



**NATIONAL COURT OF APPEAL**

**PUBLIC HEARING JUNE 19th 2018**

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

**R- Motorsport / AF Racing AG**

**Concerning :** Appeal against decision n° 37 issued by the Stewards, disqualification from qualifying, non compliance with Sporting Regulations, SRO Blancpain GT Series Endurance 3 hour, Silverstone (20/5/2018)

The hearing was attended by :

On behalf of the appellant :

- ° Mr. Julian ROUSE, Team Manager ;
- ° Mr. Sam HIGNETT, Team Manager ;
- ° Mr. Richard WOODGATE, Data Engineer ;
- ° Mr. Jamie HORNER, counsel ;
- ° Mr. Charles RAFFIN, counsel ;

On behalf of the ASN : Mr. Xavier SCHENE, manager RACB Sport ;

Technical Witnesses :

- ° Mr. Claude SURMONT, Technical Director SRO Motorsport ;
- ° Mr. Alain MARQUET, Technical Delegate SRO Motorsport ;
- ° Mr. Matthias HOLLE, Technical Delegate Emotag ;

Judicial Reporter : Mr. Benoit DECLERCK

Court Clerk : Mr. Robby WUYTS

The proceedings have been pursued in the English language as not all parties present spoke French or Dutch. Everyone however spoke English or could be assisted in translation by the Clerk of the Court when necessary. Since English is an official language of the FIA, the judgment is also in English.

This Court of Appeal has read all written evidence and writings submitted to the Court, seen and checked the material evidence submitted and heard all testimonies, comments and oral submissions made by all persons attending the hearing.

This Court heard among others the pleadings of the Counsels for the appellant, the technical witnesses and the opinion of the Judicial Reporter.

The hearing was closed after no one requested the floor any longer.

After deliberation, the National Court of Appeal pronounces the following judgment.

**1. OBJECT OF THE PROCEEDINGS :**

Competitor R-Motorsport/ AF Racing AG appealed against the decision of the Stewards n° 37 to disqualify car N° 76 from all qualifying sessions during the 3 hour Endurance event at Silverstone (UK) on 20/5/2018 within the scope of the Blancpain GT Series – Blancpain Endurance Series.

The car could take the start of the race from the back of the grid. The decision was motivated as follows:

*'The Technical Delegate reports that there was no data in the Data-logger when checked at the end of Qualifying. Having summoned and heard the competitor's representative, and from the Technical Director of Blancpain GT Series, the Stewards determine this is a breach of Article 89 of the Blancpain GT Series 2018 Sporting Regulations which requires that the data logger must work throughout the Competition. In the circumstances, they consider the only appropriate penalty to be disqualification of the car from all qualifying sessions.'*

During the hearing, the procedure concerning the installation and functioning of the Data-logger during any event of the Blancpain GT Series, and for the event in question in particular, was fully explained by Mr. Matthias Hölle and Mr. Claude Surmont. An interactive debate took place, in which all parties attending to the hearing took part. The SD memory card used for data sampling in the Data-logger, as taken out of car N° 76 on 20/5/2018 at 13h32, and sealed with tape in the presence of Julian Rouse, Alain Marquet and Claude Surmont, was unsealed in the presence of all attending the hearing, by the Clerk of the Court.

## **2. GENERAL CONTEXT :**

The Blancpain GT Series 2018 is governed by the FIA International Sporting Code and its appendices (further : the FIA Code), Appendix J, The International Series General Prescriptions and the Blancpain GT Series 2018 Sporting Regulations (further : Sporting Regulations).

According to article 59 of the Sporting Regulations : '*Appeals shall be heard by the RACB.*'

The Blancpain GT Series 2018 is a competition that is run over the territory of several countries. The Belgian ASN, RACB, requested the registration of that Competition on the International Sporting Calendar. According to article 15.1.2 of the FIA Code, this National Court of Appeal is consequently competent to hear appeals against Steward's decisions taken at any event of said Series.

## **3. ADMISSABILITY OF THE APPEAL :**

Decision n° 37 of the Stewards was notified to Team Manager for the appellant Mr. Julian Rouse on 20/5/2018 at 13h03, and signed for receipt.

The written intention of Appeal and the proof of payment by internet banking of the appeal fee of € 2.000 were received by the Stewards from the Competitor on the same day at 13h45, i.e. within one hour as stipulated by art. 15.3.2 a of the FIA Code.

