

Decision of a Sub-Committee appointed by the Executive Committee under Articles 118 and 119 of the National Sporting Code (NSC), namely –

- Mr Wayne Christie (Chair)
- Mr Graeme Robertson
- Mr Jeff Scott

In the Matter of

1. Article 119(a)(iii) of the National Sporting Code

The Sub-Committee should investigate and ascertain if Decision 15, and the subsequent Decision 18 issued by Mr Bowater during the V8 SuperTourers Meeting at Ruapuna 24-25 November 2012, were valid and in accordance with the regulations, and that the penalty applied was appropriate.

2. Article 119(a)(iv) of the National Sporting Code

The Sub-Committee should investigate and ascertain whether due process had been followed with regards to the protest initiated as a result of those Decisions.

3. Article 119(a)(v) of the National Sporting Code

The Sub-Committee should investigate and ascertain if the actions of any official breached the National Sporting Code or its Appendices or Schedules.

Hearing Details

The hearing took place by meeting at Ruapuna Park, Christchurch on Tuesday, 8 January 2013 commencing at 7:30pm. The participants being the Sub-Committee members, Mr Tim Edgell (Competitor Car #8), Mr Paul Mallard (Team Manager Car #8), Mr Ian Bowater (Official), Mr Bevin Godfrey (Clerk of the Course), Mr Alan Watkins (Competitor Relations Officer), Mr Barry Higham (Steward) and Mr Brian Budd (representing MotorSport New Zealand). Mr Bowater was unable to be present and provided a written submission and was available by telephone if required.

Background

The Sub-Committee was tasked to investigate the decisions surrounding issuing of a time penalty to Car #8 for blocking during Race 3 for V8 SuperTourers and if the decisions were issued in accordance with the National Sporting Code and its Appendices and Schedules (NSC). It was also tasked to determine if due process had been followed with regards to the subsequent protest filed by the team of Car #8 and if any official had breached the NSC.

Additionally the Sub-Committee was tasked to specifically investigate the following:

- Did the supplementary regulations issued for the meeting comply with the requirements of the NSC?
- Did any officials act contrary to the powers conferred on the official by the NSC?
- Did the actions of any official breach any rules or regulations contained in the NSC?
- Whether the protest submitted by the competitor was admissible and if so, whether the correct procedures were followed by all officials?

If, in the course of this investigation, the Sub-Committee concludes a hearing of any nature should have been held, they were empowered to undertake that hearing in the interests of natural justice.

The Sub-Committee may also consider the wider implications of any such actions to the Sport as a whole.

Hearing

The Hearing was conducted in accordance with NSC Article 120.

Mr Mallard recalled the events following the issuing of Decisions 15 & 18 leading to the filing of a protest and its eventual decline by the Stewards of the meeting as he had submitted in his request for this Inquiry.

Decision 15 notified that Car #8 had blocked Car #51 and was issued to the competitor of Car #8 at 16:44. The Decision ruled that a 5 second time penalty be applied to Car #8.

It was contended by Mr Mallard that the Decision was incorrect as Mr Edgell had not blocked Car #51 and that the penalty should not be applied. It was confirmed by the officials that the Decision was incorrect and Decision 18 was later issued to replace Decision 15 notifying that Car #8 had blocked Car #31 ruling the same penalty. Decision 18 was issued to Mr Mallard at 17:45 and was not accepted by Mr Mallard as it was timed at 16:45. Decision 18 was subsequently amended to show that it was issued at 17:45 and was handed to Mr Mallard at approximately 17:50 by Mr Watkins.

Mr Mallard immediately notified Mr Watkins of his intention to protest and requested a protest form. Mr Watkins did not have a protest form on his person. Mr Mallard contended that shortly thereafter Mr Watkins and Mr Godfrey advised him that they would not allow him to protest to the Stewards on the basis that Decision 18 was a Judge of Fact decision and did not provide him with a protest form.

