

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Deutscher Motor Sport Bund E.V. (DMSB)
on behalf of its licence-holder Young Driver AMR
against Decision No. 24 taken by the Panel of Stewards
on 2 May 2010 concerning the event run at Silverstone (UK), and
counting towards the FIA GT1 World Championship 2010**

Case 1/2010

Hearing of Tuesday 18 May 2010 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Erich Sedelmayer (Austria), who was elected President, Mr Michael Grech (Malta) and Mr Javier Bone Matheu (Spain), met in Paris on Tuesday 18 May 2010 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Deutscher Motor Sport Bund E.V. (DMSB) on behalf of its licence-holder Young Driver AMR (the “Appellant”) against Decision No. 24 taken by the Panel of Stewards on 2 May 2010, excluding car No. 7 of Young Driver AMR from the race run at Silverstone (UK) and counting towards the FIA GT1 World Championship 2010 (the “Event”), for failure to comply with Article 257.3.3.2.d.3 of Appendix J to the International Sporting Code (ISC) and Article 5 of the FIA GT1 World Championship Sporting Regulations, the Court has heard the statements and examined the arguments of the DMSB and the FIA.

Attending the above hearing were:

on behalf of the DMSB/ Young Driver AMR:

Mr Simon Taylor (Legal counsel)

Mr Jac Nellemann (Team representative, as witness)

Mr Darren Turner (Driver, as witness)

on behalf of the FIA:

Mr Pierre Ketterer (Legal counsel)

Mr Jacques Berger (Head of Technical Department, FIA Sport)

The parties presented written submissions and, at the hearing of 18 May 2010, produced witnesses and set out oral arguments and replied to the questions put to them 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 simultaneous translation or any part of the conduct of the hearing was raised by anyone.

REMINDER OF THE FACTS

1. Following a post-competition check, the FIA Technical Delegates found in their Report No. 9 of 2 May 2010 that the friction block on the flat bottom of car No. 7 had a thickness in its rear part of 24.2 mm, which is less than the minimum thickness of 25 mm required by Article 257-3.3.2.d.3 of Appendix J to the International Sporting Code (ISC).
2. Article 257-3.3.2.d.3 of Appendix J provides the following:

3.3.2 Flat bottom

It must be homologated.

To help overcome any possible manufacturing problems, a tolerance of +/- 5 mm on flatness is accepted.

a/ [...]

b/ [...]

c/ [...]

d/ Friction blocks:

Only the following compulsory friction block is authorised.

It may be made up of several pieces.

It must be fitted underneath the reference surface defined by the flat bottom.

It must :

d.1. [...]

d.2. [...]

d.3. have a minimum uniform thickness of 25 mm measured at the holes specified on Drawing 257-2;

[...]

3. On the basis of the FIA Technical Delegate's report, the Stewards took Decision No. 24 dated 2 May 2010 (the "Contested Decision"), excluding car No. 7 of the Appellant from the race results of the Event, for breach of Article 257-3.3.2.d.3 of Appendix J (cited above) and Article 5 of the 2010 FIA GT1 World Championship Sporting Regulations.
4. Article 5 of the 2010 FIA GT1 World Championship Sporting Regulations stipulates that: "Competitors must ensure that their cars comply with the conditions of eligibility and safety throughout the Event".

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

5. The Appellant lodged an appeal with the Secretariat of the ICA on 4 May 2010.
6. In its Grounds of Appeal, the Appellant requests the Court to:
 - reinstate the Appellant in the race results of the Event;
 - annul the penalty of exclusion imposed by the Contested Decision, or, in the alternative, replace it with a reprimand and/or a reasonable financial penalty.

7. The FIA, in its Defence dated 14 May 2010, requests the Court to:

- dismiss the appeal as unfounded;
- confirm the Contested Decision in its entirety.

ADMISSIBILITY

8. The Court acknowledges that the Appellant demonstrated sufficient intention to appeal and filed its appeal in conformity with the Rules of Procedure of the FIA International Court of Appeal.
9. The Court also finds that it has jurisdiction in the matter.
10. Therefore, the Court declares the appeal admissible.

ON THE SUBSTANCE

First Plea – The Appellant did not breach Article 257-3.3.2.d.3 of Appendix J

a) Arguments of the parties

11. The Appellant submits that the Contested Decision should be annulled on the basis that Article 257-3.3.2.d.3 of Appendix J was not breached.
12. The Appellant argues that the second sentence of Article 257-3.3.2, which states that a tolerance of +/- 5 mm on flatness is accepted to help overcome any possible manufacturing problems, must be construed as qualifying the whole of Article 257-3.3.2, including its subparagraph “d” regarding the friction block, given that this sentence appears in the introductory part of the article. The Appellant submits that, accordingly, a tolerance of 5 mm should have been allowed with respect to the value of 25 mm for the minimum thickness of the friction block – in other words, a minimum thickness of 20 mm should have been permitted. Upon this interpretation, the Appellant’s friction block, which measured 24.2 mm at post-race scrutineering, did not fall below the minimum permitted 20 mm thickness and did not breach Article 257-3.3.2.d.3.
13. Secondly, the Appellant argues that the thickness of the friction block ought to be assessed during *pre-race* scrutineering and not *post-race* scrutineering, as a car may suffer substantial wear and tear during the race which may cause damage to the friction block. The Appellant refers to other GT Series races such as Le Mans GT1, and to the FIA Formula One World Championship (see, respectively, Le Mans GT1 Technical Regulations, Art 3.5.1.h and FIA Formula One Technical Regulations, Article 3.13.1.d), where friction blocks are measured during pre-race scrutineering only. The Appellant submits that, if the friction block had been measured prior to, instead of after, the race, the Appellant’s friction block would have been found compliant with Article 257-

3.3.2.d.3, and it submitted evidence that its friction clock measured at least 25 mm at each of the six measuring points at pre-race scrutineering. In its evidence, the Appellant noted that it had sought to fine-tune and adjust its car settings (in particular by raising ground clearance) to minimise contact between the track and the friction block, as it had noted a relatively significant degree of contact in certain parts of the track during practice.