Appellant filed his appeal within 96 hours from the moment the Stewards were notified of the intention to appeal, as provided for in article 15.3.3 of the FIA Code.

The appellant's counsels thereafter filed a written submission as well as various exhibits, alle within the delays and forms requested by the procedure rules of the Belgian National Court of Appeal.

Under the rules set by the FIA Code and the Sporting Regulations, the procedure is consequently admissible.

## **4. FACTS :**

Appellant entered an Aston Martin V12 GT3 car as participant 76 (further : Car 76) in the abovementioned event of the Blancpain GT Series, which took place in Silverstone on 19-20/5/2018.

Appellant explained, and Technical witness Matthias Hölle confirmed, that a (new) Data-logger system was installed in Car 76 and checked by the SRO Technical Department prior to the free practice and pre-qualifying on 19/5/2018, as foreseen in article 89 of the Sporting Regulations. There were no remarks ; all parties agree that the system was operational and functioning on 19/5/2018.

On 20/5/2018, Car 76 participated in the 3 qualifying sessions and came in at pole position, which led to Car 76 being subject to scrutineering very shortly after the qualifying session. Matthias Hölle explained that Car 76 was in the pit garage n°1, close to the scrutineering garage. Matthias Hölle himself removed the SD memory card from the car and inserted it into his laptop computer, provided with a program which automatically downloads the data from the SD card into a specific software programme which contains all the data from the series. He could not retrieve data from the SD card, and re-entered the card in the system with the same result : no data on the card from the qualifying sessions, nor from the warm-up. He then proceeded to make a test-recording to rule out an internal error to the SD card. The SD-card was thereafter sealed and handed to the Stewards ; a new SD memory card was provided to the appellant by Mr. Hölle.

Since the Data logger is also used to ‘stream’ limited data via Swiss Timing for the live television feed, Mr. Hölle contacted the television crew and was given the – incorrect – information that there had been no data received from Car 76, which – incorrect - information Mr. Hölle passed on the Stewards.

At 11h58 on 25/5/2018 appellant was summoned tot report to the Stewards at 12h15, *‘alleged that there is no data in the data-logger at the end of Qualifying – an alleged Breach of Article 89 of the Blancpain GT Series 2018 Sporting Regulations.’*

At 12h52 the Stewards consequently took their decision n°. 37, excluding car 76 from all Qualifying sessions, for breach of article 89 of the Sporting Regulations.

The appeal was correctly filed at 13h45, as mentionned above. The appeal was not motivated.

The appeal led to the appellant competing in the race from pole position and winning the race. Post race, Car 76 was inspected and the data from the Data logger were accessible via the new SD memory card.

##### **5. AS TO THE MERITS OF THE APPEAL :**

First there needs to be addressed that in the written submissions and during the beginning of the hearing, appellant argued that if the Data-logger didn’t function at all, this was not the team’s responsibility. This assumption was clearly based on the – wrong - oral information obtained by Matthias Hölle from the Television crew and given during the Stewards hearing before Decision N°37, that no data from the Data-logger had gone through Swiss Timing for the live feed. Since the Decision N°. 37 of the Stewards is clearly based on the report from the Technical Delegate and mentions specifically that NO DATA was found in the Data-logger when checked at the end of qualifying, no attention needs to go to this faulty presumption. The Court will only respond to the arguments, where they are relative to a functional Data-logger, which did not have a functioning SD memory Card.

In appellant's written submissions and during the hearing, appellant sets forth the position that decision N° 37 should be waived in full; alternatively, the penalty set in the decision should be mitigated.

The appellant has set forth the following arguments, which the Court shall meet hereafter.

### 5.1 There was no breach of article 89 Sporting Regulations for which appellant could be liable.

Appellant has expressed its opinion that the Data-logger was working during the qualifying sessions and that the failure on the part of the SRO Technical Department to find/download data from the Data-logger can't constitute an infringement or breach for which appellant could be liable.

The lengthy interactive debate during the hearing on 19/6/2018 has set clear that :

- The Data-logger from Car 76 was functioning during the qualifying sessions, as the live television feed picked up data from the Data-logger via Swiss Timing ;
- The SD memory card that was used by appellant during free practice and qualifying on 19/5/2018 and that was retrieved from Car 76 during the qualifying sessions on 20/5/2018 is functional : the card does not give an 'error'. Old data are still readable, such as the data from the free practice and pre-qualifying on 19/5/2018 and the test session recorded by Matthias Hölle on 20/5/2018. These 'tests' were performed at the suggestion of the Judicial Reporter, who also asked that a test would be performed on the SD Card during the hearing. A random photograph was saved to the SD Card without problem.

