



INTERNATIONAL COURT OF APPEAL

of the

FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal lodged by the Saudi Arabian Motor Federation (SAMF) on behalf of its
licence-holder Mr. Yasir Seidan**

against

**Decision No. 9 dated 15 December 2016 of the Stewards of the 2016 Morocco
Cross-Country Rally (Morocco), counting towards the 2016 FIA World Cup
for Cross-Country Rallies**

Case ICA-2016-05

Hearing of 3 February 2017 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprising Mr Philippe Roberti de Winghe (Belgium), who was designated President, Mr Chris Harris (USA), Mr. Francesco de Beaumont (Italy) and Mr Arnas Palukenas (Lithuania), met in Paris on Friday, 3 February 2017, at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal lodged by the Saudi Arabian Motor Federation (SAMF) on behalf of its licence-holder Mr Yasir Seaidan (“Mr Seaidan” or the “Appellant”) against Decision No. 9 dated 15 December 2016 of the Stewards of the 2016 Morocco Cross-Country Rally (Morocco) (“the Meeting”), counting towards the 2016 FIA World Cup for Cross-Country Rallies (the “Competition”) by which the exclusion from the Meeting’s final classification and a fine of 6,000 Euros were imposed on Mr Yasir Seaidan (the “Decision”).

The following persons attended the hearing:

On behalf of the Appellant:

Mr Alex Nader (Mr Yasir Seaidan’s representative)
Mr Stéphane Tosi (Mechanic and Expert in Mr Yasir Seaidan’s team)
Mr Romain Soiron (Lawyer)
Mr Charles-Antoine Brezac (Lawyer)

On behalf of the FIA:

Mr Pierre Ketterer (FIA Head of Regulatory, Governance & Legal Corporate Affairs)
Ms Delphine Lavanchy (FIA Legal Coordinator)

On behalf of the third party Mr Adel Abdulla:

Mr Adel Abdulla (Competitor)
Mr Christian Grosjean (Lawyer)

Also attending the hearing:

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

The parties filed their written submissions and, at the hearing of 3 February 2017, presented their oral arguments and answered the questions asked by the Court. Upon a late request from the Appellant, a rear rigid axle was presented to the Court with the agreement of the FIA and the third party, that both stressed that this rigid axle was not the original one, which was the object of the present proceedings. Mr Stéphane Tosi, the



preparer of the Appellant's car, described the modifications made to the axle and answered the questions asked by the parties. 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 October 2016, following a protest submitted by the competitor Mr Adel Abdulla, competing with the car No. 361 in the same category as Mr Yasir Seidan, who was competing with the car No. 360, the Stewards of the Meeting requested that technical checks be carried out on the following components of Mr Yasir Seidan's car No. 360:
 - gearbox
 - transfer box
 - left turbo
 - right turbo
 - rear differential and housing (rear rigid axle)
 - wire loom and fuse box
2. As the technical checks could not be carried out on site, the FIA Technical Delegate, Mr Lionel Carre, placed seals on these components in order to proceed with a subsequent inspection.
3. On 10 November 2016, the inspection of the sealed components was carried out at the premises of Toyota France by the FIA Technical Delegate and the scrutineer, Mr Serge Larquey, who were both officials of the Meeting. They were accompanied by Mr Bernard Lindauer, director of the technical department of the Fédération Française du Sport Automobile. Mr Yasir Seidan had sent three representatives to attend the inspection.
4. It was found during the inspection that only one out of the six sealed components, namely the rear rigid axle, more specifically the housing, did technically not conform to the applicable regulations.
5. The Stewards examined the FIA Technical Delegate's inspection report and heard Mr Yasir Seidan during a conference call held on 8 December 2016.



6. On 15 December 2016, the Stewards issued their Decision and imposed on Mr Yasir Seidan a sanction of exclusion and a fine of 6,000 Euros.
7. Within the hour following the notification of the Decision, Mr Yasir Seidan confirmed his intention to bring an appeal against this decision.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

8. SAMF, acting on behalf of the Appellant, lodged an appeal before the Court against the Decision on 19 December 2016 (the “Appeal”).
9. In its submissions, filed on 6 January 2017, the Appellant seeks the following orders from the Court:

“- to declare the appeal admissible and well-founded;”

- to quash Decision No. 9, handed down on 15 December 2016 by the Stewards of the 2016 OiLibya Morocco Rally;

CONSEQUENTLY

- to confirm the final classification of the Race and, as such, confirm Yasir Seidan’s position as the winner of the Race in his category;

