appropriate for us to raise this matter, for the record, in our analysis of the data presented to us.

The matter of the forensic validity of the ELISA screening test used to identify this sample for further testing is unestablished. No clear written criteria that must be met by the screening test for the sample to proceed for further testing have been

made available to us, even though such written criteria are required by ILAC, another critical forensic deficit.

The final matter of concern is the so-called 'control sample'. For this entire forensic procedure, as structured, to be valid, this 'control sample' must be a valid sample and be shown to be analytically negative. In view of the fact that there are no SOPs for collection of the sample, and that the sample does not appear on the sample collection slip or in any of the chain of custody records, it is therefore not a valid forensic control sample for this procedure, and furthermore, the data certifying its status as negative have not been made available for review.

On these bases, and the related bases presented by my colleague Dr Lehner, we respectfully suggest that the analytical reports presented in this matter be set aside'.

Dr Tobin's report, clearly was based on the material that had been sent across to him, being the documentary material produced in the early part of the Stewards' inquiry. The report goes into considerable detail to support the summary. Exhibit I advances the argument that the entire forensic process was invalidated due to the failure to sign the declaration in relation to the veterinarian collection report form. In the body of the report Dr Tobin deals with matters under the following headings:

2/ The matter of the collection procedures followed in the chain of custody: The "veterinary/sample collection report form"

3/ The "sample identity card"

4/ The "sample kit audit document"

5/ The "inventory of samples to be delivered to the racing chemistry laboratory"

6/ The November 18 "result" of examination report

7/ The matter of the hydrocortisone concentration report

8/ The matter of the ELISA analyses;

9/ The so-called "control" or "wash" sample:

If the facts upon which this report is founded were true, then without doubt the allegations as to invalidity made by the two United States experts would be established and no reasonable Stewards would have proceeded to charge Mr Casey with this presenting offence.

Exhibit I was read out by the Chairman of Stewards early on during the resumption of the Stewards' inquiry proceedings (starting at T5). This was followed by detailed discussion of the matters raised. All of the assertions and conclusions contained in Exhibit I were the subject of close questioning and comment as the inquiry unfolded. For example, soon after this report was read out, Dr Medd responded to some of the assertions contained within Exhibit I and addressed a number of the issues particularly the aspects of the wearing of the gloves (T13 - 19) and the standard operating procedures (T20 and 22). More detailed

evidence followed later. Mr Russo also commented on Exhibit I (T23 onwards) at an early stage before going into more detail subsequently.

Dr Lenher's report goes into considerable technical detail. The summary contained within his report reads as follows:

- 1 *'Despite confusion the SOP regarding use of RIA, screening was apparently done with dexamethasone and methylprednisolone ELISAs, with samples grouped two at a time and later run separately.*
- 2 *A LC/MS screen was performed on a sample with examination for M+H compounds, but no information as to how the sample was treated. It is also unclear what the lab concluded from this screen.*
- 3 *GC/MS quantitation was next performed, involving generation of methoxime/TMS derivatives, and comparison to standards and d6-int. std. Measured result: 7.8 ug/ml.*
- 4 *LC/MS quantitation with extensive check of standards, controls and sample. Measure result: 1.6-1.8 ug/ml.*
- 5 *It is unclear why a d6-HC internal standard was used for GC/MS and a d5-HC i.s. was used for LC/ML. The certificate of analysis of both these internal standards (if they are in fact different) should be presented.*
- 6 *Rigorous confirmation of hydrocortisone by following three or more ions by IC and presenting their ratios per AORC criteria was not followed.*
- 7 *The SOP claims "urinary free cortisol" is the measurement criteria, but doesn't define this specifically as non-glucuronidated or non-protein bound (or both).*
- 8 *Dr Crone claims that "severe exercise" can cause excretion of protein; since cortisol is >90% protein bound, high protein in urine can be an explanation for high cortisone, but this is apparently not taken into consideration by the lab. Sean Casey worries that the horse in question had severe head trauma, but nowhere is there a veterinarian report of examination of the horse pre- or post-race.*
- 9 *Dr Loh states that additional samples – up to five – must be taken to verify a horse's hydrocortisone status, but this was not done.*
- 10 *Validation criteria for the SOP were nowhere presented.*
- 11 *Dr Brooks admits that cortisone doping is not as simple to determine as testosterone, owing to the lack of extrinsic ratios equivalent to the T/E ratio of testosterone, and with only a threshold value for comparison.*
- 12 *Exogenous hydrocortisone administration can be detected by isotope-ratio-mass spectrometry, but this was not performed.'*

