

Decision of a Sub-Committee appointed by the Executive Committee under Article 119 of the National Sporting Code, namely –

- Wayne Christie (Chair)
- David Kirk
- Norman Oakley

The Parties

Mr Nick Ross (Competitor Licence 055144), Competitor
Mr Mike Ross, Team Manager
Mr Craig Finlayson (Official Licence 030088), Race Director
Mr Barry Clark (Official Licence 022192), Competitor Relations Officer
Mr Shaun Varney (Competitor Licence 095611), Competitor
Mr Jason Bargwanna (CAMS Competitor Licence 8815799), Competitor
Mr Brian Budd, representing MotorSport New Zealand

In the Matter of

1. 119(a)(iii)
An investigation to ascertain if Decision RD2, issued by Mr Finlayson during the Thunder in the Park Meeting at Pukekohe 15-17 November 2013, was valid and in compliance with the regulations, and that the penalty applied was appropriate.
2. 119(a)(iv)
An investigation to ascertain whether due process had been followed with regards to the protest initiated as a result of that decision.
3. 119(a)(v)
An investigation to ascertain if the actions of any official breached the National Sporting Code or its Appendices or Schedules.

Inquiry Details

The inquiry took place by meeting at Teretonga Park on Friday, 10 January 2014 commencing at 7:00pm. All parties were present apart from Mr Clark who provided a written submission.

Background

The Sub Committee was tasked to investigate the circumstances surrounding an on-track incident involving Nick Ross and Mr Bargwanna, which resulted in a penalty being issued to Nick Ross, then a protest initiated by Mike Ross which was ruled inadmissible by the stewards.

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.

Inquiry

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

The Sub-Committee heard submissions from Messrs Nick Ross, Mike Ross, Finlayson, Clark (written submission read by Mr Budd) and Bargwanna.

It was submitted by Nick and Mike Ross that Nick made an error in trying to overtake Mr Bargwanna on the approach to turn 5 which resulted in Bargwanna being forced to temporarily leave the circuit while Ross continued ahead on the old back straight to re-join the circuit just before the hairpin. Bargwanna was overtaken by two other competitors as he re-joined the circuit at turn 6. Nick Ross slowed as he exited the hairpin to allow the next placed car driven by Varney past in order to re-dress the position he had gained. This was duly done and Nick Ross then continued racing. He explained that he did not know where Bargwanna was on the circuit at the time of re-joining and therefore could not re-dress the position with him, however after discussion Nick Ross agreed that Bargwanna was visible in his mirrors by the time the cars crossed the start/finish line approximately half a lap after the incident. Nick Ross was under the belief that he had satisfactorily re-dressed the incident and could continue racing.

Mike Ross then explained that they had received a written decision at 9:00am the following morning advising they had received a retrospective drive-through penalty which became a 50 second time penalty as they could not complete the drive-through during the race. He advised the CRO Karen Michie that he wished to lodge a protest. The CRO did not have a protest form on her and advised that they were at the CRO office. Mike Ross followed the CRO back and received a protest form. The protest form was completed and handed in to the CRO Barry Clark at 9:23am. Mr Clark then returned to Mike Ross at around 10:00am to advise that the stewards had ruled the protest inadmissible on the basis that the grounds for protest were not included on the form, and further that the time for lodging a protest had now passed. Mike Ross then explained that they felt they had not received a fair opportunity to dispute the matter which led to the request for the Executive Inquiry.

