

INTERNATIONAL COURT OF APPEAL (I.C.A.)
of the
FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE
APPEAL
OAMTC (Osterreichischer Automobil-, Motorrad- und Touring Club)/
OSK (Oberste National Sportkommission für den Kraftfahrtsport)
on behalf of its licence-holder Karl BARON
against the decision handed down by the
National Court of Appeal of the ACI/CSAI on 5 February 1998
concerning the "Ferrari Challenge 1997" run on 7, 8 and 9 November 1997
at the Pergusa autodrome (Italy)

Hearing of Monday 5 October 1998 in Paris

The FIA INTERNATIONAL COURT OF APPEAL composed of Mr Hervé de LIEDEKERKE (Belgium), elected President, Mr Vassilis KOUSSIS (Greece), Mr José MACEDO e CUNHA (Portugal) and Mr P.G. DAHLSTROM (Sweden),

Meeting in Paris on Monday 5 October 1998 at the headquarters of the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris,

Ruling on the appeal brought on behalf of the competitor and driver Karl BARON against the decision handed down by the National Court of Appeal of the ACI/CSAI on 5 February 1998 concerning the Ferrari Challenge 1997, run on 7, 8 and 9 November 1997 at the Pergusa autodrome (Italy).

Having heard Dr Olaf BORODAJKEWICZ, barrister at the Vienna bar representing the competitor and driver Karl BARON as well as the OSK (Austrian National Sporting Authority), Mr Roberto CAUSO, barrister at the Rome bar representing the CSAI (Italian Sporting Authority), and Dr TOPPE, barrister at the Munster bar representing firstly the competitor Autobecker (driver: Bruno Staub) and secondly Mr Büthe, the Technical Manager of that company, both of these being likely to be affected by the decision of the International Court of Appeal ruling on the appeal brought by Mr Karl BARON against the decision handed down by the Italian National Court of Appeal on 5 February 1998.

Having acknowledged that the procedure was in order, the rights of each of the parties or witnesses having been duly examined, both in the proceedings which preceded the hearing and during the hearing itself, the parties or their witnesses having been heard and having provided all the detailed explanations requested from them during the hearing and having received answer, with the help of a simultaneous translation system which was recognised as satisfactory by the parties,

WHEREAS, for the purposes of the hearing, it is necessary to recapitulate the facts of the case,

WHEREAS an event for Ferrari cars, called the Ferrari Challenge 1997, took place on 7, 8 and 9 November at the Pergusa autodrome (Italy), and at the end of the race, car n°51 driven by Bruno Staub was disqualified for having infringed the technical regulations by using an unauthorised brake fluid,

WHEREAS the Panel of the Stewards of the Meeting issued a decision dated 9 November 1997 at 3.40 p.m., ordering the analysis of the fluid by the competent laboratory,

WHEREAS, given the conclusions of the analysis report, the driver Bruno Staub was excluded as confirmed by the Stewards' decision n°11 dated 13 November 1997 at 3 p.m.,

WHEREAS this decision, according to the explanations given by the parties, was sent to Bruno Staub on 28 November 1997 but received on 11 December 1997; the appeal was brought only on 18 December 1997, i.e. after the expiry of the 2-day time limit provided for in article 184.2 of the International Sporting Code subject to the notification of the intention to appeal which must be given within the hour following the publication of the decision,

WHEREAS no proof was provided of the admissibility of the appeal before the Italian National Court, but the competitor Autobecker (driver: Bruno Staub) claimed that since the notification was given to the driver alone, the time period for the appeal which should have been brought by the competitor had not begun, thus the intention to appeal, in this case, could not have been made known on 13 November 1997, i.e. after the event,

WHEREAS the Italian Court of Appeal, without dwelling on this problem of admissibility which, moreover, remains unresolved, invalidated the Stewards' decision n°11 on the grounds that neither the driver Staub nor the competitor Autobecker had been heard in order to discuss the analysis report, and therefore the principle of the due hearing of all the parties concerned had not been respected,

