

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE

Appeal brought by the Automobile Club du Grand-Duché de Luxembourg (ACL) on behalf of its competitor, Jama Investments Luxembourg, against the decision handed down by the Spanish National Court of Appeal on 15 July 2004 concerning the event run at Valencia (Spain) on 20 June 2004, counting towards the Spanish Formula Junior 1600 Championship

Hearing of Wednesday 3 November 2004 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, composed of Mr Vassilis KOUSSIS (Greece), elected President, Mr Pierre Tourigny (Canada) and Mr José MACEDO e CUNHA (Portugal),

Meeting in Paris on Wednesday 3 November 2004, at the headquarters of the Fédération Internationale de l'Automobile, 8, place de la Concorde, 75008 Paris,

Ruling on the appeal brought by the Automobile Club du Grand-Duché de Luxembourg (ACL) on behalf of its licence-holder Jama Investments Luxembourg, car n° 18, driver Michael Herck, against the decision handed down by the Spanish National Court of Appeal on 15 July 2004 concerning the event run at Valencia (Spain) on 20 June 2004, counting towards the Spanish Formula Junior 1600 Championship,

Having heard:

The Automobile Club du Grand-Duché de Luxembourg represented by Mr Fabio Trevisan, Barrister at the Bar of the Grand Duchy, Mr André Herck, director of Jama Investments, assisted by the same counsel,

Mr Carlos Bertrand, Vice-President of the RFEA,

Mr Sébastien Bernard, Head of the Department of Legal Affairs of FIA Sport,

WHEREAS also having heard the knowledgeable parties Mr Pascal Tortosa, the competitor's track engineer, Mr Alain Boumal, the competitor's mechanic, and as a witness Mr Patrick Paillez, himself a competitor in the same Championship,

Having acknowledged that the procedure was in order, the rights of each of the parties having been duly examined, both in the proceedings which preceded the hearing and during the hearing itself, the parties, the knowledgeable parties and the witness having been duly heard and having provided all the detailed explanations requested from them during the hearing and having received answer, with the help of a simultaneous translation system which was recognised as satisfactory by the parties,

WHEREAS the appellant essentially made the following four claims:

First: the lack of impartiality in the organisation of the race, as the various officials were wearing on their jackets a commercial logo for the make Lois under which one of the teams taking part in the championship, the Lois Escuela de Valencia, was racing,

contrary to article 136 of the International Sporting Code which states that the timekeepers, scrutineers and assistant scrutineers must have no connection with any trade or industry which benefits in a direct or indirect way from the results of the competition,

Secondly: car n° 18, entered by the competitor Jama Investments, administrator André Herck, and driven by his son Michael Herck, was in conformity with the technical regulations of the Spanish Formula Junior 1600 Championship,

Thirdly: irregularity in the scrutineering procedure in breach of the sporting regulations governing Spanish Championship, Cup, Trophy and Challenge speed events on circuits,

Fourthly: irregularity in the modification of the classification of the event in respect of the same regulations,

WHEREAS before any discussion of the above-mentioned claims, it is appropriate to recapitulate the chronology of the facts according to the documents brought to the attention of the International Court of Appeal relating to the events run at Valencia on 19 and 20 June 2004 forming part of the Spanish Formula Junior 1600 Championship,

WHEREAS it is useful to note that while the second race forming the subject of this present case was run on 20 June, from 10.58 hrs to 11.19 hrs, it was preceded on the day before, 19 June, by a first race run from 15.48 hrs to 16.10 hrs, car n° 18 having taken part in both of these races, finishing second in the first and first in the second, as well as holding the lead in the Championship after this event and before the stewards' decision to exclude it from the said event,

WHEREAS that recapitulation makes it easier to characterise the checks carried out in the order mentioned above,

WHEREAS initial checks, called preliminary scrutineering, were carried out on all cars taking part in the two races on 19 and 20 June, including car n° 18, and the report dated 18 June at 18.35 hrs mentions that all the cars were in conformity with the technical regulations,

WHEREAS concerning the first race on 19 June a second round of scrutineering was carried out on four cars, including car n° 18, and the report dated 19 June at 10.35 hrs, before the race, mentions that all the cars were in conformity with the technical regulations,

WHEREAS at the end of that race, where the classification was signed by race control at 16.32 hrs, a third round of scrutineering was carried out on the top three cars in the classification, including car n° 18 which finished second, and the report dated 19 June at 17.00 hrs mentions that all the cars were in conformity with the technical regulations,