Mr Casey gave evidence that he personally administered solucortif to POLOIBIRD intravenously around 24 hours before it raced (T95-99). Further that "it was more than likely

that this horse had a shot of dexamethazone" (T100). Mr Casey was not sure if he gave the horse a shot of dexamethazone "... on the Monday for the Tuesday gallop ...".

The inquiry continued on 12 February 2007. Some time was devoted to hearing evidence by telephone from Dr Stenhouse, the Official Analyst of the Australian Racing Forensic Laboratory. Mr Casey then made submissions on the evidence. The Stewards eventually laid a charge against Mr Casey (T177) pursuant to Australian Rule of Racing 178 which reads:

'When any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who is in charge of such horse at any relevant time may be punished'.

The charge was expressed as follows:

'... bringing POLOIBIRD to Belmont Park racecourse on the 14th of September 2006 for the purpose of engaging in Race 7 the Ellicorsam Handicap over 1200m with hydrocortisone in excess of 1 microgram per mille of urine being detected in the post-race urine sample taken from the gelding' (T177).

Mr Casey pleaded not guilty to the charge. He was convicted in the following terms:

'... the Stewards have considered the charge, all the evidence and there are extensive submissions in regard to this matter. The Stewards are also aware of the standards of proof to which we must turn our minds in assessing a case of this nature where there may be potential for adverse findings to have significant implications for yourself. The determination of this matter requires us to make findings of fact using the Briginshaw standard working to the higher level. We have therefore carefully assessed and weighed all the evidence presented in accordance with these principles in arriving at our decision and do not take lightly the onus on us. The Racing Chemistry Laboratory in Perth and the Australian Racing Forensic Laboratory in Sydney have provided raw data and further documentation in regards to the analysis of sample no. W016779. Manager of RCL, Mr Russo and the ARFL Official Analyst, Mr Stenhouse gave evidence. Mr Russo attended in person and gave extensive evidence and was cross-examined. This cross-examination was assisted by input from your experts Dr Tobin and Dr Lehner by telephone link. Mr Stenhouse gave evidence via telephone and was cross-examined. Mr Russo and Mr Stenhouse are very experienced racing chemists and head two significant Australian racing laboratories which have full accreditation from the National Association of Testing Authorities, NATA. They are world-class racing laboratories which conduct innumerable number of tests on samples associated with racing and have done so for many years. The presence of elevated hydrocortisone levels in horses that have raced is not a new sphere of analysis for these laboratories which have through the years reported on many such samples. The methodology employed by them does not represent any new approaches or techniques to what have been longstanding accredited procedures. That two such independent laboratories both reported your sample to be far in excess of the threshold lends strong confidence to the veracity of their findings. From the outset you have sought as you are entitled to do so, to thoroughly test the veracity of the reported findings

