

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

- Wayne Christie (Chair)
- Graeme Robertson
- David Kirk

In the Matter of

1. Article 119(a)(ii) of the NSC

To investigate the decision made by the Clerk of the Course of Rally Otago and decide whether or not the decision (Decision Number 1, Rally of Otago 26 May 2012) was right or wrong and having done so consider the implications of that decision on NSC, Appendix 3, Schedule R.

2. Article 119(a)(vi) of the NSC

The Sub-Committee should also consider the implication of the decision on the results of Rally Otago.

Hearing Details

The hearing took place by meeting at MotorSport House, 69 Hutt Road, Thorndon Wellington on Friday, 26 October 2012 commencing at 9:30am. The participants being the Sub-Committee members, Norman Oakley (Clerk of the Course) and Brian Budd (representing MotorSport New Zealand). Also called but not present were Emma Gilmour (Competitor Car No 4), Chris West (Competitor Car No 3) and Andrew Simms (Entrant Car No 3).

Background

The Sub-Committee was tasked to investigate the decision surrounding the crew of Car No 4 who were provided by their service crew with a battery jump pack which was taken into Parc Fermé but not used in any way.

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.

Enquiry/Hearing

Written submissions were received from Simon Curry on behalf of the competitor and entrant of Car No 3.

At the commencement of the Enquiry Mr Oakley submitted that the Enquiry could not be held in accordance with the requirements of the NSC as the Enquiry had not been convened within 90 days of the conclusion of the Event.

The Sub-Committee agreed with Mr Oakley and determined that it was in the interests of the sport to continue with the Enquiry and provide recommendations on its findings but that no decision reached could be binding and therefore no penalty could be applied.

Mr Oakley explained to the Sub-Committee that he conducted a hearing after receiving an enquiry from Simon Curry on behalf of Car No 3 that the crew of Car No 4 had received a battery jump pack from their service crew and had carried it into Parc Fermé with them.

The car started under its own power and the battery jump pack was not used.

These allegations were confirmed at the hearing and were not contested by the crew of Car No 4.

In reaching his decision Mr Oakley determined that because there were no repairs carried out there was no breach of Sch R, Section 13. He also determined that the specific rules regarding Parc Fermé override the rules regarding prohibited service (Sch R, Art 6.3) in this circumstance. No further action was taken.

It was noted that the decision of the Clerk of the Course (Decision Number 1) had been deemed as being accepted by all parties as no protest was received.

The Sub-Committee discussed at some length whether any regulations had been breached, particularly the regulations for Parc Fermé and Prohibited Service. It was eventually agreed that there was no breach of any rules regarding Parc Fermé but that Sch R, Art 6.3(b) had been breached through the crew having received the battery jump pack outside a designated service area.

The Sub-Committee also discussed the wording of the regulations for Parc Fermé and Prohibited Assistance to determine if these regulations were meeting their desired objective.

Observation

In reaching its decision the Sub-Committee accepted that Mr Oakley had attempted to achieve a “no penalty” result as the crew of Car No 4 had not breached any Parc Fermé regulations and the car had started under its own power, thus rendering the breach of 6.3(b) ineffective with the competitor gaining no competitive advantage.

Finding

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

1. The decision made by the Clerk of the Course was incorrect in that a breach of Sch R, Art 6.3(b) had occurred and Emma Gilmour of Car No 4 should have been penalised accordingly; and
2. No consideration was given to the implication of the decision on the results of Rally Otago as the Sub-Committee were not empowered to apply any penalty which could have affected the results due to the Enquiry/Hearing being convened outside the requirements of NSC 118; and
3. Consideration needs to be given to the wording of the regulations for Prohibited Assistance and Parc Fermé.

Decision

Taking account of all the factors put before the Sub-Committee FINDS:

1. That because the Enquiry/Hearing had been convened more than 90 days after the conclusion of the Event the Enquiry/Hearing did not meet the requirements of NSC 118 and therefore no penalty could be applied.
2. That the wording of the regulations for Prohibited Assistance and Parc Fermé could be improved and offers the following amendments for consideration:
6.3(b) add the words “except for food and drink” after “materials (solid or liquid) to allow crews to receive food and drink to be carried in the car;
13.2(a) remove the words “strictly” and “under pain or exclusion” as these words were considered superfluous and inferred that a penalty of exclusion would be applied which contradicts the standard penalty under A3R.19;

13.2(b) NEW - Add "In events where there is an overnight Parc Fermé the provisions of clause 6.3 are suspended from the time that the crew leaves the Parc Fermé until the time that they re-enter." to allow the crew to bring personal items with them into Parc Fermé.

The Sub-Committee was unanimous in making its decision.

On behalf of the Sub-Committee



Wayne Christie
Chairman