WHEREAS concerning the second race on 20 June, a fourth round of scrutineering was carried out the day before, 19 June, at 13.45 hrs, on four cars including car n° 18, and the report mentions that all the cars were in conformity with the technical regulations,

WHEREAS at 09.45 hrs on 20 June, before the second race, the stewards ordered that checks concerning the braking system, fuel, and flat bottom be carried out at the end of the event on the top four cars in the classification, with the particularity, as regards the brakes, that the order states “checks on the braking system; placing under seal”,

WHEREAS the lower part of this report on the result of the checks had been left blank,

WHEREAS car n° 18 won that second race and the classification was signed by race control at 11.27 hrs; appended to that document is the classification of the Championship after that second race, a Championship in which the driver of car n° 18 also holds first place,

WHEREAS at 13.00 hrs on that same 20 June, an order was given to place under seal two brake pads from the front wheels of car n° 18, without being preceded by any checks whatsoever in that respect,

WHEREAS the report also states that a later check was to be carried out at a place as yet to be determined, a document that was signed by the competitor and of which the lower part, reserved for the removal of the seals, was left blank and bears no signature, whether of the competitor or of the technical delegate,

WHEREAS indeed, in that respect, this document states in print that this removal of the seals for checking is carried out in the presence of Mr, competitor, vehicle n°, date, and adds that if the place, date and time are not yet known, this must be mentioned on the form and communicated to the competitor in due course,

WHEREAS at 13.20 hrs on that same 20 June 2004, a report on the scrutineering for the second race was given, stating that it appeared that the brake pads of cars n° 18 and n° 23 had been placed under seal because they were not in conformity with the provisions of article 11.2.1 of the technical regulations of the Spanish Formula Junior 1600 Championship, and that this was communicated to the manager of the team concerned and to the clerk of the course. The report was marked “Valencia, 13.20 hrs, 20 June 2004”; this document mentions neither the presence nor the signature of the competitor whose car was checked,

WHEREAS, still on 20 June, at 14.05 hrs the stewards gave their decision concerning car n° 18, competitor Jama Investments, stating that it was excluded from the race for

the absence of the organising committee's marking and identification of the brake pads placed under seal, as established by the scrutineers' report and the order for placing under seal in accordance with the provisions of article 11.2.1 of the technical regulations of the Spanish Formula Junior 1600 Championship,

WHEREAS lastly, on that same 20 June, the new classification of the second race was signed at 15.30 hrs, with the exclusion of car n° 18 driven by Michael Herck,

WHEREAS following an appeal brought by the competitor, the Spanish National Court of Appeal handed down a decision on 15 July 2004 confirming the Stewards' decision,

WHEREAS the International Court of Appeal is in possession of the various documents allowing it to give a ruling and it falls to this Court to discuss the various claims made by the appellant during this hearing as well as the statements made by the Vice-President of the RFEA, representing that ASN, and by the various witnesses or knowledgeable parties,

Appellant's first claim: lack of impartiality in the organisation of the race

WHEREAS concerning the lack of impartiality in the organisation of the race, it does not appear in this case that the appellant has supplied proof of any connection with any trade or industry which benefits in a direct or indirect way from the results of the competition, according to the exact terms of article 136 of the International Sporting Code,

WHEREAS, moreover, the discussions reported by the appellant, who claims to have witnessed in previous races a lack of impartiality in this respect, are irrelevant to the case in point, as the International Court of Appeal is competent only to rule on the appeal brought by the competitor and which concerns only race n° 2 in Valencia,

WHEREAS consequently, this claim by the appellant must be rejected,

Appellant's second claim: Conformity of car n° 18, entered by the competitor Jama Investments (André Herck) and driven by his son Michael Herck, with the technical regulations of the Spanish Formula Junior 1600 Championship,

WHEREAS the competitor claims that the brake pads in question, in this case Ferodo DS 3000, were original, which is confirmed by the statement from the manufacturer Tatuus as well as by the knowledgeable party Pascal Tortosa, the competitor's engineer,

WHEREAS article 11.2.1 of the technical regulations confirms that the use of three types of brake pads is authorised and that they must be marked and identified by the organising committee; the make and model authorised are the following: "Ferodo 3000, Ferodo 4003 and GALFER 1065", therefore the original pads fitted by the

manufacturer are indeed those stipulated by the technical regulations which identify them explicitly,

