

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

of the

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE
(FIA)**

CASE

**Appeal by the Fédération Internationale de l'Automobile
(International Karting Commission - CIK)
against the decision of the Italian National Court of Appeal
of 18 July 2000
concerning the event run on 12 to 14 May 2000 at Valvibrata (Italy)
counting in the Formula C and Intercontinental C of the
CIK-FIA European Championship**

Hearing of Thursday, 28 September 2000 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, composed of Mr Reginald REDMOND (Ireland), elected President, Mr Vassilis KOUSSIS (Greece), Mr Jan van ROSMALEN (Netherlands) and Mr José MACEDO e CUNHA (Portugal),

Meeting in Paris on Thursday, 28 September 2000 at the headquarters of the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris,

Ruling on the appeal brought by the Fédération Internationale de l'Automobile (C.I.K. - F.I.A.) against the decision taken by the National Court of Appeal of the Automobile Club of Italy (ACI) on 18 July 2000 which « *declares and judges the appeal from Tony Kart Racing Team admissible ; declares it is up to the Commissione Sportiva Automobilistica Italiana (CSAI) to take the decisions relating to and the consequences of the fact; declares the appeal fee must be returned to the appellant.* », a decision taken within the framework of the sporting procedure following the report from the CIK-FIA Technical Delegate dated 13 May 2000 during the Formula C and Intercontinental C events in the CIK-FIA European Championship run at Valvibrata on 12 to 14 May 2000, noting the seal on Car N° 192 driven by Mr Daniele QUADRANA, of the competitor Tony Kart Racing Team, was broken, in breach of the regulations with regard to the scrutineering, and specifying that the seal of the engine must, at all times during the meeting, be present and intact ;

Having heard:

- ◆ for the FIA, the appellant, Mr Vincent CARO, Executive Secretary of the CIK-FIA;
- ◆ for the competitor Tony Kart, Mr Robert ROBAZZI, assisted by Mr Carlo REZZONICO, Lawyer, his Counsel;
- ◆ the CSAI, having excused themselves, as announced in their fax of 27 September 2000;
- ◆ and as witnesses: Mr Jacques JACQUEMIN, CIK-FIA Technical Delegate, and Mr Guy COLLIN, President of the Panel of Stewards of the Meeting;

Having acknowledged that the procedure was in order and the appeal admissible, the rights of the parties having been duly examined, both in the proceedings which preceded the hearing and during the hearing itself, the appellant, the competitor and the witnesses having provided all the detailed explanations and answers requested

during the hearing with the help of a simultaneous translation system which was recognised as satisfactory by the parties ;

WHEREAS the FIA, the appellant, requested that the International Court of Appeal (ICA) quash the decision taken primarily on the grounds that both the decision taken by the Stewards of the Meeting and the decision taken by the Italian National Court of Appeal contained irregularities and were null and void ;

WHEREAS the competitor Tony Kart Racing Team essentially maintains that the seal was not broken, but had only cracks and nicks which as a result did not constitute a broken seal on the engine;

ON THE COMPETENCE

WHEREAS before examining the problem brought before the International Court of Appeal, the ICA must rule on its competence ;

WHEREAS the International Court of Appeal is fully competent to hear the case because, while Article 180 of the International Sporting Code defines the National Court of Appeal as the final court of judgement for settling disputes arising between its own licence-holders, the appeal in question is lodged by the FIA and not by a licence-holder who ran in the event ;

WHEREAS in addition, Article 184 specifies that the FIA may appeal decisions of the National Courts of Appeal in either an incidental or a principal appeal; meaning the International Court of Appeal (ICA) has been regularly called upon to hear the appeal which was lodged by the FIA within the 7-day time limit beginning from the moment the FIA was informed of the entire decision and the grounds, this alone enabling it, if so desired, to exercise its right to appeal, in accordance with the provisions of Article 185 of the International Sporting Code;

