TASMANIAN RACING APPEAL BOARD

Appeal No. 2 of 2018/19

Panel:	**Kate Cuthbertson (Chair)** **Suzanne Martin** **Wendy Kennedy**	**Appellant:**	**Mark Ganderton**
Appearances:	**Wayne Pasterfield (on behalf of the Appellant)** **Paul Turner (on behalf of the Stewards)** **Scott Quill (Chairman of Stewards – Thoroughbred)**	**Rules:**	**Australian Racing Rule 178**
Heard at:	**Tasracing** **Elwick Racecourse** **Glenorchy, Tasmania**	**Penalty:**	• **12 months disqualification** • **Stewards invoke suspended penalty of 6 months disqualification**
Date:	**4 October 2018**	**Result:**	• **Penalty varied to 6 months disqualification.** • **Decision of stewards to invoke suspended disqualification affirmed.**

REASONS FOR DECISION

1. The appellant, Mr Mark Ganderton, was the trainer of a thoroughbred racing horse, *Speedy Illusion*, which was presented to race at the Tasmanian Racing Club meeting on 10 February 2018 in the Tasmanian Horse Transport Maiden 1,200 metres. A pre-race blood sample was taken from the horse. Subsequent analysis by Racing Analytical Services Limited (RASL) detected the prohibited substance caffeine in the sample. Confirmatory testing conducted by Australian Racing Forensic Laboratory (ARFL) confirmed the presence of caffeine in the blood sample.

2. An inquiry was conducted in respect of this matter over the course of three days, namely 4 June, 8 August and 27 August 2018. During the course of the inquiry, Stewards issued a charge to the appellant pursuant to AR178. The rule relevantly provides as follows:

> *Subject to AR178G, when any horse has been brought to a race course 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 was in charge of such horse at any relevant time may be penalised.

3. The particulars of the charge were as follows:

> *That you the trainer of Speedy Illusion did present that horse to race at the Tasmanian Racing Club Meeting on 10 February 2018 when a blood sample taken from it, from Speedy Illusion prior to it competing in Race 1, the Tasmanian Horse Transport Maiden, 1200 metres, upon analysis was found to contain the prohibited substance caffeine.*

4. The appellant reserved his plea in relation to the matter. Stewards found him guilty of the charge.

5. Further complicating matters, the appellant had appealed a previous prohibited substance penalty in June 2016 which related to the presentation and administration of cobalt pursuant to AR175(h)(ii). The TRAB in respect of that matter substituted the penalty originally imposed with a penalty of 12 months disqualification with 6 months suspended on condition that the appellant commit no further breach of the Australian Rules of Racing Prohibited Substance Rules for a period of 2 years from the date of the decision. The present charge occurred within that 2 year period.

6. At the inquiry held on 27 August 2018, Stewards imposed a period of disqualification of 12 months in respect of the charge pursuant to AR178 and activated the 6 month suspended period of disqualification, ordering that it be served cumulatively with the disqualification they had imposed.

The Appeal

7. The appeal lodged was in respect of both conviction and penalty. It was apparent from the particulars of the appeal that the grounds cited were directed at penalty rather than conviction. This was confirmed during the course of the hearing when the appellant's legal representative advised that there was no appeal against conviction recognising the nature of the prohibited substance offence with which the appellant was charged. The appellant argued that the length of disqualification in respect of the new matter was excessive. He also appealed the activation of the suspended period of disqualification on the basis that the Board had erred in law in imposing such a penalty in June 2016 as a suspension of disqualification is not permitted under the Rules of Racing, therefore Stewards were not entitled to put it into effect.

The activation of the suspended period of disqualification - jurisdiction

8. It is convenient to deal with jurisdictional issue raised in respect of the activation of the suspended period of disqualification first. Does the Board have jurisdiction to entertain an appeal against its activation?

9. The Board is a creature of statute. As such, it is only seized of jurisdiction in respect of matters that are specifically provided for under the *Racing Regulation Act 2004* (**the Act**). Section 28 relevantly provides that:

> "*A person may appeal to the TRAB if the person is -*
>
> *b) aggrieved by the decision of the Stewards to –*
>
> *(i) impose a fine on the person; or*

(ii) impose a suspension or disqualification on the person or on a horse or greyhound owned, leased or trained by the person."

