

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE :

Appeal lodged by

the Royal Automobile Club of Belgium (RACB)

on behalf of its license-holder Prospeed Competition,

against Decision No. 24 taken by the Panel of Stewards on 4 July 2008

concerning the 2008 FIA GT Championship,

race 3 run in Adria (I) on 20 June 2008

Hearing of Wednesday 10 September 2008 in Paris

The FIA INTERNATIONAL COURT of APPEAL (“the Court”), comprised of Mr Jan STOVICEK (Czech Republic), who was elected President, Mr José MACEDO E CUNHA (Portugal), Mr Reginald REDMOND (Ireland), and Mr Francesco DE BEAUMONT (Italy), met in Paris on Wednesday, 10 September 2008 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal submitted by the Royal Automobile Club of Belgium (RACB) on behalf of its license-holder Prospeed Competition (the “Appellant”) against Decision No. 24 taken by the Panel of Stewards on 4 July 2008, by which the Stewards excluded vehicles No. 60 and 61 of the competitor Prospeed Competition from the 2008 FIA GT Championship race run at Adria (I) on 20 June 2008, heard presentations and considered arguments presented by the RACB and the FIA (the “Defendant”).

Attending the above hearing were:

RACB: Mr Gérard Martin (Rapporteur judiciaire RACB Sport)
Mr Rudi Penders (Team Owner Prospeed Competition),
assisted by Mr Pascal Nelissen Grade (*Avocat* registered
with the Bar of Leuven, Belgium, on behalf of Prospeed
Competition)

FIA: Mr Pierre de Coninck (Secretary General FIA Sport, on
behalf of FIA Sport)
Mr Sébastien Bernard (Head of Legal Department)

The parties presented oral arguments and answered questions put to them by the Court at a hearing on 10 September 2008, during which the parties were duly heard with the aid of simultaneous translation. No objection to any element of the simultaneous translation was raised by anyone.

Judgment

Admissibility

1. The Court acknowledged that the appeal was filed in a timely manner and meets the procedural requirements set out in the Rules of the FIA International Court of Appeal.
2. The Court further acknowledges that it has jurisdiction in this matter.
3. Therefore, the Court finds that the appeal is admissible.

Background to the dispute

4. The present case concerns the third race of the 2008 FIA GT Championship, run at Adria (Italy) on 20 June 2008 (the “Race”).
5. The Panel of Stewards held in their Decision No. 20, dated 21 June 2008, that a certain number of vehicles, including vehicles no. 60 and 61 participating in the Race on behalf of the competitor Prospeed Competition, were found to have Porsche suspension parts that did not have appropriate homologation papers. However, it decided that no further action would be taken prior to the Race until the homologation issue could be clarified.
6. Following a report of the Technical Delegates, Report No. 9 dated 30 June 2008, declaring that they received new documentation from Porsche AG clarifying the matter, the Panel of Stewards took Decision No. 24 on 4 July 2008 (the “Contested Decision”), by which the Stewards excluded the vehicles concerned from the results of the Race because the parts in question were not homologated.

Procedure and forms of order sought by the parties

7. The Appellant brought the present action by appeal lodged with the ICA Secretariat on 7 July 2008.
8. The Appellant claims that the Court should:
 - declare the appeal admissible and well-founded;
 - annul the Contested Decision;
 - restore vehicles no. 60 and 61 in the ranking to the position they were in before being excluded from the Race;
 - order the Defendant to pay the costs.

9. The Defendant, in its submission of 27 August 2008, contends that the Court should:
- declare the appeal unfounded and dismiss the Appellant’s demands;
 - confirm in its entirety the Contested Decision;
 - order the Appellant to pay the costs.

On the substance

I. On the alleged absence of a homologation form for the vehicles’ suspensions

a) Arguments of the parties

10. The Appellant acknowledged at the hearing that the suspension parts in question had not been specifically and individually homologated. However, it argued that a separate homologation form for these parts was absent because no such form existed. Instead, the parts benefited from a general homologation of the suspension system. The Appellant claimed that the general homologation form did not require a detailed description of the suspension arms. Moreover, the Appellant had been racing with the same suspensions since 2007, and no adverse comments had been raised by the FIA during all this time.
11. The Appellant further submitted that, in any event, it was of little importance whether or not a separate homologation for the suspension parts existed, as the vehicles in their entirety were homologated by the FIA. In addition, the vehicles possessed a technical passport and were declared technically compliant by the FIA.
12. The Defendant submitted that suspensions have always been subject to a specific homologation and were in this case too, as evidenced by the Homologation Form dated 1 February 2007, which shows photographs and describes technical details of the vehicles’ suspensions on page 13. The Defendant further argued that the Homologation Form in question provided sufficient detail of all parts of the suspension, including the suspension arms in question.
13. The Defendant further claimed that the existence of a technical passport for the vehicles is irrelevant, as this passport in no way constitutes proof of the technical conformity of the vehicles. It is simply a document that identifies the vehicles and sets out the history of technical observations resulting from checks.

