
NATIONAL MOTORSPORT COURT OF APPEAL

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

BETWEEN **JOHN McINTYRE**

Appellant

AND **MOTORSPORT NEW ZEALAND INC**
("Motorsport")

Respondent

STATEMENT OF REASONS FOR DECISION GIVEN ON
20 JANUARY 2011

J A LANGFORD
SOLICITOR
CHAIRMAN OF THE COURT

BACKGROUND

- 1.1 This appeal was initially scheduled to be heard in Wellington on 17 December 2010. On 16 December 2010, a (slightly) amended notice of appeal, a synopsis of argument running to 18 pages, plus annexures was received by Motorsport and forwarded to the members of the Court.
- 1.2 Motorsport urgently applied for an adjournment of the appeal, to enable it to consider the arguments, (some of which were procedural or jurisdictional), and obtain legal advice if it so wished. Given that time had been set aside for the hearing of the appeal, at a busy time of the year, the adjournment was granted rather reluctantly.
- 1.3 The appeal was subsequently set down for hearing at Invercargill on the evening of 14 January 2011. The hearing took about 3 ½ hours, with both participants putting their cases in a meticulous and detailed manner. There was a considerable amount of in car video footage, technical data and other information presented – in addition to the procedural/jurisdictional submissions, which had been prepared by Mr McIntyre’s lawyer, but were very competently presented by Mr McIntyre.
- 1.4 The Court was unable to reach a decision on the night, but following further discussion, and review of the written material reached the conclusion that the appeal had failed. The decision was communicated on 20 January 2011, without reasons, because of the importance of the matter to Mr McIntyre.
- 1.5 The giving of a decision, unsupported by reasons, is not generally a desirable practice, and not one which would usually be followed. It fell to the Chairman to write up the reasons, and the Chairman apologies to Mr McIntyre for the time that this has taken.

2 JURISDICTIONAL ARGUMENTS

First Ground – Absence of Grounds of Protest

- 2.1 Mr McIntyre submitted as follows:
 - Article 3.3(2)(a) (Schedule G), which governs Stewards protest hearings provides:

“No protest is valid unless in writing and accompanied by the appropriate fee, and submitted in accordance with the Regulations.”

- The Regulations (Article 113 of the National Sporting Code) provided: Inadmissible protests the only protests which are inadmissible are:
 - (a) The protest not lodged in writing, not containing the ground of protest, or not accompanied by the correct fee.

Discussion

- (i) The Regulation is written in a rather back to front way, but it is clear enough that the written protest must set out the grounds of protest.
- (ii) The official protest form does not contain any section or guidance, for the setting out of grounds. It does contain a section headed “nature of protest.” In this case, the words “protesting decision INV2” (which is the number written on the event director’s decision).
- (iii) Mr McIntyre argued that in the absence of specific grounds, he was prejudiced, because without the grounds, he could not prepare for the Steward’s hearing. He argues that in the absence of grounds, the protest is inadmissible, and the stewards had no right to hear the protest.
- (iv) As a matter of common sense, it is difficult to know what grounds could be set out, other than to state “the Event Director made the wrong decision” given that the protest related to an on track incident, and came down to an assessment of that incident.
- (v) The protest form, as filed, under “Rule No(s) and Page(s) or Regulation(s) involved” stated “contact resulting in position change and ultimately retirement”. So the nature of the incident at issue was clearly stated, albeit possibly under the incorrect heading.
- (vi) Given that the rules only allow 30 minutes for the submission of a protest, it is hardly surprising that the form was not completed in a more detailed or scholarly manner.

OUTCOME

- (vii) The Oxford Dictionary defines “protest” as “formal statement or action of dissent or disapproval, remonstrance...”. We are satisfied that the filing of the protest, and use of the word “protest” coupled with references to the contact incident, sufficiently sets out the grounds of protest, in the present circumstances. We do not accept that Mr McIntyre suffered any breach of natural justice by reason of the rather sparse wording of the protest, or that the protest form was “inadmissible.”

3 Second Ground – Joint Protest

- 3.1 It was argued that the protest was in breach of Article 3.3(3) (Schedule G). “Joint protests shall not be accepted, but more than one individual protest may be accepted on the same grounds.”
- 3.2 It was argued by Mr McIntyre that because:
- The protestor was listed as “Knight Motorsport”.
 - The protest form was signed by Barry Neil as “protestor”.
 - Mr Neil as a crew member of “Knight Motorsport (Limited)”.
 - A crew member is deemed under NSC Part 1, Article 2, to be a “competitor”.
 - That therefore this was a joint protest by both the team itself (as entrant) and by Mr Neil as a competitor.

