

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

of the

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE
(FIA)**

CASE:

**Appeal lodged by the Knac Nationale Autosport Federatie (KNAF)
on behalf of its licence-holder and competitor, Carly Motors B.V.,
driver Duncan Huisman,
against the decision of the Italian National Court of Appeal
taken on 11 December 2003
wherein the protest of the appellant was rejected
and the Decision N°13 of the Panel of the Stewards of the Meeting
was confirmed in the event
counting in the FIA 2003 European Touring Cars Championship
run at Monza (Italy) on 19 October 2003, race N°2**

Hearing of Thursday, 12 February 2004 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr José MACEDO e CUNHA (Portugal), elected President, Mr Graham STOKER (Great Britain), Mr Vassilis KOUSSIS (Greece), and Mr Jan STOVICEK (Czech Republic),

Meeting in Paris on Thursday, 12 February 2004 at the headquarters of the Fédération Internationale de l'Automobile (FIA), 8 place de la Concorde, 75008 Paris,

History of the proceedings

WHEREAS the competitor Carly Motors B.V., driver Duncan Huisman, Car N° 21 had, during the FIA European Touring Cars Championship run at Monza on 19 October 2003, race N°2, formulated a protest against the classification of the race and gone before the Panel of the Stewards of the Meeting stating that the driver Tarquini, Car N° 4, Team Autodelta, in third place, had pushed him and forced him to abandon three laps later;

WHEREAS in their Decision N° 13 dated 19 October 2003, the Stewards of the Meeting dismissed the protest from Carly Motors B.V. on the grounds that it was a normal racing accident;

WHEREAS Carly Motors B.V. then lodged an appeal within the time limit before the Italian National Court of Appeal to have the decision quashed, though the Italian National Court of Appeal, in its ruling of 11 December 2003, confirmed the decision;

WHEREAS Carly Motors B.V. then lodged an appeal of this decision before the International Court of Appeal, while Autodelta and Tarquini in their memorandum as well as at the hearing called for a ruling on the conduct of Duncan Huisman and his team;

WHEREAS a ruling must be made on the merits of the case now before the International Court of Appeal;

Having heard:

- **for the appellant**, Mr Carly Pellinkoff, Director of Carly Motors B.V., and his driver Duncan Huisman, assisted by Mr Roberto Causo, Lawyer with the Rome Bar;

- **for the respondent**, the Automobile Club d'Italia/Commissione Sportiva Automobilistica Italiana (ACI/CSAI), represented by Mr Ricardo Ceci, Lawyer with the Rome Bar, on behalf of the competitor Autodelta represented by Ms Monica Sipsz, Team Principal, and the driver Mr Gabriele Tarquini, assisted by Mr Henry Peter, Lawyer with the Lugano Bar, and Mr Massimo Coccia, Lawyer with the Rome Bar;
- **for the FIA**, Mr Pierre de CONINCK, Secretary General FIA Sport and Mr Sébastien BERNARD, Head of the Legal Department;

After hearing the knowledgeable parties Mr Andreas Bellu, Expert for Carly Motors B.V., Mr Michele Caporaso, expert engineer for Autodelta, Mr Jacques Berger, Head of the FIA Technical Department, and after viewing the various video cassettes and DVDs submitted, and examining the recorded data submitted both by the parties and the FIA;

Having acknowledged that the due hearing of all parties had been respected, the rights of each party having been duly examined, both in the proceedings prior to the hearing and during the hearing itself, the appellant, the respondent and the knowledgeable parties having been heard and provided all the detailed explanations and answers requested during the hearing with the help of a simultaneous translation system which was recognised as satisfactory by the parties;

On the regularity of the licence

WHEREAS the appellant firstly asks that the application of the rules be verified to determine if they were respected for the issuing of Autodelta's licence, as the appellant claims in this respect that Articles 44 (not 43), 47, and 108 of the International Sporting Code as well as Article 1.1 of the Italian National Sporting Regulations were ignored in the sense that a competitor, a moral person, must duly register his by-laws in accordance with the Italian National Sporting Regulations, which would not have been the case for the Autodelta Team (company N. Technology Spa);