b) Findings of the Court

14. The Court considers that it appears from the documentation submitted that, at the time of the original vehicle homologation on 1 February 2007, a specific

suspension system had been approved and documented in sufficient detail. The Court does not accept that this homologation constituted a general homologation for any other suspension system, even one bearing similarities to the one homologated.

II. The suspensions described in the Homologation Form were different from the suspensions used at the Race

a) Arguments of the parties

15. The Appellant submits that the vehicles were bought by Prospeed from the Porsche factory as being homologated for GT2 races and have not been modified since. It accepts that the suspensions shown in the Homologation Form dated 1 February 2007 were not identical to those used in the vehicles on the day of the Race, but argues that the differences are not such as to render the parts non-compliant. The Homologation Form is too general to describe only one particular suspension system and therefore allows the use of similar parts. In addition, the applicable rules do not specifically mention the suspension arms as being among the suspension elements subject to a homologation requirement.
16. The Defendant, however, claims that significant differences exist between the suspension parts used at the Race and the parts shown on the 1 February 2007 Homologation Form. The Defendant argues that, in any event, the homologation process approves specific designs and parts, and does not leave leeway for variations without further approvals. This led the Technical Delegates to conclude that the Prospeed vehicles presented at the Race in fact included new, non-homologated suspensions.
17. The Defendant further refers to Article 257-10.1.2.a of Appendix J to the International Sporting Code, which states that suspensions “must conform to the Homologation form”, and to Article 257-10.4 of Appendix J to the International Sporting Code, which states that “all new suspension elements must be homologated”.
18. It should be noted that, on 1 July 2008, an Option Variant (OV) homologation was issued by the FIA in respect of the suspension in question. Therefore, the parts eventually became homologated, but only as of 1 July 2008.

b) Findings of the Court

19. The parties agree that the suspension parts used on the day of the Race were different from the parts shown in the 1 February 2007 Homologation Form. This technical finding is also noted in the Technical Delegates’ Report No. 9 of 30 June 2008.

20. The Court finds that the fact that a subsequent OV homologation was applied for and granted, demonstrates that the parts in question were not covered by the original 2007 homologation. The homologation should have been requested prior to actual use of the parts in a race.
21. Furthermore, the Court was provided with an undated confirmation letter from Porsche that indicates that the homologation problem could not be resolved by re-mounting the parts that had been approved in the original 2007 Homologation Form, as to do so could raise safety issues. This again demonstrates that the suspensions in question were not covered by the original 2007 homologation.
22. The Court finds that Article 257-10.4 of Appendix J refers to “all” suspension elements, which must be taken to include suspension arms, and that the suspension arms in question were in no way exempted from specific homologation. The Appellant failed to demonstrate that the specific parts used at the Race were homologated at the time of their actual use during the Race, as required by Articles 257-10.1.2.a and Article 257-10.4 of Appendix J. The fact that they may have been subsequently homologated is not a defence to the obligation to race at all times using the required homologated parts.

III. On the responsibility of Prospeed

a) Arguments of the parties

23. The Appellant claimed that it acted in good faith and that no fault could be attributed to it, as Prospeed had bought these cars from the Porsche factory believing them to be GT2 homologated race cars.
24. The Defendant claimed that conformity is the responsibility of the competitor and referred to Article 257A.2.5 of Appendix J to the International Sporting Code, which states that “it is the duty of each competitor to satisfy the Scrutineers and the Stewards of the Meeting that his car complies with these regulations in their entirety at all times during an event”.

b) Findings of the Court

25. The Court holds that it is the responsibility of the competitor to observe the rules of the competition that it has entered. In this case, the Court does not see sufficient cause to alter the sanction imposed by the Contested Decision.

On those grounds,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Upholds Decision No. 24 of the Panel of Stewards, dated 4 July 2008;**
- 2. Leaves it to the Sporting Authority to draw the consequences of the present decision;**
- 3. Orders the Applicant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 10 September 2008

The PRESIDENT