



INTERNATIONAL COURT OF APPEAL

INTERNATIONAL COURT OF APPEAL (I.C.A.)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the Hong Kong Automobile Association (HKAA)
on behalf of the competitor Team Craft Bamboo AMR
against the decision handed down by the national court of appeal
of the Japan Automobile Federation (JAF) having ruled on an appeal against
Decision n°15 dated 1 June 2014 taken by the Stewards of the competition
at Autopolis (Japan) counting towards the international series called
GT Asia Series 2014**

Case ICA-2014-02

Hearing of Friday 17 October 2014 in Paris



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The FIA INTERNATIONAL COURT OF APPEAL ("the Court"), made up of Mr Philippe Roberti de Winghe (Belgium), who was designated President, Mr Thierry Julliard (Switzerland), Mr Jean Luisi (France), and Mr David Miles (Australia), met in Paris on Friday 17 October 2014 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Hong Kong Automobile Association (HKAA) on behalf of its licence-holder Team Craft Bamboo AMR (the "Appellant" or the "Competitor") against the decision of the national court of appeal of the Japan Automobile Federation (JAF) having ruled on an appeal against Decision N° 15 dated 1 June 2014 taken by the Stewards of the competition at Autopolis (Japan) counting towards the international series called GT Asia Series 2014, whereby the Stewards excluded the Competitor's car n°97 from Race n°2 of the competition at Autopolis in Japan, the Court has heard the statements from the Appellant and the FIA and examined the arguments of the Appellant, the JAF and the FIA.

Attending the above-mentioned hearing were:

on behalf of the HKAA and the Appellant:

Mr Robert Cain, Lawyer

Mr Richard Coleman, Chief Executive Craft Bamboo AMR

Mr Stephen Farrell, Technical Engineer, Witness

on behalf of the FIA:

Mr Sébastien Bernard, FIA Legal Director

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)

Ms Sandrine Gomez (Administrator of the FIA Courts)

Although duly summoned, the representatives of the JAF declined to attend or to be represented at the hearing.

The parties presented written submissions and, during the hearing on 17 October 2014, submitted their arguments orally, presented witnesses, and replied to the questions put by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the simultaneous translation or of the conducting of the hearing was raised by anyone.



REMINDER OF THE FACTS

1. During Race n° 2 of the competition at Autopolis on 1 June 2014 (hereinafter the "Competition"), counting towards the International Series called GT Asia Series 2014 (hereinafter the "International Series"), the Competitor's car n°97, when leaving its pit, came into contact with a wheel that had been left on the ground, which resulted in it moving towards the fast lane of the pits. Considering that this was an infringement of the regulations of the GT Asia Series (the "Competition Regulations"), a drive-through penalty was immediately imposed on the car by the Race Director who displayed it on the timing monitor and then on the board.
2. In circumstances which, after reading the submissions and statements at the hearing, remain confused and imprecise, the Race Director would appear to have decided to cancel the penalty in question, and a note to this effect was posted on the timing monitor. In the meantime, several laps were completed, and officials, presumably noting that the drive-through penalty had not been served, showed the black flag to the driver.
3. The Competitor, however, told its driver to stay on the track, on the grounds that the penalty had been cancelled and that the incident would be sorted out after the Competition.
4. After the Competition, the Stewards, in a Decision n°14, imposed a fine of ¥30,000 on the Competitor for having carried out "improper pit work" on its car n°97, which had just won the said Competition.
5. Following the announcement of the provisional results, the competitor Clearwater Racing Team, which had finished second, lodged a protest against the Competitor's car n°97 on the grounds that this car had contravened the Competition Regulations by not respecting a drive-through penalty that had been imposed on it and by ignoring the black flag that had subsequently been shown to it.
6. On the basis of this protest, the Stewards decided, in their Decision n°15 (the "Decision"), to exclude car n°97 from the Competition.
7. Also, in a Decision n°16, the Stewards pronounced a reprimand as a penalty for the disorder in the organisation and conduct of the race.
8. The Competitor brought an appeal against Decision n°15 before the National Court of Appeal of the JAF (the Japanese ASN).
9. On 3 July 2014, the court of appeal of the Japanese ASN decided to confirm Decision n°15 which pronounced the exclusion of the Competitor's car n°97, but quash Decision n°14, namely the fine of ¥30,000. This latter decision is not called into question in the present proceedings before the ICA.



