



**INTERNATIONAL COURT OF APPEAL**

**of the**

**FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by the Japan Automobile Federation (“JAF”) on behalf of its  
licence-holder Toyota Gazoo Racing  
against  
Decision No. 55 dated 7 May 2016 of the Stewards of the 6 Hours of Spa-  
Francorchamps counting towards the 2016 FIA World Endurance  
Championship (WEC)**

**Case ICA-2016-02**

**Hearing of 13 July 2016 in Paris**



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprising Mr Jan Šťovíček (Czech Republic), who was designated President, Mr Rui Botica Santos (Portugal), Mr Jean Luisi (France) and Mr Nish Shetty (Singapore) met in Paris on Wednesday, 13 July 2016 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Japan Automobile Federation (JAF) on behalf of its licence-holder Toyota Gazoo Racing (“Toyota” or the “Appellant”) against Decision No. 55 dated 7 May 2016 of the Stewards of the 6 Hours of Spa-Francorchamps competition counting towards the 2016 FIA World Endurance Championship (WEC) (the “Decision”) by which a penalty was imposed on Toyota equal to the missing driving time of its driver, Mr Nakajima, namely 9 minutes and 10 seconds, converted into a 4-lap penalty.

The following persons attended the hearing:

On behalf of the Appellant:

Mr Pascal Vasselon (Technical Director)  
Mr John Steeghs (Team Manager)  
Mr Philippe Lambilliotte (Lawyer)

On behalf of the FIA:

Mr Pierre Ketterer (FIA Head of Regulatory, Governance & Legal Corporate Affairs)  
Ms Delphine Lavanchy (Legal Coordinator)  
Mr Jean-François Veroux (Chairman of the Panel of the Stewards)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)  
Mr Nicolas Cottier (Clerk of the FIA Courts)  
Mrs Sandrine Gomez (Administrator of the FIA Courts)

The parties filed their written submissions and, at the hearing of 13 July 2016, presented their oral arguments and answered the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. No objection to the competence or the composition of the Court, to any element of the fairness of the proceedings or of the hearing or to any element of the simultaneous translation was raised by either party.



## REMINDER OF THE FACTS

1. On 7 May 2016 during the 6 Hours of Spa-Francorchamps (the “Competition”), the Stewards noted, on the basis of a report sent by the timekeeper, that the driver Kazuki Nakajima, registered in car No. 5 of Toyota, competing in the LMP1 hybrid category, drove for 30 minutes, 49 seconds and 167 milliseconds throughout the Competition.
2. Based on Article 10.10.2 of the 2016 WEC Sporting Regulations (the “WEC Sporting Regulations”) which provides that the minimum driving time in the Competition for the LMP1 category is 40 minutes per driver, the Stewards decided on the same day at 23:04 and after having heard the representatives of Toyota, to impose a time penalty equal to the missing driving time of Mr Nakajima, namely 9 minutes and 10 seconds, then converted into a 4-lap penalty.
3. Toyota notified its Intention to appeal against the Decision at 23:59, namely within the 1 hour time limit provided under article 10.1.1.d) of the Judicial and Disciplinary Rules (JDR).

## PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

4. On 10 May 2016, the JAF, acting on behalf of the Appellant, notified the Court of the appeal against the Decision (the “Appeal”).
5. The Notification of appeal reads as follows:

*“Dear Sir,*

*Re. Notification of an appeal, Toyota Gazoo Racing*

*We, Japan Automobile Federation (JAF, Japanese ASN) on behalf of JAF license license (sic) holder, Toyota Gazoo Racing, hereby give notice of submitting the appeal to the ICA against the decision of the Stewards of the meeting of 6 Hours of Spa-Francorchamps on 7<sup>th</sup> May 2016 counting towards 2016 FIA World Endurance Championships, pursuant to the provision of article 10.1.1 of the Judicial and Disciplinary Rules.*

*Please find attached the following documents:*

1. *The stewards’ decision No.55*
2. *Intention to appeal of the stewards’ decision No. 55*



3. 2016 WEC Registration
4. 2016 WEC Competitors staff certificates (3 personnel)
5. 2016 JAF International Entrant License for Toyota Gazoo Racing (No. 8615 5225 1250)
6. Copy of remittance for the appeal deposit of €6,000.00

*Pursuant to the provision of article 17 (iii), we consent to authorise Mr Johannes Steeghs, Sporting Director/Team Manager of Toyota Gazoo Racing to communicate directly with the ICA. (...)*

6. In its Grounds for appeal, notified to the Court on 3 June 2016, the Appellant seeks the following orders:

*“(i) the appeal is admissible;*

*(ii) the Contested Decision is confirmed with respect to the finding that the driver Kazuki Nakajima did not complete his minimum driving time, and*

*(iii) the 4 laps penalty imposed on Toyota is quashed and substituted by a more appropriate sanction consistent with previous similar cases and proportionate, such as no penalty, or withdrawing the driver points, as the Court finds most appropriate.”*

7. The FIA, in its Grounds in response notified to the Court on 23 June 2016, invites the Court:

*“primarily, to declare inadmissible the appeal brought by the Competitor against Decision No. 55 of the Stewards in application of Article 10.1.1.a) of the Judicial and Disciplinary Rules of the FIA;*