10. There is no question that Stewards purported to activate the suspended period of disqualification that had been imposed by the Board. Counsel for Stewards argued that a determination of Stewards to activate the penalty is not equivalent to *imposing* a disqualification on a person. The order made by the Board was, according to their argument, akin to a hanging order, that is one that automatically comes into effect on the happening of a particular event. In this case, Stewards argue that the particular event, namely the breach by the appellant of the prohibited substance rules within two years of the making of the order by the Board, was sufficient to activate that penalty. There was no imposition of the penalty by Stewards in that respect, merely the administrative recognition of the condition required to be fulfilled before it became operative, namely the further breach of the prohibited substance rules.

11. Having regard to the transcript of the inquiry, Stewards stated as follows:

> *We've also determined the matter of the 6 month suspended disqualification, Stewards have determined to invoke that disqualification which is to be served cumulative with this, the 12 month handed as I mentioned and that will commence on the 27th of August 2019 and expire on the 26th of February 2020.*

12. As can be seen, Stewards made two decisions in respect of the suspended disqualification. The first was to "invoke" the penalty. The second was to order that the disqualification be served cumulatively to the other period of disqualification imposed.

13. AR196(3) provides that a penalty of disqualification imposed in pursuance of AR196 shall be served cumulatively to any other penalty of disqualification unless otherwise ordered by the person or body imposing the penalty. The rules are silent as to the activation of suspended penalties.

14. According to the Oxford English Dictionary, the natural and ordinary meaning of the word *impose* is to introduce something that must be obeyed or done or to force something to be accepted. In invoking the penalty, Stewards were required to determine whether the new offence found proved breached the conditions of the previously ordered suspended penalty. Until such time as the penalty was invoked, it had not, in effect, been imposed. Having so decided to invoke the penalty, it was then required to be obeyed or accepted by the appellant. The decision to order that the penalty be served cumulatively to the disqualification they had earlier imposed additionally involved the exercise of discretion. Stewards were not bound to order the penalty be served cumulatively.

15. In those circumstances, the Board finds that the determinations made by the Stewards in respect of the activation of the suspended disqualification involved the imposition of a period of disqualification by them. This is particularly so as they made a decision regarding the cumulative operation of penalty and that the circumstances were such that the conditions of its activation were satisfied.

16. The Board is satisfied it has jurisdiction to consider an appeal concerning the activation of the suspended disqualification in the circumstances.

Caffeine matter – circumstances of offence

17. *Speedy Illusion* finished in 8th place in the race which occurred on 11 February 2018. The appellant first received advice that the "A" sample was positive to caffeine on 20 March 2018. A stable inspection was conducted on 18 April 2018. According to the appellant, between those dates he turned his mind to what had gone wrong and in particular focussed on the products being administered to *Speedy Illusion.*

18. The appellant considered that the source of the caffeine must have been a contaminated supplement and he determined it was most likely to be Vecta Bute-All paste. There were some issues in respect of the evidence of his use of that product. When the appellant was first advised of the positive swab, he did not mention to the Steward and vet who attended his stables that he used Vecta Bute-All paste. He first raised his use of that product with the Stewards who attended his stables in April 2018. He advised Stewards then that he had used the product for 18 months but had run out of supplies at the time of the March inspection. His treatment book was not at his stables at that time and he had forgotten to mention his use of the product. He had recently discovered there had been a contaminated batch of Vecta products in New South Wales and raised the possibility that the Bute-All paste he had been using may also be contaminated. He could otherwise offer no explanation for the presence of caffeine in the horse's system.

19. The Stewards received evidence from the producers of Bute-All. They advised there had been no report of contamination in respect of Bute-All paste. Another product previously manufactured at another facility in a different country was recalled from the market in March 2017 due to contamination. In contrast, Bute-All paste was said to have been sold for over 3 years in 13 different countries and had never been associated with a report of a positive swab to caffeine or any other prohibited substance.

20. The analysis conducted by both RASL and ARFL is not a quantitative analysis but is designed to detect the presence of the relevant prohibited substance. Nevertheless, Mr Zahra from RASL described the levels of caffeine found in the sample as about average compared with other positive results he had encountered.

