

DECISION OF THE INQUIRY PANEL APPOINTED BY MOTORSPORT NEW ZEALAND, NAMELY:

- Wayne Scott (Chairman)
- Graeme Robertson
- Barry Higham

THE PARTIES CONCERNED

- Michael Ross (Car 95)
- Nick Simpson (Meeting Clerk of the Course)
- Chris Adams (Area Steward)
- Josie Spillane (Highlands Motorsport Park CEO)

- Raewyn Burke (MotorSport NZ representative – via video link)

JURISDICTION:

MOTORSPORT NEW ZEALAND (INC) under the powers set out in Articles 118 to 122 of the National Sporting Code, specifically Article 118 (1) and Article 122 (2) considered an application for an Inquiry Hearing into the events surrounding Michael Ross being apparently excluded from a Meeting without the due and proper processes taking place as per the National Sporting Code. ,

The race meeting was held under a National Race Organising Permit (240182).

An Inquiry Review Panel was established under Article 121(1) of the National Sporting Code.

Under the provisions of NSC Part X Article 121 (2), the Inquiry Review Panel considered Mr Ross's request for an Inquiry Hearing.

The Inquiry Review Panel was unanimous in its decision in determining that an Inquiry Hearing be convened and that the Inquiry Panel be tasked with:

- To consider the written information and hear evidence from the parties called
- To consider the circumstances surrounding why the intended hearing did not proceed
- Establish whether the competitor Michael Ross was excluded from the meeting
- Investigate the nature of the actions of the circuit representative
- Consider any other associated matters as may be identified by the hearing
- Consider whether there are any recommendations or findings to be made.

BACKGROUND

During Race 2 of the Sprint Series Group B class, there were a number of alleged incidents which occurred involving competitor Michael Ross. These incidents were observed by the personnel in race control, and the designated driving standards observer. Three inquiry forms were also lodged at the conclusion of the race.

Due to time constraints a Hearing could not be held prior to the competitor participating in the next race and subsequently, the circuit representative intervened and told the competitor that he was not allowed to participate in the remainder of the race meeting.

The competitor has written to express his frustration at the treatment on the day, and of not being given the opportunity to defend himself. A request for an investigation was lodged.

INQUIRY HEARING

An Inquiry Hearing pursuant to the provisions of Part X, Articles 118 to 122 of the National Sporting Code was held in Dunedin at the Southern Cross Hotel on 6 June 2024 at 7.00pm.

Those in attendance were:

- Wayne Scott (Chairman)
- Graeme Robertson
- Barry Higham

- Michael Ross (Car 95)
- Steve Ross
- Nick Simpson (Meeting Clerk of the Course)
- Chris Adams (Area Steward)

On video link

- Josie Spillane (Highlands Motorsport Park CEO)
- Damon Leitch (Highlands Motorsport Park)
- Raewyn Burke (MotorSport NZ representative)

DOCUMENTS PROVIDED

The Panel considered the following documents that had been provided to all parties.

- (1) Competitor Complaint
- (2) Request for Inquiry Hearing
- (3) Inquiry Review Panel Decision
- (4) Clerk of the Course Report
- (5) Stewards Report
- (6) Email statement from Josie Spillane

HEARING

On opening the hearing, the Chairman outlined the process which would be followed, and noted the tasks the Panel was charged with addressing.

They also heard evidence from Michael and Steve Ross, Chris Adams, Nick Simpson and Josie Spillane.

The substantive facts of the matter were proven and not disputed by any of the parties.

- The 3 inquiries regarding Mr Ross's driving behavior had not been finalised due to race management pressures. Mr Simpson said that he had had pressure from Josie Spillane to expedite his hearings but it was not possible to do so.
- Michael Ross was instructed by a circuit representative (Josie Spillane) that he was disqualified from the meeting due to his driving behavior and as a matter of safety.
- Mr Ross took no further part in the meeting and on that basis the CotC took no further action.

Mrs Spillane claimed that she had the authority acting as PCBU for Highlands Motorsport Park to prevent Mr Ross from competing as she considered his behavior to be dangerous to other competitors and she had a duty of care to them.