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10. Also, given the circumstances in which these events took place, which were chaotic to say the least, in particular as regards the organisation of the Competition and the processing of the penalties imposed on the Competitor, the court of appeal of the Japanese ASN imposed a reprimand on two of the members of the organisation of this Competition.
11. In a letter dated 10 July 2012, the HKAA brought an appeal before the Court on behalf of the Competitor against the decision of the court of the appeal of the Japanese ASN that confirmed the Stewards' Decision n°15.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

12. The Appellant lodged its grounds for appeal with the Secretariat of the FIA Courts on 28 August 2014 and, with authorisation from the President of the Hearing, produced a further submission on 25 September 2014.
13. In its grounds for appeal, the Appellant requests that the Court:
 - quash the penalty of exclusion imposed by the contested Decision and confirmed by the ASN, and pronounce against the Appellant the previously pronounced fine of ¥30,000.
 - reinstate the Appellant's car n°97 in first place in the Competition and restore to it the points that go to the winner, adapting the classification of the Competition accordingly.
14. On 18 September 2014, the JAF lodged its grounds in response and asked the Court to make "*a sensible decision as this case may unhinge the absoluteness of flag signals in the future races*".
15. In its written submissions dated 2 October 2014, the FIA invites the Court to assess the facts in this case, after hearing the parties concerned, and give a ruling on the possible commission of a breach of the applicable sporting regulations and, if appropriate, on the principle of a sanction.

ADMISSIBILITY AND ABSENCE OF THE JAF

16. The Court acknowledges that the Appellant showed sufficient intention to appeal and that this appeal was brought in conformity with the FIA Judicial and Disciplinary Rules (the "JDR").



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17. The Court also considers that it is competent to judge this matter, by virtue of Article 14.1, Ch. 1.c of the JDR.
18. Therefore, the Court declares the appeal before it to be admissible, which nobody contests.
19. Also, the Court wishes to state that it regrets the absence of the JAF and the effect of such absence on the adversarial debate during the hearing in question. However, it notes that by virtue of Article 17.5, para. 2 of the JDR, a decision may be taken against the JAF notwithstanding its absence.

AS A PRELIMINARY

20. *In limine litis*, the Court wished to raise a point concerning the procedure followed thus far.
21. The Court noted that the appeal against the contested Stewards' Decision n°15 was brought before the court of appeal of the Japanese ASN, which appears to it, *prima facie*, to contradict the provisions of the International Sporting Code (the "Code") concerning the jurisdiction of the different national appeal bodies.
22. Article 14.1.4 of the Code stipulates that "*The competent sporting tribunal for an appeal formulated within the framework of a Competition that is part of an international series shall be that of the ASN that requested approval of the series, save the right to appeal the decision directly before the International Court of Appeal in accordance with the FIA Judicial and Disciplinary Rules*".
23. While the competition at Autopolis during which the events that gave rise to the contested decision took place in Japan, it does not appear to the Court that it is the Japanese ASN "*that requested approval of the series*" in the sense of Article 14.1.4 of the Code. The Court is clearly of the view that this was "*a Competition that is part of an international series*".
24. The President of the Hearing having expressed the Court's concerns on this subject at the beginning of the hearing, the parties present were requested to give their opinion on these concerns prior to any debate on the substance.
25. An adjournment of the hearing was then granted in order to allow the parties to prepare a reasoned response.

a) Arguments of the parties

26. The Appellant began by informing the Court that it had brought its appeal before the court of appeal of the JAF on the advice both of its parent ASN (the HKAA) and of the ASN responsible for the organisation of the Series (the Automobile Association of Malaysia, the "AAM").