- to order Adel Hussain Abdulla to pay all costs incurred by his groundless complaint and charge him with any penalty deemed suitable;

- to sentence Adel Hussain Abdulla (severally with the Qatar Motor and Motorcycle Federation) to indemnify Yasir Seidan of all the expenses incurred by its claim, which are evaluated at EUR 572,227 (to be enhanced);

- to order the return of the entire appeal fee paid by the Appellant to the Court;

- to sentence the Fédération Internationale de l’Automobile to pay all court costs. “

10. The Appellant asked the presence of Mr Stéphane Tosi at the hearing of 3 February 2017 explaining that the latter was the mechanic who attended the expertise of the Appellant’s car with the FIA and who put the reinforcement in that car.
11. The FIA in its grounds in response received by the Court on 20 January 2017, invites the Court:



“7.1 *to dismiss the Competitor’s appeal and to confirm the Stewards’ decision on all points, in application of Article 10.9 of the FIA Judicial and Disciplinary Rules /JDR),*

7.2 *and to order the Appellant to pay the costs in accordance with Article 11.2 of the JDR.”*

12. Mr Adel Abdulla acting through the Qatar Motor & Motorcycle Federation (QMMF), requested on 1 January 2017 to be heard as a third party. This request was granted by Decision No. 1 of the President of the Hearing dated 3 January 2017. Mr Adel Abdulla invited the Court in its written submissions received on 20 January 2017:

“Principal claim:

- *to confirm the Stewards’ Decision n° 9 on all points, in application of Article 10.9 of the FIA Judicial and Disciplinary Rules;*

- *to dismiss the appeal brought by the SAMF together with all of its demands, claims and conclusions;*

- *and to order the Appellant to pay the costs in accordance with Article 11.2 of the FIA Judicial and Disciplinary Rules.*

Subsidiary claim:

- *to pronounce the non-conformity of the vehicle of competitor n° 360, Mr Yasir Seaidan, and order the exclusion of competitor n° 360, Mr Yasir Seaidan, from the 2016 Morocco Rally competition.”*

ADMISSIBILITY OF THE APPEAL

13. The Decision was issued on 15 December 2016 at 17:00 and was notified to the Appellant at 19:30, who in return immediately declared its intention to appeal against this Decision.
14. The SAMF then lodged the appeal before the Court on 19 December 2016, within the deadline provided under Article 10.3 (i) lit. a of the Judicial and Disciplinary Rules (the “JDR”), applicable to appeals against decisions of the Stewards. The appeal deposit was also paid in due course.
15. Considering the above, the Court finds the appeal admissible, which is undisputed.



ON THE SUBSTANCE

a) *Arguments of the Parties*

16. The Appellant contends, in essence, the following:

1. The Stewards did not respect the adversarial principle and the right to be heard. The Decision is not sufficiently grounded in order for the Appellant to exercise properly his right to appeal. According to the Appellant, the Stewards did not follow the procedure imposed by the International Sporting Code (the “Code”) when the Stewards consider imposing a penalty of Exclusion. As a last submission on procedural matters, the Appellant claims that the Homologation Regulations and the inspection report were not available or were not provided to him in due course.

2. On the material elements of the case, the Appellant puts forward that the modifications made to his car’s rear rigid axle were not subject to the Homologation Procedures and, in any event, were fully admissible under the applicable regulations, namely Appendix J of the 2016 FIA Regulations (the “Appendix J”), notably articles 282 and 284.

3. Addressing the issue of the sanctions imposed by the Stewards, the Appellant claims that the sanction of exclusion is disproportionate and infringes article 11.9.2.j of the Code insofar as he had not been found guilty of “*improper conduct or unfair practice.*” As a further argument on the disproportionality of the sanctions, the Appellant stresses that the alleged unauthorised modification made to its car’s rear rigid axle did not procure him any competitive advantage.

4. Eventually, the Appellant argues that the alleged illegitimate claim of his competitor, Mr Adel Abdulla, and the procedure which followed it, caused him important damages from a financial and sporting point of view, forcing him notably to drive another car for the last race of the Competition in Portugal and therefore impacting negatively his performance during this race. The Appellant argues further that he could not take part in the Dakar 2017. In that context, the Appellant provided a series of invoices and statements to support his claim for compensation of an alleged damage of 572,227 Euros.