from both laboratories. Your thoroughness and that of the experts engaged by you could not have been more exhaustive. Every available avenue has been fully explored in great detail. Dr Tobin and Dr Lehner both American veterinary experts provided an extensive written report on the raw data supplied and gave evidence via telephone. The contents of their reports and the areas of concern raised by them were used in the cross-examination of both Mr Russo and Mr Stenhouse. Some of the matters raised by Tobin and Lehner did not go to the heart of the issues related to the actual analysis and interpretation of the data. In other cases such as that concerning the wash sample it was patently demonstrated that your experts did not fully appreciate the manner in which these samples are taken, packaged and transported, thus leading to conclusions made on misapprehension of facts. This is but one example where through clarification it became apparent that the criticism simply fell away, a point conceded by you at that time. Of the many areas canvassed by them, many related to general procedural matters or criticism of levels of documentation produced and supported for the findings rather than them being a criticism of the finding itself. These matters did not amount to establishing sufficient reasons to discount the findings of the laboratories. It is clear that both the ARFL and the RCL have made every effort to provide as much information as possible to comply with your requests for the raw data. The broad and unspecific request to provide everything has been complied with to the best of their ability. This required some interpretation by individual laboratories to decide what qualified as raw data in order to comply with the request. The Stewards do not believe that you've been denied anything of a critical nature. By virtue of the vast amount of information provided, your experts were able to prepare detailed reports, a clear indicator that they had ample information to guide their considerations. As mentioned the points raised by them have been subject to further cross-examinations of the reporting laboratories. This cross-examination served to further confirm the veracity of the initial reports when both Mr Russo and Mr Stenhouse were able to satisfy the Stewards in response that their analysis and findings could be relied upon for the reasons they gave. Having heard their responses to the matters raised by the experts, the Stewards are satisfied that the evidence given by them both verbal and documentary can be relied upon to confirm the sample taken from POLOIBIRD did have a level of hydrocortisone in excess of the permitted level. Dr Judith Medd was present throughout this inquiry and also gave evidence and was cross-examined. This is the third hearing of this inquiry. Extensive evidence has been taken and considered. In considering this matter, the Stewards are mindful of Australian Rule of Racing 178(d) which reads: Samples taken from horses in pursuance of powers confirmed on the Stewards by ARR.8(j) shall be analysed by only an official racing laboratory. Upon the detection by an official racing laboratory of a prohibited substance in a sample taken from a horse such laboratory shall – a) notify its finding to the Stewards, who shall thereupon notify the trainer of the horse of such finding; and b) nominate another official racing laboratory and refer to it the reserve portion of the same sample and, except in the case of blood sample, the control of the same sample, together with advice as to the identity of the prohibited substance detected. 3) In the event of the other official racing laboratory detecting the same prohibited substance, or metabolites, isomers or artifacts of the same prohibited substance, in the referred reserve portion of the sample and not in the referred portion of the control, the certified findings of both official racing laboratories shall be prima facie evidence upon which the Stewards

may find that a prohibited substance had been administered to the horse from which the sample was taken. In relation to the analysis of POLOIBIRD and sample no. W016779, the Stewards are in possession of the certified findings of both official racing laboratories. Mr Casey, you have in essence recommended to the Stewards that on the evidence produced, the Stewards should not proceed with this hearing, as in your opinion, the analytical data from both laboratories are flawed. The Stewards have given that great consideration and on the evidence before them, and cannot agree with the suggestion for these reasons, for the reasons already mentioned. Mr Russo went to great lengths to explain and support his findings. Mr Stenhouse commented on Dr Lehner's report and answered questions. The Stewards, after considering the evidence of Mr Russo, Mr Stenhouse, Dr Tobin and Dr Lehner could not find fault with the methodology and reporting procedures of both laboratories, that is RCL and ARFL. You have also in the course of this inquiry raised the possibility that stress could account for the elevation of hydrocortisone detected in POLOIBIRD. POLOIBIRD had experienced a rough float trip to Belmont Park racecourse and on alighting from the float was found to have a trickle of blood from one nostril. You responsibly advised the Stewards and following a veterinary examination, the gelding was permitted to start and subsequently won the race. No scientific evidence has been presented to this inquiry which supports that stress could elevate the level of hydrocortisone above the permissible threshold, ie 1 milligram per ml. Indeed, Dr Medd clearly explained the veterinary and analytical history of the threshold level. It is also worth noting that horses that suffer sudden death, fractures, heart seizures etc, on racetracks and trials are all sampled. Elevated levels of hydrocortisone have not been reported and certainly these unfortunate animals have suffered stressful episodes. In your closing submission there were a number of varied matters raised, none of which in our opinion, served as exculpatory evidence in the matter at hand. Mr Casey, after full consideration of the charge, the Stewards find you guilty as charged' (T178-182).