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27. It also stated that Article 14.3.1 of the Code provides that "*Competitors, whatever their nationality, shall have the right to appeal against a sentence or other decision pronounced on them by the stewards before the ASN of the country in which that decision has been given*", and that in this case its appeal before the court of appeal of the JAF was appropriate insofar as Decision n°15 had indeed been taken on the territory of the Japanese ASN.
28. The FIA, for its part, pointed out that the wording of Article 14.1.4 is clear and that the logic behind its adoption is, in the case of international series such as the one involved in this case, to avoid multiple courts of appeal (constituted under different ASNs) according to whether the decisions forming the subject of appeals take place on the territory of such or such an ASN.
29. It went on to say that this mechanism aims to achieve a certain harmonisation of the appeal decisions concerning one and the same international series.
30. Lastly, it confirmed that the AAM is indeed the parent ASN of this international series and that it was the AAM that had requested and obtained the FIA's approval and the registration of this series on the international sporting calendar.

b) Conclusions of the Court

31. The Court considers first that the rules of competence, and thus of the admissibility of appeals, defined by the applicable texts must be scrupulously respected, both by appellants and by the national courts tasked with hearing such appeals.
32. It considers that these are imperative rules, in the same way as the rules on the time limits for appeals, which cannot be waived simply according to the wishes of the parties, who are obliged to respect the applicable pertinent rules.
33. Also, it is the opinion of the Court that if lack of comprehension of such a rule seems proven but none of the parties raises the point, it is then up to the courts to which the case has been referred to raise it on account of the imperative nature of the rules concerning the admissibility of judicial procedures.
34. The Court notes that the regulations of the international series called 2014 GT Asia Series provide that "*Motorsport Asia Ltd (MAL) and Supercar Club Hong Kong Ltd (SCCHK) with the agreement of the Fédération Internationale de l'Automobile (FIA) and the Automobile Association of Malaysia (AAM) are organising a series of international competitions in 2014, known as GT Asia Series 2014*" (Article A.1 of the regulations of the international series called GT Asia Series 2014).
35. It also notes that Article A.2 of the same regulations provides that the International Sporting Code is among the regulations applicable to this international series.



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36. Also, the Court considers that the Appellant is mistaken about the scope of Article 14.3.1 of the Code. Indeed, while this article does set out a general principle whereby it is the national court of the ASN of the country where the contested decision was taken that is theoretically competent, Article 14.1.4 of the same Code must take precedence in that it sets out a special rule of competence in the event that, as in the case in point, the Competition is part of an international series.
37. It results from this that it is the court of the Malaysian ASN that was competent to hear the appeal brought against Decision n°15 taken by the Stewards of the Competition at Autopolis, and not the court of the JAF.
38. Therefore, the appeal brought before the court of appeal of the JAF was clearly inadmissible for having been brought before an incompetent court. Consequently, in consideration of the fact that the rules of competence are imperative and must be upheld by the judges themselves if the parties fail to raise this point, the court of appeal of the JAF ought itself to have noted its own territorial incompetence and to have declared this appeal inadmissible.
39. As a result of the above, the Court considers that the decision of the court of appeal of the JAF that has been brought before it must be quashed, since it was taken by an incompetent authority.
40. Also, as regrettable as this might be in view of the circumstances of the case in point, the Court considers that the devolutive effect of the appeals brought before it does not, in legal terms, allow it to examine in depth appeals that were inadmissible before the national court, given that they had been brought in the first instance before an incompetent court.
41. Insofar as the appeal initially brought before the court of appeal of the JAF was inadmissible, the contested Stewards' Decision n°15 must consequently be regarded as definitive, notwithstanding the incorrect formal execution of procedures that the Court notes in this case.

COSTS

42. In view of the circumstances of the case, the Court decides that the costs must be shared equally between the Appellant and the JAF, in accordance with Article 18.2 of the JDR.



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ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal brought before it admissible;**
- 2. Quashes the decision taken by the Court of Appeal of the JAF;**
- 3. Declares that in the circumstance it cannot rule on the substance of the Appeal;**
- 4. Confirms the definitive nature of Decision n°15 dated 1 June 2014 taken by the Stewards of the competition at Autopolis (Japan) counting towards the international series called GT Asia Series 2014;**
- 5. Orders the competent sporting authority, as appropriate, to draw the consequences of the present decision;**
- 6. Orders the equal sharing of the costs between Team Craft Bamboo AMR and the JAF, in accordance with Article 18.2 of the FIA Judicial and Disciplinary Rules;**
- 7. Rejects all other and further conclusions.**

Paris, 17 October 2014

Philippe Roberti de Winghe, President