17. The FIA submitted to the Court the following arguments in its grounds in response:

1. As to the Appellant’s submissions based on procedural grounds, the FIA explains first that by virtue of the devolutive effect of the appeal, the Court can review the factual and legal elements of the Decision and reverse it if the Court deems it necessary. In other words, should they be proved, the alleged irregularities



of the Decision are cured by the appeal procedure. The FIA claims further that the enquiry was held correctly, one day after the receipt by the French representative of Toyota of the original parts of the homologated vehicle, thus enabling the comparison with the parts taken from the Appellant's vehicle. The Appellant was duly represented by three representatives, namely Messrs Nader, Tosi and Thil, who received all the necessary information on the reason for the rear rigid axle's non conformity, all this being reflected in the inspection report. Claiming that the Appellant was properly summoned in order to present his defence four weeks after the inspection had taken place, the FIA finds that the procedure before the Stewards met the requirements set under article 12.3.4 of the Code.

2. The FIA explains that the Appellant had access to the Homologation Regulations through its ASN, through the private area of the FIA website or through Denis Mathiot Compétition (DMC), the firm in charge of preparing the Appellant's car.

In other words, it is the FIA's view that the Appellant had several possibilities to access to the Homologation Regulations. As to the technical report, the FIA stresses that it is intended exclusively for the Stewards, who ordered it and it was therefore not supposed to be submitted to the Appellant before the conference call held on 8 December 2016.

3. Coming to the issue of the non-conformity of the modifications made by the Appellant to his car, the FIA puts forward that cars taking part to the Competition are meant to be produced in series and to have therefore undergone a minimal number of mechanical transformations in order to control costs and to ensure equal conditions between the teams. Article 284 of Appendix J allows only to strengthen the rigid axle but no other modification. External stiffening ribs may be added, as well as any other unconcealed and removable part. The addition made by the Appellant being irreversible and having the effect of modifying the circuit followed by the oil in the housing, which is part of the rear rigid axle, the FIA claims that the Appellant infringed article 284 of Appendix J. This would not have been the case if the Appellant had strengthened the rear rigid axle from the outside. This would have been admissible and would have protected the housing from external impacts, which the Appellant claims to have been the purpose of the modification.

18. The FIA concludes that the modification not only prevents the rear rigid axle from being damaged but increases the reliability and durability of the housing components by improving their lubrication during a race where cars can cover up to 3'000 km.

19. As to the sanction imposed on the Appellant, the FIA refers to the absolute authority granted by the Code to the Stewards to pronounce the penalties provided under article 12.3.1 of the Code, including the Exclusion. As Appendix J has been infringed, the Code provides that “ *if an Automobile is found not comply with the*



applicable technical regulations, it shall be no defence to claim that no performance advantage was obtained.” (article 1.3.3 Code). Referring to the precedent ICA-2016-03, the FIA contends that no other sanction than an Exclusion is appropriate in the present case as the Appellant’s car would not have been allowed to compete if the infringement had been found before the Meeting. The FIA submits further that the Appellant himself provoked the exclusion of Mr. Adel Abdulla for the same reasons in relation with the same Meeting.

20. Finally, the FIA argues that the Appellant’s claim for damages should be rejected as the sealed components were removed on site in order to allow the Appellant to replace them afterwards in view of the next meeting of the Competition. The rigid axle was left on the car at the Appellant’s request in order for him to be able to move his car. Nevertheless, the rigid axle could still have been replaced afterwards without damaging the seals which had been placed adequately. Concerning the Dakar race, all the parts which were in conformity with the regulations had been sent back to the Appellant after the inspection of the 24 November 2016. The Appellant had thus plenty of time to put them back in place and replace the rear rigid axle with another original.
21. The submissions made by the third party, Mr Adel Abdulla, can be summarised as follows:
 1. The procedure applied by the Stewards was valid and the submissions made by the Appellant on procedural grounds must be rejected.
 2. The Stewards did mention clearly and properly the various infringements to Appendix J and the Cross-Country Homologation Regulations committed by the Appellant and the Decision is perfectly well founded, as the Appellant did not bring the proof that his car was compliant with the applicable regulations.
 3. Based on the precedent ICA-2013-03, Mr Adel Abdulla claims that the Appellant should have taken the necessary steps to ensure the conformity of the modifications made to his car’s rear rigid axle. Based on the same precedent, Mr Adel Abdulla puts forward that the sanction imposed on the Appellant was therefore appropriate and it shall be no defence to claim that no performance advantage was obtained as provided under article 1.3.1 of the Code.
 4. The Decision is not linked to the protest filed by Mr Adel Abdulla as reflected in the Technical Delegate’s report of 24 November 2016. Mr Adel Abdulla is in any event not responsible for the damage allegedly suffered by the Appellant who is the only person responsible for it.

