



## **NATIONAL COURT OF APPEAL**

### **PUBLIC HEARING OF 20 MAY 2015**

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

#### **GRT (GRASSER RACING TEAM)**

Concerning : **Appeal** against decision n°43 issued by the Stewards, exclusion from the race in connection with technical conformity, Blancpain GT Series 2015, Blancpain Endurance Series, Monza (10-12/04/2015)

The hearing was attended by :

On behalf of the appellant:

- Mr. Gottfried GRASSER, team principal;
- Mrs. Maria Francesca PORTINCASA, counsel;
- Mr. Stefano BRUSTIA, counsel.

On behalf of the ASN:

- Mr. Xavier SCHENE, manager RACB SPORT;
- Mr. Claude SURMONT, official scrutineer RACB, Technical delegate for the BLANCPAIN Series 2015, and member of the Sporting Committee for the Event;
- Mr. Fabrice GIOVANNINI, official scrutineer RACB, Chief Scrutineer for the BLANCPAIN Series 2015;
- Mr. Patrick COCQUYT, official scrutineer RACB

Judicial Reporter: Mr. Gérard MARTIN

Court Clerk: Mr. Robby WUYTS

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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 by the counsels for the appellant, and the opinion of the Judicial Reporter.

The hearing has been closed after no one requested the floor any more.

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

## **1. OBJECT OF PROCEEDINGS :**

Competitor GRASSER RACING TEAM appealed against the decision of the Stewards to exclude them from the race following technical non-conformity during the event at Monza (Italy) on 10-12 April 2015 within the scope of the Blancpain GT Series – Blancpain Endurance Series.

The criticized parts – i.e. a refuelling restrictor and a refuelling pipe – were exhibited during the whole hearing, and any person who so wished was free to look at them, touch them or take any measure with any measurement instrument they liked, as well as check the seals affixed on both exhibited parts.

## **2. GENERAL CONTEXT :**

The Blancpain GT Series 2015 is governed by the FIA International Sporting Code, Appendix J, the Circuit General Prescriptions, the International Series General Prescriptions and the Blancpain GT Series Sporting Regulations 2015.

According to art. 49 of the Sporting Regulations, “*Appeals will be national appeals.*”

The Blancpain GT Series 2015 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 art. 14.1.3 ISC, this National Court of Appeal is consequently competent to hear appeals against Stewards’ decisions taken at any event of said Series.

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

Decision n°43 of the Stewards was notified to Competitor GRASSER on 12/04/2015, at 20h00, and signed for receipt.

The written Intention of Appeal and the appeal fee of 2.000 € were received by the Stewards from the Competitor on the same day at 20h56, i.e. within one hour as stipulated by art. 14.3.2 ISC.

Appellant filed his appeal and several grounds of appeal within 96 hours from the moment the stewards were notified of the intention to appeal, as provided for in art. 14.3.3 ISC.

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

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

## **4. FACTS :**

Competitor GRASSER RACING TEAM engaged two cars in the Blancpain GT Series – Blancpain Endurance Series, including the Lamborghini Huracan GT3 n°19 (drivers PALMER, BABINI and MUL).

Appellant's car Lamborghini Huracan n°19 won the race on 12/04/2015 in Monza.

According to note n°06 of the technical department of SRO (promotor of the series), various scrutineering took place after the race, including the check of the fuel rig restrictors on the first 3 Pro cars.

During the scrutineering on the refuelling tower of the Appellant, the fuel restrictor and the fuel pipe were considered not conform by the scrutineers.

The Stewards consequently took their decision n°43, excluding car n°19 from the race, for breach of FIA art. 257 A, Appendix J 6.1.4.

Appellant claims that the decision of the Stewards was taken "*without any proper proceedings, violating applicable regulations as well as the Team's right to defend its position*".

Appellant essentially casts doubt about the origin of the parts which are presented to the Court by the scrutineers and which were allegedly taken from his refuelling tower.

Appellant objects that certain formal proceedings would not have been respected, to that extend that the origin and journey of these parts are not demonstrated.

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

- a. Appellant declares that "*he does not know*" whether the submitted parts (fuel restrictor and pipe) were taken from his refuelling tower or not. He however also declines to say that they are not, repeating he does not know and it is not proven these parts were used by him.

Appellant refused to take a close look at these parts and comment on their likely or possible origin. He also refused to measure them in any way.

This attitude does not strike the Court as being fair play. A close look at these parts could have lead Appellant to notice some detail or other allowing him to state for sure that these parts were his. Especially as it is common knowledge that most of these parts are very specific and adapted to only one type of car.

On the contrary, a close look at these parts could have allowed Appellant to discover details allowing him to tell the Court why they could not be his. But he merely claimed that it is not proven where they come from.

- o According to the last paragraph of art. 6.1.2 of Appendix J to the ISC, art. 257A, the fuel tank of the refuelling towers should be equipped with a flow restrictor with a maximum internal diameter of 33mm.

However, as an application of the Balance of performance (BOP) applicable to them, the refuelling towers for both Lamborghini Huracans of the Appellant should have contained a flow restrictor limited to a diameter no larger than 31mm (see BOP decision, Tracks A, dated 30/03/2015).