The Panel considered that they needed to further research and seek opinion regarding Mrs Spillane's view of her authority and advised all parties that their decision would be delayed until this was obtained. This has now been received and includes that:

- As an Officer or Worker of Highlands Motorsport Park Limited ("HPML"), a PCBU, Mrs Spillane's duties under the Health and Safety at Work Act 2015 (HSWA) extend to hazards and risks posed by the "work activity" of HPML.
- The 'work activity' of HPML is the offtrack management and hosting of the event. Mrs Spillane's duties would not extend to the "work product", being the control of the racing itself.
- The Meeting is a MSNZ permitted event. The Clerk of the Course as a MSNZ official had the authority to make decisions concerning on-track behaviour, and exercise their discretion to decide what is reasonable to deal with such behaviour under the mandate of the Code.
- MSNZ was the PCBU responsible for the race, and separately because "disqualification" of a driver is exclusively a judicial decision.

On the commencement of a permitted competition, all sporting matters fall under the National Sporting Code, and management of the event, including any decisions, is the mandate of the appointed officials of the Meeting, acting in accordance with their duties, responsibilities and authorities as set out in the Code.

FINDINGS

The Inquiry Panel, following consideration of the information and evidence, decide:

- *To consider the circumstances surrounding why the intended hearing did not proceed*

The Clerk of the Course explained that he had intended holding the hearing post race, however became aware of Mrs Spillane's actions and was of the understanding that the competitor had left the circuit. No hearing summons had been issued at that stage. He was accordingly surprised when Mr Ross arrived to enquire what was happening at the end of the day, however by that stage other competitors had left the circuit, the inquiry notices had been dealt with by discussion with the inquirers, witnesses were not available and neither was evidence in the form of in-car cameras etc. Further by that stage Mr Ross had been denied competing in the last race, with impact on his championship outcome, which in itself was a significant penalty, and he was conscious of possible double jeopardy.

- *Establish whether the competitor Michael Ross was excluded from the meeting*

While competitor Michael Ross had been told he could take no further part in the Meeting, he had not been excluded from the Meeting, as no authorised official had made such a decision, nor had any hearing been held.

NSC Article 90 (1) sets out clearly who may discipline and penalise competitors.

Article 93(1) provides that prior to any penalty (except a time or drive through penalty) being imposed, a proper hearing must be held.

It is clear that no hearing had been held by the Clerk of the Course, as it had been deferred until after Mr Ross's next race, however it is noted that he had commenced the relevant process.

No Notice to Appear at a Hearing had been issued.

In terms of the results of his Race 3, they should be recorded as DNS rather than DSQ.

- *Investigate the nature of the actions of the circuit representative*

The circuit representative, Mrs Spillane had no authority under the National Sporting Code to require Competitor Michael Ross to cease competition. Neither did she have authority under HSWA.

The National Sporting Code sets out the authority for the imposition of penalties and processes to be followed. In particular:

Article 90(1) provides that Competitors, Entrants and drivers may only be penalised by;

- The Event Director or Race Director;
- The Clerk of the Course or licenced Assistant Clerk of the Course;
- The Stewards;
- The Judicial Committee
- The National Court of Appeal.

Mrs Spillane's duties as representing the PCBU of Highlands Motorsport Park are limited to the safe organisation and management of the facilities at Highlands MotorSport Park Limited. The Meeting was a MSNZ permitted event, and the Clerk of the Course as a MSNZ official had active control of and authority for on track decision making and judicial matters. Clerks of the Course have their own responsibilities and authorities in Health and Safety matters as a "worker" for the MSNZ PCBU.

- *Consider any other associated matters as may be identified by the hearing*

There is a need for policy that clearly defines track owners and circuit representatives responsibilities and authorities at motorsport permitted meetings.

DECISION

1. The actions of Mrs Spillane in 'disqualifying' Mr Ross were without authority.
2. Mr Ross was accordingly denied the opportunity of competing in his final race.
3. The results and record of that race are to be amended to show Mr Ross as DNS.

RECOMMENDATIONS

1. MSNZ creates a policy which details track owners and circuit representatives responsibilities at MSNZ permitted events and meetings.
2. MSNZ prepare an information sheet for its officials setting out their obligations and responsibilities under the HSWA.
3. HPML forward a letter of apology to Mr Ross. This letter is to be sent within 7 days, with a copy to MSNZ.

DATED this 18th day of June 2024



WAYNE SCOTT

CHAIRMAN