WHEREAS article 2.6 of the technical regulations states that the parts are considered to be free, provided that they preserve their original function, do not fulfil any additional function, and are located in the same position as the original part; that is especially so in this particular case, since the parts concerned are the original parts as confirmed by the manufacturer Tatuus,

WHEREAS from this text one cannot say that the parts were not in conformity with those duly authorised,

WHEREAS at this stage of the discussion, this claim by the appellant appears to be justified,

Appellant's third claim: Irregularity in the scrutineering procedure, especially in breach of the regulations governing Spanish Championship, Cup, Trophy and Challenge speed events on circuits,

WHEREAS one needs only to examine the chronological report of the various instances of scrutineering to see that there are no grounds for saying that the brake pads were not in conformity with the regulations,

WHEREAS in effect, as regards car n° 18, the reports on the four rounds of scrutineering concerning the two races, carried out respectively on 18 June at 18.35 hrs and 19 June at 10.35 hrs, 13.45 hrs and 17.00 hrs, all state that all the vehicles checked were in conformity with the technical regulations, and in particular the report at 17.00 hrs on 19 June after the first race which ended at 16.32 hrs where car n° 18 finished in second place and therefore necessarily had to be checked,

WHEREAS concerning the stewards' order, dated 20 June at 09.45 hrs, i.e. before the second race, for checks to be carried out on the top four cars in the classification as regards the braking system with "placing under seal", such placing under seal cannot even be contemplated until an infringement has been noted during a check, when the part concerned is then placed under seal to allow the stewards to take a decision in full knowledge of the facts,

WHEREAS after the second race, which finished at 11.10 hrs, and the classification drawn up at 11.27 hrs, at 13.00 hrs an order was given to place under seal the two brake pads from the front wheels of car n° 18 which were to be examined,

WHEREAS that order states that the competitor Jama Investments has been informed of the placing under seal regarding the marking of the two brake pads from the front wheels and that the checking of these parts will be carried out later at a place to be determined, with the signatures of the competitor and the technical delegate; however, the lower part of this document, which bears the printed formula regarding the

removal of the seals, remained blank, and it turns out that the scrutineering took place, still on 20 June, at 13.20 hrs without the competitor being informed, as he declares, and without any document produced by the Spanish sporting authorities establishing the slightest notification, contrary to article 21.8 of the sporting regulations governing Spanish Championship, Cup, Trophy and Challenge speed events on circuits, which states that the duly announced technical inspection at the end of the race will be carried out in the presence of the competitor whose car is concerned by the inspection, or of his representative.

WHEREAS the report form for the scrutineering of 20 June, dated 13.20 hrs, does not contain any printed formula for recording the presence of the competitor, and is signed by the scrutineer alone for transmission to the stewards,

WHEREAS this infringement to the above-mentioned rule is all the more serious since the scrutineer does not even say what he has found, even in an elementary fashion, and contents himself with repeating the provisions of article 11.2.1 without saying what they apply to in the case in point,

WHEREAS the fact that the removal of the seals did not take place in the presence of the competitor, together with the failure to notify him to attend final scrutineering and his absence from those checks, renders the operations void, in accordance with article 21.8 of the sporting regulations and with the general principles of rights whereby each party is ensured due hearing, as mentioned in various places in the International Sporting Code,

WHEREAS the panel of stewards, in its decision of 20 June 2004 at 14.05 hrs, contented itself with confirming the scrutineer's report in accordance with article 11.2.1 of the technical regulations, without taking the trouble to examine whether the check had indeed been carried out and if so in the proper conditions, or to hear the competitor seriously, the decision being drawn up on a form on which was printed only the words "interested party heard" without the full identification of that party, who claims that he had not been able to defend himself but had merely been notified of the sanction,

WHEREAS, therefore, the appellant's claim proves to be all the more justified since all the checks carried out up to then on car n° 18 had recognised the conformity of the car with the technical regulations and then suddenly, after the second race at 13.00, without further checks, the car was illegally placed under seal,

WHEREAS the appellant's claim is therefore justified, and the stewards' decision, judging from the above, should be invalidated for the above-mentioned reasons,

Fourth claim: Irregularity in the modification of the classification of the event

WHEREAS the appellant also reports an irregularity in the modification of the classification at 15.30 hrs when that classification had been signed at 11.22 hrs,

