

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal lodged by the
Fédération Française de Sport Automobile (FFSA)
on behalf of its competitor ING Renault F1 Team
against Decision N°45 of Panel of Stewards taken on 26 July 2009
at the Grand Prix of Hungary and counting towards the
2009 FIA Formula One World Championship**

Case 18/2009

Hearing of Monday 17 August 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr. Edwin Glasgow CBE, QC, (United Kingdom), who was elected President, Mr. Dieter Roskopf (Germany), Mr. Harry Duijm (Netherlands), and Mr. Thierry Julliard (Switzerland), met in Paris on Monday 17 August 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, in considering the appeal lodged by the Fédération Française de Sport Automobile (FFSA) on behalf of its competitor ING Renault F1 Team (the “Appellant”) against Decision N°45 of Panel of Stewards taken on 26 July 2009 at the Grand Prix of Hungary counting towards the 2009 FIA Formula One World Championship (the “Contested Decision”), heard arguments and evidence presented by the Appellant and by the Fédération Internationale de l'Automobile (FIA).

Participating in the above hearing were:

for ING Renault F1 Team/ FFSA:

Mr. Ali Malek QC (Barrister)
Mr. Andrew Ford (Solicitor)
Mr. Georgina Bayley (Solicitor)
Mr. Pat Symonds (Executive Director of Engineering)
Mr. Steve Nielsen (Team Manager)
Mr. Bob Bell (Technical Director)

for the FIA:

Mr. Paul Harris (Barrister)
Mr. Pierre de Coninck (Secretary General FIA Sport)
Mr. Sébastien Bernard (Head of Legal Department)
Mr. Charlie Whiting (F1 Race Director)

for the RFEA:

Mr. Carlos Gracia (President)
Mr. Joaquin Verdegay (Vice-President; Head of Legal Affairs)

The parties made detailed written submissions, presented oral arguments at the hearing and answered questions put to them by the Court. The hearing took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised. During the discussions, adversarial principles were respected.

THE FACTS

1. At the 2009 Grand Prix of Hungary, the Stewards of the Meeting decided on 26 July 2009 to suspend the Appellant from the next event of the 2009 FIA Formula One World Championship (namely the European Grand Prix in Valencia) for breach of Article 23.1.i and Article 3.2 of the 2009 FIA Formula One Sporting Regulations (the “Sporting Regulations”). The Contested Decision further states:
 1. that the Competitor knowingly released car no. 7 from the pit stop position without one of the retaining devices for the wheel-nuts being securely in position, this being an indication that the wheel itself may not have been properly secured.
 2. being aware of this failed to take any action to prevent the car from leaving the pit-lane;
 3. failed to inform the driver of this problem or to advise him to take appropriate action given the circumstances, even though the driver contacted the team by radio believing he had a puncture,
 4. this resulted in a heavy car part detaching at Turn 5 and the wheel itself detaching at Turn 9.

2. Article 23.1.i of the Sporting Regulations states that:

It is the responsibility of the competitor to release his car after a pit stop only when it is safe to do so.

3. Article 3.2 of the Sporting Regulations states that:

Competitors must ensure that their cars comply with the conditions of eligibility and safety throughout practice and the race.

PROCEDURE AND FORMS OF ORDER SOUGHT BY THE PARTIES

4. The Appellant lodged the present appeal with the Court on 28 July 2009.
5. The Appellant contends that the Court should declare that:
 - the Appellant did not *knowingly* release car no. 7 from the pit stop position without one of the retaining devices for the wheel nuts beings securely in position;
 - the Appellant is guilty of a technical breach of Article 3.2 of the Sporting Regulations in that it failed to ensure that car no. 7 complied with the conditions of eligibility and safety throughout practice and the race;
 - the Appellant is guilty of a technical breach of Article 23.1.i of the Sporting Regulations in that they released the car after a pit stop when it was unsafe to do so;
 - the sanction imposed by the Contested Decision be quashed and that the Appellant be allowed to race at the European Grand Prix at Valencia; and
 - the Appellant be issued with a reprimand and/or fine as the Court considers appropriate.

6. The FIA, in its submission of 13 August 2009, contends that the Court should:
 - dismiss the appeal as unfounded;
 - declare the submission of the RFEA inadmissible.