ON THE FACTS

WHEREAS during the event in question, the infraction was not recorded by the FIA Technical Delegate on 13 May 2000 at 2:30 p.m. following a simple error in the date, but effectively recorded on 14 May 2000 at 2:30 p.m. - and this was agreed by the parties during the hearing; while the decision of the Panel of the Stewards of the Meeting was filed the same day, 14 May 2000, at 2:15 p.m.;

WHEREAS the difference in times stems from the fact that the technical delegate, Mr Jacques JACQUEMIN, dated his report at the time he filed it in the office of the Stewards of the Meeting, although he had informed the Stewards of the infraction he had noted between 2:00 p.m. and 2:05 p.m. which had led to the meeting of the Panel of the Stewards at 2:15 p.m. ;

WHEREAS the Panel of the Stewards should have, on the basis of this incident, summoned the competitor, heard the Clerk of the Course of the event, and heard the competitor present his defence, in accordance with Article 153, 174-e and 175 of the International Sporting Code ;

WHEREAS this was not at all what happened because the President of the Stewards of the Meeting maintained the competitor need not be heard and could not appeal because the regulations did not permit appeals when the infraction involved a broken seal;

WHEREAS the competitor nonetheless went before the Panel of Stewards of the Meeting, and whereas the lengthy discussion which ensued focused exclusively on whether or not one had the right to appeal, following which the Panel nevertheless officially accepted the appeal on 14 May 2000 at 5 p.m.;

WHEREAS it may be considered that, with the one-hour time limit apparently suspended for the above reasons, the intention to appeal was manifested;

WHEREAS in addition it was shown during the hearing that an appeal was sent to the National Court of Appeal on 15 May 2000;

WHEREAS under these conditions the appeal was admissible;

WHEREAS while it cannot be taken into account that the infraction under consideration cannot be appealed, as set out in the relevant regulations, this infraction did not call for such a sanction by virtue of the principle that a decision is never without such recourse; and this was, in effect, exercised by Tony Kart Racing Team without affecting safety or the equality of the competitors' chances;

WHEREAS before examining the case brought before the National Court of Appeal, the regularity of the decision of the Panel of the Stewards of the Meeting must first be examined;

On the decision taken by the Panel of Stewards of the Meeting on 14 May 2000

WHEREAS this decision is null and void due to the fact that neither the competitor nor the Clerk of the Course were summoned, and that no mention is made of any defence which could have been presented by the competitor, as provided for in Articles 153, 174-e and 175 of the International Sporting Code;

WHEREAS in addition the report from the Stewards of the Meeting dated 13 May 2000 was only signed by two of the Stewards and not by three, the names of which are however mentioned in the said report which was not forwarded to the FIA until 24 July 2000;

WHEREAS at the hearing two months later, Mr. Guy COLLIN, President of the Panel of the Stewards of the Meeting, submitted a new report containing the same terms but dated 14 May 2000 and now signed by three Stewards;

WHEREAS it must be noted that the original report, which was drafted at the time the events were taking place, in the presence of only two of the three Stewards, was subsequently modified;

WHEREAS consequently this report is also null and void, because the absence of one of the three Stewards could have had an effect on the decision taken;

WHEREAS these facts are extremely regrettable and in any case the President of the Panel of Stewards of the Meeting is not a judge who can determine whether or not there can be an appeal simply by reading the regulations; his role is to fulfil his obligations as stipulated in the International Sporting Code, and not to anticipate what decisions might later be taken by a superior court to determine whether or not there can be an appeal;

On the decision of the National Court of Appeal dated 18 July 2000

WHEREAS firstly it is regrettable to note that this decision was not handed down within thirty days, in accordance with the provisions of the International Sporting Code (Article 185);

WHEREAS in addition, the CSAI did not communicate the terms of the decision taken by the National Court of Appeal until 20 July 2000 and then only with the mention

that the National Court of Appeal - deeming the appeal lodged by Tony Kart Racing Team admissible and with grounds - quashed the decision of exclusion taken by the Stewards of the Meeting and noted the decision would be sent as soon as the National Court of Appeal had issued it ;