WHEREAS in fact article 40.5 of the sporting regulations states that once the protest time limit (thirty minutes) is up and no protest has been made, and once the scrutineering has been carried out, the classification will become definitive,

WHEREAS in this case the classification was signed at 11.22 hrs and the above-mentioned 30-minute time limit expired at 11.52 hrs without any protest of any kind having been made or the slightest technical check carried out in the meantime, the first such technical check being represented by the brake pads being placed under seal on the same 20 June 2004 at 13.00 hrs, i.e. well after the expiry of the time limit, likewise the illegal check at 13.20 hrs,

WHEREAS, therefore, the appellant's fourth claim proves all the more justified since the classification, which had been finalised by the stewards, included no proviso concerning any modification, contrary to the provisions of Article 177 of the International Sporting Code which states that in the event of any problem it is mandatory to publish a provisional classification,

WHEREAS, as that was not the case, the classification was therefore definitive and the Stewards' decision to modify the said classification at 15.30 hrs is thus rendered invalid,

WHEREAS the Appellant appealed against the said decision, which appeal was duly brought before the Spanish National Court of Appeal,

WHEREAS the NCA heard Mr Marc Rawar, an official importer of the Ferrodo make in Belgium, who confirmed that FERRODO produced one type of brake pads, Ferrodo DS 3000, which were those used by the competitor in accordance with article 11.2.1 of the technical regulations which specifically stipulate that type of pad,

WHEREAS the NCA also heard Alain Boumal, the technical specialist from the competitor's team, who said that the pads fitted on car n° 18 were indeed Ferrodo 3000 pads but did not bear the WS marking or identification,

WHEREAS at the request of the Spanish National Court of Appeal, Mr Hermenegildo Baylos, the technical delegate of the RFEA, was also heard; Mr Baylos stated that WS, a commercial company whose managers were the sole members of the organising committee and Tatuus the parts manufacturer, was the organiser of the Championship (in reality RPM, according to the Spanish text of the judgment and the sporting regulations), that the pads could be bought in different shops, but that those used in the Championship bearing the WS mark were only available from the truck stationed on each circuit, adding that it was obvious that all the competitors in the Championship knew that all the parts had to be bought from the WS truck,

WHEREAS that knowledgeable party did not remember having used the term “commission” in the words attributed to him by Mr Boumal and according to which anybody could win a commission,

WHEREAS the Spanish National Court of Appeal endeavoured to explain in this respect the reason for WS by stating that the supply of parts such as brake pads via organising committees (such as RPM in this Spanish Championship) was not exclusively justified by commercial or economic criteria, in order to try to limit costs while maintaining as much equality as possible,

WHEREAS the judgment concluded that paragraphic 2.1 of article 11 prescribing the use of the three types of brake pad (Ferodo 300, Ferodo 4003 and Galfer 1065), which must be marked and identified by the organising committee, imposed:

- 1) the obligation that the brake pads be marked and identified by the organising committee RPM by means of the mark WS,
- 2) that the models authorised would be Ferodo 3000, Ferodo 4003 and Galfer 1065

But **WHEREAS** no article of the technical regulations, or of the sporting regulations, provides for an operation whereby the parts are marked by the organiser of the Championship, let alone that they are marked with the commercial brand WS, or for that matter with the mark of any other distributor, and the judgment is therefore adding a condition which appears nowhere else than in the organiser’s intention and which therefore cannot be held against the competitor,

WHEREAS in these conditions the brake pads in question on the car prove to be in conformity with the technical regulations and the decision that is the subject of this appeal should therefore be invalidated,

ON THESE GROUNDS,

RULING on the appeal brought by the Automobile Club du Grand-Duché de Luxembourg on behalf of its licence-holder Jama Investments against the decision handed down by the Spanish National Court of Appeal on 15 July 2004,

DECLARES AND RULES that the appeal brought before the International Court of Appeal by the appellant is admissible,

DECLARES the appeal justified as regards the grounds for appeal as set out in the present decision,

INVALIDATES the decision of the Spanish National Court of Appeal and declares the brake pads in question to be in conformity with the technical regulations,

LEAVES it to the sporting authority concerned to rectify the classification of the event according to the present decision,

LEAVES it to the appellee to pay the costs, in accordance with Article 190 of the International Sporting Code.

The President,

Made in Paris, 3 November 2004