APPLICATION BY AFFECTED PARTIES TO BE HEARD

7. A submission was received on 31 July 2009 from the Real Federación Española de Automovilismo (“RFEA”). The RFEA submits that the decision which may be adopted by this Court could directly and significantly affect not only the Spanish driver Fernando Alonso, holder of a Spanish license, but also the organizers and promoters of the European Grand Prix of Valencia, the companies sponsoring the Grand Prix and the driver, the City of Valencia and its citizens, and all the Spanish fans, who are being deprived the main reason for their attendance of that Grand Prix, namely Mr. Alonso’s presence.
8. RFEA argues that, under Article 21 of the ICA Rules of Procedure, the Court may hear, independently of the parties to the appeal, any competitor in a major FIA Championship who so requests and who could be directly and significantly affected by the decision to be taken. The FIA Formula One World Championship is a major Championship.
9. RFEA submits that while Article 21 refers to “competitors”, this should be read broadly and that RFEA should be allowed to make submissions as licensor to Mr. Alonso and in the interests of the organizers and promoters of the European Grand Prix, the sponsors, the City of Valencia and its citizens, and the Spanish fans.
10. The Appellant does not contest the right of the RFEA to intervene in the present case and submits that the RFEA’s submission contains relevant information with respect to the severe consequences of the decision to be taken by this Court.
11. The FIA argues that the RFEA’s submission is inadmissible pursuant to Articles 1, 14, 17, 21 of the ICA Rules of Procedure, as the RFEA does not represent a “competitor” in this case.

Findings of the Court

12. The sub-paragraph of Article 21 cited by RFEA provides the right to be heard to competitors in a major FIA Championship who could be directly and significantly affected by the decision to be taken. The RFEA is not itself such a competitor and did not demonstrate that it represents such a competitor in this case. The Court finds that the mere fact that RFEA issues a license to Mr.

Alonso and/or that it may share the interests of the organizer of the European Grand Prix, the sponsors, the City of Valencia and its citizens, or Spanish fans, does not on its own establish a sufficient basis for the RFEA to be heard in this case. The Court therefore finds that the RFEA's submission is not admissible. The Court does, however, agree to consider any submissions made by the RFEA that were adopted by the Appellant, and invites the RFEA to remain as an observer throughout the hearing in order to hear the arguments and evidence.

ADMISSIBILITY AND JURISDICTION

13. The Court recognizes that the appeal was filed in a timely manner and that the required formalities were observed.
14. The Court declares the appeal is admissible and finds that the Court has jurisdiction in the matter.
15. The FIA correctly reminded the Court that it should, when reviewing Stewards' decisions, take account of the neutrality and the vast experience of the Stewards. The FIA, however, also agreed at the hearing that the Court has the right and duty to consider the matter *de novo* and without any preconceived presumption, either way, as to the correctness of the Stewards' decision which is in issue. The Court indeed takes these elements into account and notes that it does not lightly interfere with the Stewards' findings.

ON THE SUBSTANCE

First Plea – The Appellant did not knowingly infringe Articles 3.2 and 23.1.i of the Sporting Regulations

a) Arguments of the parties

16. The Appellant claims that it is clear from the Contested Decision, and from the nature of the sanction, that the Stewards did not take the Contested Decision simply because the Appellant's wheel came off during the event in question, but rather because they had concluded that the Appellant had released car no. 7 from the pit lane despite knowing that the wheel was not properly attached and that the Appellant had therefore, in essence, been reckless. While the Appellant accepts that there was a technical breach of the Sporting Regulations insofar as the car was released from the pit-stop (i) without the wheel nut being fully tightened and (ii) without the wheel retaining device being engaged, it denies that it *knowingly* allowed the car to rejoin the race in unsafe conditions.

17. The Appellant argues that the Stewards failed to adduce any evidence of Renault's knowledge of these factual breaches, as they did not mention how or when the team acquired this knowledge, or even who in the team had the relevant and requisite knowledge. It contends that the burden of evidence is not on the Appellant to prove that the Renault team did not have this knowledge. The Appellant further refers to a decision of this Court dated 12 June 2008, quashing a Stewards' decision on the basis that the evidence adduced did not allow the Court to establish with certainty that the regulations had been disregarded.
18. The Appellant contends that the fact that it had no motive for or interest in allowing its car to leave the pit lane with, in effect, three wheels, constitutes additional evidence of the fact that the infringement was committed unknowingly.
19. With respect to the facts leading to the car being released from the pit lane, the Appellant argues that, while Mr. Gavin Morgan (Race Team Mechanic) was aware that the wheel retaining device was not engaged, he had no way of knowing that the wheel nut was not tightened properly. Even the Race Team Mechanic who fitted the wheel nut, Mr Andy Band, believed that the wheel nut had been properly tightened. The Appellant further submits that the fact that the wheel retaining device was not securely in position did not constitute an indication of the wheel itself not being properly secured, as a wheel nut can be securely tightened even if the wheel retaining device is not secure. In addition, Mr. Morgan was not in a position to release or hold the car in the pit box. The only person who was in a position to hold the car in the pit-lane position, Mr Gavin Hudson (Race Team Chief Mechanic), did not know that the wheel was not securely fixed to the car nor that the retaining device had not clicked into place, and so released the car after the four wheel gun mechanics had raised their red-gloved arms.
20. The Appellant recognizes that its pit stop procedure was flawed (as until now the procedure in place simply did not foresee the eventuality that a gun man confirms that the wheel nut is tight and the retaining device subsequently fails to lock), but stresses that the car was released in good faith. The Appellant further relies on the fact that this admittedly faulty procedure was commonly adopted by the majority of the other F1 teams.
21. The FIA relies on the Appellant's knowledge of the fact that the wheel retaining device was not secure, which was admitted by both Mr. Band and Mr. Morgan in the witness statements they submitted to the Court. This knowledge is also evident from the video footage of the pit stop procedure, which shows Mr. Morgan unsuccessfully attempting to lock the wheel retaining device even as the car moves forward out of the pit lane.