21. Between the inquiry held on 4 June 2018 and the further hearing conducted on 8 August 2018, Stewards arranged to have two tubes of Vecta Bute-All paste collected from the appellant's property during the April 2018 stable inspection and a tube of Vetrofen Instant, which is manufactured by the same company and had been purchased by the appellant, sent away for analysis. On analysis, all were found to contain caffeine, with the reading for the Vetrofen Instant being higher than that for Bute-All. The appellant does not use Vetrofen Instant but purchased it solely for testing.

22. Stewards also had a tube of Vecta Bute-All paste supplied by the manufacturer analysed. That did not contain caffeine.

23. The appellant's treatment book disclosed that Bute-All had been administered to *Speedy Illusion* in the period leading up to the relevant race. During the course of the appeal, the appellant sourced a statement of his account with Devonport Saddle

World which disclosed the supply of Bute-All to the appellant in the period leading up to the positive swab. The statement is consistent with the amount of Bute-All being supplied to the horses in the appellant's stable at that time.

24. There was no information available regarding the batch numbers of the tubes of Bute-All administered to *Speedy Illusion*. It could not be verified that the samples of Bute-All later tested were from the same batch or batches administered to the horse. As a consequence, it is not possible to find that the Bute-All actually administered to *Speedy Illusion* prior to the race contained caffeine. The analysis of the other tubes obtained from the appellant's stables but purchased subsequently to the positive swab, raise the possibility that the product was contaminated with caffeine. It should be noted that caffeine is not said to be a constituent of the product.

25. Stewards submitted that the tubes of Bute-All analysed and found to contain caffeine were acquired after the event. They submitted that the Board cannot conclude from the evidence that the Bute-All administered to the horse prior to its presentation were relevantly contaminated with caffeine.

26. Further, according to stewards, the amounts of caffeine detected in the two tubes of Bute-All taken from the appellant's stables were 74.2 ug/g and 75.6 ug/g respectively. These amounts, it was submitted, are low when compared with, for example, the caffeine levels in Coca-Cola. Stewards submitted that no evidence had been presented addressing whether the administration of Bute-All having the quantities of caffeine found in the samples analysed could give rise to a positive result. Acceptance of the appellant's submission required, on the Stewards' case, two leaps of faith: first, that the Bute-All administered to the horse actually had caffeine, and, secondly, that if it had been contaminated at the levels detected in the samples analysed it would explain the positive result. Stewards submitted there is no basis upon which the Board could so conclude.

27. In considering penalty, the Stewards noted as follows:

> *In determining penalty Stewards have taken into account the following, your length of time as a trainer and involvement within the industry, your record relating to prohibited substances which is extremely poor and includes one disqualification for administering a prohibited substance, one disqualification for presenting a horse to race with a prohibited substance, one conviction of presenting a horse to race with a prohibited substance with no penalty recorded, one fine for presenting a horse to trial with prohib…a prohibited substance, two fines for administering treatments on race day without permission, four fines for failing to properly maintain treatment records. We've also considered that if we were to believe that the product Vecta Bute-All paste was the cause of SPEEDY ILLUSION returning a positive sample to caffeine. The use of this product was not mentioned by you or sighted by Stewards at the stable inspection conducted at your stables on the 20th of March 2018 and if so you did not take the necessary measures required as a trainer to ascertain what the ingredients were in this product prior to it being used and in fact still did not know what was contained in that product until this inquiry commenced on the 4th of June 2018, which is in our view reckless on your behalf. We've taken into consideration the nature of the prohibited substance and the level detected that SPEEDY ILLUSION was unplaced on the day of the race in question. Your financial and personal circumstances. We've considered the onus and*

responsibility lies solely on the trainer to present horses free of prohibited substances, we've considered previous cases and precedence (sic.) *relating to caffeine from Tasmania and interstate. The need for industry and public confidence that horses are competing on a level playing field and ensure the integrity of the, of this industry. That any penalty act as an individual and general deterrent. Based on the evidence provided Stewards are of the opinion that there is no conclusive evidence that SPEEDY ILLUSION had been administered a contaminated product prior to it competing on the 11th of February 2018 and this if further highlighted by the number of negative samples returned by other horses trained by you which were taken at around this time and also the negative sample returned by SPEEDY ILLUSION on the 20th of March 2018 … We don't have, we don't believe there's conclusive evidence to say that SPEEDY ILLUSION received a contaminated product prior to it competing.*

