

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT019-08

DATE: 27 June 2008

APPELLANT: Brian Kelsall Wakefield

RESPONDENT: Queensland Racing

APPEAL FROM: Decision of the Stewards of Queensland Racing that the Appellant breached Australian Rules of Racing 178 and the imposition of a fine of \$5,000. Appeal against finding only.

BREACH OF RULE: AR178

DECISION: Appeal allowed.

APPEARANCES: Bradley W. Farr SC instructed by Gabriel Ruddy and Garrett Solicitors appeared on behalf on the Appellant.

Mr John Hackett Deputy Chief Steward appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Leo G Williams AO -Chairman
Mr Brockwell Miller - Deputy Chairman
Mr Dennis Standfield - Member

This is an appeal by Licensed Trainer Brian Kelsall Wakefield against the finding by the Stewards that he breached Rule 178 of the Australian Rules of Racing. Mr Wakefield appears by Senior Counsel and his attendance is excused pursuant to Section 182 of the Racing Act 2002.

The Stewards did on 2 June 2008 make a finding that the Appellant breached AR178 and imposed a fine of \$5,000 as penalty. The Appellant's Appeal is only to the finding of the Stewards and not the penalty imposed.

AR178 provides:

"When any horse 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/or any other person who was in charge of such horse at any relevant time maybe punished."

The finding of the Stewards was as a result of the return of a positive urine sample for diclofenac taken from Pagan County after it won Race 4 at Eagle Farm on 5 April 2008.

The Notice of Appeal dated 11 June 2008 states the grounds of appeal as:

- (a) The Certificate of Analysis showing the result of the analysis should not have been relied upon by the Stewards due to a failure to comply with the analytical procedures published pursuant to Regulation 20 of the *Racing Regulations 2003*.
- (b) There was no admissible evidence to prove the presence of a prohibited substance in the horse upon which the Stewards were able to rely to disqualify the horse under AR177.

These grounds relate to a "leak" being found from one of the urine sample bottles.

The Sample Collection Kit Number for the urine sample is 257453. When all the collected samples taken by the Stewards from the Eagle Farm Race Meeting of 5 April 2008 were delivered to the Racing Science Centre there was a notation

made by the Racing Science Centre on the Record of Sample Custody and Despatch Protocol A Form of "257453-leaked, no sample type on centre pouch". The Form was Exhibit 3 at the Stewards Inquiry.

Upon analysis of Sample No. 257453 a Certificate of Analysis No. 19705R issued with the results being that the sample was shown to contain diclofenac. The Certificate of Analysis was Exhibit 5 at the Stewards Inquiry.

The referee sample of 257453 was forwarded to Racing Analytical Services Limited in Victoria and its Certificate of Analysis confirmed the presence of diclofenac with the Certificate of Analysis also stating "Samples arrived in good condition and seals intact". That Certificate of Analysis was Exhibit 13 at the Stewards Inquiry.

When the Racing Science Centre forwarded the Racing Analytical Services Limited Analyst's Report on 8 May 2008 to the Stewards there was stated in the penultimate sentence of that letter the following:

"I wish to draw your attention to the compliance issues that were noted when Sample No. 257453 was received at the Racing Science Centre".

The letter of 8 May 2008 was Exhibit 8 at the Stewards Inquiry.

Notwithstanding the reference to the non compliance the Stewards proceeded with the Inquiry. At the Inquiry the Appellant objected to the reliance of the Certificates of Analysis No. 19705R stating that as the bottle leaked there had been non compliance with the required procedures for the collection of samples.

The Appellant submitted this was either because the equipment was defective or the lid on the sample bottle was not secured as tight as possible.

These matters of concern were raised by the Appellant at the second day of the Inquiry. The second day of the Inquiry was necessary because the Appellant requested the presence of Mr Bruce Young who is the Manager of Veterinary Services of the Racing Science Centre. Dr Young's evidence and views of the leakage of the urine sample was to the effect that it did not taint the evidence presented and he stated to the Inquiry (page 32 from line 35 of the Stewards Inquiry transcript):

“DR YOUNG: Leakage of a sample is not ideal. It is certainly not ideal. But in this case, I do not believe that it inhibited the evidence in anyway with the ability to analyse the sample in accordance with their procedures. You know the fact that we have Portion B of the sample, that is the very reason why we do, just to be able to confirm that the findings in that portion A are correct.

