

## IN THE NATIONAL MOTORSPORT COURT OF APPEAL

**BETWEEN**            **PETER SCHARMACH**  
Appellant

**A N D**                **MOTORSPORT NEW ZEALAND INC**  
Respondent

### DECISION

This written decision elaborates on the oral decision given by us, following the hearing at Manfeild on 16 February 2007.

There were 2 grounds of appeal:

#### **1 Jurisdiction**

- 1.1 It was submitted by the appellant that the Deputy Event Director, Brian Davies, had no jurisdiction to make any finding against, or impose any penalty on Mr Scharmach. This argument was based on Appendix One, Schedule O, of the National Sporting Code, which sets out the designated officials for an event. The list includes an “Event Director”; and an “Assistant Event Director” but does not include a “Deputy Event Director.”
- 1.2 On 20 December 2006 Motorsport NZ issued Championship Amendment CH – 07 – A002 which added additional personnel for the Taupo Event. It referred to “Deputy Event Director – Brian Davies, who will undertake Event Director Responsibilities for (various categories, including Mini).”
- 1.3 Reference was made to Article 18(3) of the NSC, which states that no amendment to the Supplementary Regulations of an event shall be valid, unless by way of Official Bulletin, according to the procedures set out in the definition of Official Bulletin, in Article 2 of the NSC.
- 1.4 “Official Bulletin” means “any document ... which must be signed by either the Clerk of the Course, or the Secretary of the Meeting. The argument was

therefore made that because the amendment was signed by the General Manager of MNZ, not by the Clerk of Course, or Meeting Secretary, it was invalid, and therefore Mr Davies was not properly appointed.

- 1.5 The appellant dealt with an argument which he expected MSN to raise, i.e.:  
Schedule CH of the Race Championship General Prescriptions (Article 24) states that MSN may issue amendments to the articles or technical schedules ... It was argued that this power of amendment did not cover Supplementary Regulations.
- 1.6 Article 2 of the Prescriptions states that they are to be considered as an addendum to the NSC, and other named regulations. The prescriptions themselves nominate the Championship Personnel. The notice from MNZ is headed “Championship Amendment”, and is stated to be made under NSC Article 18(2).
- 1.7 As stated above, the MSN notice was not signed by the Clerk of Course, or Meeting Secretary and does not meet the definitions of an “Official Bulletin”. But it should be noted that article 70 of the NSC states that “At any ... event, MSN may appoint an Event Director, and where appropriate, an Assistant Event Director...”.
- 1.8 We do not see any significant distinction between an “Assistant Event Director” or “Deputy Event Director. : Whilst the notice issued by MNZ may not be perfectly worded, and may have incorrectly referred to NSC Article 18(2) in its introductory part, the notice is clear enough. It appoints a Deputy Event Director “who will undertake the Event Director responsibilities for ... Mini categories.” Had the notice said “Assistant Event director” no issue could be taken. As stated, we see no real distinction between “Deputy” and “Assistant” and we hold that the notice was valid.
- 1.9 We also observe that the argument as to validity of the notice, and jurisdiction, which was highly technical, was only provided to MSN a day or so before the hearing of this appeal. We find that this was prejudicial to MSN’s ability to answer such argument, and indeed to our own ability to come to the hearing conversant with the issues.

## **2 The Merits**

- 2.1 The submission for Mr Scharmach was that he was not overtaking, at the moment of the collision with the Moore car. Having viewed the video footage, particularly the TVNZ footage, it is clear that Mr Scharmach was, in effect, in the course of overtaking. There was a gap between the 2 vehicles concerned, and Mr Scharmach's car closed on the other car, which had maintained its line. The contact between the 2 cars was avoidable. Mr Scharmach could have "backed off" momentarily. We appreciate that this occurred during the cut and thrust of a very close contest, and that there was some kind of "aggro" between the 2 drivers – but this does not affect the facts.
- 2.2 Mr Scharmach clearly initiated the contact, and this cannot be said to be part of the previous incident between the two vehicles.

## **3 Disclosure/Late Provision of Grounds of Appeal**

- 3.1 Mr Scharmach's representatives raised issues about late disclosure of the TVNZ footage by MNZ, and suggested that this in turn prevented the finalisation of the submissions. Clearly, the footage was equally available to the appellant had he, or his representatives, chosen to seek it from TVNZ – so the suggestion has no merit.
- 3.2 The late provision of the appellant's submissions did prejudice MSN, and create problems for the Court, as stated above. As this is our first case under the new guidelines, we make it clear:
- (a) In future cases we may not allow late provision of specific grounds of appeal; or
  - (b) We may either defer our hearing, or otherwise allow MSN time to prepare their reply – particularly in respect of technical arguments, such as those made in this case;
  - (c) Late provision of material will be taken into consideration as to costs;
  - (d) The purpose of the guidelines is to allow both parties to come to the hearing properly informed, and the interests of fairness to both parties.

**4 Conclusion**

4.1 For the reasons stated above, the appeal fails.

4.2 No part of the appeal fee shall be refunded, but we make no further order as to costs.

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