

MotorSport New Zealand (Inc.)

Decision of a Sub Committee appointed by the Executive Committee under Articles 118 and 119(a)(iii), (iv) & (v) of the National Sporting Code, namely –

- **Graeme Robertson (Chair)**
- **Martin Fine**
- **Campbell Robertson**

In the Matter of

An investigation into a penalty imposed on Mike Tubbs (Competitor No.731 – Competition Licence 15509) resulting from Stewards Decision 1 during DUNLOP Targa Rally 2008 regarding his behaviour during Special Stage 20 on 31 October 2008.

Hearing details

The hearing took place on Wednesday 17 December, in Hamilton (MAP & Associates, 14 Knox Street) commencing at 6.00pm. The participants being the Subcommittee members, Mike Tubbs, John DeVere-Ellery (Clerk of the Course) and Don Fenwick (Competitor Relations Officer).

There was a small delay at the beginning whilst Mr Tubbs considered his options as a result of incorrect guidance provided to him by MSNZ Office regarding his ability to have witness's present. He accepted the Chairman's consideration regarding acceptance of facts being given and on that basis agreed to the hearing continuing.

Background

The Executive Committee, required the Sub Committee to hear the case "de novo" and additionally to consider National Sporting Code articles:

Article 119(a)(iii)

That it appears from the Steward's Report or otherwise that any penalty imposed was clearly excessive or clearly inadequate, or that for special reasons such penalty was inappropriate:

The Sub Committee should investigate whether the penalty applied to the competitor was appropriate in terms of the gravity of any offence(s) which it investigates.

Article 119(a)(iv)

That it appears on the application of any entrant or driver that an inquiry into any competition is called for on the basis that there has been either a gross miscarriage of justice or such inquiry is considered fundamental to the interests of motorsport:

The Sub Committee should investigate whether due process has been followed with regards to the protest and appeal procedures set out in the National Sporting Code.

Article 119(a)(v)

That it appears any Official, Promoter, Organiser or any other person or Organisation has committed any breach of this Code, its Appendices and Schedules, or International Sporting Code:

The Sub Committee should investigate the actions of the named parties and any other Officials involved in this matter

Hearing

The Clerk of the Course Decision 4 and Stewards Decision 1 and a letter from Mike Tubbs to Shayne Harris, Chairman Rally Commission were tabled and considered.

Evidence was given by John DeVere-Ellery and Mike Tubbs. Start and Finish logs and a statement from Paul Mullens was also tabled and considered.

The hearing was conducted in accordance with National Sporting Code Article 120.

Finding

The Subcommittee have reached the following findings in respect to the Tubbs SS20 incident and the points they have been charged with considering:

1. TUBBS SS20 INCIDENT

The competitor failed to follow the requirements imposed upon him, in that he did not lodge a temporary withdrawal form as required by the Supplementary Regulations for the event, and entered a live rally stage without having taken any positive steps to ensure the road was open when he decided to enter SS20 at approximately 2.15km from the finish.

2. *The Sub Committee should investigate whether the penalty applied to the competitor was appropriate in terms of the gravity of any offence(s) which it investigates.*

- The Sub Committee was instructed to hear the matter de novo
- On this basis there is no comment appropriate to any prior penalty imposed on the Competitor at any prior hearing.

3. *The Sub Committee should investigate whether due process has been followed with regards to the protest and appeal procedures set out in the National Sporting Code.*

- The Clerk of the Course summons was inappropriate and purported to exclude the competitor from the event without a hearing.
- The Clerk of Course hearing was properly conducted, but when the matter was referred to the Stewards for consideration of penalty, the Stewards of the event followed an improper process by not hearing the matter de novo and in doing so compromised the competitors right of protest

The Sub Committee should investigate the actions of the named parties and any other Officials involved in this matter

- As the matter was only brought to the competitor's attention a day later there appears to be a lack on the organiser's behalf in the requirements of stage integrity.
- There did not appear to be an understanding by either Rally HQ or #999 car with regard to accuracy required when confirming reconciliation of cars through the stage.
- There is an apparent lack of manpower to deal with event management issues as they arose.
- There appeared to be a total lack of understanding by the block marshal regarding access to the stage while it was still running.

Decision

Taking account of all the factors put before it and considering that the Tubbs SS20 incident was required to be heard 'de novo' Mr Tubbs is penalised the maximum that is available to the Sub Committee.

1. Penalty A3R.18 applies
 - Exclusion from the event
 - Endorsement of competition licence until 1 November 2009.
2. The Clerk of the Course is reprimanded and is required to attend the next A Grade CotC course and pass the appropriate examination for his licence to continue.
3. No order is made as to costs.
4. The parties are reminded of their rights of appeal which commence when the written decision is received..

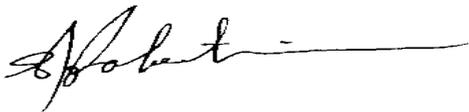
This decision was given verbally at 2010hrs and followed by written notification on 18 December at 1330hrs.

Recomendations

The Sub Committee recommends that:

1. an adequate tracking system be introduced for vehicles traversing special stages and,
2. #999 procedures be reviewed to ensure that accurate reconciliation be achieved before departing a stage and,
3. #999 timetable be reviewed so that a 'sweeper' car is departing no later than 3minutes after the last car to start a stage and,
4. training of block marshals to be reviewed to ensure that they are aware of the flow of vehicles through stages and their responsibilities regarding vehicles entering a stage that is still running and,
5. Rally HQ procedures and manning is reviewed so that the appropriate experience is available to handle on event emergencies and to provide the Clerk of the Course with timely information so that he can resolve any issues on a daily basis and,
6. the organisers are to provide a plan as to how they are implementing these recommendations when applying for any permits during 2009. NB: it may be necessary for MSNZ to appoint officials to assist with development/oversight of this plan and,
7. the Chief Steward is to issue a notice to his department regarding the appropriate method to handle any matters that are referred to them under Schedule P, Article 3.1 and consideration of penalties available under Schedule P 2.1 (6) (a) and (7) (a) and,.
8. given the nature of this inquiry it would have been helpful for the Stewards, as officials whose actions were to be investigated, to have been in attendance.

On behalf of the Sub Committee.



Graeme Robertson
Chairman