*secondarily, to dismiss the Competitor’s appeal and confirm Decision No. 55 of the Stewards in its entirety, in application of Article 10.9 of the Judicial and Disciplinary Rules of the FIA; and*

*to leave it to the Appellant to bear the costs in accordance with Article 11.2 of Judicial and Disciplinary Rules of the FIA.”*

## **ADMISSIBILITY OF THE APPEAL**

8. The Decision was issued by the Stewards on 7 May 2016 at 23:04. It was immediately notified to the Appellant, which in return declared in writing its Intention to appeal against the Decision on that same day at 23:59.
9. The written declaration of the Appellant reads as follows:

***“Intention to appeal against Stewards Decision n° 55***



*Dear Gentlemen,*

*Herewith we like to notify you that we intent (sic) to appeal against today's Stewards Decision n°55.*

*Should you require any further information, please do not hesitate to contact me.*

*Yours sincerely*

[signed: John Steeghs, Toyota Motorsport GmbH]"

10. The JAF lodged the Notification of appeal before the Court on 10 May 2016, namely within the deadline provided under Article 10.3 (i) lit. a of the JDR, applicable to appeals against decisions of the Stewards of a major FIA championship, which is the case with the WEC. The appeal deposit was also paid in due course.
11. In its Grounds in response dated 23 June 2016, the FIA claimed that the Notification of appeal submitted to the Court did not include the reasons for bringing the appeal. The FIA therefore concludes that the “*inadmissible nature*” of the appeal is established on account of its non-compliance with the provisions of Article 10.1.1.a) JDR.
12. On 7 July 2016, the JAF sent a letter to the Secretary General of the FIA Courts which reads as follows in its relevant parts:  
  
*“With regard to our notification of an appeal dated 10<sup>th</sup> May 2016 (Ref.JAFMS2016-0107), we have noted that we have made a clerical mistake in our appeal notice by not including specifically the reason for our appeal. For us that reason was self-evident since there could be no other reason than seeking a reduction of the penalty in the reasonably simple circumstances of the case.  
However, we wish to apologize towards the FIA for this matter.”*
13. At the outset of the hearing, the Appellant confirmed to the Court that it had indeed made a mistake but that it was of the opinion that the reason for the appeal was obvious and self-evident. There was thus no actual need to include it in the notification.
14. Having carefully read through the Notification of appeal made by the JAF on behalf of its licence-holder on 10 May 2016, notably its appendices, and in particular the notification of the Intention to appeal made by Toyota on 7 May 2016, the Court concludes that the reasons for bringing the appeal were indeed not mentioned in the Notification of appeal filed by the JAF, neither in the Notification itself nor in the appendices attached to it.



15. This statement is actually confirmed in the letter spontaneously sent to the Court by the JAF on 7<sup>t</sup> July 2016, where the latter admits having made a “*clerical error*”.
16. Article 10.1.1 JDR reads as follows in its relevant parts:  
*“The notification of an appeal must include:*
  - a) (...) *the reasons for bringing the appeal.*

(...)

*Any irregularity in the notification will result in the inadmissibility of the appeal.”*
17. Contrary to the JAF’s position in its letter dated 7 July 2016, namely a fortnight after the FIA had raised this important issue in its Grounds in response, the Court finds that the error made is not at all a “*clerical error*”. Indeed, the formal requirement set under Article 10.1.1 of the JDR is strict and clear. Its last sentence in particular does not provide any margin of appreciation as to whether the lack of any of the listed formal requirements in the Notification of the appeal is of a crucial or clerical nature. The sanction set by the legislator is very clear.
18. Not only does Article 10.1.1 of the JDR seek to know the remedy sought but also the “reasons” (in French: “*les motifs*”) for bringing the appeal. This requires that the ASN summarises the arguments of its licence-holder in order for the Court to get a preliminary overview of the background of the case and of the position of the Appellant. There are valid practical reasons for this requirement, consisting in the need to prepare the hearing according to the nature of the given case.
19. Furthermore, the reference to Article 10.1.1 of the JDR in the Notification of appeal confirms that the JAF was therefore fully aware of its contents and the sanction for non-compliance with its provisions.
20. The Court has already stressed in previous cases the importance of the requirements set out under article 10.1.1 of the JDR and the clear consequences on an appeal’s admissibility, should those requirements not be met (for recent examples, see cases ICA-2015-01 and ICA-2015-02). The Appellant and its ASN must thus face the consequences of the error made in the Notification of appeal.
21. Based on the clear wording of Article 10.1.1 of the JDR, especially its last sentence, the Court thus has no other option but to declare the appeal inadmissible.



## **ON THE NECESSARY CONSEQUENCES OF THE FOREGOING**

22. In view of the foregoing, it follows that there is no need to examine the merits of the case, namely the factual and legal arguments raised by the Appellant and the FIA.

## **COSTS**

23. Considering that the Appeal was declared inadmissible, the Court orders the Appellant to bear all the costs in accordance with Article 11.2 of the JDR.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal inadmissible;**
- 2. Upholds Decision No. 55 of the Stewards of the 6 Hours of Spa-Francorchamps counting towards the 2016 FIA World Endurance Championship (WEC);**
- 3. Orders the competent sporting authority to draw the consequences of the present decision;**
- 4. Orders Toyota Gazoo Racing to pay all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules.**

**Paris, 13 July 2016**

**Jan Šťovíček, President**