WHEREAS in this respect it suffices to note that the articles in question in the International Sporting Code, as moreover in Article 109 and 110, specify in the clearest way that each ASN issues its licences; and that in addition, Article 120 of the International Sporting Code allows the use of a pseudonym which is issued by the ASN;

WHEREAS consequently this problem is not within the competence of the International Court of Appeal, and Article 47 of the International Sporting Code stipulates to this end that “*Such a professional competitor or driver will be subject to the jurisdiction of the ASN of the country where he is competing, and to that of the ASN which issued his licence*”, in this instance, the ASN of Italy in both cases;

WHEREAS under these circumstances, if the rules were not respected, and supposing this was the case, the only competent jurisdiction to resolve the difficulty is that of the Italian ASN;

On the procedure

WHEREAS concerning the procedure, the appellant reproaches the National Court of Appeal for having authorised, during a first hearing on 24 November 2003, the viewing - to the exclusion of all others - of the video cassette presented by the Stewards of the Meeting, as well as for refusing to hear the knowledgeable parties of Lamm and Coronel on the pretext that they had been indirect witnesses; and whereas the appellant in addition was not given access to Autodelta’s memorandum, with the case postponed until the hearing of 11 December 2003;

WHEREAS during this latter hearing, the Italian National Court of Appeal modified its previous decision; refused hearing only the Mr Coronel while authorising the testimony of Mr Lamm without asking any questions; refused in addition either to view a second time the video cassette which was seen at the first hearing or to view another cassette which was submitted by the appellant; and refused also to examine the recorded data;

WHEREAS refusals of this kind are open to criticism and undermine the rights of the defence, which will be respected by the International Court of Appeal which has remedied this situation;

WHEREAS the appellant also states that the decision of the National Court of Appeal was not signed by the President of the Court, but rather by someone who had received proxy;

WHEREAS these different arguments do not have unfortunate consequences because the appellant received information regarding the claims put forward by his adversary prior to the second hearing, even though normally he should have before the first

hearing; and whereas the fact that the sentence was signed by proxy by someone who had been duly authorised to do so does not give rise to any suspicions of abuse of power, even though the decision should have been signed by the President himself;

WHEREAS again no diriment circumstances can be reproached regarding the appeal procedure because the due hearing of all parties was respected, albeit late;

WHEREAS concerning the arguments which Autodelta wish to uphold, ie the inadmissibility of the case and of the appeal lodged by Carly Motors B.V. on the pretext that the driver Duncan Huisman was not sanctioned and that consequently Article 182 of the International Sporting Code did not allow him to make a protest, all the more so as he had not suffered any personal wrong; his ranking in the Championship did not allow him to obtain a better place regardless of his ranking in the event itself;

WHEREAS regarding Article 182 of the International Sporting Code, it suffices to note that the competitors « *shall have the right to appeal against a sentence or other decision pronounced on them by the Stewards of the Meeting* » which thereby authorises the competitor to appeal a decision taken by the Stewards of the Meeting, this being the case in this instance since the Stewards of the Meeting rejected the protest made by the competitor Carly Motors B.V.;

WHEREAS the reference made by Autodelta to the text of this same Article 182 of the International Sporting Code does not in any way change the sense of this article; indeed “*other decision pronounced on them by the Stewards* » is aimed at the decisions taken with regard to competitors which in this instance is the case since the decision rejected a protest from the competitor who was in effect concerned by the decision, the English text specifying « *on* » and not « *against* »;

WHEREAS therefore there is no divergence between the French and the English texts, and thus no need to have recourse to differing interpretations of the texts, in which case the French text would be the definitive one;

WHEREAS concerning the absence of personal gain of the part of the competitor, by virtue of the rule “*no interest, no action*”, it is evident that Carly Motors B.V. and the driver Duncan Huisman had a manifest interest in filing a protest in order to have sanctioned what they claimed to be a prejudicial and unfair act committed by Gabriele Tarquini because following the collision, Duncan Huisman was forced to abandon the

race three laps later and was thus deprived of a possibly good ranking in race N°2 which, even if it hadn't given him the necessary points for obtaining a better place in the Championship, would have nonetheless offered him considerable satisfaction on both a personal and a sporting level for the event, and would have enabled him possibly to claim material losses for damages to his car from other jurisdictions;

