

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ADVISOR: DR P. KNIGHT**

**APPEAL OF Ms SALLY TORRENS**

**DECISION**

On 10 May 2009 the stewards conducted an inquiry into the finding that the pacer Smooth As Honey, which raced at Tamworth on 23 April 2009, had a plasma total carbon dioxide (TCO<sub>2</sub>) level in excess of the allowable threshold. Ms Sally Torrens (the Appellant) was the licensed trainer of the said horse. She was charged with a breach of Harness Racing Rule 190 sub-rules (1), (2) and (4), which provides:

- (1) *A horse shall be presented for a race free of prohibited substances.*
- (2) *If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence.*
- (4) *An offence under sub rule (2) or sub rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*

The particulars of the charge were:

*... that you, a licensed trainer, Sally Torrens, being the trainer of the racehorse Smooth As Honey did present that mare to race at the Tamworth meeting on 23 April 2009 when a blood sample taken from that horse prior to it competing in the Good Companions Hotel Pace was found upon analysis to have a TCO<sub>2</sub> level in advance of the available threshold.*

She was found guilty and disqualified for five months.

The Tribunal is considering her appeal against the severity of the penalty imposed. She does not dispute the finding of guilt.

The Tribunal has before it the transcript of the stewards inquiry and the exhibits, which include a Screening Analysis Report from the Australian Racing Forensic Laboratory which demonstrated a level of 38.1 mmol/litre. A confirmatory analysis by the Queensland Racing Science Centre produced a reading of 37.9.

Exhibit E before the stewards inquiry was a letter from Dr Craig Suann. It explained why the levels referred to constitute a breach of the Harness Racing Rules. No objection was taken as to the findings and the opinions expressed.

The Appellant told the stewards that, by reason of difficulties in keeping the horse in its usual stall adjacent to a new horse brought to her stables, she had placed it in a yard, where it remained for some five weeks prior to the race on 23 April 2009. She explained that there the water available to the horse came from a bore, as distinct from dam water previously available to it. Otherwise, the horse's feeding regime was as normal.

Ms Torrens told the stewards that she had been training for twenty years without any prior drug-related offence. It was her belief that the high alkalinity of the bore water was the explanation for the reading. She maintained:

*The whole problem I'm having with my program - I've been training for 20 years - and Dad has done all this for me. Like, he's had a licence for 30 years and we haven't changed - you know, supplements may change, whatever is new on the market. We might change our supplements a little bit. But that's been the way and I've had that many swabs go through and I've never ever had a problem. It's important in our climate, with the heat that we have up here that the first thing you want to do is keep a horse hydrated and I just think we're not over the top in doing that. If she wasn't racing, if she was just leading up, like jogging up or in her early stages of twelve weeks into a program she wouldn't be getting the 60 grams of the Salkavite. That's only because she's up and running and I need to put it back into her.*

Called in support of the Appellant's case was Dr Speer, veterinary surgeon. The Appellant referred to tests that she had done on the bore water and, in response to her questions, Dr Speer expressed his opinion:

*Ms TORRENS: The test revealed that I had a problem with high alkalinity and sodium - salt intake in this particular water.*

*Dr SPEER: Yes, that's right.*

*Ms TORRENS: Do you believe that this coinciding with my feeding program could have some impact on the TCO<sup>2</sup> level.*

*Dr SPEER: It could, yes. The TCO<sup>2</sup> level is dependent on a range of different things, particular what the horse has ingested and as such having very high alkaline water you can end up with getting different compounds associating in the blood and you will end up with a high free hydrogen level in there and in particular if there is a reasonable amount of calcium carbonate, which there is, you do end up with a chance that this horse could have an elevated level of carbon dioxide in her blood just as a norm if she has been on this water for an extended period. Unfortunately, the only way that you could say definitely what this would be would be with serial testing, keeping the horse on this water for an extended period and testing it regularly and then taking it off and having it on other water and testing it to see what the actual levels of carbon dioxide were.*

The Appellant pointed out that the horse was at a tie-up rail at the race track and at that stage had been without water for approximately eight hours.

The transcript reveals that the Chairman of Stewards asked this question:

*You've had an opportunity to look at Ms Torrens daily feeding regime, which includes in total 130 grams of alkalinising agents in the horse's daily intake. What effect, in your view, would that amount of alkalinizing agents have on a horse's resting TCO<sub>2</sub> level?*

Dr Speer responded:

*It should probably lift it from instead of being a normal range of 32 to 36 - it may lift it to be 34 to 38, something in that vicinity. Unfortunately again you have to have a broad range because every horse is an individual and they all react to different treatments individually again and have a range of responses.*

At its highest, Dr Speer's evidence was to the effect that there was a chance that the horse could have an elevated level of TCO<sub>2</sub> resulting from the combined effects of drinking bore water and its feeding regime. This, however, would have to be demonstrated by serial testing over an extended period. There was no suggestion that such testing had been undertaken.

Dr Speer's evidence demonstrated that the alkalinising agent fed to the horse could have raised the TCO<sub>2</sub> level to 38, that is, well above the threshold of 36.

The stewards were under no obligation to demonstrate how the elevated TCO<sub>2</sub> level occurred. They did not have to show that a trainer deliberately, or indeed carelessly, engaged in a course of conduct that would affect a horse's performance. The rule is breached when the elevated level is established, regardless of the cause.

In this case, the Tribunal accepts the Appellant's claim that she did not administer a "milkshake" or deliberately take any step which resulted in the elevated level. It appears to the Tribunal that the most probable cause was the alkalinising agents in the horse's feed, combined with the high concentration of alkalinising agent in the bore water which the horse consumed. This finding does not excuse the Appellant's liability for, as stated, the rule is breached when the offending level is demonstrated. It is, however, relevant on the question of penalty.

The stewards took into account all relevant matters of mitigation in fixing a penalty of five months disqualification. She was granted every consideration and available discount.

The stewards, like this Tribunal, are acutely aware that the survival and prosperity of harness racing is largely dependent upon its reputation for clean racing. It must be seen that breaches of the rules designed to ensure drug-free racing, be they deliberate or inadvertent, will be met with condign penalties. The result in this matter may have the effect of reminding trainers of the extreme standards of care expected of them.

Further matters and submissions were placed before this Tribunal which were not available to the stewards and which were influential in the Tribunal arriving at its decision.

The Tribunal is persuaded that the appropriate penalty is a suspension of five months, in lieu of the disqualification imposed. That suspension is to commence on 10 May 2009 and is to expire on 9 October 2009.

The appeal deposit is forfeited.

The decision in this matter is related to facts peculiar to it. It must not be regarded as some form of precedent.

23 June 2009

J. C. McGuire, Judge