



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by Mr Sven Quandt on behalf of Mr Nasser Al Attiyah against
Decision n° 3 dated 2 April 2015 of the Stewards of the Abu Dhabi Desert
Challenge Competition counting towards the 2015 FIA World Cup for Cross
Country Rallies**

Case ICA-2015-01

Hearing of 5 June 2015 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr Rui Botica Santos (Portugal), who was designated President, Michael Beloff QC (United Kingdom), Jean Gay (Switzerland) and Michael Grech (Malta), met in Paris on Friday 5 June 2015 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Mr. Sven Quandt on behalf of Mr Nasser Al-Attayah (the “Appellant”) a licence-holder of the Qatar Motor and Motorcycle Federation (QMMF) against Decision n°3 dated 2 April 2015 of the Stewards of the Abu Dhabi Desert Challenge Competition (the “Stewards”) counting towards the 2015 FIA World Cup for Cross Country Rallies (the “World Cup”) under which the car driven by the Appellant had failed to meet the measurements required of its vertical suspension travel (the “Decision”) in contravention of Article 285.7.4 of Appendix J of the FIA International Sporting Code (the “Code”).

The following persons attended the hearing:

On behalf of the Appellant:

Mr Sven Quandt (CEO, X-raid GmbH)

On behalf of the FIA:

Mr Sébastien Bernard (FIA Legal Director)

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 5 June 2015, 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 and to any element of the simultaneous translation was raised by either party.



REMINDER OF THE FACTS

1. During checks carried out on the car n° 202, driven by the Appellant, during the Abu Dhabi Desert Challenge of 2 April 2015 (the “Competition”) counting towards the World Cup, the FIA Technical Delegate found that this car did not pass the checks on the vertical suspension travel.
2. The motion ratio between the bump stopper and the wheel of the car driven by the Appellant measured at 262 mm, whereas the measurement required by Article 285.7.4 of Appendix J of the Code is 250 mm.
3. The FIA Technical Delegate thus concluded in his report that this could constitute a breach of the above regulation.
4. On the basis of the FIA Technical Delegate’s report, the Stewards first heard the Appellant and thereafter decided to exclude car n° 202 from the Competition for breach of Article 285.7.4 of Appendix J of the Code.
5. The Appellant declared his intention to lodge an appeal within the prescribed deadline.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

6. On 6 April 2015, the Appellant, acting through, Mr Sven Quandt, directly lodged an appeal against the Decision before the Court (the “Appeal”).
7. The same day, the Secretary General to the FIA Courts drew Mr Quandt’s attention to Article 12.1.1 of the FIA Judicial and Disciplinary Rules (the “JDR”) and points 7 et seq. of the ICA Practice Directions (the “Practice Directions”), which provide in essence that an appeal before the ICA must be notified “*by the FIA, the ASN [red: the National Sporting Authority], the FIA member or the person who is the subject of a decision of the International Tribunal*”.
8. On 9 April 2015, the Secretary General to the FIA Courts again drew the above rules to Mr Quandt’s attention, this time asking him to confirm (i) the capacity in which he was representing the Appellant (ii) the ASN to which the Appellant belonged and (iii) the contacts of the said ASN.
9. The same day, the Secretary General to the FIA Courts received a power of attorney from Mr Quandt issued in his favour by the Appellant, which document empowered Mr Quandt to “*(...) act (...) in all sports and juridical actions related to the entry of the X-raid team and our Qatar Rally Team in the 2015 events*”.



(...)”. Mr Quandt also confirmed that the Appellant’s ASN was the QMMF and added that he “*was told by Fred Gallagher [red: the Chairman of the Stewards] to send the appeal directly to you and not via the ASN*”.

10. On 30 April 2015, the Appellant filed his grounds of appeal by email.
11. The Appellant contends, in essence, that the Court should set aside the Decision to the extent that the maximum sanction that can be imposed for the infringement be a “financial penalty” or an “additional time penalty”.
12. The FIA filed its grounds in response on 18 May 2015 and invited the Court:
 - to declare inadmissible the appeal lodged by the Appellant against the Decision, in application of Article 12.1.1 JDR; and
 - to charge the costs to the Appellant, in conformity with Article 13.2 JDR.
13. On 22 May 2015, the Appellant sent an email to the ICA Secretary General requesting the Decision to be “reverted” so that he had restored to him the points and the victory for the Competition. The Appellant also requested that the doctrine of *restitutio in integrum* be applied in which case the QMMF should be granted an opportunity to file the appeal afresh in accordance with the FIA procedural rules.

