



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Real Federación Española de Automovilismo (RFEdA)
on behalf of its licence-holder Campos Racing against
Decision n°5 dated 3 August 2014 of the Stewards of the Argentinian
competition in Thermas de Rio Hondo counting towards the 2014 FIA World
Touring Car Championship**

Case ICA-2014-03

Hearing of 26 September 2014 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr Jan Stovicek (Czech Republic), who was designated President, Mr Michael Grech (Malta), Mr Philippe Narmino (Monaco) and Mr Nish Shetty (Singapore), met in Paris on Friday 26 September 2014 at the Fédération Internationale de l’Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Real Federación Española de Automovilismo on behalf of its licence-holder Campos Racing (the “Appellant” or the “Competitor”) against Decision n°5 dated 3 August 2014 of the Stewards of the Argentinian competition in Thermas de Rio Hondo (the “Stewards”) counting towards the 2014 FIA World Touring Car Championship (the “Competition”) under which the Appellant’s car n°98 was excluded from the results of race n°2 of that Competition for breach of Articles 5 and 6 of the FIA 2014 World Touring Car Championship Sporting Regulations (the “CSR”).

The following persons attended the hearing:

On behalf of the Appellant and of the RFEEdA:

Mr Roberto Causo (Attorney-at-law)
Mr Joan Orus (Team Manager)

On behalf of the FIA:

Mr Sébastien Bernard (FIA Legal Director)
Mr Manuel Leal (WTCC Technical Delegate)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Ms Sandrine Gomez (Administrator of the FIA Courts)

The parties filed their written submissions and, at the hearing of 26 September 2014, set out oral arguments and answered the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation in French and English. No objection to the composition of the Court or to any element of the hearing, notably the simultaneous translation, was raised by anyone.



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REMINDER OF THE FACTS

1. At the end of race n°2 of the Competition counting towards the 2014 FIA World Touring Car Championship (the “Championship”), the FIA Technical Delegate carried out checks on the Appellant’s car n°98 and found that this car was not in conformity with the technical regulations with regard to the ground clearance of the front splitter.
2. The FIA Technical Delegate concluded in his report n°3 that this situation contravened the provisions of Article 263.209 [*sic, see pt. 24 et seq. below*] of Appendix J to the FIA 2014 International Sporting Code (“Appendix J”).
3. On the basis of this report and after having heard the Appellant’s representative and examined the photos of car n°98, the Stewards decided to exclude this car from race n°2 of the Competition for breach of Articles 5 and 6 CSR. The Stewards issued their decision on 3 August 2014 (the “Decision”).
4. The Decision was notified to the Appellant the same day and the latter immediately notified its intention to appeal against the Decision.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

5. On 7 August 2014, the Real Federación Española de Automovilismo (“RFEdA”), acting on behalf of the Appellant, lodged an appeal against the Decision before the Court (the “Appeal”).
6. In its submissions, received by the Court on 25 August 2014, the Appellant contends, in essence, that the Court should:
 - request that the FIA (1) provide evidence of the written request to scrutinize notably car n°98 made by the Stewards or the Clerk of the Course to the FIA Technical Delegate; (2) provide every picture taken by the FIA Technical Delegate during his inspection and (3) provide the video taken by the on-board camera of car n°98;
 - pronounce that the Stewards’ appealed decision is null and void due to the infringement of the Appellant’s right of defence and is lacking any reasonable grounds, the appeal being correctly introduced and founded from a formal and material aspect.



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- set aside Decision n°5 and declare that car n°98 was not “*scrutinized in the same condition as she was tuned up, but in conditions independent from the Competitor’s will and because of a mechanical failure.*”
7. The FIA, in its grounds in response received by the Court on 9 September 2014, invites the Court:
- to reject the Competitor’s appeal and confirm the Stewards’ Decision n°5 on all points, in application of Article 17.9 of the FIA’s Judicial and Disciplinary Rules (the “JDR”);
 - and leave it to the Appellant to pay all the costs in accordance with Article 18.2 JDR.

