

**INTERNATIONAL COURT OF APPEAL (ICA)
OF THE
FEDERATION INTERNATIONALE DE L'AUTOMOBILE (FIA)**

CASE:

Appeals lodged by

**the Royal Automobile Club of Great Britain - RAC Motor Sport Association
on behalf of its licence holder West McLaren Mercedes,
and by the FIA,
against**

**Decision N°3 of the Stewards of the Meeting
taken on 23 August 1997**

**(Event: 1997 Belgian Grand Prix
Spa Francorchamps, held on 24.08.97)**

Hearing of Wednesday, 3 September 1997 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr. J.W.G. van ROSMALEN (Netherlands) elected President, Dr. Gérard NURSCHER, First Joint Attorney General (Austria), Mr. Edgar JULIEN (France), and Mr. Vassilis KOUSSIS (Greece),

Sitting in Paris on Wednesday, 3 September 1997, at the Headquarters of the Fédération Internationale de l'Automobile, 8, place de la Concorde, 75008, PARIS,

Ruling on the one hand on the appeal lodged by the Royal Automobile Club of Great Britain - RAC Motor Sport Association on behalf of its licence holder, West McLaren Mercedes, and on the other hand on the appeal lodged for the FIA by its representative, Mr. Pierre de CONINCK, Secretary-General of the FIA Sport Division, against decision N°3 handed down by the Stewards of the Meeting on 23 August 1997 (Event: 1997 Belgian Grand Prix, Spa Francorchamps, run on 24.08.97)

After hearing :

1. for the main Appellant: Mr Martin WHITMARSH, Operations Director, McLaren International; Mr. Dick GLOVER, Research Manager, McLaren International; Mr. Tim MURNANE, Director of the McLaren Legal Department, assisted by Mr. Charles FLINT, Queen's Counsellor, Lawyer with the London Bar, in the presence of Mr. Terry LANKSHEAR, representative of the Royal Automobile Club of Great Britain;
2. Mr. Pierre de CONINCK, Secretary-General of FIA Sport, representing the FIA, who received from the International Court of Appeal acknowledgment of the appeal lodged on behalf of the FIA against the above decision of the Stewards of the Meeting in order to obtain a reversal of this decision by requesting its invalidation and calling for the exclusion from the event of the competitor McLaren, an increase in the fine imposed by the first judge, as well as a fine for the lodging of a frivolous appeal by the McLaren company, in accordance with last paragraph of Article 184 of the International Sporting Code.

Having heard the knowledgeable parties summoned by both parties: Mr. Arno REGLITZSKY, ADAC Technical Consultant, Mr. Jo BAUER, FIA Technical Delegate, Dr. P.J.C. TIBBETTS, Engineer and Fuel Analyst and Technician in charge of analysing the petrol, and Mr. Brian BROPHY, Chief Steward of the Meeting for the event,

Having recognized that the proceedings were in order, the two appeals admissible, and that the rights of the parties had been duly examined, the Appellants having supplied all detailed and relevant explanations when requested of them during the hearing and having answered all questions with the aid of simultaneous interpretation which was deemed acceptable by the parties involved,

WHEREAS the International Court of Appeal had to determine whether or not the fuel used during the qualifying practice session on 23 August 1997 by the competitor McLaren, in car n°9 driven by Mika HAKKINEN, was in conformity with the fuel approved by the FIA, under the terms of Article 16 of the F1 Technical Regulations;

WHEREAS the questions raised were debated at length during the successive hearings of each of the parties and the knowledgeable persons or expert witnesses summoned by them;

WHEREAS this hearing revealed, as was even admitted by McLaren, notably at the hearing, that variations existed between the sample taken from the fuel tank of its car n° 9 driven by Mika HAKKINEN during the practice session, and the FIA approved fuel; that the fuel used was not in conformity;

WHEREAS McLaren attempted to submit that the variation was due to evaporation of the fuel which led to changes in the amounts of benzene and toluene found in the fuel, though this explanation was rejected by Dr. TIBBETTS, FIA fuel analyst, who contended that the fuel from the car would in any case never have been authorized by the FIA, and this was confirmed by the subsequent fuel analysis conducted by SGS, an independent laboratory;

WHEREAS in addition, despite the explanations from McLaren, the International Court of Appeal noted that other samples had been taken from the cars of other competitors during the same practice session and that none had fuel of a texture different from that of the fuel authorized by the FIA;

