



INTERNATIONAL COURT OF APPEAL

INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Russian Automobile Federation (RAF)
on behalf of its licence-holder G-Drive Racing against
Decision n°36 of the Race Stewards of the Meeting in Le Mans counting
towards the 2013 FIA World Endurance Championship (WEC), under which
the Stewards decided to exclude G-Drive Racing's LMP2 car n°26 from the Le
Mans 24 Hours event 2013**

Case ICA-2013-03

Hearing of Tuesday 10 September 2013 in Paris



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The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Jan Šťovíček (Czech Republic), who was designated President, Mr Jean Gay (Switzerland), Mr Richard McLaren (Canada) and Mr Erich Sedelmayer (Austria), met in Paris on Tuesday 10 September 2013 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Russian Automobile Federation (RAF) on behalf of its licence-holder G-Drive Racing (the “Appellant” or “G-Drive Racing”) against Decision n°36 issued on 27 June 2013 by the Race Stewards of the Meeting (the “Stewards”) in Le Mans counting towards the 2013 FIA World Endurance Championship (WEC), under which the Stewards decided to exclude G-Drive Racing’s LMP2 car n°26 from the Le Mans 24 hours event 2013 for an alleged infringement of article 6.5.1 of the 2013 Technical Regulations for Prototypes (the “Technical Regulations”), the Court heard the statements and examined the submissions made by the Appellant, the FIA and the interested third party Greaves Motorsport (“Greaves Motorsport”).

The following persons were attending the hearing:

on behalf of the RAF:

Ms Svetlana Shakhova (RAF’s Secretary General)

on behalf of G-Drive Racing:

Mr Simon Dowson (Team Principal)

Mr Roman Rusinov (Driver)

Mr Simon Taylor (Attorney-at-law)

Mr Giles Dawson (Managing Director of Aero Tec Laboratories Limited)

on behalf of the FIA:

Mr Sébastien Bernard (Head of Legal department)

Mr Bernard Niclot (Technical Director)

Mr Denis Chevrier (Technical Delegate)

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)

Greaves Motorsport, interested third party, was neither present nor represented at the hearing.



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The parties filed their written submissions and, at the hearing of 10 September 2013, set out oral arguments and addressed 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 any element of the hearing, notably the simultaneous translation, was raised by anyone. With the authorisation of the President of the Hearing, the arguments of the representative of the Russian Automobile Federation were exposed in Russian language and then translated in English with the help of a personal translator.

REMINDER OF THE FACTS

1. During checks carried out on G-Drive Racing's LMP2 car n°26 at the end of the Le Mans 24 hours event 2013 counting for the 2013 WEC, which took place on 22 and 23 June 2013, the FIA Technical Delegate found that "*the fuel tank of the car n°26, (...) was measured bigger than 75 litres*", namely at least 75.4 litres, and issued a report concluding that this could constitute a breach of Article 6.5.1 of the Technical Regulations.
2. On the basis of that report, the Stewards, having heard G-Drive Racing's representative, decided on 27 June 2013 to exclude G-Drive Racing's LMP2 car n°26 from the Le Mans 24 hours event for a breach of article 6.5.1 of the Technical Regulations and issued the decision n°36 (the "Decision")

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

3. G-Drive Racing lodged an appeal before the Court on 28 June 2013 (the "Appeal") against the Decision.
4. In its submissions, received by the Court on 19 July 2013, the Appellant contends that the Court should, in the alternative:
 - find that the Technical Regulations have not been contravened by the Competitor, that the Decision should be set aside and that car n°26 should be reinstated into the results; or
 - in the event that the Court finds that the Technical Regulations have been breached, set aside the penalty of exclusion, due to the extraordinary facts of this case, and reinstate car n°26 into the results.
5. The FIA, in its grounds in response received by the Court on 9 August 2013, invites the Court to confirm the Decision on all points.



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6. Greaves Motorsport requested to take part in the present proceedings, as provided under Article 17.8 iii) of the Judicial and Disciplinary Rules of the FIA (the “JDR”), which was admitted by the President of the Hearing in its decision dated 17 July 2013. In this capacity, Greaves Motorsport requested in its submissions, received by the Court on 7 August 2013, that the Court confirms the penalty imposed on the Appellant.
7. The RAF produced written submissions at the outset of the hearing, which were not admitted by the Court because they were produced after the deadline set out by the President of the Hearing. However, as reflected in the introduction of the present Decision, the RAF, which did not object to the decision of the Court, could present oral arguments at the hearing.

