
MOTORSPORT COURT OF APPEAL

IN THE MATTER of an appeal Against the Decision of the Stewards

BETWEEN **MARK PETCH MOTORSPORT**

Appellant

A N D **MOTORSPORT NEW ZEALAND INC**

Respondent

DECISION OF THE COURT

**DECISION OF MOTORSPORT
COURT OF APPEAL**

- 1 The Court apologises to the parties for the delay in producing this decision. The jurisdictional arguments raised by the appellant meant that the matter could not be decided on the day of hearing and further information was called for. Time then had to be found to properly consider the rather complex issues.

Procedural Background

- 2 The matter arises from an incident in pit lane at the Pukekohe meeting on the 22nd of April 2007 (the final day of the 3 day event). It began with an enquiry by a member of a competing team, which in turn, caused the Event Director to summon Mr Petch (the appellant) to appear at a hearing on 26 April 2007.
- 3 The Event Director ruled that Mr Petch had breached NSC 94(c), which prohibits any “competitor, entrant, driver or official in a series, meeting or event”... to act prejudicial to any series, meeting or event, or to the interests of automobile sport in general.
- 4 In this case, the entrant was Mark Petch Motorsport. (“MPM”). It was held that Mr Petch was responsible, pursuant to NSC 35(g) for the actions of a crew member – namely himself. The entry form does not say that MPM was a limited company, so in this case Mr Petch was the entrant, as well as being a crew member.
- 5 The Event Director, having found the charge proved, referred the matter to “The Stewards” for rehearing under Schedule P3.1(a). This rule provides that if “at the conclusion of any hearing... the Official hearing the matter considers that the complaint has been proved, and the penalty prescribed... is insufficient given the serious nature of the offence then... the matter may be passed on for a sentence befitting the serious nature, to be applied “by the Stewards appointed to the Meeting.”.

- 6 The Rule then rather confusingly says that “The Stewards will call a further hearing, using the same parameters that apply to Protect Hearings, Part IX of the Code. They will re-hear the matter in its entirety. This is confusing because:
- (a) P3.1(a) contemplates that the Stewards role in this instance is to impose penalty only, whereas it goes on to call for a full re-hearing.
 - (b) It requires the Stewards collectively, to call for the further hearing, rather than their Chairman doing so. In this case, it is unclear who in fact, convened the re-hearing. It seems most likely that it was MSNZ.
- 7 The Stewards appointed to the meeting were Wade Paterson (Chairman), Paul Te Punga, and Barry Swanerton.
- 8 A hearing was convened for 10 May 2007, but only Mr Paterson was available to hear the case at that particular time and venue. Two other qualified Stewards, Bill Ritchie and Gary Lathrope were co-opted onto the hearing panel. Mr Petch’s counsel has repeatedly made the point that these two gentlemen were not “Stewards appointed to the Meeting.”
- 9 The question therefore arises as to whether substitute, or deputed, Stewards may be appointed in such circumstances. If not, the hearing on 10 May 2007 was convened outside the Rules, and was therefore a nullity.
10. Counsel for Motorsport New Zealand (“MSNZ”) submits that:
- (a) Mr Petch did not raise any objection on the day, and therefore consented to the hearing. This argument cannot succeed. If the hearing was a nullity, this cannot be cured by consent.
 - (b) That under Article 73 of The NSC, where the appointed Stewards are not available, other Stewards may be substituted. The difficulty is that this rule contemplates that it is MSNZ which appoints the Stewards. However, if any Steward fails to arrive, it seems, under the Rule, to be up to the organiser to try and locate or appoint another Steward – in

this case, the organiser was New Zealand International Grand Prix (Auck) Inc, who had no role in this matter.

- 11 In reality, what happened was that it fell to the Chairman, Mr Paterson, to contact substitute Stewards. There is no doubt that they were both suitable persons, and we reject Mr Drummond's suggestion that Mr Paterson chose them because he knew them, or thought he could influence them. Mr Paterson, has clearly acted in good faith, throughout.
- 12 One problem is that Mr Paterson relies on Article 77(d) of The NSC. This Article refers back to Article 76 which relates to a "Meeting or Event." Clearly 77(d) authorises the appointment of deputies to ensure that the required number of Stewards are present (at the meeting). Clearly, Messrs Lathrope and Ritchie were not appointed in the context of a meeting or event. Mr Paterson refers to them as not "The original Stewards of the Meeting."
- 13 Another problem is that Rule 77 confusingly says that "the Stewards (plural) may appoint deputies in the absence of some of their number, to ensure that the required number of Stewards are present (at the meeting or event).
- 14 Somewhat reluctantly (because we would prefer to deal with this matter on its merits), we are forced to accept the argument that under the Rules, as they stand, Messrs Lathrope and Ritchie:
 - (a) Were not Stewards of the Meeting;
 - (b) Could not be appointed by the Chairman following the conclusion of the meeting, to deal with this disciplinary matter; and;
 - (c) That in the first instance, it was the role of MSNZ to appoint the "Stewards of the Meeting".

Consequences of our decision re Procedure/Jurisdiction

- 15 The Stewards' hearing on 10 May 2007, though it was thorough, and fairly conducted, was outside the Rules, and therefore a nullity.
- 16 In the course of the appeal, we re-heard the witnesses and reached the same conclusion as the Stewards, i.e. that Mr Petch's behaviour was unacceptable, and prejudicial to the meeting, series and sport as a whole. Whilst we were left in some doubt as to the specifics as to which of the participants in the incident committed an assault (if either), there is no doubt that the actions of Mr Petch in touching another competitor's vehicle, and persisting in doing so when told to stop, was provocative, constituted a trespass to the vehicle, and was likely to lead to trouble, as indeed it did. The fact that Mr Petch may have suspected some irregularity about the vehicle, or its tyres, was no excuse, and could have been dealt with via officials.
- 17 Were it not for the jurisdictional issues, the appeal would have failed. As it is, we reluctantly allow the appeal, but order that the appeal fee be forfeited. We recommend that a review of the relevant rules be undertaken, to allow more flexibility and certainty around the appointment, and replacement, of officials in such circumstances.

DATED this day of 2007