



BRITISH HARNESS RACING CLUB

21st June 2010

BHRC v Taff **Panel Decision**

1. On the evening of 7th September 2009, at Tir Prince Raceway, a team of BHRC Stewards arranged for a number of blood samples to be taken from horses designated to race that night under provisions contained within Section Y of the BHRC Rule and Regulations. Section Y2 specifically authorises that "samples may be taken at any time from any horses at any location, that have run, or are scheduled to run in any race under BHRC Rules". Following this sampling, the blood was tested by the Horse Race Forensic Laboratory (HFL) in Newmarket and a reading of 39.2mm available Carbon Dioxide (TCO2) per litre in plasma was reported and confirmed by Confirmatory Analysis for the sample relating to Lifeø a Beach .
2. Section Y5 introduces the actions which can be taken when a sample contains a "prohibited substance". Sections Y6 and Y7 continue to expand on the sanctions which may be imposed. Sect Y16 states clearly that a TCO2 reading of less than 37 millimoles per litre in plasma is not actionable therefore a reading above that level renders the test positive for a prohibited substance.
3. Mr Taff was called to a hearing on 13th September 2009 to explain why the horse, Lifeø a Beach, trained by himself, had a TCO2 reading of 39.2 millimoles per litre of plasma. Mr Taff was represented by Miss S Guttman of Solicitors Petherbridge Bassra. Mr Taff first stated that he did not understand why the BHRC were questioning him and when it was reported that the panel were examining whether an alkalising agent had been administered, something colloquially known as Milk Shaking, Mr Taff reported that he thought he knew what this meant and later when seeking an adjournment to refine his defence he stated that the defence was "95% complete". Mr Taff was advised that action could be taken under the Rules and Regulations of the BHRC, which he is contractually bound to adhere to as a result of his signing a BHRC Licence Renewal form - a mandatory process in place when Licence Holders renew their licences.
4. On 20th September 2009, a second hearing was convened and Mr Taff attended with his Solicitor and an expert witness, Mr A Topp MRCVS, a noted veterinary surgeon. Miss Guttman accepted that the BHRC had the right to enquire into the case and apply sanctions if it thought fit. Mr Taff and Miss Guttman accepted that the sampling and subsequent tests had been carried out correctly and stated that the result of HFL was accepted. Mr Taff stated that the horse had been diagnosed as possibly having gastric ulcers and that Mr Topp, although never having examined the horse, had recommended treatment with an equine antacid and a change of feed, and Mr Taff had chosen Settelex and Red Mills Horse Care

Cubes. It was contended that the Sodium Bicarbonate in Red Mills Horse Care Cubes, the alkaline substances in Settlex and the electrolytes administered intravenously by Mr Taff had caused the high TCO₂ reading, not the administration of an alkalinising substance by Mr Taff. Mr Topp went on to say that high readings over 37 millimoles per litre were normal in horses in racing and submitted some photocopied pages from a Veterinary manual which went on at great length regarding Electrolytes Cations and Anions in the Performance Horse by Dr Topliff of the West Texas A&M University.

5. The BHRC made enquiries of Red Mills Feed Company, Feedmark (the makers of Settlelex) and HFL as to the veracity of Mr Taff's defence. A long period of requesting information from Mr Taff's lawyers ensued, including requests for a formal statement of case and written submissions from Mr Topp - none of which has ever been forthcoming. The BHRC panel considered a report for the Hong Kong Jockey Club, 'Alkalinising substances normal For Racehorses in Hong Kong' a research paper submitted to the 12th International Conference of Racing Analysts and Veterinarians (a copy was provided to Mr Taff's advisors). This report countered Mr Taff and Mr Topp's suggestions. The BHRC also submitted to Miss Guttman copies of all correspondence between the BHRC and Red Mills and Feedmark.
6. Following the addition to Mr Taff's legal Team of a Barrister, Mr Nigel Edwards, prolonged endeavour was made to set up a hearing and following two requests for further adjournments, a hearing was arranged for 14th February 2010. Despite the BHRC agreeing to adjournments which effectively gave Mr Taff's advisors three months in which to prepare their case, the statement of case requested by the BHRC, prior to the arranged hearing, was never received. This, the panel found to be very unhelpful and contrary to normal practice in Tribunals who have a quasi judicial role or Courts of Law themselves. At that hearing, Mr Taff's defence was that Mr Topp's verbal submission had explained why the TCO₂ reading was as it was, that by frustrating Mr Taff's attempts to have the B sample tested the BHRC had contaminated the process and that Mr Taff's human rights had been offended. The timing of the testing also rendered the process invalid. Therefore the matter should be closed and no sanctions taken out against Mr Taff. The BHRC adjourned the hearing to examine the issues raised by Mr Edwards.
7. The BHRC instructed Mr Rory Mac Neice, a specialist sports lawyer with particular interest in horse racing, and a partner in Ashfords. Mr Mac Neice, who is both nationally and internationally recognised as a leader in his sphere of operation, arranged for expert opinion to be obtained from Dr JP McCaffrey, a Veterinary surgeon based in Australia. Dr McCaffrey, formerly Director of Veterinary Services Racing Victoria Ltd., Consultant Veterinary Surgeon to racing authorities in the Middle East and the British Horse Racing Authority (BHA), is an eminent authority on Veterinary matters and has extensive experience in the issues of alkalinising agents being administered to horses as well as other drug related matters within horse racing.

