

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE:

Appeal lodged by

the Motor Sports Association (MSA)

on behalf of its licence-holder Vodafone McLaren Mercedes,

against Decision N° 49 taken by the Panel of Stewards

on 7 September 2008 at the 2008 Belgian Grand Prix,

an event run on 7 September 2008 and counting towards the

2008 Formula One World Championship

Hearing of Monday 22 September 2008 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Philippe NARMINO (Monaco), who was elected President, Mr Harry DUIJM (Netherlands), Mr Erich SEDELMAYER (Austria), Mr Xavier CONESA (Spain) and Mr Thierry JULLIARD (Switzerland), met in Paris on Monday 22 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 Motor Sports Association (MSA) on behalf of its licence-holder Vodafone McLaren Mercedes (“McLaren”) against Decision N° 49 taken by the Panel of Stewards on 7 September 2008 at the 2008 Belgian Grand Prix, run on 7 September 2008 and counting towards the 2008 FIA Formula One World Championship, heard presentations and considered arguments presented by the MSA/Vodafone McLaren Mercedes and by the Fédération Internationale Automobile (“FIA”).

The Commissione Sportiva Automobilista Italiana (CSAI) notified the Court on 12 September 2008 of the request of its licence-holder Scuderia Ferrari Marlboro (“Ferrari”) to be heard in the present case in accordance with article 21 of the Rules of the International Court of Appeal. The Court therefore heard the presentations and considered the arguments presented by Ferrari.

Attending the above hearing were:

MSA: Robert Jones (Secretary General)

for Vodafone McLaren Mercedes:

Mark Philips QC (Lawyer)
Lewis Hamilton (Driver)
Philip Prew (Race Engineer)
Martin Whitmarsh (Chief Executive)
Sue Thackeray (Legal representative for Mr Hamilton)
Tim Murnane (Legal representative)
Matt Bishop (McLaren)
David Ryan (Team Manager)
Tom Cassels (Legal representative for McLaren)
Ben Allgrove (Legal representative for McLaren)

for Scuderia Ferrari Marlboro:

Nigel Tozzi QC (Lawyer)
Stefano Domenicali (Team Principal)
Luca Baldisserri (Team Manager)
Massimiliano Maestretti (General Counsel)

Andrea Fioravanti (Legal representative)
Henry Peter (Legal representative)

for the FIA: Mr Paul Harris (Lawyer)
Mr Pierre de Coninck (Secretary General FIA Sport, on
behalf of FIA Sport)
Mr Sébastien Bernard (Head of Legal Department)
Mr Charlie Whiting (Race Director)

The parties presented oral arguments at the hearing. The witnesses or knowledgeable parties answered questions put to them by the parties and by the Court. 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. During the discussions, the adversarial principle was respected.

Reminder of the facts

1. This case concerns the 2008 Belgian Grand Prix, an event that was run at Spa Francorchamps (Belgium) on 7 September 2008, counting towards the 2008 FIA Formula One World Championship (“the event”).
2. On lap 42 of the event, the car belonging to the Ferrari team, driven by Mr Kimi Räikkönen, was leading the race at turn 18. The car belonging to the McLaren team, driven by Mr Lewis Hamilton, drew level with Mr Räikkönen’s car on the approach to turn 19, cut the chicane and took the slip road. Mr Hamilton thus found himself in the lead, in front of Mr Räikkönen’s car, at the exit from turn 19. On rejoining the track, Mr Hamilton allowed Mr Räikkönen to overtake him in order to cede back the latter’s place. Immediately afterwards, Mr Hamilton carried out another overtaking manoeuvre at turn 1 (La Source) and again overtook Mr Räikkönen. Mr Hamilton finished the event in the lead.
3. In its decision N° 49 (the “contested decision”), taken on 7 September 2008, the Panel of Stewards considered that Mr Hamilton had not sufficiently ceded back the advantage he had gained by cutting the chicane, and had thus breached Article 30.3.a) of the Formula One Sporting Regulations and article 2.g) of Chapter 4 of Appendix L to the International Sporting Code. On the basis of Article 16.3.a) of the Formula One Sporting Regulations, the Panel imposed a drive-through penalty on Mr Hamilton. Article 30.3.a) of those regulations stipulates that “during practice and the race, drivers may use only the track and must at all times observe the provisions of the Code relating to driving behaviour on circuits”. Article 2.g) of Chapter 4 of Appendix L to the International Sporting Code states that “the race track alone shall be used by the drivers during the race”. As the penalty was to be applied at the end of the race,

the Panel of Stewards added 25 seconds to the driver's race time, in accordance with the provisions of Article 16.3, final paragraph.