To the Court, it is clear that these findings rule out the possibility of failure on the part of the SRO Technical Department to provide a working system throughout the competition and to find/download data from that system after the competition.

Also the appellant can't be followed in their reasoning that ANY failure of the Data-logger or SD card must lie with SRO, since they provide a technical system, for which only SRO could carry liability. The Court comes to this decision based on legal as well as factual reasons, which fortify each other :

#### LEGAL :

- Article 6 Sporting Regulations : '*Competitors must ensure that their cars comply with the conditions of eligibility and safety and with the technical regulations throughout the competition.*'
- Article 89 Sporting Regulations : '*A data-logger with additional sensors, approved by the Promoter, must be installed in all cars at all Competitions. It will be the responsibility of each team to obtain this data-logger and sensors, to install the data-logger, loom and antenna, and to have correct operating red and green check lights during the competition.*'

#### FACTUAL :

As provided in the regulations, the Data-logger has red, (yellow) and green checklights, which allow the teams to check the Data-logger system, and assume responsibility for the provided

system. The Data-logger system has 4 LED checklights, for 1/power, 2/logging, 3/gps and 4/the status of the SD card. Also, the SD card is kept in place via a slider that allows the SD card only 0,5 mm room, to prevent accidental slips during the race. Richard Woodgate, Data Engineer for the appellant, explains that the Data-logger in Car 76 is built in on the floor of the passenger's side of the car. He says that, during the race, the driver can't see whether the LED's are lit, let alone the colour in which they are lit. The Court can only conclude that the way that appellant installed the Data-logger in Car 76 leaves a margin of error, since the Data-logger can't be checked for proper functioning.

The Court does not agree with the '*a contrario*' referral to article 12.1.2 of the FIA Code, where appellant states that offences or infringements are not punishable, if there is no intent nor negligence on the part of a competitor. According to this Court, the article states that if not otherwise specified, an offence or infringement is punishable whether there is an intent to commit the infringement/offence or whether the infringement/offence is simply caused by negligence. Since any competitor is deemed to know all codes, negligence is a subsidiary word for every circumstance which does not involve intent. The Court reads this article to be a 'catch all' phrase. Any other interpretation of the article would go against the fairplay principles that rule motorsports.

Furthermore, the Court has heard the clear opinion of the SRO Technical Witnesses that they believe there was intent from the part of the appellant team, since they presume there was no SD memory card in the Data-logger during the qualifying sessions. When asked about a possible motive for the removal of the SD Card during the qualifying session, the Technical Witnesses only refer to the unusual fact that appellant took only three laps in the final qualifying session. During the interactive debate, the possibility of negligence is also discussed, more specifically the situation in which a member of the team – for some reason – forgets to re-insert the SD memory card before the qualifying sessions, and remarks the red LED light on the Data-logger too late, and tries to cover up this mistake by blaming a 'default' SD card.

The Court noted distinct contradictions in the Statements of Matthias Hölle and Richard Woodgate. The Court sees no reason why Mr. Hölle would not tell the truth. Mr. Woodgate on the other hand, came across very nervous and agitated.

The Technical Witnesses believe the SD memory card was slipped into the Data-logger right before post-qualifying scrutineering, which would only take two seconds, and for which there was ample time e.g. while pushing the car into the garage. The SRO Technical Witnesses were adamant that Pit Gantry camera footage could not be conclusive to rule out a two second manipulation to the Data-logger. The Court follows this reasoning concerning the camera footage.

These possible scenarios are only given in answer to the arguments made by the appellants. The Court is of the opinion that what really happened is not relevant to ascertain a breach of article 89.

More important is that the appellant is not able to explain ignoring the failsafe green/red LED light indicating a problem with/the absence of the SD memory card.

Therefore, the Court reaches the same conclusion as the Stewards, namely a breach of article 89 of the Sporting Regulations, which states clearly that is the responsibility of each team to obtain the Data-logger and sensors, to install the Data-logger, loom and antenna and to have correct operating red and green check lights during the Competition. The responsibility to have correct operating red and green check lights, also entails the responsibility to pay attention to these check lights. Since clearly no attention was given to the check lights during three consecutive qualifying sessions, appellant manifestly failed to meet the responsibility set forth in artikel 89.