WHEREAS, regarding the substance of the case, the competitor Autobecker laid a certain number of arguments before the International Court of Appeal to the effect that the brake fluid used by the competitors did not necessarily have to be that prescribed by the regulations, the German and Italian versions differing in this respect, that there had been no unfair competition, and that no advantage would have been gained by using an unauthorised brake fluid which, moreover, other drivers also used,

WHEREAS no documents were produced in support of such a demonstration, which the International Court of Appeal could not have referred to anyway owing to the problem of whether the appeal was admissible before the International Court of Appeal, which is the subject of the present decision,

WHEREAS article 184 of the International Sporting Code explicitly states that "an international appeal may be brought by the ASN on behalf of its competitors or licence-holders, from the decisions of the stewards of the meeting in accordance with the provisions of the second paragraph of Article 180, and from the decisions of the national courts of appeal. All appeals brought by an ASN must be in writing, signed by a duly qualified representative of the ASN and accompanied by such fee as shall be decided annually by the FIA.",

WHEREAS it must be noted that the submission of appeal on account of which the international court was convened was a letter from a company of lawyers, Witt & Partner Keg, dated 26 March 1998, stating the following: appellant Karl BARON represented by the law firm Witt & Partner Keg (a professional association of lawyers in the form of a company governed by Austrian law); the same text indicated that the appellant was also represented by the OSK,

WHEREAS after the account given in this document and its conclusion, which called for the quashing of the decision handed down by the National Court of Appeal, no signature appeared on page 4 of the letter which simply ended with the words "Vienna, 26 March 1998, Karl BARON", typed but unsigned,

WHEREAS on the first page, this lawyer's letter merely mentions "appellant" followed by the signature of Karl BARON, and that this appellant is represented by Witt & Partner Keg next to which there is an illegible signature,

WHEREAS, as stated above, there is no signature on page 4 to verify the grounds set out by the appellant, and at the very bottom of page 4 is printed 27 March 1998, 9.40 a.m., with the stamp of the Austrian Sporting Commission followed by the signature of its secretary, Kurt WAGNER,

WHEREAS the appellant's lawyer claims that this submission of appeal was in order since it was in the form of a document signed by the lawyer on behalf of his client and by the client named as appellant on the first page, and bore the OSK stamp and the signature WAGNER at the bottom of the last page,

WHEREAS it is therefore evident that the lawyer was representing both Karl BARON and the OSK, with the stamp of that organisation,

WHEREAS, contrary to the interpretation given by the appellant's lawyer, it is therefore clear that the appeal was brought on behalf of Karl BARON by his lawyer, who had also been commissioned by the OSK,

WHEREAS this is contrary to the text of article 184 quoted above, whereby only the ASN has the authority and competence to bring an appeal on behalf of its competitors or licence-holders, it being mandatory that the request for an appeal must come from an ASN and must be set out in writing and signed by a representative of that ASN,

WHEREAS in the case in point, the ASN did not submit a request for an appeal in the form required by the regulations, and the fact of placing a stamp at the very bottom of the last page without any immediate continuity with the text and bearing a different date from that of the appeal document itself, submitted by a lawyer on behalf of his client Karl BARON, having received from his client the power of attorney, does not

provide sufficient guarantees of the intention of the OSK (Austrian National Sporting Authority) to appeal,

WHEREAS the presence of the OSK's stamp on this document cannot be interpreted as proof of an unequivocal intention to appeal, since it is merely a simple stamp and with a different date from that stated on the letter that Karl BARON considers to be a submission of appeal,

WHEREAS the imperative rule set out in article 184 has not been respected in this case, neither to the letter nor in spirit, and therefore the appeal brought before the present International Court must be declared inadmissible,

ON THESE GROUNDS,

DECLARES the appeal inadmissible,

SENTENCES the appellant to pay all the costs.

Made in Paris,
5 October 1998

The President