ADMISSIBILITY

8. The Court acknowledges that the Appellant filed its Appeal in conformity with the JDR, which is undisputed.
9. The Court also finds that it has jurisdiction in the matter.
10. Therefore, the Court declares the appeal admissible.

ON THE SUBSTANCE

a) Arguments of the parties

11. The Appellant claims that it had to replace the fuel bladder of its car n°26 because the original one was found to be leaking due to a manufacturing fault. Based on the results of the measurement of the new fuel bladder’s capacity, a volume ball was added in order to ensure that the maximum capacity of 75 litres prescribed by the Technical Regulations not be exceeded, which was confirmed by the results of a new measurement indicating a capacity of 74.6 litres.
12. Explaining all the measures taken in order to meet the requirements set by the Technical Regulations and all the circumstances of the case, the Appellant submits that it had no reason to believe that the new fuel bladder did not meet the requirements set under article 6.5.1 of the Technical Regulations.
13. According to the Appellant, it is only once the car was in the *Parc Fermé* and that the FIA officials requested a fuel tank capacity check that the Appellant discovered that the maximum permitted capacity had been exceeded.
14. Admitting the fact that the maximum capacity allowed for the fuel tank had been exceeded the Appellant puts forward that this was apparently due to the expansion of the new bladder to the contact with the E10 Shell Bio Fuel. The



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Appellant grounds its submissions on reports issued by the manufacturer of the bladder, namely Aero Tec Laboratories Limited (“ATL”).

15. Claiming that neither itself nor Oreca, the car’s manufacturer, were aware of the risk of variance in capacity of the bladder caused by immersion of the latter in E10 Shell Bio Fuel, the Appellant submits that the bladder’s expansion was caused by *“an unknown and unforeseeable reaction between the control fuel and the new bladder, both of which were approved and/or compulsory, by the [Technical] Regulations, for use in the Race.”*
16. On the basis of all the above, the Appellant argues that it has not contravened to the Technical Regulations and that, in any case, due to the exceptional circumstances of the case, the penalty of exclusion should be set aside.
17. The FIA stresses first that it is established and not contested by the Appellant that the quantity of fuel on board of the Appellant’s car n°26 was not in conformity with article 6.5.1 of the Technical Regulations.
18. With reference to the Appellant’s submissions, the FIA then puts forward that it is up to the competitor to ensure, at any moment during the event, that the quantity of fuel on board of its car is in conformity with the Technical Regulations. The FIA argues further that, in any event, the Appellant knew that the new bladder was a flexible component placed against its container. This meant, to the FIA’s opinion, that the Appellant should have known that there was a possibility that the new bladder would expand with repeated use. Notwithstanding the evidence provided by the Appellant, it remains that the latter had to prevent the non-conformity of its car n°26 with the Technical Regulations.
19. Considering the results of ATL’s study which shows that the bladder would expand not only with Shell E10 and E20 fuels but also with Motorsport fuel, the FIA finds that it was up to the Appellant to obtain information from its supplier as to the characteristics and particularities of the material used.
20. Besides those technical considerations, the FIA adds that the Appellant had sufficient time and means to test the new bladder before the race, notably by using *“self-sealing couplers connected with tubing to graduated conventional receptacles.”*
21. The FIA stresses as well that the technical conformity of a car with the Technical Regulations is assessed objectively. To the FIA’s view, any established case of non-conformity is liable to a sanction, without the need to establish an element of intent, as this results to a breach of the principle of sporting equity.
22. As to the proportionality of the sanction, the FIA explains that *“the maximum quantity of fuel on board a competing car is one of the fundamental parameters for controlling performance.”* Zero tolerance is thus recommended. The surplus



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of fuel, of at least 0.4 litres, carried on the Appellant's car n°26 could have allowed it to cover one lap more in a stint.

