

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the Deutscher Motor Sport Bund (DMSB)
on behalf of its competitor and driver Aaron Burkart,
against the decision handed down by the National Court of Appeal of the CSAI
on 5 November 2008, concerning the 44th Rally del Friuli e Alpi Orientali, an
event run on 28-30 August 2008 and counting towards
the 2008 FIA European Rally Cups**

Hearing of Tuesday 3 February 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Thierry JULLIARD (Switzerland), who was elected President, Mr Jan STOVICEK (Czech Republic), Mr Anthony SCRIVENER (Great Britain), and Mr José MACEDO e CUNHA (Portugal) met in Paris on Tuesday 3 February 2009 at the Fédération Internationale de l'Automobile (FIA), 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal submitted by the Deutscher Motor Sport Bund e.V. (DMSB) against decision N° 13-2008 handed down by the National Court of Appeal (NCA) of the CSAI on 5 November 2008 concerning the 44th Rally del Friuli e Alpi Orientali, an event run on 28-30 August 2008 and counting towards the 2008 FIA European Rally Cups (the “contested decision”), heard the statements and examined the arguments of the DMSB.

Attending the above hearing were:

for the DMSB: Mr Matthias Feltz (Legal representative)
 Mr Aaron Burkart (Driver and Competitor)
 Mr Jürgen Bertl (Team Manager)

The DMSB presented its arguments orally at the hearing. The CSAI, as respondent, and the FIA, as an intervening party, did not take part in the hearing, despite the fact that an invitation had been duly sent to them. Therefore, as far as the CSAI and the FIA are concerned, the Court is able to take into account their written submissions only.

The hearing took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised by anyone.

Procedure and forms of order sought by the parties

1. The DMSB filed the present appeal with the Secretariat of the Court on 12 November 2008, and paid the required appeal fee within the given time limit.

The appeal is therefore admissible.

2. The DMSB requests the Court to
 - modify the judgment of the National Court of Appeal of the CSAI N° 13-2008 so that the organiser of the 44th Rally del Friuli e Alpi Orientali must issue new rankings based on the reference time of the driver Fornasiero of 15 minutes and 16.2 seconds (as clarified during the hearing) at special stage n° 12 and which must be accepted for all vehicles that were impeded from completing special stage no. 12 due to the occurrence of the accident, and to amend the general ranking accordingly.
3. In its statement of 14 January 2009, the CSAI requests the Court to
 - reject the appeal and declare it unfounded.
4. The FIA, in its intervention of 27 January 2009,
 - supports the argument of the DMSB according to which the time allocated to Mr Burkart is not fair; and
 - leaves it to the sovereign appreciation of the Court to take a decision.

Reminder of the facts

5. During the 44th Rally del Friuli e Alpi Orientali, the race was interrupted during special stage n° 12 – the final special timed stage of the rally – because of an accident involving vehicle n° 16.
6. Five vehicles were able to complete the special stage without being affected by the accident. The last vehicle to pass before the accident occurred was vehicle n° 26, driven by Mr Fornasiero. Mr Burkart was the first driver who did not complete this special stage.
7. Following that incident, the Stewards, in their decision n° 3 dated 30 August 2008, allocated a calculated time to all the teams that had been impeded from finishing special stage no. 12, and thus also to the appellant.
8. The time allocated to the appellant was 15 minutes and 50.5 seconds, i.e. 34.3 seconds more than his direct rival, Mr Fornasiero, who had completed special stage n° 12 without hindrance.

9. Mr Burkart then submitted an appeal against the Stewards' decision to the National Court of Appeal (NCA) of the CSAI, on the grounds that the time allocated to him was arbitrary and not fair in light of article 19.16.1 of the 2008 General Prescriptions applicable to all FIA Rally Championships, Trophies, Challenges and Cups (hereinafter, the "FIA General Prescriptions"), which states that "[w]hen a special stage is stopped or interrupted for any reason, the stewards may allocate each crew affected a time which they consider is the fairest".
10. In its decision published on 5 November 2008, the NCA of the CSAI rejected Mr Burkart's appeal on all counts, considering it unfounded, and confirmed Stewards' decision n° 3, on the grounds that the Stewards had a discretionary freedom which they had exercised satisfactorily in this case.

On the substance

11. The question that arises in the present case is: what is the procedure to be followed when a special stage has been interrupted or stopped? The Stewards of the Meeting, as well as the NCA of the CSAI, based their decision on the national rally regulations of the CSAI, which foresees in such a case the application of a percentage system for allocating a time.

a) Arguments of the parties

12. The DMSB argues that the Stewards' decision violates article 19.16.1 of the FIA General Prescriptions, as the time allocated to Mr Burkart is not fair in the light of his previous sporting performance in the same race. It claims that the Stewards did not choose the fairest criterion available to them for calculating the allocated times, and that their application of the formula provided for in the CSAI's national regulations, without taking into consideration all the circumstances of the race, led to a result that was not fair.
13. The CSAI counters those arguments by claiming that the Stewards made good use of the very vast scope of discretion conferred upon them by the FIA General Prescriptions. It claims that the notion of fairness simply means that the chosen method of calculation must not be discriminatory or irrational and that it must be equal for all affected competitors, which was the case in this instance. Furthermore, the method of calculation used was not arbitrary, in the sense that it was not invented by the Stewards impromptu but was deduced from the CSAI's national regulations.