14. The FIA, with respect to the proper interpretation of Article 257-3.3.2, argues that the 5 mm tolerance on flatness cannot be interpreted as a general clause applicable to all the restrictions imposed by Article 257-3.3.2, but must be construed as applying only to the flat bottom of the car. The FIA submits that “flatness” is not the same as “thickness”. Moreover, in general, a tolerance cannot be applied to a minimum value, and only applies to nominal values (the minimum value being the nominal value minus the tolerance). Notwithstanding expressing reservations about the relevance of other Championships (see below), the FIA refers, for comparison, to the Formula One regulations, which do allow a margin of tolerance for the nominal value for the friction block’s thickness. This is in keeping with the fact that the Formula One regulations do not specify a minimum thickness, and do not refer to “flatness” but to “thickness”. The FIA therefore maintains that, on a proper interpretation of Article 257-3.3.2, the Appellant’s friction block did not comply with the minimum thickness of 25 mm required by this provision.
15. Notwithstanding its own comparisons to other championships, the FIA states that the Appellant’s references to other championships which apply the principle of pre-race scrutineering (as opposed to post-race scrutineering, or both pre- and post-race scrutineering) are irrelevant to the case at hand. The technical regulations applicable to the Event are those which were adopted by the FIA, taking into account the specifications of the GT1 World Championship. The FIA argues that these regulations are clear, and the existence of other and different regulations for other championships of a different nature and format has no bearing on the Applicant’s conformity with the regulations applicable to the current Event.

b) Conclusions of the Court

16. The Court finds that the 5 mm tolerance permitted by Article 257-3.3.2 does not apply to the minimum thickness of the friction block (Article 257-3.3.2.d.3). The language of the article clearly refers to “flatness”, and not to thickness. Moreover, the very nature of a *minimum* value is that no tolerance can be applied to it. Finally, the second sentence of Article 257-3.3.2 mentions that the tolerance is intended to deal with possible manufacturing problems, which are not relevant to the present case.
17. The Court further notes that the regulations and scrutineering practices of other championships are not relevant to the interpretation of the regulations of the Championship under consideration.

Second Plea – The penalty imposed by the Contested Decision is disproportionate

b) Arguments of the parties

18. The Appellant accepts that it is responsible for complying with the regulations, but submits that, in the event that the Court should find that the Appellant breached Article 257-3.3.2.d.3, the penalty of exclusion imposed by the Contested Decision is disproportionate to the facts. The Appellant argues that any non-compliance did not arise as a result of a manufacturing error, or an error by the Appellant, or cheating, or an attempt to gain an unfair advantage, but rather was the result of wear and tear during the race and of occurrences on the race track which are completely beyond the competitor's control. The Appellant, during the hearing, also referred to the decisions of the Court of 23 February 2009 and 14 October 2009 (ICA 26/2009 *Pekaracing* and ICA 21/2009 *Hexis Racing*, respectively), where, despite finding the existence of technical breaches the Court took into account the surrounding circumstances and adjusted the sanctions that had been imposed.
19. The Appellant argues that it is neither appropriate nor fair that exclusion should be considered an automatic penalty for such an infringement, and submits that discretion should be applied. The Appellant holds that the penalty of exclusion is not a mandatory penalty, and that the Court is entitled to use its discretion to apply a different penalty if it considers it appropriate to do so in the circumstances. The Appellant suggests that a reprimand and/or a financial penalty would be fair and proportionate in the circumstances.
20. The FIA states that it is the competitor's duty, under Article 258 of Appendix J and Article 5 of the GT1 Sporting Regulations, to ensure that its car is in conformity with the regulations at all times during the Event. This principle has been consistently upheld by the Court in previous case law. The fact that the competitor may have suffered wear and tear, or damage to any part of its car, does not exempt it from its obligations under the Event's regulations – these include the obligation to comply with the minimum thickness of the friction block.
21. The FIA notes that even if no performance advantage was obtained, this does not provide the Appellant with a defence, as is clear from Article 58 of the International Sporting Code. The Appellant's non-conformity constitutes a breach of the principle of sporting equity, which must prevail in competition. The FIA therefore asks the court to confirm the competitor's responsibility and uphold the sanction of exclusion imposed by the Contested Decision.

b) Conclusions of the Court

22. The Court acknowledges that it has previously confirmed the existence of technical breaches but has nonetheless adjusted penalties (including in the decisions of this Court of 23 February 2009 and 14 October 2009). However, in the cases cited exceptional circumstances applied. No such exceptional

circumstances were present in the current case. Nor does the Court find the penalty imposed to be disproportionate in the circumstances. The oral submissions and the evidence adduced during the hearing show that the Appellant had full knowledge, from the beginning of the Event (including the practice sessions), of the state and condition of the track, and it had in fact increased its ground clearance to seek to reduce the level of contact with the track. The fact that it may have erred in estimating the appropriate settings adjustments to avoid the breach cannot be regarded as an exceptional circumstance.

23. As the Applicant was in breach of Article 257.3.3.2.d.3, the Court finds that the sanction imposed by the Stewards must be upheld.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

1. **Declares the appeal admissible;**
2. **Confirms the Contested Decision;**
4. **Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 18 May 2010

The President