The Stewards then considered the question of penalty. Further discussion ensued with Mr Casey during which time the Stewards clarified that this was in fact a presenting rather than an administration offence. (T182) It emerged from questioning Mr Casey had a full stable of 35 horses. The range of potential penalties was discussed and the consequences of a disqualification. Mr Casey when asked as to the options responded his preference was a 'very minimal fine'. The Stewards determined the matter in the following terms:

'The Stewards consider that any breach of the prohibited substance rule to be serious. A runner which is found to have competed in a race with a prohibited substance in its system brings into question the integrity of races and tarnishes the image of racing. Trainers are expected to present their horses to compete in races free of prohibited substances and compete on an equal basis with all other runners. Failure of this to happen affects the betting public's confidence and therefore negatively impacts on the financial support of the racing industry. You admitted that you administered 500mgs of solucortef to POLOIBIRD twenty-four hours before its race. Also on the Thursday before the race, you administered dexamethasone to the gelding. You have no record of these administrations. The levels of hydrocortisone detected is indicative of a clear administration, of a closer administration. The Stewards, as it is not uncommon in these type of cases, may

never discover the culprit. The Stewards have accepted the findings of the laboratories which indicate levels far in excess of the threshold level. As the trainer who presented this horse to race with an elevated level of hydrocortisone, the onus is clearly on you to present horses free of prohibited substances. You've been licensed as a trainer for twenty years and prior to that you were a jockey. You've essentially spent a life time in the racing industry. You have a blemish-free record in relation to prohibited substance breaches and that is to be commended. The Stewards have also taken into account the nature of the prohibited substance detected, excessive levels of hydrocortisone are deemed to be therapeutic not a stimulant. The Stewards have also taken into account your personal circumstances. We have considered the provisions of ARR.196 and that is you are liable for disqualification, suspension or fine or a combination of both. There has been one previous case of hydrocortisone in WA. In 2003 Trainer Mr P Graham was disqualified for twelve months. Whilst the prohibited substance was the same, Mr Graham's circumstances differed considerably from yours and obviously that influenced the Stewards decision in that matter. The Stewards believe that a penalty should reflect similar to other anti-inflammatory administrations. Mr Casey, after careful consideration, the Stewards believe that you should be fined the sum of \$6,000.00' (T186-187).

Mr Casey appealed against the outcome on the following grounds:

'Inconclusive analytical finding Standard of procedure internally not followed (WA, NSW). World standard of procedure not followed. Contradictory statements regarding veterinary and sample collectors standards of procedure. Chairman's request for standard of procedure on control water and wash collection not provided by RWWA Vet. Severity of the fine.'

THE APPEAL PROCEEDINGS

Mr Casey appeared before the Tribunal in person and argued the matter with some passing assistance from his wife. As he had foreshadowed prior to the commencement of the appeal Mr Casey sought leave at the hearing to have both Dr Tobin and Dr Lehner give further evidence by means of a telephone hook up. When questioned why he sought to link up with the two American experts by telephone and what role he intended them to play it was obvious that Mr Casey simply contemplated asking them more questions regarding the evidence which had been placed before the Stewards and which had already been subject to Mr Casey's scrutiny. I denied the request on the basis that it was not appropriate to cover ground which had already carefully canvassed and no case justifying presenting fresh evidence had been advanced. Mr Casey had also foreshadowed in writing before the appeal commenced to be heard that he wished to be permitted to cross examine Mr Zucal and vice versa regarding standard of procedure and integrity of the sample. Such an exercise too was disallowed as it was inappropriate.

GENERAL

The appeal raises a range of factual issues which the Stewards were required to carefully investigate. Only after 3 sittings and the passage of some months were they able to conclude the matter. The Stewards' panel was comprised of the Chairman of Stewards, the Chief Steward thoroughbred, the Stipendiary Steward and Manager of Harness Racing, and

the Stipendiary Steward and Manager of Licensing and Registrations and Stewards' Administration. The transcript of the inquiry clearly reveals that this most experienced panel conducted their proceedings in a methodical and thorough fashion. This approach is what one would reasonably expect from such an eminently qualified panel which was carefully handling a case with such serious implications involving so many alleged anomalies. The matter not only involved consideration of the adverse personal consequences for the appellant. It also required consideration of the quality of analysis and methodology in relation to the taking and handling of the sample which the resolution of which could reflect adversely on racing officials and laboratories with flow on grave consequences for the industry. Two international experts threw serious doubts on both the sampling procedures and the laboratory analysis based on the information that had been presented to them. The Stewards were as a consequence required to exercise patience and give careful consideration to a wide range of complex issues.