ADMISSIBILITY OF THE APPEAL BEFORE THE ICA

a) Submissions of the Parties

14. With respect to the issue related to article 12.1.1 JDR (absence of notification of the appeal by the Appellant’s ASN), the Appellant submits, without bringing any supporting evidence, that he was told by Mr Fred Gallagher, the FIA chairman of the stewards, to send directly his appeal to the FIA.
15. The Appellant claims further that he was not served any document specifying the procedure for appealing.
16. With respect to the issue of Mr Quandt’s power of attorney, the Appellant contends that his legal representative has the power to represent X-Raid Team and the Qatar Rally Team, which are owned by the Appellant.
17. The FIA for its part stresses that the notification of appeal in the present case contravenes three conditions of admissibility of the appeal:
 - a. The appeal was not lodged by the Appellant’s ASN but by Mr Sven Quandt, CEO of the X-Raid Team on the basis of a power of attorney granted by X-Raid Team and Qatar Rally Teams. According to the FIA, Mr Sven



Quandt“(...) *does not appear to be duly authorised to represent the Competitor in respect of the present procedure*”;

- b. A copy of the Decision was not filed with the notification of appeal; and
- c. The notification of appeal was not signed by a duly qualified representative of the competent ASN, namely the QMMF but only by Mr Sven Quandt.

18. The FIA draws the Courts attention to the fact that the Appellant recently lodged an appeal through his ASN in the case ICA 2014-4, and therefore cannot plausibly claim that he was ignorant of the JDR procedures.

b) *Conclusions of the Court*

19. According to Article 12.1.1 JDR, *“the appeal must be notified to the GSC [red: the General Secretariat of the FIA Courts] by the FIA, the ASN, the FIA member or the person who is the subject of a decision of the IT. (...)”* This article clearly states that *“Any irregularity in the notification will result in the inadmissibility of the appeal.”* and this unambiguous provision has the virtue of certainty.

20. Accordingly, the Court finds that the Appeal was not lodged in accordance with the clear requirements set in Article 12.1.1 JDR and should thus be declared inadmissible, as already confirmed by the Court in other previous cases past (see for instance ICA 17/2009, SEAT SPORT, dated 16 July 2009, nr 15 et seq. or an ICA decision CHEMIN dated 30 April 2002, pages 3 and 4).

21. The Court next refers to article 7 of the Practice Directions which provides that:

“In the cases described in article 9.1, 1., (a) to (c) of the Rules [red: the JDR] , it is the National Sporting Authorities (ASNs) that submit the relevant cases to the ICA. In those cases the ASNs (and/or their legal representatives) must conduct all communications with, and make all submissions to, the ICA.

22. Although article 8 of the Practice Directions provides that the ASN *“is free to notify the ICA in writing that it authorises its license-holder (e.g. a competitor that has requested the initiation of the appeal) to communicate with the ICA on that ASN’s behalf”*, the Practice Directions provide specifically in this same article that *“there can be no exception to this rule [red: article 7 of the Practice Directions] in relation of the “Notification of Appeal” as described in Article 12.1.1 of the Rules.”*

23. The clear wording of the Practice Directions thus leave no room for interpretation of the strict requirements set in Article 12.1.1 JDR.

24. With respect to the misleading information allegedly provided by Mr Gallagher, the Court notes first that no evidence has been adduced by the Appellant to support his submission and, whatever Mr Gallagher may or may not have said, there is nothing in the JDR or in the Code that authorises the Stewards, or holds out that the Stewards as having the right, to give instructions to the competitors



with respect to the appeal procedure. It is the opinion of the Court that whoever submits himself to the jurisdiction of a court, has also to comply and abide with the rules and regulations of that court. The FIA rules and regulations may not be overridden by a steward's direction or alleged direction. Any other interpretation would seriously undermine the stability and clarity that rules and regulations are meant to bring about.

25. In any event article 1.3.1 of the Code provides that “*any person, or group of persons, organising a Competition or taking part therein: (...) shall be deemed to be acquainted with the statutes and regulations of the FIA and the national regulations*”. Therefore the Court stresses that it is the Appellant's duty (as it is the duty of all competitors) to follow the rules. The Appellant's submission on the role allegedly played by the Stewards is therefore rejected by the Court.
26. The Appellant's submissions on the alleged lack of documents specifying the appeal procedure must be rejected for the same reasons. The rule book is accessible to all.
27. In view of the above, the Court finds that the appeal as filed by the Appellant is flawed as it disregards the elements requested by the rules. In consequence it is hereby declared inadmissible on procedural grounds, *in casu* for having not been filed by the relevant ASN (herein the QMMF) as required under Article 12.1.1 JDR.
28. In view of this finding no further determination has to be taken of the rest of the arguments *i.e* (i) the Appellant's failure to annex a copy of the Decision to the notification of appeal and (ii) the Appellant's failure to ensure that the notification of appeal was signed by a qualified representative of the QMMF.

ON THE SUBSTANCE

29. *Submissions of the Parties*
30. In view of the foregoing, it follows also that there is no need to examine the arguments of the parties as to the substance of the appeal and/or address the prayers and requests made by the Appellant, *i.e* its request to be reinstated or to have the Decision set aside and/or the sanctions mitigated.

COSTS

31. Considering that the Appeal was declared inadmissible, the Court orders the Appellant to bear all the costs in accordance with Article 13.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal inadmissible;**
- 2. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 3. Orders Mr Nasser Al Attiyah, the Appellant, to pay all the costs, in accordance with Article 13.2 of the Judicial and Disciplinary Rules of the FIA;**
- 4. Rejects all other and further conclusions.**

Paris, 5 June 2015

Rui Botica Santos, President