b) Conclusions of the Court

22. After having carefully reviewed all the Parties’ submissions and listened to their oral arguments raised at the hearing, the Court went through the different articles of the various applicable regulations cited by the Parties.



i) On the irregularity of the procedure before the Stewards

23. The Court notes first that it has been a constant jurisprudence of the ICA to recognise that, subject to very specific cases, possible procedural mistakes committed by the Stewards are cured by the devolutive effect of the appeal before the Court.
24. However, the Court finds it important to stress in this particular case that the Appellant did not prove that the Stewards had done any mistake during the proceeding. The Appellant could send three representatives during the inspection. He could also make submissions and express his opinion on the findings of the FIA Technical Delegate during the hearing which took place on 8 December 2016. The Appellant's submission that the FIA Technical Delegate's report was not submitted to him before such hearing must be rejected as this report is issued for the Stewards in order for them to take their Decision. The Appellant fails to demonstrate where the Code or the JDR or any other FIA regulation provides that a technical report must be submitted to a competitor before his hearing by the Stewards. In any event, the Appellant, through his representatives who attended the inspection on 10 November 2016, knew what was the issue, namely the non-conformity of the rear rigid axle, more specifically the housing. Eventually, the Court has no doubt that the Appellant could have had access to the Homologation Regulations at any time, be it directly on the FIA website or through his car's preparer or manufacturer.
25. With reference, as two examples, to the precedents ICA-2014-08 and ICA-2015-03 which provide for exceptions to the well established principle of the curing effect of an appeal on procedural mistakes made by the Stewards, the Court stresses again that, had the alleged procedural mistakes raised by the Appellant been proven, such mistakes would not have been of such a nature that they could not be cured by the present proceedings. Indeed, the Appellant had the opportunity before the Court to comment on the Homologation Regulations, to bring expert statements and even to ask for the inspection at the hearing of a rear rigid axle similar to the litigious one.
26. The Appellant's submissions which are based on procedural grounds must thus be rejected.

ii) On the modifications made to the Appellant's car and the sanction imposed on the Appellant

27. The issue in the present case relates to the modification made by the Appellant to his car's rear rigid axle, more specifically to the housing.



28. The Court notes first that a distinction must be made between the Homologation Regulations and the Appendix J which provides for specific regulations for Series Cross-Country Cars (Group T2).
29. It results from a literal and systematic interpretation of those two regulations, that the specific regulations for Series Cross-Country Cars (Group T2) in Appendix J constitute a *lex specialis* to the Homologation Regulations. As clearly expressed under article 284.4 of Appendix J “*all the modifications which are not allowed by the present regulations or by Article 282, or rendered mandatory by Article 283, are expressly forbidden.*”
30. Considering that Article 284.4 applies specifically to a category of cars which are subject to a very strict homologation procedure, namely the Series Cross-Country Cars, the clear wording of Article 284.4 means that modifications can be made to homologated parts of Series Cross-Country Cars, as long as this remains within the framework of Articles 282 to 284 of Appendix J.
31. The fact that the Homologation Regulations provide that “*the housings must remain standard*” does therefore not exclude that the housings be modified after the homologation on the basis of Articles 282 to 284 of Appendix J. This is actually not disputed by the FIA and Mr Adel Abdulla does not seem to exclude any modification of the housings, at least on the basis of the Homologation Regulations.
32. According to Article 284.6.3.2 of Appendix J “*if a rigid axle is used, the original parts may be strengthened in such a way that the original part can be still recognised.*”
33. The Court finds that two conditions must be made in order to validly modify a rigid axle:
 1. The modification must be visible on the original part, which must thus be recognisable;
 2. The impact of the modification must be limited to strengthening the rigid axle.
34. Considering that Article 284.6.3.2 deals with an homologated part of a Series Cross-Country Car, the Court finds that the level of proof that both conditions are met must be set at high level.
35. The Court stresses also that the burden of proof is borne by the Appellant. Article 282.1.1 (confirmed by Article 284.4) of Appendix J which applies on all Cross-Country Vehicles indeed provides that:

“*All modifications are forbidden unless expressly authorised by the regulations specific to the group in which the car is entered [in the present case: Art. 284] or*



by the general prescriptions below or imposed under the chapter “Safety Equipment”.

The components of the car must retain their original function.

It is the duty of each competitor to satisfy the Scrutineers and the Stewards of the competition that his automobile complies with these regulations in their entirety at all times during the competition. (...)

