

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Royal Automobile Club of Belgium (RACB)
on behalf of its licence-holder Pekaracing NV
against Decision No. 17 taken by the Panel of Stewards
on 25 October 2009 concerning the event held at Zolder (Belgium), and
counting towards the FIA GT Championship 2009**

Case 24/2009

Hearing of Thursday 3 December 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Vassilis KOUSSIS (Greece), who was elected President, Mr Jan STOVICEK (Czech Republic) and Mr Laurent ANSELMINI (Monaco), met in Paris on Thursday 3 December 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Royal Automobile Club of Belgium (RACB) on behalf of its licence-holder PEKARACING NV (the “Appellant”) against Decision No. 17 taken by the Panel of Stewards on 25 October 2009, which imposed a drive through penalty (converted into a 30-second time penalty) on Car No. 1 of competitor Vitaphone Racing Team at the event held at Zolder (Belgium) and counting towards the FIA GT Championship 2009, the Court has heard the statements and examined the arguments of the RACB, the DMSB on behalf of Vitaphone Racing Team (“Vitaphone”) and the FIA.

Attending the above hearing were:

on behalf of the RACB/Pekaracing NV:

Mr Gérard Martin (RACB, Legal Rapporteur)
Mr Pascal Nelissen Grade (Avocat)
Mr Jorge Segers (Team Manager)
Mr Toine Hezemans (Team Principal)
Mr Anthony Kumpen (Driver)
Mr Mike Hezemans (Driver)

on behalf of the DMSB/Vitaphone Racing Team:

Mr Matthias Feltz (Lawyer)
Mr Michael Bartels (Driver)
Mr Malte Bongers (Team Manager)
Mr Jens Hagelauer (Team Coordinator)

on behalf of the FIA:

Ms Brechtje Lindeboom (Legal Department, FIA Sport)

The parties presented written submissions and, at the hearing of 3 December 2009, 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 was raised by anyone.

REMINDER OF THE FACTS

1. During the eight race of the FIA GT Championship 2009 held at Zolder (Belgium) on 25 October 2009, the Appellant lodged a protest against Car No. 1 of competitor Vitaphone Racing with the Stewards of the Meeting for violation of Article 104 of the GT Sporting Regulations, which contains provisions pertaining to “Assistance in the pits and refuelling”. This article allows a maximum of four people in the pit lane working area during refuelling (one Team Manager and four mechanics, to include one or two fuel attendants and a fire attendant), and provides that any other team members standing in the working area will be considered as mechanics “working” on the car. Article 104 also specifies that, during refuelling, the only other authorized activities are cleaning the windscreen and assisting with the change of driver.
2. In its protest, the Appellant alleged that Vitaphone had infringed these rules by placing in front of the car’s left front wheel a person carrying a wheelgun pointed at the wheelnut during refuelling (after that person had finished cleaning the windscreen). The Appellant alleged that this act constituted an activity which is not permitted pursuant to Article 104.
3. Following this protest, the Stewards took Decision No. 17 dated 25 October 2009 (the “Contested Decision”), which holds that:

[...] the stewards decide that more than the correct number of mechanics were in the working area during refuelling contrary to article 104 Sporting Regulations FIA GT 2009 and decide to impose a drive through penalty, which converts into a 30 seconds penalty.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

4. The Appellant lodged an appeal with the Secretariat of the ICA on 27 October 2009.
5. In its Grounds of Appeal, the Appellant contended that the Court should:
 - declare the appeal admissible and well-founded;
 - set aside the Contested Decision;
 - declare that the penalty imposed by the Contested Decision is not in conformity with Article 109 of the GT Sporting Regulations, or, in the alternative, that it is not proportionate to the offence committed;
 - replace the penalty imposed by the Contested Decision with a penalty of exclusion, or, in the alternative, with a more severe penalty than the one imposed.
6. The FIA, in its Defence dated 26 November 2009, suggests that the Court:
 - declare the appeal admissible;

- confirm the Contested Decision.
7. Vitaphone Racing, which applied to be heard as a directly and significantly affected party within the meaning of Article 21, fifth paragraph of the ICA Rules of Procedure, in its submission of 17 November 2009, requested that the Court:
- declare the appeal inadmissible and unfounded.