22. The FIA further submits that the fact that the wheel-retaining device was not securely in position necessarily constituted an indication that there was a potential risk that the wheel itself had not been properly secured and could become detached during the race – a risk which in effect materialized shortly after the car left the pit lane, as the wheel retaining device did detach at Turn 5 and the wheel did detach at Turn 9. That risk arises simply because one potential cause for a wheel-retaining device not locking into position is an ill-fitted, improperly tightened wheel nut, which was precisely the case here. In addition, the FIA argues that the fact that the wheel retaining device was not properly fixed constituted a safety risk in and of itself (regardless of whether the wheel was secure) given that the fairing could fly off the car (which indeed it did) and cause injury.

b) Findings of the Court

23. The truthfulness of the explanations given by all the witnesses was accepted by all parties, and is accepted by the Court.
24. The Court considers that the real issue here turns on the degree of culpability of the Appellant. In this regard, the Court accepts the submission that there was no conscious wrong-doing on the part of anyone.
25. Notwithstanding its respect for the Stewards, the Court considers that the use of the term “knowingly” in the Contested Decision was not appropriate in this case because, notwithstanding the powerful arguments of the FIA, it is the Court’s view that the use of that term in this context clearly suggests conscious wrong-doing and implies a finding that the “release” of the car from the pit box was allowed despite actual knowledge of potential danger on the part of the individual who made the decision to release it (in this case, the Chief Mechanic, Mr Gavin Hudson). No party has challenged the truth or accuracy of Mr. Hudson’s statement that he was not aware of the potential danger.
26. The Court notes that Article 123 of the International Sporting Code states that the entrant to a race “shall be responsible for all acts or omissions on the part of their driver, mechanic, or passengers, but each of these shall be equally responsible for any breach of this Code or of the national rules of the ASN concerned.” There can be no doubt that the Renault team, as it accepts, is “responsible” for releasing car no. 7 in an unsafe condition (in breach of Article 23.1.i of the Sporting Regulations) and that it failed to ensure that car no. 7 complied with the conditions of eligibility and safety throughout practice and the race (as required by Article 3.2 of the Sporting Regulations). However, while the Court considers that the Appellant was responsible for the offences committed, it also accepts and finds that this responsibility does not, in the present circumstances, equate to conscious wrong-doing. Responsibility is not synonymous with culpability. A party which accepts responsibility is not thereby precluded from arguing that it did not act culpably.

Second Plea –The Appellant failed to inform the driver that the wheel was or might not be securely attached

a) Arguments of the parties

27. As set out above, the Appellant submits that the team could not have informed the driver, Mr. Alonso, as it did not know about the problem with the wheel retaining device and/or the wheel nut in time to do so. Mr. Morgan informed the Chief Mechanic about the fact that the wheel retaining device was not engaged as soon as the car left the pit box, as can be seen on the video evidence, but by the time Mr. Hudson was in a position to communicate that concern, Mr. Alonso had already told the team that he had a punctured tyre and was on his way back to the pits.
28. The FIA submits that it is indisputable that the Appellant did not inform Mr. Alonso of the wheel problem. This point was admitted by the Appellant to the Stewards during the latter's investigation after the race. The FIA's position is that the team should have immediately informed the driver that the wheel retaining device was not in place, prevented him from leaving the pit box and/or the pit lane, and required him to pull over and stop racing on the track immediately.
29. According to the FIA, the existence of a suspected other problem (a punctured tyre) did not negate or otherwise override the serious safety implications of the unsecured wheel retaining device. Nor is it relevant that some of the Appellant's team members did not know of the wheel retaining device problem due to Renault's own flawed pit lane procedures and its failure to adequately communicate within its own team.

b) Findings of the Court

30. Having reviewed the video evidence and taken account of the circumstances in which the Appellant was making decisions, and having considered with care all the accounts which were given, the Court accepts that the actions taken (or not taken) by the Appellant were flawed, but taken in good faith.
31. The Court finds, as the Appellant accepted, that the Appellant's communication procedures were clearly inadequate in that incorrect information was transmitted (*i.e.* hand signals were given indicating that the car was ready to leave the pits when this was not the case) and that Mr. Morgan's knowledge of the risk that the wheel nut retaining device was not securely fixed could not be communicated to relevant decision makers with sufficient speed. These failings on the part of the team merit a sanction. However, the Court finds that there was no knowing or intentional breach of the regulations.