I am satisfied the investigation part of the Stewards' process was conducted both thoroughly and appropriately. Further, the reporting of the findings by the Stewards at the end of that process also warrants positive comment. The reasons delivered in respect of the convicting and fining both reflect the fact that the Stewards considered and fully evaluated all of the relevant issues appropriately. In my opinion, their findings and conclusions are backed up by the evidence which eventually emerged. The Stewards clearly and properly recognised that the two international experts only had some of the relevant information before them to assist them in their report writing following the November proceeding. Thereafter, Mr Casey was afforded the opportunity to test all of the supplementary information that came to light. Both Dr Tobin and Dr Lehner were also able to participate in the later proceedings on 5 February 2007. In addition representatives of the two Australian laboratories participated fully in the inquiry process. At all stages Mr Casey was given a free hand to question all of the participants thoroughly throughout the inquiry.

It is clear that a substantial amount of the criticism and the allegations as to inappropriate procedures and analysis raised by the two overseas experts was made with only part of the full factual material which eventually emerged. Those overseas experts did not enjoy full knowledge of the total set of circumstances. For example it is obvious much of that was criticised of the way the sample was taken initially, its handling thereafter and subsequent analysis was ultimately fully explained and properly justified as the Steward's inquiry unfolded. In addressing the many concerns expressed to them along the way the Stewards carefully dealt with each separate item and had qualified witnesses both veterinary and analyst address and discuss each contentious point.

Mr Casey expressed concerns at the appeal that he was not given access to all of the data and his experts were not able to comment on everything which ultimately formed the basis for the Stewards' determination. I am satisfied the Stewards inquiry delved into all relevant aspects in adequate detail. As issues were raised and concerns expressed they were in due course fully investigated. Satisfactory explanations and answers were provided. At the appeal hearing Mr Casey re-agitated many of the very same questions which the Stewards had already thoroughly and appropriately disposed of both at the level of the investigating stages of the inquiry and in their reasons for determination. Nothing new, different or surprising was raised at the appeal which tainted the way the inquiry was handled by the Stewards.

CONVICTION

In my opinion in all aspects the Stewards were entitled to reach the conclusions which they did on the totality of the evidence. Where any conflict in evidence occurred between Mr Casey's experts and the local experts the Stewards were persuaded to accept the explanations of the local witnesses. The local testimony proved to be credible and addressed all of the misgivings of Drs Tobin and Lehner. I can therefore see no error in the Stewards' approach.

Nothing in the evidence emerged which persuaded me that there was anything untoward in the procedures followed concerning the collection of the sample. The evidence when looked at overall, can properly be interpreted to establish the Standard Operating Procedures, as specified in the TWWA Collection of Equine Post-Race Drug Testing Samples dated March 2006, were in fact complied with. It is reasonable to conclude on the evidence, that Dr Tobin had not in fact seen that document (T20). Indeed Mr Casey in fact expressed no misgivings as to the chain of custody as the Stewards' inquiry unfolded (T59, 60, 77). At T64, Mr Casey admitted that the Stewards had gone through a lot of issues raised by Dr Tobin *"and we cleared them up to the point of us being happy about them"* (T64).

It is clear from Dr Medd's evidence given on 14 November 2006 that the WA laboratory only looked for the presence of hydrocortisone which had been detected by two immuno assay screens followed by the confirmation that it exceeded 1 microgram (T7). The other laboratory also employed two techniques (Dr Russo T47). The medical and other evidence satisfies me that the high amount of hydrocortisone detected excluded the possibility that stress or trauma were an exoneration or excuse (T41-44). Because the concentration exceeded 2 micrograms per millilitre there was no need to quantify the precise amount.