WHEREAS following several reminders from the FIA, the CSAI announced, on 22 August 2000, that the « *National Court of Appeal of the ACI had decided to include the appellant in the classification* », under the signature of Dr. Carmelo CONTI, President of the National Court of Appeal;

WHEREAS given the dissatisfaction of the FIA, which wished, and rightly so, to have the real and complete decision of the National Court of Appeal including the grounds and the terms actually agreed, the CSAI responded in a fax dated 12 September 2000 that « *National Court of Appeal of the ACI has not yet published the full decision concerning the event run at Valvibrata on 12-14 May 2000* » with the same signature as above, that being of Dr. Carmelo CONTI;

WHEREAS this response was all the more surprising as the Italian press had published the grounds of the decision as well as the terms, notably in the magazine « Vroom » (World Wide Karting Magazine) which was distributed in Italy from 2 to 5 September 2000;

WHEREAS moreover, in the first extract sent, the CSAI referred to the reinstatement, while in the complete decision sent by fax on 15 September 2000, the conclusion did not refer to any reinstatement but mentioned only that the appeal was admissible, with no reference to the grounds, or lack of, and that it was up to the CSAI « *to take the decisions relating to and the consequences of this fact* »;

WHEREAS consequently, in the conclusion, the National Court of Appeal did not judge the grounds, or lack of grounds, for the appeal, but only declared the appeal admissible;

WHEREAS finally, Tony Kart Racing Team did not participate in either of the two events in the European Championship run at Valvibrata on 14 May 2000 due to exclusion by the Stewards of the Meeting;

WHEREAS due to this fact, it is impossible to reinstate the competitor in the classification, as declared in the line of the first extract of the terms of the decision

communicated, and as implied by the National Court of Appeal which preferred to leave it up to the CSAI, which was not competent to decide the matter because it was a question regarding conformity or non conformity with the regulations;

WHEREAS under these circumstances, due to the serious irregularities surrounding the decision of the National Court of Appeal, the decision can only be considered null and void;



WHEREAS it is consequently up to the International Court of Appeal, as the superior court, to re-examine the case which had been previously submitted to the two lower jurisdictions;

WHEREAS it is evident that, during the scrutineering and according to the report from the CIK-FIA Technical Delegate in charge of the verification - the highest authority competent for such verification, it was noted that one of the seals was broken, albeit cracked or nicked according to the Technical Delegate of the Italian Federation;

WHEREAS all one needs is to review the terms of the regulations which are clear: before the start of the race, the seals must be present and intact, and if they are not, it is up to the driver to notify the scrutineers so the seals can be replaced, which was not done in this case;

WHEREAS the exclusion required by the regulations therefore had to be imposed to ensure the respect of equality of chances of the competitors in all events;

WHEREAS there does not appear, however, to have been any attempt at cheating by the competitor either by changing certain parts of the engine or modifying the way it is run, and his good faith can be wholly accepted, though this in no way can modify the imperative nature of the sanction imposed; no tolerance in this respect can be accepted;

WHEREAS the International Court of Appeal - in the presence of such unequivocal facts which were not contested by the competitor himself - must note the exclusion of the Tony Kart Racing Team from the event, in accordance with the provisions of the regulations;

ON THESE GROUNDS,

DECLARES the FIA's appeal admissible,

IN RESPECT OF THE SUBSTANCE,

QUASHES both the decision of the Stewards of the Meeting actually taken on 14 May 2000 and the decision of the National Court of Appeal taken on 18 July 2000 on the grounds they are both null and void, by virtue of the provisions and principles set out above,

RE-RULING,

RECORDS the exclusion of the competitor Tony Kart Racing Team from the Formula C and Intercontinental C events of the CIK-FIA European Championship run at Valvibrata on 12 - 14 May 2000 for breach of the CIK-FIA regulations (seal broken or damaged and not intact),

LEAVES it to the CIK-FIA to draw the conclusions from the present decision,

ORDERS the Automobile Club of Italy/Commissione Sportiva Automobilistica Italiana to pay the costs of the appeal.

Paris, 28 September 2000

(signature of R. Redmond)

THE PRESIDENT