Finally, the Court dismisses the final possibility offered by appellant, namely that the – functional – SD card only failed to operate correctly whilst on track, under variable conditions of high temperatures and vibration. The Technical Witnesses reject this possibility, referring to the functioning of the Data-logger which starts to record the moment the Car goes over 30 km/h. The argument brought forward by appellant can't explain why the SD card has NOT a single shred of data neither from warming-up, nor from either of the three qualifying sessions, since high temperature or vibrations are not likely to occur from the first moments of registry.

#### 5.2 Appellant should not have been sanctioned for any infringement/non-conformity or breach found

Appellant repeats the argument drawn from article 12.1.2 of the FIA Code, which has been addressed and dismissed under 5.1.

The Court adds that article 89 clearly states that the Data-logger is also a scrutineering device. The length and content of article 89 must have been a clear indication to appellant that focus to the failsafe led lights and access to the Data-logger during the Competition were important. The responsibility of appellant is clear, and warrants sanctioning.

#### 5.3 Any punishment/penalty should have been (and should be) de-minimis.

Appellant calls the punishment of disqualification from all qualifying sessions 'an entirely unjust and disproportionate penalty'.

The Courts agrees with appellant that the sanction given by the Stewards was too severe, but not for the reasons given by appellant. See further under Sanction.

## **6. AS TO THE SANCTION :**

This National Court of Appeal has consistently ruled that the duty to technically comply is absolute and a matter of objective and measurable facts, while the intention or the effect to the non-conformity is irrelevant. The obligation to comply with the relevant technical regulations does not depend upon a fault being established.

Although this matter is somewhat different to other technical non-conformities, the fact that the Data-logger in itself is a scrutineering device, warrants for teams to be very attentive to the well-functioning of the device, which appellant clearly was not.

The Court takes into consideration that the Data-logger can't influence the performance of the car. However, manipulating the Data-logger can hide unauthorized manipulation of the vehicle during the competition.

The Court also takes into consideration the possibility that the Stewards did suspect manipulation by the team in the presumption that the Data-logger was not functioning at all. Also, the Court notes that the lack of time between the qualifying sessions and the race at 15h00, both on 20/5/2018 excluded the possibility for lengthy debates before the Stewards, as there has been on the day of the hearing 19/6/2018 (approximately 3 hours).

The Court does not entirely agree that the punishment given by the Stewards was – given the circumstances mentioned in the previous paragraph – ‘entirely unjust and disproportionate’.

The Court refers appellant to the Section in the FIA Code concerning the Authority of the Stewards, and more in specific article 11.9.3 of the FIA Code, which states :

*Within the framework of their duties, they notably:*

*11.9.3.a shall decide what penalty to enforce in the event of a breach of the regulations ;*

*...*

*11.9.3.f may impose penalties or fines ;*

*11.9.3.g may pronounce Disqualifications ;*

Disqualification was thus ‘not entirely unjust’, but a mitigation of the penalty is in order, taking into account following attenuating circumstances :

- Eleborate questioning by the Court did not reveal any ill intent with the team management ;
- Although the team is ‘new’, various member of the team have lengthy experience in motorsports and did not previously appear before this Court ;

- The absence of a specific sanction neither in article 89 of the Sporting Regulations, nor in article 58 of the Sporting Regulations ;

The Court also refers to Article 15.5.1 of the FIA Code, which states that the National Court of Appeal shall not be empowered to order any Competition to be re-run.

Car 76 did have the fastest time the qualifying sessions, and won the race starting from pole position. It is clear to the Court that the chances of Car 76 winning the race from the back of the grid were slim to none. Upholding the penalty would have far reaching consequences.

The Court therefore is of the opinion that the imposition of a fine, as is provided in article 11.9.3.f of the FIA Code, is the more appropriate penalty.

#### **FOR THESE REASONS**

The National Court of Appeal,

- Rules the appeal admissible and partially grounded ;
- Upholds the decision of the Stewards where it finds a breach in article 89 of the Blancpain GT Series 2018 Sporting Regulations ;
- Revokes the decision to disqualify Car 76 from all qualifying sessions ;
- Imposes a € 5.000 fine ;
- Says that the Appeal fee will not be refunded to the Appellant, and condemns Appellant to pay the administrative costs, i.e. € 500 ;

Heard at the Public Hearing of June 19th 2018, the bench being composed of

Mrs. Arianne VANDECARTEELE

President

Mr. Andy LASURE

Judge

Mr. Umberto STEFANI

Judge