Third Plea –The sanction imposed by the Contested Decision is excessive and disproportionate

a) Arguments of the parties

32. While the Appellant accepts that the facts disclosed constitute an offence under the Sporting Regulations, it submits that the penalty of exclusion from the next race is excessive and disproportionate.
33. The Appellant argues that the Contested Decision has been taken on the wrong basis, namely, the team's actual knowledge that the release of the car from the pit box was potentially dangerous.
34. The Appellant further draws the Court's attention to a list of sanctions previously imposed for breaches of Article 23.1.i ("unsafe release from the pit-stop") and to examples of comparable incidents where wheel retaining devices were not properly attached but where no sanction was imposed, with a view to demonstrating that the penalty is excessive compared to penalties previously imposed (or not imposed) for similar offences. The Appellant submits that fairness requires that penalties imposed by the Stewards are broadly consistent and that a race ban should be reserved only for offences of a serious nature, where the facts giving rise to danger or potential danger have been knowingly ignored, which is not the case here.
35. In light of the above, the Appellant argues that a reprimand or a minor fine would be a more appropriate sanction than exclusion from the next race, and requests the Court to replace the penalty imposed on it by a more lenient sanction.
36. The FIA warns the Court against the dangers of taking undue account of other instances, the precise nature of which instances the Court is unaware of. It concedes that, in at least one instance where no sanction was imposed, action should undoubtedly have been taken, but recalls that "two wrongs do not make a right". The FIA submits that, in any event, each case must be considered on its own merits. With respect to some of the comparable instances brought forward by the Appellant in which allegedly inconsistent penalties were imposed, the FIA relies on the fact that the manifest and very serious danger that arose in the present case was not necessarily reflected in these other instances.
37. The FIA reminds the Court of the safety risks posed and argues that the penalty imposed should not be altered, or, in the event it would be altered, should be replaced by the imposition of a larger fine than the Stewards had jurisdiction to impose and/or by the deduction of constructor's points.

b) Findings of the Court

38. The Court is persuaded that the language of the Contested Decision indicates that the Stewards concluded and expressly found that the release was made “knowingly” and that the Appellant was “aware” of the need to prevent the car from leaving the pit box, and that these express finding constituted significant aggravating features of this case. The Court is further satisfied that it would be incorrect and artificial to read either of those two words in any way other than in their usual and normal meaning.
39. With respect to sanctions imposed in similar incidents, the Court accepts and emphasizes that each case must be looked at on its own merits and does not wish retrospectively to make judgments about other incidents. Nonetheless, it is the Court’s view that the penalty imposed in the present case appears to be significantly inconsistent with any penalty previously imposed (or not imposed) in other broadly comparable cases. After viewing the video evidence submitted to it, the Court does not accept the FIA’s submission that real potential danger did not arise in all or any of these other incidents.
40. The Court endorses the FIA’s view that it is always necessary to have regard to the potential dangers which arise from a situation, as recent tragic incidents have proved. However, in assessing the penalty which is appropriate in an individual case, great care must be taken not to equate potential danger with conscious wrong-doing.
41. The Court notes that it has taken account of the letters of support which the Appellant has received from Red Bull Racing, Vodafone McLaren Mercedes, Scuderia Ferrari Marlboro, and Toyota F1 Team and which it has submitted to the Court. These letters confirm that two of the above-mentioned teams lay claim to having followed improved procedures precisely in order to avoid the very serious safety risks which unquestionable arose in the present case. While the Court accepts the FIA’s submissions that the letters should not be regarded as wholly unsolicited testimonials of support, it considers that it would be wrong in the circumstances of this case to ignore the other teams’ views, which they have formally recorded in writing with the knowledge and intention that they should be submitted to the Court.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Declares the appeal admissible;**
- 2. Confirms the appeal and overturns Decision N°45 of Panel of Stewards taken on 26 July 2009 at the Grand Prix of Hungary;**
- 3. Issues a reprimand and imposes a fine of \$50,000 upon the Appellant, in accordance with Article 153 of the International Sporting Code;**
- 4. Orders the Defendant to pay the costs, in accordance with Article 24 of the ICA Rules of Procedure.**

Paris, 17 August 2009

The President