Mr Mallard then sought Mr Gary Lathrope (class representative for V8 SuperTourers and listed as Assistant Clerk of the Course under V8 SuperTourers Officials in the Supplementary Regulations Part Two) who provided him with a protest form at approximately 18:10.

Mr Mallard completed the protest form and handed it to Mr Watkins at 18:15 who confirmed the time of receipt. Mr Mallard did not have his credit card details and returned within a few minutes with his credit card. Mr Watkins delivered the protest form and Mr Mallard's credit card to the Stewards.

Mr Mallard observed that Mr Watkins and other officials were with the Stewards for some time and Mr Watkins then advised Mr Mallard that Mr Adam Simmons (listed as Judge of Fact (Time Penalties) under V8 SuperTourers Officials in the Supplementary Regulations Part Two) was the Judge of Fact who had issued the penalty. Mr Mallard advised Mr Watkins that he wished to proceed with the protest after Mr Watkins had advised him that the Stewards could increase the penalty applied.

After further discussion with the Stewards Mr Watkins advised Mr Mallard that the protest had not been accepted as it had been received out of time.

Mr Godfrey explained that the discussion with Mr Mallard around not accepting the protest was more about the decision being about the wrong car number, that the decision was actually made by Mr Ross Thurston (listed as Assistant Clerk of the Course (IPO) under V8 SuperTourers Officials in the Supplementary Regulations Part Two) as a Judge of Fact decision which couldn't be protested, and also commented that the Notification of Decision should have been signed by Mr Thurston.

Mr Robertson questioned Mr Godfrey if he had stated to Mr Mallard that he would not convey the protest to the Stewards. Mr Godfrey denied this was the case and re-iterated that in his mind the issue was more around the decision and not the penalty.

Mr Watkins stated that he delivered Decision 18 to the pit area of Car #8 at 17:45 by his watch and that it took around five minutes to locate Mr Mallard. Mr Mallard advised his intention to protest, Mr Watkins advised that he didn't have a protest form with him and for Mr Mallard to come up to the CRO office, Mr Watkins returned to the CRO office. At approximately 18:10 Mr Mallard arrived to complete the protest form and at 18:15 handed the form to Mr Watkins without payment. Mr Mallard returned with his credit card a further five minutes later.

Mr Mallard asserted that Mr Watkins and Mr Godfrey were present when the protest form was requested, then at approximately 18:00 he went to find Mr Lathrope who provided the protest form.

Mr Higham confirmed that the protest form was received by the Stewards at 18:20. He denied any suggestion that the Stewards had conferred with other officials prior to declining the protest.

Mr Christie questioned the point regarding Mr Simmons issuing the time penalty, Mr Godfrey confirmed that it was Mr Thurston who had issued the time penalty.

Mr Robertson asked Mr Godfrey what a Judge of Fact (Time Penalties) was charged with. Mr Godfrey was not able to verify this.

Mr Godfrey advised that he had had a discussion with the Stewards regarding the overturning/reversal of Decision 15 and Mr Higham confirmed that a discussion had taken place but couldn't recall what the outcome was.

After further questioning by Mr Robertson it was confirmed that the meeting was held under a National Race (Foreign Participation) permit. This was in response to Mr Bowater's written submission that the FIA International Sporting Code provided for a Race Director (as he was listed under V8 SuperTourers Officials in the Supplementary Regulations Part Two) to have the authority as Assistant Clerk of the Course and as such would have the right to issue penalties under the NSC.

Mr Christie commented that the Supplementary Regulations Part Two could be construed as being confusing in that the first heading stated "Canterbury Car Club Officials of the Meeting" while the second heading only stated "V8 SuperTourer Officials" and this could be taken to read that only the Canterbury Car Club Officials were appointed as officials of the meeting. It was also noted that the second steward, Mr John Armstrong, was missing from the Supplementary Regulations Part Two.