23. Based on all the above, the FIA finds that the sanction imposed on the Appellant should be confirmed.
24. Greaves Motorsport argues that the Appellant had plenty of time to give car n°26's tank a full "soak" before the start of the race. This would have been common practice according to Greaves Motorsport. Based on the Technical Regulations, the Appellant should be sanctioned.

b) Conclusions of the Court

25. The Court notes first that the Appellant does not contest that the fuel capacity of its car exceeded the 75 litres provided under article 6.5.1 of the Technical Regulations.
26. The Court then finds that, according to article 6 of the 2013 FIA World Endurance Championship Sporting Regulations (the "WEC Sporting Regulations"), "*Competitors must ensure that their cars satisfy the conditions of eligibility, compliance with the technical regulations, and safety throughout the Event.*" This duty is reinforced by Article 123 of the International Sporting Code (the "ISC") which stipulates that "*the competitor shall be responsible for all acts or omissions on the part of any person taking part in, or providing a service in connection with, an event or a championship on their behalf (...).*"
27. The Court thus emphasises that the obligation imposed on competitors to ensure that their cars comply with the relevant regulations is an absolute and objective one and that the breach of that obligation does not depend upon a fault being established (ICA 3/2010, *RACB Prospeed ASBL*, dated 30 November 2010, nr 20).
28. The Court therefore considers that the Appellant committed a breach of article 6.5.1 of the Technical Regulations and should bear all of the sporting consequences that may arise from the non-conformity of its car.
29. The Appellant claims however that it was confronted by unforeseeable and exceptional circumstances which should justify a mitigation of the sanction imposed on it.
30. Although there is no particular rule in the International Sporting Code nor in other regulations providing for a mandatory sanction of exclusion in case of a technical non-conformity discovered in a competitor's car, it is consistent jurisprudence of the Court, and also the constant approach of other FIA disciplinary bodies to impose the sanction of exclusion in such situations.
31. The sanction of exclusion may seem to be severe, especially in the context of such demanding events as a 24 endurance race. However, a technical non-



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conformity is widely considered as one of the most serious breaches of the regulations. When such non-conformity could possibly provide a competitive advantage even if that advantage is not proven but only potential, as the Court can not enter the theoretical speculative considerations in order to assess whether actually and to what extent such an advantage occurred.

32. A strict approach is particularly appropriate when the technical irregularity concerns some of the systems vital for sporting performance of the car, like for example engine, brakes, and also – particularly in endurance racing – the fuel tank, which is the case here.
33. The responsibility of the competitors to ensure technical conformity of their car is absolute and objective, as explained above. From the definition of objective responsibility in all legal systems it is clear that the element of competitors intention or negligence with regard to the cause of the breach is irrelevant. However, this does not mean the responsibility is without any limits, as there could potentially occur very rare and exceptional situation, where highly exceptional circumstances may be a reason for application of a less severe sanction than exclusion. Certainly such circumstances would be based in absolute lack of any intention and negligence on the side of competitor. However, the Court reached the conclusion that there are no such circumstances in the present case.
34. Referring to previous decisions of the ICA (ICA 21/2009, *FFSA Hexis Racing AMR*, dated 14 October 2009; ICA 26/2009, *Pekaracing NV*, dated 23 February 2010; ICA 1/2010, *DMSB Young Driver AMR*, dated 18 May 2010), the Court does not find in the present case mitigating circumstances which should justify a lighter sanction than an exclusion. The breach committed by the Appellant was not caused by a clerical error or a mistake on the official homologation documents as this was the case in those ICA precedents, quoted above, where the sanction of exclusion was converted into a fine.
35. It is appropriate to expect from such an experienced competitor as the Appellant to implement relevant tests prior to the event as a precautionary measure, in order to ensure the fuel bladder will conform with regulations, especially knowing (as confirmed by the bladder manufacturer) that each bladder is in fact a hand-made product, its volume and characteristics piece-by-piece, and it needs to “settle” some time in the chassis.
36. Based on the foregoing, the Court finds that the penalty imposed on the Appellant is proportionate and the Decision must be upheld.
37. The Appeal is thus rejected.



COSTS

38. Considering that the Appeal was rejected, the Court leaves it to the Appellant to bear the costs in accordance with Article 18.2 JDR.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Declares that G-Drive Racing committed a breach of article 6.5.1 of the 2013 Technical Regulations for Prototype;**
- 3. Upholds the Decision n°36 of the Race Stewards of the Meeting in Le Mans counting towards the 2013 FIA World Endurance Championship (WEC);**
- 4. Confirms the exclusion of G-Drive Racing's car n°26 from the Meeting in Le Mans counting towards the 2013 FIA World Endurance Championship (WEC);**
- 5. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 6. Orders the conservation of the appeal fee paid to the Court by G-Drive Racing;**
- 7. Leaves it to G-Drive Racing to pay all the costs, in accordance with Article 18.2 of the Judicial and Disciplinary Rules of the FIA;**
- 8. Rejects all other and further conclusions.**

Paris, 10 September 2013

The President

Jan Šťovíček