ADMISSIBILITY OF THE APPEAL BEFORE THE ICA

8. According to Article 14.1 (i) a) JDR, the Court will hear, in the context of a competition forming part of a major FIA Championship, appeals against decisions of the stewards of an event brought by organisers, competitors, drivers or other licence-holders that are addressees of such decisions or that are individually affected by such decisions.
9. The Competition is part of the FIA World Touring Car Championship, which is a major FIA Championship.
10. The Appeal is brought before the Court by the RFEdA on behalf of its licence-holder, namely the Competitor, which is the addressee of Decision n°5 issued by the Stewards after race n°2 of the Competition.
11. According to article 17.3 (i) a) JDR, “*appeals against a decision of the Stewards of a meeting must be notified within 96 hours of the notification to the Stewards by the person concerned of his intention to appeal of the Stewards’ decision, on condition that the Stewards have been notified in writing of the appellant’s intention to appeal within one hour of the Stewards’ decision being notified to the person concerned or published.*”
12. The Decision was notified to the Appellant on 3 August 2014 at 19:30 Argentinian time, namely 23:30 CET.
13. The intention to appeal against the Decision was notified by the Appellant to the Stewards in writing within the hour following the notification of the Decision.
14. The RFEdA lodged the Appeal before the Court on 7 August 2014 at 10:00 (CET), namely less than 96 hours after the notification of the Decision to the Appellant.
15. Considering the above, the Court finds the appeal admissible, which is undisputed.

ON THE SUBSTANCE

Preliminary requests of the Appellant

16. The Appellant requested in its grounds of appeal that the FIA (1) provide evidence of the written request to scrutinize notably car n°98 made by the Stewards or the Clerk of the Course to the FIA Technical Delegate; (2) provide every picture taken by the FIA Technical Delegate during his inspection and (3) provide the video taken by the on-board camera of car n°98.
17. Attached to its Grounds in response notified to the Court on 9 September 2014, the FIA provided the Court and the Appellant with the pictures taken by the FIA Technical Delegate. It confirmed that no written request was made by the Stewards to scrutinize the Appellant's car n°98. In the end, the video taken by the on-board camera of car n°98 could not be produced as the car was sealed and still on transit to China.
18. The Court finds that the preliminary requests n°1 and n°2 were dealt with by the FIA whereas the preliminary request n°3 could not be satisfied for logistical reasons.
19. Regarding the preliminary request n°3, the Court notes that the fact which is sought to be proven by the video taken by the on-board camera of car n°98, namely the damage to the flat bottom, is undisputed and was proven by other means, notably by the pictures which are in the Court's file. The Court notes further that the Appellant neither reiterated its request at the hearing that the video from the on-board camera be produced nor complained that it had not been provided during the course of the proceedings.
20. Based on all the above, the Court formally rejects the Appellant's preliminary requests.

First plea – breach of the rights of the defence

a) *Submissions of the Parties*

21. The Appellant puts forward that:
 - (i) the Stewards did not view the video of race n°2 despite the request of the Appellant for them to do so; and
 - (ii) that the Stewards infringed Article 12.3.4 of the International Sporting Code (the "ISC"), impeding the exercise of its right to appeal by issuing an ungrounded decision.

b) Conclusions of the Court

22. First, the Court finds that it is well within the power and discretion of the Stewards to consider and decide which evidence they consider appropriate to admit at the hearing in order to enable them to determine the issue(s) before them. The mere fact that the Stewards considered it unnecessary to view the video evidence proposed by the Appellant does not mean that the Appellant was deprived of its right of defence. Notably, the Appellant did not substantiate its assertion with reference to the applicable regulations, whether under the ISC or otherwise. In any event, even if there was such breach, such breach has been cured by the devolutive effect of this appeal before the Court. The same applies to the allegedly insufficient grounds of the Decision. The Court does indeed review the case *de novo* (Article 17.9 JDR), both as regards facts and also as regards the applicable law, so that the Appellant had, before this Court, the full opportunity to put forward all submissions that it would find necessary to support its case, which the Appellant undoubtedly did.
23. The Court therefore rejects the Appellant's submissions on the procedural failures both in fact and in law allegedly committed by the Stewards.

Second plea – the wrong article of Appendix J, namely Article 263.209 instead of Article 263.902, is quoted in the Decision

a) Submissions of the Parties

24. The Appellant mentioned in its grounds of appeal that Article 263.209 of Appendix J, which is quoted in the Decision, does not apply to the irregularity which has been noted by the FIA Technical Delegate in his report and by the Stewards in their Decision.
25. The FIA states that the reference in the Decision to Article 263.209 of Appendix J was the result of a typographical error and that the article which must be referred to in the Decision is Article 263.902 of Appendix J which deals with the ground clearance.

b) Conclusions of the Court

26. The Court notes that under the part "Facts" of the Decision, the Stewards of the Meeting mention that it was found that the car's "*ground clearance [was] non conform with the article 263.209 of Appendix J of the FIA ISC.*"
27. Although one would expect from the Stewards that they pay the utmost attention to the drafting of their decisions and therefore do not commit this type of typographical errors, the Court finds that the Decision refers clearly to the ground clearance as the irregularity found on car n°98 – which is clearly a breach under

Article 263.902 of Appendix J. The Court notes further that the Appellant already faced a disciplinary procedure in relation with the irregularity, under Article 263.902 of Appendix J, of the ground clearance of its car n°98 after the race which took place in Hungary on 3 May 2014.