WHEREAS on the other hand Autodelta submits that only the disciplinary authorities of the event could pronounce a sanction on Gabriele Tarquini for his conduct which would have been judged incorrect or unfair;

WHEREAS while it is true that these authorities are competent to ensure that proper disciplinary action is taken for the event, it is no less true that a competitor is perfectly able to protest against incorrect or unfair conduct, supposing it has been established, on the part of another driver and to file a protest against the offence which is claimed to have been committed, not only to obtain compensation but also to avoid any repetition of such an offence, with respect both to the competitor himself as well as to the other competitors;

WHEREAS once again it is in the interest of the competitor to file a protest, which will either be accepted or dismissed by the sporting jurisdiction concerned but which will leave intact the right to protest and to appeal;

WHEREAS in effect, to forbid a competitor the use of such recourse would be to deprive him of his personal rights, for the sole benefit of the disciplinary authorities, which would be in contradiction with any conception of justice;

On the facts,

WHEREAS under these circumstances the International Court of Appeal must rule on the facts themselves and must know what offences were committed by one or the other of the drivers or by both drivers;

WHEREAS at Article 2c of Chapter IV of Appendix L of the International Sporting Code, it states that, concerning overtaking, *“However, manoeuvres liable to hinder other drivers are strictly prohibited and shall be penalised, according to the importance and repetition of the offences, by penalties ranging from a fine to the exclusion from the race”*;

WHEREAS paragraph d of the same Article also reads, “*any obstructive manoeuvre carried out by one or several drivers, either having common interests or not, is prohibited*”;

WHEREAS although the appellant calls for the application of Article 37 of the Sporting Regulations of the FIA European Touring Car Championship, its stipulations would seem not to apply in this case, while the International Sporting Code specifies that an event can in no case be run again; this makes it impossible for the Court to decide a penalty as set out in the said Article (a drive-through penalty or a 10-second time penalty at the pit stop);

WHEREAS, after hearing the parties and their advisors, the FIA representative, the knowledgeable parties, and after examining the different videos and DVDs submitted to the Court as well as recorded data supplied by the official services of the FIA; and after noting, at the request of Carly Motors B.V., the decision not to hear the knowledgeable parties of Lamm and Coronel, the latter having submitted a written account of what he had noted, the International Court of Appeal can now rule;

WHEREAS in fact, with regard to the behaviour both of Gabriele Tarquini and of Duncan Huisman, the first who ran into the second and the second who blocked the first, the provisions in Chapter IV of Appendix L - “*Code of Driving Conduct on Circuits*” - of the International Sporting Code referred to above were infringed;

WHEREAS even if no deliberate manoeuvre can be attributed to either one of the drivers, at the least they both displayed a particularly unfortunate lack of attentiveness or even negligence at a crucial moment during the event which leads to conclude that one as much as the other carried out manoeuvres likely to substantially hinder the other drivers;

WHEREAS they must therefore each be sanctioned, in application of Chapter IV of Appendix L and Articles 152 and 153 of the International Sporting Code, with a fine of US\$ 25 000;

ON THESE GROUNDS,

DECLARES admissible the appeal lodged by the Knac National Autosport Federatie on behalf of its licence-holder and competitor Carly Motors B.V., driver Duncan Huisman, along with the request formulated in the memorandum submitted by

Autodelta and reviewed at the hearing concerning the consequences of Duncan Huisman's conduct;

QUASHES the ruling of the Italian National Court of Appeal of 11 December 2003;

SENTENCES each of the competitors Carly Motors B.V. and Autodelta to a fine of US\$25 000 for infringement of Appendix L, Chapter IV of the International Sporting Code, and of Articles 152 and 153 of this same Code;

DISMISSES any other claims from the parties.

LEAVES it to the sporting authority to draw the conclusions of the present decision;

LEAVES payment of all costs to be shared equally between Carly Motors B.V. (driver Duncan Huisman) and Autodelta (driver Gabriele Tarquini), in accordance with Article 190 of the International Sporting Code.

Paris, 12 February 2004

(signature)

THE PRESIDENT