Procedure and forms of order sought by the parties

4. McLaren lodged the present appeal with the Court Secretariat on 9 September 2008.
5. McLaren claims that the Court should:
 - declare the appeal admissible and well-founded;
 - annul the contested decision.
6. The FIA, in its submission of 19 September 2008, claims that the Court should:
 - declare the appeal inadmissible pursuant to Article 152 of the International Sporting Code;
 - if the appeal is admissible, dismiss the appeal as unfounded and confirm the contested decision in its entirety.
7. Ferrari, as an intervening party, claims that the Court should:
 - declare the appeal inadmissible;
 - if the appeal is admissible, confirm the contested decision in its entirety.

Arguments presented by the parties

McLaren

8. Concerning admissibility, McLaren points out in its submission that according to Article 152, three types of penalty are not susceptible to appeal: (i) drive-through penalties; (ii) stop-and-go penalties; and (iii) penalties expressly specified in FIA Championship regulations. McLaren claims that, as the penalty imposed in this case consists of adding 25 seconds to the race time, it does not fall into any of those three categories and that, consequently, it does fall within the scope of the restriction upon the right of appeal under Article 152.
9. On the substance, McLaren claims that while Mr Hamilton did indeed cut the chicane, he gained no advantage from this, since immediately upon taking the lead of the race he allowed Mr Räikkönen to pass him and retake first place. McLaren considers that since its driver and its car were faster, Mr Hamilton was

able to overtake his rival again properly, without in any way using all or part of the advantage he had obtained by cutting the chicane.

FIA

10. Concerning admissibility, the FIA claims that in the contested decision, the Stewards clearly indicated that the penalty imposed was a drive-through penalty. In accordance with Article 152, this type of penalty is not susceptible to appeal. The fact that the penalty came into effect at the end of the race and thus took the form of an addition of 25 seconds to the race time does nothing to change the nature of the penalty.
11. On the substance, the FIA considers that the decision taken by the Stewards is not to be criticised, since Mr Hamilton incontestably gained an advantage by leaving the track. The FIA considers that while this advantage was ceded back to Mr Räikkönen, it was only partially so, and that it had not been ceded back in its entirety.

Ferrari

12. Regarding admissibility, Ferrari also claim that the penalty imposed in the present case constitutes a drive-through penalty, which is not susceptible to appeal pursuant to Article 152.
13. Concerning the substance of the case, Ferrari considers that the Stewards' decision was justified, and claims that Mr Hamilton would not have been able to overtake Mr Räikkönen if he had not gained an advantage from the disputed manoeuvre undertaken at the chicane.

Decision of the Court

Regularity of the appeal

14. Ferrari raised the question of whether or not the appeal submitted against the contested decision had been notified within the time limits stipulated in the Rules of the Court. McLaren claim that the appeal was indeed submitted within the given time limit.

Nothing in the dossiers submitted to the Court establishes that the appeal was not lodged properly, and in particular that the appeal time limits were not respected. The documents produced suggest, on the contrary, that the time limits were observed. It follows that the appeal must be declared properly formed.

Competence of the competitor Vodafone McLaren Mercedes

15. The competitor Ferrari, having claimed that only Lewis Hamilton was penalised by the Stewards' decision, and having observed that the driver concerned had not appealed, deduced that McLaren could not appeal. However, it must be noted that, with regard to this decision, the Stewards did indeed record a breach of the rules committed by "the competitor named below", which referred expressly to the "competitor Vodafone McLaren Mercedes".
16. In these conditions, it is clear that this competitor was sanctioned, even if the penalty of 25 seconds was added to the race time of the driver Hamilton.
17. It follows that McLaren, through its ASN, is competent to submit the appeal that is now before the Court.