28. Based on the above, the Court finds that, as regretful as it may be, the administrative typewriting error made by the Stewards in their Decision did not mislead the Appellant, which could and did, in any event, exercise fully its rights of defence before the ICA, as already mentioned above.
29. This submission is therefore rejected by the Court.

Third plea – invalidity of the technical check carried out on car n° 98 after race n°2 of the Competition

a) Submissions of the Parties

30. The Appellant puts forward that the technical check on car n°98 was carried out in breach of Article 11.14.2 ISC, (i) as this check had not been requested by the Clerk or the Stewards and (ii) as the FIA Technical Delegate did not mention in his report that the flat bottom of car n°98 was broken.
31. The FIA, based on a witness statement of the Stewards, argues that:
 - (i) the checks were carried under the direction of the Stewards;
 - (ii) Article 11.14.2.a does not require that the Stewards' request be made in writing;
 - (iii) it is common practice to have technical checks carried out after a race counting towards an FIA World Championship on the basis of an oral proposal made by the FIA Technical Delegate;
 - (iv) in any event, the ISC does not provide for a sanction leading to the nullity of the FIA Technical Delegate's report;
 - (v) the FIA Technical Delegate did not have to mention the broken flat bottom as this did not fall under the infringement concerning the ground clearance authorised by Appendix J;
 - (vi) the Competitor had the opportunity to put forward before the Stewards that the flat bottom was broken.

b) Conclusions of the Court

32. Having carefully reviewed Article 11.4.2 ISC and considered the arguments put forward by the Parties, the Court comes to the conclusion that the FIA Technical Delegate's report on the Appellant's car n°98 was validly issued.

33. Based on the witness statement made by the Stewards, namely Mr Rod Parkin, Chairman of the Stewards, and Ms Sylvia Bellot, FIA Steward, the Court notes that the checks performed by the FIA Technical Delegate were submitted to the preliminary approval of the Stewards, who gave such approval.
34. The Court then stresses that, in any event, nothing in the ISC requires any written confirmation of the approval of the Stewards. It finds further that the checks made by the FIA Technical Delegate in the present case are obviously common and cannot be considered as unusual.
35. Finally, the Court finds that the FIA Technical Delegate did not have to report the fact that car n°98's flat bottom was broken as the infringement reported referred to the ground clearance and not to the flat bottom. The Appellant was, however, free to mention to the Stewards the fact that its car's flat bottom was broken and to try and demonstrate that this had caused the irregularity on the ground clearance.
36. The Appellant's submissions with respect to this third plea are therefore rejected as well.

Fourth plea – absence of deliberate irregularities on the Appellant's car

- a) *Submissions of the Parties*
 37. The Appellant does not claim that there was no irregularity on its car. However, it claims that car n°98 was not deliberately rendered uncompliant with the rules and that the measurements taken by the FIA Technical Delegate showed clearly that the two centimetres difference between the left side and the right side of the splitter were caused by damage consequent to damage to the car's flat bottom. The flat bottom allegedly detached from the front splitter of the car during race n°2 and hit the front splitter numerous times during the remaining four laps of that race, which, according to the Appellant, caused the irregularity mentioned in the FIA Technical Delegate's report.
 38. The FIA argues that:
 - (i) it is undisputed by the Appellant that the position of the front splitter of car n°98 was not in conformity with Article 263.902 of Appendix J;
 - (ii) the measures taken by the FIA Technical Delegate were executed without the driver on board, which is the most favourable case for the Appellant;
 - (iii) according to Article 5 CSR, it is up to the Appellant to prove that the ground clearance of its front splitter is in conformity with Appendix J at all times during the competition;
 - (iv) during this sporting season 2014, the Appellant had already been judged for a breach of the regulations relating to ground clearance and was therefore

- fully aware of this specific part of the regulations and the obligations relating to it incumbent on the competitors;
- (v) no apparent damage or loosened mounting had been observed on the splitter or the front bumper of car n°98 and nothing proves that the damage caused to car n°98's flat bottom affected the height of its front splitter;
 - (vi) in the event that this incident occurred during race n°1, which the FIA considers as likely due to an impact on the left side of car n°98 during that race, the Competitor had sufficient time to check its front splitter and replace it, if need be;
 - (vii) in the event that this incident occurred during race n°2, the Appellant could have stopped in the pits in order to proceed with repairs and make the necessary adjustments;
 - (viii) in any event, the technical conformity of a car with the applicable regulations is assessed objectively. Any non-conformity is therefore liable to a sanction.
 - (ix) the rules on minimum ground clearance are essential to sporting equity and safety and no sanction other than exclusion can be imposed on the Appellant.