Mr Finlayson then provided a detailed account and timeline of the process involved in reaching his decision RD2 and is summarised as follows:

- Immediately following the NZ V8 Touring Car race on the Saturday afternoon Mr Finlayson received a verbal enquiry from Bargwanna questioning the incident and further querying how such an incident was to be dealt with as what had happened on the circuit differed to what had been advised in the earlier drivers briefings.
- Mr Finlayson had not received a report of the incident during the race and undertook to investigate further.
- It was established that the incident had taken place and Mr Finlayson called Nick Ross to discuss the incident.
- There was no dispute from Nick Ross that the incident had occurred.
- Mr Finlayson advised Nick Ross he was in breach of CH 26.3.2.1 in that he had failed to re-dress with the competitor involved, that a penalty would apply and would be written up overnight with the written decision being handed to him the following morning.
- Mr Finlayson advised the Sub Committee that he was required to investigate an enquiry and take appropriate action if the enquiry showed that a breach had occurred.
- Mr Finlayson advised the Sub Committee that this breach carried a choice of two penalties which both carried the same penalty and he opted to apply penalty CH 40.23 as Bargwanna had finished the race in front of Nick Ross.

The Sub Committee had received a written submission from the head steward of the meeting Dale Crossley advising that the stewards had concluded the protest initiated by Mike Ross was inadmissible on the basis that it did not contain the grounds of protest, rather the protest form contained two statements of fact.

In response Mike Ross advised that they were under considerable time pressure to lodge the protest given that they were in the middle of preparing their car for its next race, the distance from their pit to the CRO office and that the protest form made sense to them at the time of completing it.

Mr Bargwanna submitted that he had initiated the post race enquiry as he felt what had happened on the circuit differed to what he understood the regulations to be.

In summing up Nick and Mike Ross confirmed that they accepted that the incident had happened as had been advised and did not dispute any of the process applied by the Race Director.

Finding

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

1. 119(a)(iii)
 - An enquiry into the incident had been received by the Race Director.
 - It was not disputed that an investigation into the incident occurred, that it was explained to Nick Ross who admitted causing the incident, that a penalty would apply and that the decision would be delivered the following morning.
 - The Sub Committee accepts that Nick Ross re-dressed the position back to second place, however CH 26.3.2.1 is very clear in that it is the competitor being disadvantaged who is to be re-dressed within one lap of the incident.
 - The Race Director followed correct process throughout the investigation and decision process.
2. 119(a)(iv)
 - The grounds for protest outlined on the protest form were not particularly clear however on balance the Sub Committee believes the protest form contained sufficient information to enable the protest to be heard.
3. 119(a)(v)
 - From the evidence heard the Sub Committee does not believe that the actions of any official breached the National Sporting Code or its Appendices or Schedules.

Decision

Taking account of all the factors put before it the Sub-Committee has DETERMINED:

1. 119(a)(iii)
 - The Decision RD2 issued by Craig Finlayson, Race Director during the Thunder in the Park meeting at Pukekohe 15-17 November 2013, was valid and in compliance with the regulations, and that the penalty applied was appropriate. This decision has been upheld by the Sub Committee.
2. 119(a)(iv)
 - Due process had been followed with regards to the protest initiated as a result of that decision however the Sub Committee believes the protest could have been heard.
3. 119(a)(v)
 - No actions by any official breached the National Sporting Code or its Appendices or Schedules.

The Sub-Committee was unanimous in making its decision.

This decision was given verbally at 8:15pm and followed by written notification on 11 January 2014 at 5:30pm.

Comments

1. In the course of its deliberations the Sub-Committee observed that neither the competitor nor the CRO had a protest form immediately available to them. While the onus clearly remains on the competitor to have the correct forms at their disposal the Sub Committee believes that a prudent CRO would ensure they have a supply of forms readily available on the person when delivering a decision. It was also noted that the protest form used is out of date and the current form is available on the MotorSport New Zealand website.

2. It was observed that the original enquiry was received verbally and while there is no requirement under Sch CH for an enquiry to be in writing the Sub Committee believes it would be useful for such enquiries to be submitted on writing or on the prescribed form.

Recommendations

1. CROs, particularly at premier event level should carry a supply of appropriate current forms with them, especially when delivering decisions.
2. Enquiries from competitors should be submitted in writing on the appropriate form.

On behalf of the Sub Committee



Wayne Christie
Chairman

Right of Appeal

Attention is drawn to the right of appeal in accordance with the provisions of the National Sporting Code.