Admissibility of the appeal

18. Article 16.3 of the Formula One Sporting Regulations stipulates that:

"The stewards may impose any one of three penalties on any driver involved in an Incident:

- a) A drive-through penalty. The driver must enter the pit lane and re-join the race without stopping.
- b) A ten second time penalty. The driver must enter the pit lane, stop at his pit for at least ten seconds and then re-join the race.
- c) A drop of ten grid positions at the driver's next Event.

However, should either of the penalties under a) and b) above be imposed during the last five laps, or after the end of a race, Article 16.4b) below will not apply and 25 seconds will be added to the elapsed race time of the driver concerned."

19. Furthermore, Article 152 of the International Sporting Code states that:

“Penalties of driving through or stopping in pit lanes together with certain penalties specified in FIA Championship regulations where this is expressly stated, are not susceptible to appeal.”

20. The above-mentioned decision of 7 September 2008 demonstrates that the Stewards, after having noted that the driver Lewis Hamilton “cut the chicane and gained an advantage”, considered that an infringement of Article 30.3a) of the Formula One Sporting Regulations and of Article 2.g) of Chapter 4 of Appendix L to the International Sporting Code had been committed. As a consequence, they decided to pronounce the following penalty: “drive-through penalty (Article 16.3(a)), since this is being applied at the end of the Race, 25 seconds will be added to the driver’s elapsed race time”.

21. The foregoing demonstrates that the Panel of Stewards intended to impose a drive-through penalty within the meaning of Article 16.3.a) of the Sporting Regulations. In applying Article 16.3, final paragraph of those Regulations, they added 25 seconds to the elapsed time of the driver concerned.

22. The provisions of Article 16.3 must be read in their entirety, as the three points a), b) and c) and the last paragraph of this Article are manifestly linked. There is no indication that one is allowed to confer an autonomous character to the last paragraph of this provision. On the contrary, this paragraph sets out a specific mode of execution of penalties a) and b) and aims to determine the implementation of these sanctions when they must be imposed during the last five laps of the race or after the end of the race.

23. It is with this in mind that the Panel issued its decision, as the penalty that it expressly imposed on the competitor is indeed a drive-through penalty pursuant to Article 16.3.a).

24. Therefore, the nature of the penalty mentioned in the last paragraph of Article 16.3 (addition of 25 seconds to the elapsed time) is identical to those mentioned in points a) and b). Its legal regime must for that reason be in line with the regime applicable to the sanctions foreseen under a) and b).

The Court therefore considers that the penalty imposed by the Stewards on 7 September 2008 must be considered to be a drive-through penalty.

25. As a consequence, this sanction falls within the scope of Article 152, paragraph 5, of the International Sporting Code. According to these provisions, “penalties of driving through or stopping in pit lanes together with certain penalties specified in FIA Championship regulations where this is expressly stated, are not susceptible to appeal”.

26. The above must thus be taken into account in the present matter by declaring inadmissible the appeal against the contested decision.

27. The Court, in a judgment of 12 October 2007 rendered in the Toro Rosso case concerning the 2007 Japanese Grand Prix (driver Vitantonio Liuzzi), concluded, in similar circumstances, that the appeal against a decision to impose a 25-second penalty was admissible. However, none of the parties concerned had raised the inadmissibility of the appeal in that case, the FIA for its part leaving the matter to the sovereign appreciation of the Court. Therefore, the Court was able, in the conclusion of its decision, to declare the appeal admissible, but it did not give reasons for its decision on the issue, as the question was not debated.

Consequently that judgment does not present itself as settled law with respect to this question and does not bind the Court in the present case.

On the substance

28. In view of the foregoing, it follows that there is no need to examine the substance of the appeal submitted by McLaren.

On those grounds,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Declares the appeal inadmissible;**
- 2. Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 22 September 2008

The President