



NATIONAL COURT OF APPEAL

PUBLIC HEARING October 17th, 2018

(English translation)

The National Court of Appeal of the Belgian ASN pronounces the following judgment, in the case of:

Black Falcon

Concerning: Appeal against decision of the Stewards – disqualification from the race – non-compliance with technical regulations – Blancpain GT Series – Barcelona (30/09/2018)

The hearing was attended by:

On behalf of the appellant:

- Mr. Sean Paul Breslin (Team Principal)
- Mr. Marvin Wagner (General Manager and Technical Director)
- Mr. Renaud Dufour (Lead Engineer)
- Mr. Jamie Horner (counsel)
- Mr. Charles Raffin (counsel)

Judicial Reporter: Mr. Gérard Martin

Clerk of the Court: Mr. Robby Wuyts

I. Proceedings:

In report n° 08 from the technical delegate dated September 30th, 2018 at 20h15, the following facts were stated:

"Lors de la vérification d'après course, nous avons constaté la présence de Tape noir et autocollant au niveau des raccordements du système d'admission d'air de la voiture #4 châssis 132 du team Mercedes AMG Team Black Falcon (photo 1).

D'après la fiche d'homologation n°042 FIA ce tape n'y est pas représenté, donc n'a pas lieu de s'y trouver (Photo 2)."

Based upon aforesaid report and after hearing the team representative, the Stewards of the Meeting took decision n° 46 on September 30th, 2018 at 21h40 and disqualified car n° 4 because of a breach of articles 6 and 11 of the Blancpain GT Series 2018 Sporting Regulations.

An appeal was lodged in due time against this decision, on September 30th, 2018 at 22h00 and a right of appeal of 2.000,00€ was paid.

The Team Principal confirmed this appeal to the RACB by a letter dated October 1st, 2018.

By letter dated October 9th, 2018 all parties were summoned to the National Court of Appeal in the offices of the RACB located in Brussels.

Considering the evidence on file,

Considering the appellant's written submissions and attached evidence.

Considering the verbal defence of the appellants.

Considering the verbal opinion of the Judicial Reporter.

After the debates, held in English and French, were closed, the case was taken into deliberation.

II. Decision of the Court

a) Concerning the procedure:

An appeal was introduced in time and according to the rules, and it is therefore admissible.

The appellant was summoned by letter of October 9th, 2018 and appeared in front of this Court on October 17th, 2018 where the appeal was heard contradictorily.

b) Concerning the facts:

Appellant took part to the Blancpain GT Series race in Barcelona on September 30th, 2018.

After the race, the Technical Delegate noticed a self-adhesive tape at the level of the air-intake of car N° 4 chassis 132 of the team Mercedes AMG Team Black Falcon.

This is not in accordance with the homologation form.

These factual findings led to the decision N° 46 of the Stewards whereby the car was disqualified based upon a breach of articles 6 and 11 of the Blancpain GT Series 2018 Sporting Regulations.

The decision was motivated as follows:

"The Technical Delegate reports that there is black tape present on the chassis air inlet tract of car 4 which is not present on the FIA homologation #042 for this car. The Stewards have viewed photographic evidence of car 4 and compared this with the Engine compartment photograph on the Homologation Form #42. They have summoned and

heard from the competitor's representatives (Sebastian Wittrisch, Marvin Wagner and Tino Naundorf) who acknowledge the presence of the tape but state that it this has been normal practice for the team to present their cars in this condition since running Mercedes AMG cars and that no performance advantage is gained. The Stewards however consider that this represents a technical non-compliance and determine that this is a breach of Articles 6 and 11 of the Blancpain GT Series 2018 Sporting Regulations. Accordingly, they disqualify car 4 from the race."

c) Appeal Grievances

The appeal grievances exposed by the appellant can be summarised as the punishment being disproportionate to the breach.

d) Decision of the Court

Based upon the evidence available and in particular the two pictures attached to the report N° 2 of the Technical Delegate, it is clear that the air-intakes of the car in question were covered with a black tape which is not shown on the homologation form.

This fact was not denied during the hearing before the decision of the Stewards, nor in front of this Court.

The only specific defence was that this was done on a regular basis and that it does not provide any advantage of performance.

Article 1.3.3. of the FIA International Sporting Code is clear and not susceptible of interpretation.

When a non-compliance is established, it cannot be excused by claiming that no performance advantage was obtained.

The infringement is established in this case and it was duly confirmed as an infringement of articles 6 and 11 of the Blancpain GT Series 2018 Sporting Regulations.

In this Technical Delegate Alain Marquet acted correctly.

Together with the Judicial Reporter, the Court finds the punishment being disproportioned with the infringement.

Even though it is irrelevant whether or not the non-compliance resulted in any performance advantage, the Court is of the opinion that this consideration can influence the measure of penalty.

From the technical explanations provided at the hearing and from the examining the air-intakes presented at the hearing, it is unlikely that the fixing of the self-adhesive tape could have lead to any gain (of power).

It is not plausible and can be doubted.

It seems that the team wanted to address a very minor material issue without realising that this would lead to a non-compliance.

The Court follows the Judicial Reporter at the Court on his advice that the disqualification should be withdrawn and that a financial fine is more appropriate.

The members of the Court decide unanimously that a fine of 5.000,00€ has to be imposed.

**FOR THESE REASONS
THE COURT DECIDES,**

Contradictorily towards the appellant;

Declares the appeal admissible and partly grounded;

Cancels decision nr. 46 from the Stewards at 21h40 on September 30th, 2018 and rule anew on the facts.

States that the appellant was in breach of articles 6 and 11 from the Blancpain GT Series 2018 Sporting Regulations;

In application of article 58 of the Blancpain GT Series 2018 Sporting Regulations and article 11.9.3.f. of the FIA International Sporting Code, imposes a fine of 5.000€.

States that the right of appeal fee does not have to be returned to the appellant and condemns the appellant to the administrative costs of 500,00€

Thus judged by the Court of Appeal of the RACB Sport in Brussels by Mr. Benoît DECLERCK, chairman, Mr. Umberto STEFANI and Mr. André VANSTEYVOORT, judges, pronounced at the session of October 17th, 2018.

Signed,

Mr. Benoit DECLERCK,
Judge, Chairman,

Dhr. Umberto STEFANI,
Judge,

Dhr. André VANSTEYVOORT,
Judge