Principles

28. Before considering the appellant's submissions, we record and gratefully adopt the observations and matters of principle set out below by Justice Garde in *Kavanagh v Racing Victoria Limited (No.2)* [2018] VCAT 291 at [15]:

> *Kavanagh and O'Brien rely on the decision of the Racing Appeals Tribunal in McDonough v Harness Racing Victoria, where Judge Williams said:*
>
> *... from the point of view of penalty the ability of a trainer to demonstrate to a Tribunal, and the onus is on the trainer, that he lacks culpability because he did not administer the substance himself or is not otherwise responsible in any way, that is still of course a significant factor in terms of penalty. But I emphasise the evidentiary onus remains in my view, on the trainer, to avail himself of the benefits of proof of reduced or absent culpability. That conclusion, from a legal point of view, is consistent with the criminal law, in the case of Storey and it is also referred to in a thoroughbred case that I was reading of the New South Wales Authority v Graeme Rogerson ... a case in which His Honour Mr Barry Thorley presided...:*
>
> *In the view which this Tribunal takes of the structure of AR178, it is however for the trainer to carry the evidentiary onus of proving facts which serve to reduce the primary inference that would be drawn by the fact of the finding of a prohibited substance in a horse within his charge which has been brought to a race course.*
>
> *I endorse that statement of the onus in respect of not only the thoroughbred rules but also the harness racing rules.*
>
> *With this background these prohibited substance cases <u>generally</u>, and I emphasise <u>generally</u>, fall into one of three categories. First where through investigation, admission or other direct evidence the Authority, in this case Harness Racing Victoria, can establish before the Tribunal a positive culpability on the part of the person responsible, perhaps the trainer.*
>
> *For example, the trainer administered the drug to the horse either himself or at his direction or had otherwise acted in some way as to be instrumental in the commission of the offence. Within that category the culpability may be in the class of deliberate wrongdoing or it may be through ignorance or carelessness or something similar.*

Secondly, where at the conclusion of any evidence and plea the Tribunal is left in the position of having no real idea as to how the prohibited substance came to get into the horse. This may be with the trainer giving some explanation which the Tribunal is not prepared to accept or the trainer may simple (sic.) concede that he has no explanation.

I might say that this second category is perhaps the most commonly experienced scenario. Indeed as again His Honour Mr Barry Thorley ... said:

> *"The common experience is of course that the Stewards have no idea as to how it is in the case of any racehorse that the prohibited substance came to be in it. They immediately, as is required, opened an inquiry. It is very seldom indeed that that inquiry demonstrates the actual culprit. Why is that? For the obvious reason that the sole knowledge of what transpires is within the stable and its staff and its professional advisors. No doubt one can speculate that there are many ways in which a horse may present with a prohibited substance. One can contemplate the act of some intruder by stealth of night entering the stable and administering some drug. One can contemplate the consumption by the animal accidentally of some substance left lying around negligently or the ingestion of some grasses which produce adverse results. One can contemplate that there was an actual, albeit mistaken administration within the stable of some product which was really intended for the horse in the adjoining stall, but mistakenly administered to the horse in question. One can even imagine that the horse might lick a rail or some place which had previously been contaminated. The number of examples one can contemplate is manifold."*

As I say, that is perhaps the most common scenario that the Tribunal is left with.

Thirdly, the trainer (or other person being dealt with) may provide an explanation which the Tribunal accepts and which demonstrates that the trainer has no culpability at all. An obvious example would be if the trainer could satisfy the Tribunal that his horse had been nobbled, and it had been nobbled notwithstanding the presence of reasonable measures to prevent same.

And of course there could be various other factual scenarios where the horse could somehow be the subject of the administration or ingestion of a prohibited substance without any culpability either directly or indirectly on the part of the trainer. This category represents cases where the trainer does establish to the Tribunal's satisfaction, the onus being on him, that he is free of blame, that he himself was not instrumental in the administration of the prohibited substance and that he has done all he could be expected to do to prevent same.

Generally cases will fall into one of these three categories of case. Obviously the first category where there is positive evidence of culpability to varying degrees, is the worst from the point of view of the trainer or other person concerned and high penalties as are appropriate would be likely to flow.

The second category, the lack of evidence category, may or may not end up being similar to the first category, every case depending on its own individual facts.