In summing up Mr Higham advised that in making their decision not to accept the protest their emphasis was on any inability to receive a protest form, and while preferable, a protest does not need to be lodged on the official form. He confirmed that the protest was inadmissible without payment of the prescribed fee and when lodged correctly was outside time. The Stewards determined that Mr Mallard had the ability to have lodged the protest within time and that there were not sufficient grounds to consider any exception.

Mr Godfrey advised that he could not confirm the exact times of the events and thought that the decision under protest was Decision 15.

Mr Mallard confirmed that the race in question had been the last race of the day. He also submitted that the original Decision 15 was incorrect and that there were a number of precedents to show that an incorrect decision should not be upheld.

The Sub-Committee then retired to consider its verdict.

Observation

In its deliberations the Sub-Committee observed that the standard penalty under A4Z.4 Breach of Code of Driving Conduct which was applied for Decision 18 provides for a maximum fine of \$500 as well as a time penalty. The fine had not been applied. It was also noted that Mr Bowater had issued a number of penalties during the meeting.

Finding

The Sub-Committee have reached the following findings in respect to the points they have been charged with considering:

1. All decisions issued by Mr Bowater were invalid because he was not an appointed Assistant Clerk of the Course as per the published Supplementary Regulations Part Two and as required under the NSC; and

2. The Stewards determined that the protest was inadmissible due to it not having the prescribed fee attached and was then out of time when correctly lodged. This is the Stewards authority to make this decision and no evidence was produced to question this decision; and
3. Mr Bowater acted outside the authority for which he had been appointed and therefore acted contrary to the powers conferred on him by the NSC; and
4. Mr Bowater's submission that the FIA code allowing the use of the term Race Director was not valid as the permit issued for the meeting was for a National Race (Foreign Participation) meeting and therefore was under the jurisdiction of the New Zealand MotorSport Manual No. 35 containing the NSC; and
5. The Supplementary Regulations Part Two issued for the meeting were confusing and contained terms not provided for under the NSC; and
6. Any time penalties issued under A4Z.4 were incorrect as they did not comply with the standard penalty prescribed under Sch P, which required that a fine also be applied.

Decision

Taking account of all the factors put before it the Sub-Committee DETERMINES that:

1. All decisions issued by Mr Bowater for this meeting are to be null and void; and
2. All race results affected by any decisions issued by Mr Bowater are to be amended; and
3. Mr Bowater is to be severely reprimanded for his actions at this meeting due to him acting outside his delegated authority.

The Sub-Committee was unanimous in making its decision.

Costs

In view of the circumstances the following costs are to be borne by MotorSport New Zealand:

- Reasonable travel & accommodation costs for Mr Edgell & Mr Mallard;
- Reasonable accommodation costs for Mr Robertson;
- Mileage costs for Mr Watkins;
- Receipts to be provided to MotorSport New Zealand for actual costs.

Recommendations

As a result of discussions and submissions the Sub-Committee makes the following recommendations:

1. Judge of Fact appointments need to be examined to ensure they meet the test for a Judge of Fact under Art 86(c) of the NSC. This requirement is to be notified to all permit issuing stewards.
2. There is no clear process for a Clerk of the Course to rescind/amend a decision which has clearly been issued incorrectly and the Sub-Committee recommends that a process similar to that provided for Judges of Fact under Art 86(1)(4) and Art 77(j) of the NSC be provided for.
3. All competitors should be reminded of their responsibilities to ensure that they have the appropriate documentation for any meeting (eg - do not rely on a CRO to provide a protest form as this can negatively affect tight protect lodgement timelines).
4. Permit issuing stewards be reminded to ensure that Supplementary Regulations are accurate, particularly around the appointment of officials.

Right of Appeal

The parties are reminded of their rights to appeal in accordance with the provisions of the NSC.

This decision was given by email notification on 9 January at 3:30pm.

On behalf of the Sub-Committee



Wayne Christie
Chairman