36. The Appellant claims that the only purpose of the two plates added inside his car’s housing was to strengthen it in order to avoid that oil be lost due to the shocks sustained by the housing. The FIA and Mr Adel Abdulla put forward that the measures taken by the Appellant did not only strengthen the housing but also improved the lubrication by creating notably a so called “splash effect”.
37. The Appellant produced the evidence of his technical specialist, Mr Tosi and of an external expert, Mr Prieur. Both of them expressed the opinion that the two plates added inside the car’s housing did not impact the housing’s internal lubrication in any way. Mr Tosi stressed at the hearing that the place where the plates were located in the housing was “bathing” in oil whereas Mr Prieur speaks in his report in French of “barbotage”. Those two technicians express therefore the view that the plates were located in a place that could not generate any special effect, notably a “splash effect” to the lubrication in the housing.
38. Mr Tosi explained as well that they had no lubrication issue during the two years preceding the inspection made on the rear rigid axle.
39. The FIA Technical Delegate Lionel Carre confirmed in his Technical Report dated 24 November 2016 the view that “*the inside of the housing was modified for better oil guidance and/or reinforcements.*” In his witness written statement filed by the FIA with its grounds in response, Mr Carre stressed that “*in Group T2, the circuit followed by this oil in the differential may not be modified; the regulations do not allow for it.* “
40. Mr Carre added that “*due to the addition of the two metal plates, the circuit of the oil was changed.*

In fact, the flow of the oil, due to the effect of gravity and the moving parts, came into contact with the upper parts of the metal plates (which remained open) and caused a dispersion (splash effect) of the lubrication oil on all the moving parts in the rear differential.

It therefore seems very clear that the addition of these two metal plates resulted in the reinforcements on the inside of the homologated part being concealed and (red.) its function being changed, which is not permitted under the regulations.(...)
”



41. The Court is therefore confronted to two positions which appear to be contradictory.
42. Based on the foregoing, on the drawings provided by the Appellant and the FIA in their written submissions and on the explanations given by Mr Stéphane Tosi during the hearing when showing a modified rear rigid axle to the Court, the Court finds that the Appellant did not “satisfy” it, within the meaning of Article 282.1.1 of Appendix J, that “*his automobile complies with the regulations.*”
43. Indeed, there is no doubt that the fact that the two plates were put inside the housing did impact its overall internal shape so that the oil cannot circulate in the same way with or without those two plates, just on the basis of the rules of physics. As a consequence, the Court considers that the rigid axle has not only been strengthened by the Appellant, but also modified which leads to its non-conformity with the applicable Regulations.
44. Given the consequences of a non-conformity and the strict rule under article 1.3.3 of the Code, the Appellant should thus have asked for a confirmation from the FIA before implementing his solution, which consisted in reinforcing the rear rigid axle from the inside of the housing and impacting the shape of the latter. This would have allowed Mr Yasir Seidan to assess the impact of the proposed modification with the FIA and avoid any subsequent litigation on this technical issue.
45. Referring to article 12.3.1 of the Code and considering the constant jurisprudence of the ICA, notably the one quoted by the FIA and the third party, the Court decides that the Appellant must be sanctioned with a penalty of Exclusion.
46. As expressed by the ICA in its precedent ICA-2013-03, “*technical non conformity is widely considered as one of the most serious breaches of the regulations*” and the Court does not find any element in the present case that would justify to overturn its well established jurisprudence.
47. As the Appellant did not bring forward any particular submission regarding the proportionality of the fine imposed on him together with the penalty of Exclusion, the Court confirms the Decision on this point as well.

iii) On the claim for damages

48. Considering that all the elements of the Decision, notably the sanctions imposed on the Appellant, were upheld by the Court, the Appellant’s submissions on damages must be rejected.
49. In any event, the Court finds that the Appellant had the possibility to use the all the sealed parts which were found conform and to change its rear rigid axle before the Meeting in Portugal and the Dakar race.



COSTS

50. Considering that the Appeal was rejected, the Court orders the Appellant to bear all the costs in accordance with Article 11.2 of the JDR. The third party deposit paid by Mr Adel Abdulla shall be returned to him.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Upholds the decision No. 9 of the Stewards of the 2016 Morocco Cross-Country Rally (Morocco), counting towards the 2016 FIA World Cup for Cross-Country;**
- 3. Orders the competent sporting authority to draw the consequences of the present decision;**
- 4. Orders Mr Yasir Seaidan to pay all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules;**
- 5. Orders the third party deposit to be returned to Mr Adel Abdulla.**

Paris, 3 February 2017

Philippe Roberti de Winghe, President