As to the third category where there is little or no culpability, one would expect any penalty to reflect the absence of culpability or its low level. Within this category of cases there may in appropriate situations be instances where it is deemed not to be appropriate that the sentence express denunciation or general deterrence at all and indeed where it is appropriate to impose no penalty at all.

29. Having regard to those observations in *McDonough*, it appears to the Board that the only factual issues to be determined are whether the appellant has convinced us to the requisite degree that there is a probable cause for the positive result that demonstrates that the appellant was not culpable. Taking the categories referred to by Justice Garde in *Cavanagh*, there is a contest as to whether this case falls within Category 3. If we cannot reach the requisite degree of satisfaction for that position, the case should be assessed as a Category 2 case where, effectively we are left with no affirmative proof of how and why the horse came to present with an elevated reading.

30. Other horses in the appellant's stable were being administered Bute-All at the same time as *Speedy Illusion*. *Speedy Illusion* was also being administered Bute-All in the two days preceding 20 March 2018 when a further sample was taken from the horse. That sample was negative to caffeine. The substance had been administered to *Speedy Illusion* on 8 and 9 February prior to him returning the positive swab on 11 February. Other horses in the appellant's stable that were administered with the substance also returned clear samples. There is no evidence, as submitted by Stewards, that confirms the presence of caffeine in the levels detected in the samples analysed after the event would be sufficient to cause a positive reading. Although we cannot rule out the possibility of contamination from supplements being provided by the appellant, the overall circumstances are such that we cannot be positively satisfied that the positive result was a consequence of the administration of a contaminated batch or batches of Bute-All.

31. As a consequence, we are left in a position of viewing this case as a Category 2 type case.

32. In respect of the penalty imposed, the appellant submitted that it was excessive due to the following:

    (a) the horse was beaten during the race suggesting that there had been no enhancement of its performance involved;

    (b) other cases involving samples testing positive to caffeine did not result in such severe penalties.

33. The appellant referred the Board to a July 2018 decision of NSW Stewards relating to Todd Smart in which 5 horses trained by him tested positive to caffeine. It appears a product being administered to the horses was contaminated with caffeine at very high levels. It was found by Stewards in that case that the trainer involved had made inquiries with his stable veterinarian about the use of the product and received no adverse advice about its use. He had received certification about the product and was aware that other trainers used it without issues. Stewards were

positively satisfied that the detection of caffeine resulted from the ingestion of the product which had been contaminated through no fault of the trainer. It is clear that stewards were satisfied the circumstances fell into the first category of cases identified by Justice Garde. They issued no penalty against Mr Smart.

34. The Board was also referred to a further NSW's stewards' decision relating to Craig Carmody from 6 April 2017. In that case, the horses in his care tested positive to caffeine linked to the use of Vetrofen. Samples of the product seized from Mr Carmody's stables and supplied by the manufacturer were tested and found to contain high levels of caffeine. Stewards were satisfied that the reading was the result of the use of Vetrofen. Mr Carmody had a "clean record" and was fined $5,000.

35. In the circumstances, the appellant argued that 12 months disqualification was excessive and that a fine or shorter period of disqualification was called for.

36. The appellant has had previous breaches of the prohibited substance rules. In 2011, he was fined $2,000 for presenting a horse to trial with a prohibited substance in its system. In 2014, he was fined for administering Vicks to the nostrils of a horse in breach of the prohibited substance rules. He was fined $500 under the same rule in 2015 for applying an antiseptic spray to a horse on a race morning. The previous partially suspended disqualification was imposed in 2015 in respect of prohibited substance charges relating to cobalt.

Consideration

37. Any breach of the prohibited substance rules is always a concern. Breaches of these rules strike at the heart of the integrity of the industry. This is not the appellant's first offence for breaches of the prohibited substance rules. Disqualification rather than suspension usually attends a breach of the rule of this type. That is so because of the serious harm such breaches cause to the perception of the industry. This is not a case in our view where a fine or suspension is appropriate.

38. Having regard to the circumstances of the case, our inability to make any factual findings that could inform our assessment of the appellant's culpability one way or the other, and his prior matters, we consider that a period of disqualification of 6 months is appropriate. This case is clearly distinguishable from those to which the Board was referred by the appellant.

Imposition of suspended period of disqualification

39. Having determined we have jurisdiction to consider this matter, the appellant argued that the penalty was unable to be activated as the imposition of the order was an error of law as it did not comply with the rules.