14. The FIA indicates that national regulations are applicable only insofar as they do not contradict the FIA regulations, and refers to the Supplementary Regulations of the race in question, which state that “This rally will be run in compliance with the International Sporting Code (and its appendices), the General Prescriptions applicable to all FIA Rally Championships, the Sporting Regulations of the FIA Championship(s), the provisions of the National Sporting Regulations, which comply with the FIA regulations and these supplementary regulations”.
15. It also points out that, according to the FIA General Prescriptions, in such a case the Stewards are obliged to find the fairest possible solution, while maintaining a certain margin of discretion. The FIA adds that this obligation entails the principle that the Stewards must not reverse the classification of the competition.

b) Conclusions of the Court

16. As the race in question forms part of the FIA European Rally Cups, the above-mentioned article 19.16.1 of the FIA General Prescriptions is applicable.
17. The notion of fairness mentioned in that article entails seeking a decision that will take into account all the circumstances of the race, and a result that appears fair, i.e. one that reflects, for example, the sporting performance achieved during the entire race and all its special stages.
18. To justify its application of the percentage system, the CSAI bases its argument on the fact that the system was applied in the same way to all affected competitors, and that the Stewards’ decision was therefore fair. However, given the duty to find the solution “which they consider is the fairest”, the Stewards were under the obligation to choose the solution they considered the fairest out of several possible solutions, and not automatically to apply just one solution made available by the national regulations. In the present case, the fact that they based their decision solely on the CSAI’s national regulations without taking into account the circumstances of the race could not lead to a result that complied with the FIA General Prescriptions.
19. Further, the Court considers that, even if it is considered that the Stewards had examined all possible solutions and had concluded that the method proposed by the national regulations was the fairest, this choice would have been manifestly incorrect, since it takes into account neither all the prior circumstances of the race, nor the result obtained.
20. During this rally, the race between the two competitors, Mr Burkart and Mr Fornasiero, had been extremely close; after more than 2 hours and 20 minutes of special stages, the gap between them was only 0.3 seconds, in favour of the appellant. The difference in the times set by these two competitors in all the

special stages had never exceeded 8.3 seconds. In the light of these circumstances, it is manifestly unfair to consider that the appellant would have lost 34.3 seconds in the last special stage.

21. Further, the Stewards omitted to take into consideration the results of special stage n° 9, the track of which corresponded exactly to that of the interrupted stage n° 12. During stage n° 9, the appellant had finished ahead of Mr Fornasiero by half a second.
22. Also, the provisional general classification drawn up after stage n° 11 put the appellant half a second ahead of Mr Fornasiero.
23. It therefore appears that the Stewards' decision on the one hand reverses the running and the classification of the race up to that point, and on the other hand penalises the appellant in an unjustified manner with a delay of more than half a minute in a special stage in which he had, only a few hours earlier, managed a performance that was half a second faster than that of his direct rival. The result produced by the Stewards' decision is therefore unfair, and even arbitrary, in view of the running of the race up to that point.
24. Considering the circumstances and facts mentioned above, the Court considers that the Stewards did not seek to apply the calculation method that they considered to be the fairest, and that they applied a formula which, in the circumstances of the present case, proved to be clearly unfair.
25. The Court therefore considers that the decision handed down by the NCA of the CSAI, and consequently, the Stewards' decision, both violate article 19.16.1 of the FIA General Prescriptions.

On the costs

26. As the appeal is judged well-founded, the appeal fee of €6000 paid by the appellant to the ICA, as well as the fee paid to the NCA of the CSAI, will be returned to the appellant in accordance with Article 190 of the International Sporting Code.
27. The Court leaves it to the CSAI to pay the costs of the present appeal as calculated by the Secretariat of the ICA, in accordance with Article 24 of the Rules of the International Court of Appeal.

On these grounds,

THE FIA INTERNATIONAL COURT OF APPEAL

- 1. invalidates the decision handed down by the National Court of Appeal of the CSAI on 5 November 2008;**
- 2. declares, in consequence, decision n° 3 taken by the Stewards of the meeting on 30 August 2008 to be ill-founded;**
- 3. refers the case back to the sporting authority in order that, in accordance with the above, it draws up a new classification of special stage n° 12, as well as a new final classification of the 44th Rally del Friuli e Alpi Orientali;**
- 4. orders the CSAI to pay the costs in accordance with Article 24 of the Rules of the International Court of Appeal; and orders the return of the appeal deposits paid by the appellant to the International Court of Appeal and to the National Court of Appeal of the CSAI, pursuant to Article 190 of the International Sporting Code.**

Paris, 3 February 2009

The President