ADMISSIBILITY

a) Arguments of the parties

8. The Appellant acknowledges that Article 152, fifth paragraph, of the FIA International Sporting Code (ISC) provides that '*penalties of driving through or stopping in pit lanes together with certain penalties specified in FIA Championship Regulations where this is expressly stated, are not susceptible to appeal*'.
9. The Appellant nevertheless argues that this prohibition on appeals against drive through penalties only applies to the competitor who is the subject of the drive through penalty (in this case, Vitaphone), and therefore does not apply to the Appellant. The Appellant further notes that it is not contesting the infringement committed by Vitaphone but is disputing the Stewards' choice of sanction, which in effect amounted to the absence of an effective sanction as it made no difference to the outcome of the race, and this was not consistent with the infringement's severity.
10. The FIA invites the Court to declare the appeal admissible, without stating its reasons.
11. Vitaphone contests the admissibility of the Appellant's appeal on the ground that Article 152, fifth paragraph, ISC stipulates that drive through penalties are not susceptible to appeal. This provision does not leave any margin for interpretation and excludes any avenue for appealing such penalties. Vitaphone argues that the Appellant's interpretation of Article 152, fifth paragraph ISC, according to which the prohibition to appeal applies only on the penalised competitor is not supported by any provision of the ISC.

b) Conclusions of the Court

12. The Court does not accept the Appellant's argument that the prohibition on appealing drive through penalties introduced by Article 152 ISC, fifth paragraph, of the ISC applies only to the competitor who is the subject of the penalty. The language of Article 152 ISC, fifth paragraph contains no such limitation.

13. Article 152 ISC, fifth paragraph instead clearly confirms that drive through penalties are not susceptible to appeal. This has also been the Court's finding in previous cases (see, for instance, ICA Decisions of 22 September 2008 and 21 April 2009).
14. As a general principle, the Court observes that the right to appeal forms an integral part of the legal order set out in the ISC. Furthermore, the ISC must be read in the sense which offers the broadest legitimacy and legal protection to all parties bound by it. This being so, any limitation on the right to appeal against sanctions, such as that found in Article 152 ISC, fifth paragraph, must be narrowly construed.
15. The ISC provides the Stewards with wide discretion in deciding penalties in all cases. In relation to the particular circumstances of this case, Article 104 of the GT Regulations ("Assistance in the pits and refuelling") also specifies at paragraph C that "*penalties for breaches of the above shall be at the Stewards' discretion*". However, this cannot be read to mean that the Stewards may apply any penalty in any circumstance. In every case the Stewards' discretion is necessarily limited by the framework of the ISC and other applicable regulations which provide the Stewards with a range of penalties to choose from.
16. Against this background, the Court notes that while Article 152 ISC, fifth paragraph, excludes any review of the merits of appeals against drive through penalties imposed in accordance with the ISC and any Supplementary Regulations, it does not prevent the Court from reviewing the legality of such penalties. In all cases the Court retains its supervisory function of ensuring that the rule of law is respected and that when drive through penalties are applied, they are applied only as authorised in the ISC and any Supplementary Regulations. Any other conclusion would imply that Court could exercise no legal control even where a drive through penalty had been imposed in circumstances far outside the ISC.
17. Article 153 ISC, fifth paragraph identifies the penalties that the Stewards are authorised to impose: "reprimand (blame); fines; time penalty; exclusion; suspension; disqualification". This list does not include 'drive through penalties'. Article 44 of the GT Championship Regulations expressly authorizes the use of drive through penalties, but limits their application to "any driver involved in an Incident". No other relevant and explicit authorisation for the use of drive through penalties appears in the ISC or the GT Championship Regulations. The Court would have grave reservations about any suggestion that a penalty which is not susceptible to appeal could be *implicitly* authorised by the ISC.
18. It is not obvious to the Court that this case arose in relation to 'a driver involved in an Incident', which appears to be the only explicitly stated circumstance in

which a drive-through penalty may be imposed in relation to this Championship. However, neither the Appellant, the addressee of the penalty (Vitaphone) nor the FIA have raised any argument or put forward any plea or evidence to assist the Court in this regard. While questions remain as to whether the Stewards properly had recourse to a drive-through penalty in this case, the Court has not been provided with sufficient elements to make a ruling on this point.

19. Therefore, the Court dismisses the Appellant's arguments with respect to admissibility and declares the appeal inadmissible on the grounds that no plea has been raised regarding the legality of having imposed that penalty and the Court has no jurisdiction to review the merits of the penalty as Article 152, fifth paragraph excludes such a review by the Court.
20. In light of the above, the Court does not deem it necessary to further examine the parties' arguments on the substance.

COSTS

21. Considering that the Appellant's pleas were not upheld by the Court, and that the appeal is inadmissible, the Court leaves it to the Appellant to bear the costs in accordance with Article 24 of the Rules of the International Court of Appeal.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal inadmissible;**
- 2. Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 3 December 2009

The President