40. AR196(4) provides:

> *Any person or body authorised by the Rules to penalise any person may in respect of any penalty imposed on a person in relation to the conduct of a person, other than a period of disqualification or a warning off, suspend the operation of that penalty either wholly or in part for a period not exceeding 2 years upon such terms and conditions as they see fit.*

41. AR8(e) vests power in Stewards to penalise any person committing a breach of the rules. The Board is not empowered to impose penalties pursuant to the Rules. The Board's power is sourced from the *Racing Regulation Act 2004* (the Act) which provides that after hearing an appeal, it has the power to affirm, vary or quash the decision that was the object of the appeal: s.34(1)(a). In its decision of 2 June 2016, the Board purported to vary the stewards' decision. The question is whether the Board's power to vary is limited to imposing penalties that stewards would themselves be able to impose pursuant to the rules.

42. A similar issue was considered by the Racing Appeals Tribunal (SA) in *O'Shea and Downing* RAT 14/2018. In that decision, the Tribunal held that it was not prevented from suspending a period of disqualification despite the wording of AR196(4) as that rule applied only to a person or body authorised by the Rules to penalise a person. The President of the Tribunal held that it operated in a quasi-criminal jurisdiction and had inherent powers to achieve a just result.

43. The Board is not convinced that this analysis, if correct, applies to the Board. As a creature of statute, it has no inherent powers or jurisdiction, but may have implied powers necessary to exercise its statutory functions and powers. The Act relevantly provides that the Board:

    a. is to proceed with as little formality and technicality as a proper consideration of the appeal permits – s.30(6)(a);

    b. is to act according to equity, good conscience and the substantial merits of the case – s.30(6)(ab);

    c. except as provided by the Act, may otherwise regulate its own proceedings – s.30(6)(d);

    d. may take into account any matters relating to, or to the administration of, racing that are within the knowledge or experience of a member of the TRAB or which have arisen in or as a result of other proceedings or appeals before the TRAB – s.30(6D)(c).

44. Section 34(7) of the Act also provides that a determination of the TRAB in relation to an appeal is final and, in the case of an appeal against a decision, is to be taken to be the decision of the respondent (in this case stewards) to which the determination relates. The combined effect of these provisions strongly suggests that the powers of the Board in respect of penalties in such appeals are limited to those available to stewards. A varied decision is taken to be a decision of the stewards: see s.34(7). The Board is entitled to take into account matters relating to the administration of racing, including the rules relating to the imposition of penalties.

45. Nevertheless, the decision of the Board to impose a suspended disqualification, is considered final. It was not the subject of any application for judicial review. Stewards were entitled to act on the premise that it was decision of stewards and to activate it. It was not unlawful for them to do so. The Board would be acting against equity and good conscience to allow the appellant to take the benefit of its earlier decision and avoid its effect following the clear breach of the conditions of suspension.

46. There is no good reason to find that stewards ought not to have been satisfied that the conditions of suspension were fulfilled. Nor could it be said that the decision to activate the penalty was unreasonable in the circumstances. In our view, it is also

appropriate for the penalty to operate cumulatively to the varied period of disqualification imposed in respect of the caffeine matter. The suspension of the penalty provides a person the opportunity to avoid its operation in circumstances where the conditions of suspension are met. Where they are breached and there are no exceptional circumstances warranting a departure from the expectation that a suspended penalty ought be activated, it is appropriate for the penalty to be served. The Board notes the appellant's personal circumstances and the adverse impact of the disqualification upon him and his dependents. In light of the circumstances of the breach and the appellant's prior history of breaching the prohibited substance rules, the imposition of the penalty is not unreasonable or unjust.

Conclusion

47. The period of disqualification imposed by stewards in respect of the caffeine matter is varied to one of 6 months disqualification. The decision of stewards to activate the suspended disqualification and order that it be served cumulatively to the period of disqualification imposed in respect of the caffeine matter is affirmed.

48. The decision of stewards has been varied. The Board orders pursuant to s.34(1A) and (2)(d) of the Act that 25% of the appellants prescribed deposit be forfeited to the Secretary of the Department. It is also ordered pursuant to s.34(4A) and (4B)(c) of the Act that the appellant pay 25% of the cost incurred in the preparation of the transcript of the stewards' inquiry.