b) *Conclusions of the Court*

- 39. The Court notes first that the Appellant does not dispute that the position of the front splitter of its car n°98 was objectively not in conformity with Article 263.902 of Appendix J.
- 40. Addressing now the Appellant's submission that the irregularity of its ground clearance was not voluntary, the Court finds that, according to Article 5 CSR, "*Competitors must ensure that their cars comply with the conditions of eligibility and safety throughout the Competition.*"
- 41. The Court thus emphasises that the obligation imposed on competitors to ensure that their cars comply with the relevant regulations is an absolute and objective one and that the breach of that obligation does not depend upon a fault being established (ICA 3/2010, *RACB Prospeed ASBL*, dated 30 November 2010, n°20; ICA-2013-03, *G-Drive Racing*, dated 10 September 2013, n°27).
- 42. The Court therefore considers that the Appellant committed a breach of Article 5 CSR and should bear all of the sporting consequences that may arise from the non-conformity of its car.
- 43. Coming now to the proportionality of the sanction pronounced by the Stewards in the Decision, the Court finds first that the rules on minimum ground clearance as detailed under Article 263.902 of Appendix J are essential to sporting equity and safety. Therefore, based on the constant jurisprudence of the ICA, notably the ones quoted above (see pt. 41) and below (see pt. 48), the Court finds that this type of

irregularity must lead to an exclusion unless exceptional circumstances exist. This is actually not disputed by the Appellant.

44. Having found that the Appellant committed a breach of Article 5 CSR and that this breach should lead to the exclusion of the competitor concerned, the Court notes further that the Appellant does not put forward exceptional circumstances beyond its control, which could justify a mitigation of the sanction imposed on it.
45. The Appellant failed to provide any evidence convincing the Court that the irregularity found on its car n°98 was due to the breaking of the car's flat bottom during the Competition, or any other involuntary incident which would have taken place during race n°1 or race n°2.
46. Referring to the statement of Mr Leal, the Court noted that the latter checked the solidity of the fixation of the front splitter of car n°98 during his inspection after race n°2 but did not observe anything indicating that it was dislodged or damaged from its regular mountings.
47. Further, as shown during the hearing, through the projection of various extracts of the evidence produced by both the Appellant and the FIA before the Court, it appears clearly that considering the way the flat bottom was fixed to the front splitter of car n°98, and considering the fact the splitter remained fixed not only to the car bumper on at least two fixation points but also firmly to the metallic car chassis by two solid fixation points, the impacts of the detached flat bottom do not appear to involve the front splitter position and cause the irregularity found on the Appellant's car n°98.
48. Lastly, the Court refers to previous decisions where the ICA stressed that exceptional circumstances in relation with technical irregularities are admitted only under very limited criteria (see *G-Drive Racing*, dated 10 September 2013, with reference to ICA 21/2009, *FFSA Hexis Racing AMR*, dated 14 October 2009; ICA 26/2009, *Pekaracing NV*, dated 23 February 2010; ICA 1/2010, *DMSB Young Driver AMR*, dated 18 May 2010).
49. Having considered those decisions and having reviewed all the circumstances of the case, the Court comes to the conclusion that the circumstances put forward by the Appellant do not meet the strict and clear criteria to constitute an exceptional circumstance.
50. The Court also states that the Appellant itself did not request mitigation of the sanction of the exclusion in his plea for relief and only requested cancellation of the appealed decision.



51. Based on all the above and in the absence of any exceptional circumstance, the Court decides that the Appellant's car must be excluded from race n°2 of the Competition and the Decision must therefore be upheld.

COSTS

52. Considering that the Appeal was rejected, the Court leaves it to the Appellant to bear the costs in accordance with Article 18.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Upholds Decision n°5 of the Race Stewards of the Argentinian competition in Thermas de Rio Hondo counting towards the 2014 FIA World Touring Car Championship;**
- 3. Orders the conservation of the appeal fee paid to the Court by Campos Racing;**
- 4. Leaves it to Campos Racing to pay all the costs, in accordance with Article 18.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Rejects all other and further conclusions.**

Paris, 26 September 2014

Jan Štovíček, President