If in this case we didn't have a Portion B, well, then possibly your case is stronger. But the fact that Portion B was completely sealed, there was no evidence of leakage and the very same compounds have been detected.”

While the Stewards did not elaborate their reasons for finding the Appellant in breach of AR178, the Chairman of Stewards Mr Hackett did refer to being “... mindful of the responses of Dr Young ...”.

At the hearing Mr Hackett did present to the Tribunal a letter from Dr Carmel Kerwick the Senior Veterinary Officer of the Racing Science Centre. The letter effectively summarises the view of the Stewards that they were of the opinion that

there was no compromise in the samples taken because of the leakage and they relied on the certificates issued. That letter states (omitting formal parts):

“Dear Mr Hackett

Re: Compliance issues noted on Record of Custody and Dispatch Form RSC V36 – sample number 257453 (urine and associated control):

- collected at Eagle Farm on 5 April 2008
- received at the Racing Science Centre on 7 April 2008
- submitted to the laboratory for analysis on 7 April 2008

In my opinion, the compliance issues noted for Sample Number 257453 do not compromise the integrity or forensic value of the sample and the following comments are provided:

- Leakage of urine from one bottle into the sealed sample pouch was noted. This part of the sample was submitted as Portion A to the Racing Science Centre laboratory for analysis. The sample volume submitted to the laboratory was 183 millilitres. The Racing Science Centre’s Manager, Analytical Services has confirmed that the sample was tested using urine taken from the bottle. In accordance with the Racing Science Centre’s standard laboratory procedures, no attempt was made to harvest the leaked portion from the pouch.
- There was no leakage of the control solution or second sample bottle (Portion B) and these were subsequently submitted to the referee laboratory for analysis. I draw your attention to the photograph of the control solution and referee portion (Portion B) and the receipt from the referee laboratory that notes the seals were intact and consistent. The receipt from the referee laboratory does not record leakage.
- The independent referee laboratory analysed the control solution and Portion B of Sample number 257453. The referee laboratory issued a notice of analytical results stating that diclofenac was found in Sample 257453 but was not found in the associated control solution.
- It has been noted that there are some details missing from the centre pouch. The notation recorded by the Racing Science Centre on the Record of Sample Custody and Dispatch RSC V36 form states, “No sample type on Centre pouch” in regards to Sample Number 257453. The sample type for Sample number 257453 (urine) is clearly marked on the RSC V36 form. Although the sample type was not recorded on the centre pouch, the same information regarding Sample number 257453’s sample type is clearly marked on the RSC V36 form

and therefore should not impact on the integrity of the sample.”

Mr Farr did present to the Tribunal written submissions for which the Tribunal is grateful. In those submissions the matter of *K Smythe v Queensland Racing* (2005) QRAT 7 (9 May 2005) is referred to. In that decision the Tribunal did set out in detail its reasoning that the stated procedures in the “Procedures Document” are mandatory. While the “Procedures Document” is now Version 3 and has been retitled “The Collection Procedures”, the requirements that each step specified are mandatory procedures is not affected.

In Step 1 of Appendix 1 of “The Collection Procedures” there is the requirement “Do not use defective or leaking equipment” and in Step 4 the requirement “Secure the lids as tightly as possible”. Clearly if a sample in a bottle leaks then either the requirement in Step 1 or the requirement in Step 4 has not been adhered to. Accordingly the Certificate of Analysis No. 19705R should not have been relied upon by the Stewards and the Appeal is upheld.

An issue of concern to the Tribunal were the statements made by Dr Young at the Inquiry that leakage of samples occur on a regular occurrence. While human error can occur in not tightening the cap of a bottle there is particular concern that there may be a manufacturing type defect which leads to leakage. If this is the case this should be addressed by the relevant authorities as it will only further lead to issues of non compliance with Step 1 of The Collection Procedures.

The Orders of the Tribunal are:

1. Appeal upheld.

2. The Appeal Deposit Fee is refunded to the Appellant.

Mr Leo G Williams AO - Chairman
Mr Brockwell Miller - Deputy Chairman
Mr Dennis Standfield - Member