Discussion

- 3.3 We were provided with Knight Motorsport’s entry form for the championship. Barry Neil is described on the form as “team manger”, which gives him apparent (and probably actual) authority to act on behalf of the team.
- 3.4 The protest form, as lodged (“name of protestor”) refers to one protestor only, Knight Motorsport. It does not purport to be a joint protest. Mr Neil has signed for the team. Clearly he had the team’s authority to do so. There is no suggestion whatever that he lacked authority to sign on behalf of the entrant.
- 3.5 Again, given the limited time for the lodging of a protest, it is hardly surprising that the protest form has not been completed to a state of legal perfection. We do not consider that the Stewards should be troubled by having to consider legal issues as to agency, or apparent authority, when there

is no suggestion or indication, that the person signing for the named protestor lacks authority or is signing in some other capacity.

OUTCOME

- 3.6 Both of the jurisdictional arguments failed, and we were therefore left to consider the merits. Was the contact between the two cars nothing more than a “racing incident” as submitted by Mr McIntyre?

MERITS

- 4.1 Mr McIntyre called evidence from Ross Thurston, Assistant Event Director, for the series. There was also evidence from Perry Field, who took the Court through the “Motec” data, and from Mr McIntyre himself.
- 4.2 There was also input from Andy Knight, the driver of car (5), and Paul Manuell whose car (15) hit the rear of Mr McIntyre’s car (47), and pushed it into Andy Knight’s car (5) causing it to spin.
- 4.3 There was no dispute that there was initial contact between the McIntyre car and the Knight car followed by the Manuell car “shunting the McIntyre car into the Knight car. The main issue was whether Mr McIntyre committed a breach of Article 26.1(Code of Conduct) (Schedule CH) by (in particular):
- causing a collision; or
 - forcing a driver off the track
- 4.4 Changes to the rules were introduced for the 2010/11 series. The emphasis on “providing respect and racing room to fellow competitors” was retained. Drivers were also told “Do not expect to profit from an error of judgment, whether by accident or design.”
- 4.5 The Steward’s decision was very brief (as stated by Mr McIntyre):
“Having viewed the video footage, contact was made by car 47 J McIntyre causing car 5 A Knight to spin, and as such failed to finish the race.”

In logic, there was little more that the Stewards could say. They made a judgment call, based on the in car video evidence, and reached a conclusion.

- 4.6 The Court had the assistance of Mr Thurston’s analysis of the video footage, and diagrams. We were also taken through the Motec data, which was of interest, but did not advance matters greatly.

- 4.7 It was explained to us that Mr Knight and Mr McIntyre have different approaches, or techniques for negotiating their way through the corner in question. Mr Knight takes a “classic approach” i.e. goes wide and then apexes” the corner. Mr McIntyre tends to take a more narrow angle into the corner. Clearly these two techniques are at odds with one another, and unless racing room is given, there is the possibility of collision.
- 4.8 In this case, Mr Knight’s car was ahead of the McIntyre car, and Mr Knight “had the line”. It is not alleged that Mr McIntyre drove recklessly, or maliciously, but it may well be that he made an error of judgment, as to the amount of room he allowed the Knight car. From our observation of the video footage, and other data, it was a very finely balanced issue, as to whether the McIntyre car caused the collision.
- 4.9 We keep in mind the practice guidelines, which state:
“The Court has confidence in the ability of the Stewards to reach a proper decision in the first instance, and the onus is on the appellant to show that the Stewards got it wrong...” Whilst our hearing is “de novo” and we have the power to substitute our findings for those of the Stewards, this is not a case where we are persuaded that the Stewards got it wrong. We think, on the balance of probabilities, that they got it right.
- 4.10 We are in no doubt that the Knight car was disadvantaged as a result of the contact or collision. We are not persuaded that the cause of the spin was the Manuell car, hitting the McIntyre car. Our view is that the second contact, was the direct result of the first.

OUTCOME

- 4.11 The appeal on the merits fails.

PENALTY APPEAL

- 5.1 The appellant’s submission is that:
- The penalty for breach of the Code of Driving Conduct is (CH40.16) in racing, is “addition of 50 seconds of race time and placement behind affected competitor in race results.”
 - Because the Knight car failed to finish, and did not post a result, the McIntyre car could not be placed behind the Knight car.

- 5.2 We are not attracted by this argument, which would make a nonsense of the intention of the rule, which is that the “at fault” car, should not be placed ahead of the “disadvantaged” car.
- 5.3 In this case the Knight car was recorded in the results, as “DNF”. The McIntyre car was placed behind the Knight car, as “DQ”, in accordance with the rule.

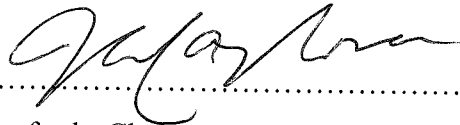
OUTCOME

- 5.4 The Penalty appeal fails.

COSTS/APPEAL FEES

We have received submissions from Motorsport regarding costs. We invite submissions from Mr McIntyre regarding the costs/appeal fee issue.

DATED this *8th* day of *March* 2011



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J A Langford - Chairman