Both laboratories are NATA accredited and comply with world standards. When all of the evidence is considered there is no reason to doubt the clear evidence of Dr Russo that he was *"extremely satisfied, 100%, with the results"* (T124). The method employed by his laboratory had been used for the last 5 or 6 years and he was totally satisfied with the analytical procedure (T164).

Under the Rules of Racing when two official racing laboratories detect the same prohibited substance in a sample taken from a horse, the certified findings of both laboratories *"shall be prima facie evidence"* upon which the Stewards may rest their findings (AR178D(3)). Exhibits B and C satisfied that provision. The Stewards obviously had a great deal more evidence to rely on than simply these two exhibits in reaching their finding.

The Stewards at the commencement of their reasons have quite properly acknowledged the relevant standard of proof required in relation to this serious matter.

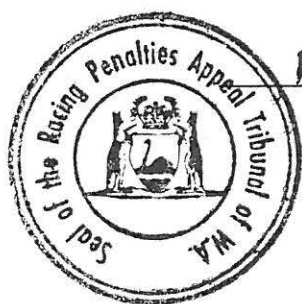
In the light of these reasons, I am satisfied that the Stewards were entitled to come to the conclusions which they did of the evidence and they properly convicted Mr Casey of the charge. I can see no merit in any of the grounds of appeal as to conviction. I would therefore dismiss the appeal as to conviction.

PENALTY

The Stewards in my opinion properly considered all of the factors relevant to the penalty. Nothing was raised in the appeal hearing in my assessment which would justify interfering with the penalty imposed. Indeed, in view of the level of the drug found in the horse the Stewards may well have been entitled to extract a more serious penalty even though this was a first offence. The Stewards in their reasons properly took into account the case of Graham (Appeal 426), being the only other matter involving hydrocortisone, and distinguished that case as they should have done it. The Stewards discounted appropriately because of the circumstances personal to Mr Casey, including his very lengthy period in the industry. It is worth observing in passing that in regards to another naturally occurring substance, namely TCO², the many convictions for that substance have not infrequently attracted more serious penalties than simply fines.

At the Appeal hearing, Mr Zucal produced a table of penalties imposed by the Stewards following convictions for prohibited substances with a range from \$3,000 fine up to long periods of disqualification. Admittedly, it is hard to draw any fair or appropriate comparisons between the offence in question and the offence included in the table because different drugs were used and the full circumstances surrounding each offence on the table were not explained.

Mr Casey's proposition put to the Tribunal at the appeal that "\$500 fine would have been appropriate" cannot be supported in my opinion in the light of all of the relevant circumstances. I would therefore dismiss the appeal as to penalty as well.



Dan Mossenson DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT: SEAN ROBERT CASEY
APPLICATION NO: A30/08/667
PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)
DATE OF HEARING: 1 MAY 2007
DATE OF DETERMINATION: 1 August 2007

IN THE MATTER OF an appeal by Sean Robert Casey against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 12 February 2007 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

Mr S R Casey appeared in person.

Mr J Zucal appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr D Mossenson, Chairman.

I agree with those reasons and conclusions and have nothing further to add.



John Prior

JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS K FARLEY (MEMBER)

APPELLANT: SEAN ROBERT CASEY

APPLICATION NO: A30/08/667

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

DATE OF HEARING: 1 MAY 2007

DATE OF DETERMINATION: 1 August 2007

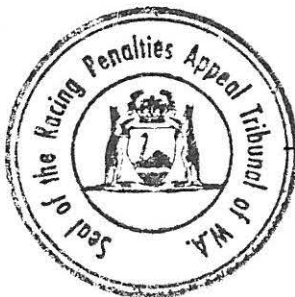
IN THE MATTER OF an appeal by Sean Robert Casey against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 12 February 2007 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

Mr S R Casey appeared in person.

Mr J Zucal appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr D Mossenson, Chairman.

I agree with those reasons and conclusions and have nothing further to add.



Karen Farley

KAREN FARLEY, MEMBER