Dr McCaffrey produced a comprehensive report, which was submitted to Mr Taff's lawyers which opined that:

- [a] The threshold of 37mm litre of plasma set out in the BHRC rules is fair, reasonable and in line with international levels, being higher than those levels set in both Australia and New Zealand.
- [b] The levels of Sodium Bicarbonate present in Red Mills Horse Care Cubes would have little or no effect on the levels of TCO₂ in plasma.
- [c] The constituents in Settlex would have no significant effect on TCO₂ levels in plasma.
- [d] Electrolyte admission would have not raised TCO₂ levels to anywhere near the threshold

- [e] The combination of Red Mills Horse Care Cubes, Settelex and Electrolytes was in the opinion of Dr McCaffrey "highly unlikely to achieve TCO₂ levels close to or in excess of the threshold. This has been borne out by my practical experience and from the investigation of many cases" in Australia.
 - [f] Dr McCaffrey completely discounted Mr Topps opinion that horses with resting levels approaching 36 mm was common, and that the chance of a horse having a resting level of 35 mm was "calculated to be about 1:1000".
 - [g] Dr McCaffrey goes on to say: "Generally speaking to achieve levels in excess of 39.0 a horse will have to have been administered significant quantities of alkalinising agents" and that a "solution could be made up for this purpose".
 - [h] Dr McCaffrey stated that tests in Australia were conducted between 3 hours and 20 minutes before race time.
8. The issue of Mr Taff being disadvantaged regarding the Testing of the B sample was examined in depth. It was found that Mr Taff had not been disadvantaged at all, the BHRC office had answered all his questions, which centred on how much it would cost to have the B sample tested. Also, Mr Taff had signed to abide by the Rules and Regulations of the BHRC and therefore was deemed to have knowledge of them and Mr Taff had a legal team in place to advise him. In addition, both Mr Taff and his legal representative had previously accepted the analysis and result of HFL. At no stage was there any denial or frustration of his right to have the B sample tested.
9. Following extensive correspondence between Mr Mac Neice and Mr Taff's lawyers a hearing was convened for the 21st June 2010 with formal invitation being made to Mr Taff's advisors, Petherbridge Basra. The hearing, to take place at 1.30 pm at the BHRC Office, the panel consisting of Miss Dawn Forrest (BHRC Steward), Mr Robert Thompson (Regional Steward) and Mr Gordon Garnett (BHRC Chairman). Neither Mr Taff nor any of his advisors attended. Mr Taff's solicitors had informed the BHRC that neither they nor Mr Taff intended to appear as they were of the opinion that another hearing was not necessary. The view of the Panel was that it was their decision as to whether another hearing was necessary, and not the decision of Mr Taff or his advisors. The case was heard in Mr Taff's absence. The case for the BHRC was introduced and led by Mr Mac Neice. The evidence of Mr Topp was reviewed and that of Dr McCaffrey examined, as well as the assertions of Mr Taff's lawyers as made out throughout the series of earlier hearings and ensuing correspondence. The statements made by Mr Taff himself were also reconsidered. The Panel came to conclusions and made decisions on the evidence before it and no other information was considered.
10. The Panel found that the BHRC had authority to take action under its the Rules and Regulations in force at the date of the sampling (September 2009), that a prohibited substance had been found in the blood of Life's a Beach and that Mr Taff as trainer was under a duty of care to be responsible for that horse by virtue of Section Y8. The panel preferred the expert opinion of Dr McCaffrey to that of Mr Topp, finding it helpful, comprehensive and conclusive. The panel ultimately considered that the presence of the prohibited substance came about as a consequence of a deliberate act to administer alkalinising agents to Life's a Beach either by Mr Taff directly or a third party on his instructions. The Panel found that motive for this was to improve the horse's performance and therefore gain unfair advantage over the other competitors in the race. The Panel were of the opinion that the process of sampling and testing were carried out correctly (as Mr Taff and his lawyers had accepted in the September 2009 hearings) and that the discussions on the cost of the testing of the B sample had not disadvantaged Mr Taff. Therefore the panel decided that it was right and proper to take sanctions out against Mr Taff as follows:

- (i) Suspension of all Mr Taff's BHRC licences for two years from 7th September 2009 and that a fine of £2000 be levied under provisions of Section Y of the BHRC Rule Book.
- (ii) It is considered that Mr Taff has carried out actions injurious to the sport of Harness Racing and that there is good reason for the panel to apply sanctions under Section S40 of the BHRC Rules and Regulations and that the appropriate penalty be a suspension of all Mr Taff's BHRC licences for one year (to run consecutively with the earlier penalty) and a further fine of £1000.
- (iii) Mr Taff to pay all the costs reasonably and necessarily incurred in this case by the BHRC - these to be supplied to Mr Taff in due course.
- (iv) The horse Life's a Beach to be disqualified from the race which it won at Tir Prince on the night of 7th September 2009, that it be suspended from racing under BHRC Rules for one year from 7th September 2009 and that it must pass a BHRC Integrity test before becoming eligible to be entered. The owner is to pay the costs of test/s and any pursuant hearings.
- (v) Mr Taff has a period of 28 days from receipt of this formal reasoned decision to appeal and in accordance with Section U of the BHRC Rules, any such appeal to be made in writing and a deposit of £250 is to be lodged with the BHRC Office, such deposit may be forfeited if the appeal fails.
- (vi) The re-allocation of prize money to the other horses in the race to be made at the end of the period for appeal (if an appeal is not forthcoming) or after the conclusion of any appeal.

Signed:

Gordon Garnett - BHRC Chairman

J Robert Thompson - Regional Steward

Dawn Forrest - BHRC Steward