WHEREAS McLaren therefore attempted to claim that in any case it was not proved that the fuel used, if it were different, would improve performance, an argument which must be rejected in the light of the terms of the last paragraph of Article 58 of the International Sporting Code which states that the absence of a performance advantage can never be considered an argument for defence, which is understandable because the contrary would always enable a party to submit that an unauthorized fuel could nevertheless be used;

WHEREAS without examining questions of a purely technical nature, it appears that, to respect the equality of opportunities for the drivers and the competitors, the fuel used must conform exclusively to the fuel approved by the FIA before the event in question, and that to decide otherwise would be to go against the objectives sought by the regulations;

WHEREAS Article 7 of the Sporting Regulations of the FIA Formula One World Championship specifies that "*Competitors must ensure that their cars comply with the conditions of eligibility and safety throughout practice and the race*", and that in addition, Article 2.6 of the Technical Regulations states that "*It is the duty of each competitor to satisfy the scrutineers and the Stewards of the Meeting that his automobile complies with these regulations in their entirety at all times during an event*";

WHEREAS it is necessary to point out that, according to declarations made by Mr. Brian Brophy, Permanent Steward of the Meeting, the initial statements given by McLaren

representatives did not contest the technical conclusions regarding the fuel, and that it was only later, after having learned of the decision taken by the Stewards of the Meeting, that they declared they would appeal against the decision;

WHEREAS this appeal, due to its suspensive nature, enabled car N° 9 driven by Mika HAKKINEN to leave from the third line of the starting grid on the day of the race instead of the last line, as had been decided by the Stewards of the Meeting;

WHEREAS under these circumstances, the appeal lodged seems to have allowed the car to start from a better position;

WHEREAS in this case the bad faith of McLaren concerning a possible deliberate infringement cannot be established, but to respect the equality of opportunities mentioned above, the regulations stating that any samples taken from the fuel tank of a competitor's car must conform to the FIA-approved fuel must be strictly applied, in keeping with complete impartiality as previously expressed by the International Court of Appeal;

WHEREAS under these conditions, it falls to the International Court of Appeal to pass sentence, after invalidating the previous decision, to exclude from the event the competitor McLaren and its driver Mika HAKKINEN, in accordance with the last paragraph of Article 152 of the International Sporting Code in its current form;

WHEREAS in fact an infringement committed during the practice session had the inevitable consequence of obtaining, for the race itself, a privileged position at the start, obtained with the use of a fuel which was not in conformity during practice, and which thus affected the equality of opportunities;

WHEREAS consequently, exclusion from the event appears justified;

WHEREAS the fine set by the first judges of \$ 25,000 has been judged too modest and the fine of \$200,000 demanded by the FIA deemed excessive, due to the circumstances of the case, and that under such conditions the International Court of Appeal feels the fine should be set at \$ 50,000;

WHEREAS concerning the fine for a frivolous appeal, the FIA called for the authorized fine of 1 million French Francs, in accordance with the last paragraph of Article 184; this request cannot be accepted due to the fact that all competitors have the right to appeal against a decision except in particularly abusive circumstances which do not exist in the present case;

ON THESE GROUNDS,

AS TO THE FORM,

DECLARES the appeals both from McLaren and from the FIA admissible,

AS TO THE FACTS,

INVALIDATES decision N°3 of the Stewards of the Meeting of the Belgian Grand Prix run on 23 August 1997,

RE-RULING,

DECLARES and JUDGES that the competitor McLaren committed an infringement of the Regulations mentioned above and was unable to prove that it used, during the practice session, a fuel which was in conformity,

REVERSES, consequently, the decision of the first judges,

DECLARES and JUDGES that the competitor McLaren is excluded from the qualifying practice and the race itself, of the 1997 Belgian Grand Prix,

DECLARES and JUDGES that this exclusion applies equally to the driver Mika HAKKINEN, in accordance with the last paragraph of Article 152 of the International Sporting Code currently in force,

DECLARES and JUDGES that the fine imposed on the competitor McLaren must be increased and set at \$ 50,000,

DISMISSES the FIA's demand for a fine relative to the frivolous appeal, the conditions of which are not met in this case,

LEAVES it up to the Sporting Authority to draw the conclusions from the present decision and to re-establish the classifications accordingly,

SENTENCES West McLaren Mercedes to pay all expenses both of the first ruling and of the appeal.

Paris, 3 September 1997

The **PRESIDENT**