The Refuelling Rig Registration form for round 1 in Monza, dated Friday 10/04/2015 and signed by Scrutineer F. GIOVANNINI states that cars n° 19 and 63 resorted to a rig restrictor with  $\varnothing$  31. This however does not mean that any scrutineer had checked that diameter and found it conform. Quite on the contrary, that form clearly states “*déclaré par les teams*” (as declared by the teams). This needs to be read in the light of art. 5 and 6 of the Sporting Regulations: the competitor (now Appellant) was deemed to make an implicit statement of conformity.

That statement confirms that Appellant was very much aware of the limitation implied to his rig restrictor by his BOP: 31 mm instead of 33, and should have paid a special attention to it.

- b. The parts were publicly measured at the hearing and found non-conform. Especially, the flow diameter of the restrictor was measured at 32,7 mm and the length of the pipe at 222 cm.

The coupling part of the pipe is also found to bear the trademark “KRONTEC”, which is the mark stipulated for the filler coupling of the car according to its technical form.

Appellant was explicitly requested to check these measurements and mark, albeit without prejudice, but he declined to do so.

Appellant suggested several times that any unknown person could have accessed his fuel tower and replaced eligible parts by non-eligible parts. [1]

*Se non è vero è bene trovato...*

This Court is however not inclined to believe in fairy tales. That “suggestion” by Appellant implies that a malevolent third party would have manufactured a non-eligible flow restrictor and a non-eligible pipe, both fitting on his refuelling tower, and would have exchanged these parts after emptying the tank, while this is a lengthy operation and the fuel tower is in full sight from all directions, and all the while knowing that the fuel tower would be scrutineered after the race... This is (bad) science fiction.

- c. All those attending the hearing agreed that such non-conformity would give the drivers an advantage (estimated between 4 and 8 seconds per refuelling, according to different persons).

Appellant also admitted the principle of an advantage (though still claiming it is not proven that these were his parts).

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<sup>1</sup> Already stated in the first grounds of appeal received by the Stewards on 12/04/2015, 20h56: “*in the situation that there was not any seal on the restrictor over the whole period of the event, no one can proof that this restrictor was not changed by any other person outside of our team*”.

- d. Mr. SURMONT, official scrutineer RACB and Technical delegate for the BLANCPAIN Series 2015, testified of the following :
- Before the race, as a common practice, he informed the Stewards about the scrutineering which he planned to carry on after the race, which included the fuel rig restrictor of the first 3 Pro cars, whichever they would be. Car n°19 won the race and its fuel rig consequently was to be checked.
  - As he could not take care himself of all scrutineering at the same time, Mr. SURMONT appointed assistants to do parts of it. Mr Michele BOVINA was an official Italian scrutineer appointed by the CSAI (license 80187) in order to be one of his assistants during the Monza event. Mr. SURMONT appointed Mr. BOVINA in order to carry on the scrutineering on the fuel rig of Appellant.
  - Mr. BOVINA came back to him with the relevant parts (fuel restrictor and fuel pipe), telling him those were the parts he took from Appellant's refuelling tower.
  - Mr. SURMONT himself immediately sealed these parts.
  - The parts were thereafter carried to the Belgian ASN under supervision of Mr. SURMONT.
  - Mr. SURMONT confirmed at the hearing that the seals on these parts were those affixed by him in Monza.

The Court could check that these seals were intact and of the type usually used under such circumstances.

Sticking to its defence tactics, the Appellant refused to look at the seals or comment on them.

- e. This Court is unanimously satisfied – well beyond any reasonable doubt – that the parts presented indeed belonged to the refuelling tower of the Appellant.

They have been at all time in the custody of race officials who confirm so to the Court.

Appellant states that the same is not demonstrated. Implicitly, such attitude uselessly casts doubts on the reliability of officials without any clue to justify it.

- f. Appellant states that his “vehicles” were scrutineered pre-race and found in compliance. This is literally correct but by doing so Appellant suggests that the fuel tower at stake was also scrutineered, which was *not* the case.

There was consequently not reason for the fuel restrictor or fuel pipe to be sealed before the race.

It might be worth pointed at that if the fuel tower had been scrutineered before the race and found non-conform, Appellant's cars would not have been authorized to take part to it, with a similar result as with exclusion after the race.

- g. Appellant claims that he was not duly summoned by the Stewards as they required their representative to report to the Stewards "immediately" but without stating why.

No regulation provides that the Stewards must explain beforehand why they summon a team (from a practical point of view, they mostly would not have time to detail such reasons).

The court points out that Appellant should not merely claim that some formalities were not respected but he should also explain how that concretely influenced the decision of either the Stewards or possibly this Court, which he fails to do.

- h. Appellant claims that art. 70 of the GT3 Series Sporting Regulation was not respected as the scrutineering was not carried out by duly appointed officials.

As written here above, this scrutineering was carried out by CSAI official scrutineer BOVINA, assistant to head scrutineer of the series SURMONT and empowered by him.

- i. Appellant also claims that art. 67 of the GT3 Series Sporting Regulation was not respected as no official representative of the competitor attended the scrutineering of the parts of the fuel tower.

First of all, the relevant part of art. 67 (2<sup>rd</sup> par. before last) relates to scrutineering of (1) classified cars, and (2) in the Parc Fermé. This case submitted to the Court relates to the scrutineering of a fuel tower, outside of the Parc Fermé. It is therefore doubtful that said art. 67 applies.

Moreover, the *ratio legis* (regulatory purpose) of said article must be considered. Certain situations cannot be evidenced otherwise than by looking at them (and possibly commenting them). Such is not the case when the eligibility issue relates to specific parts and that these parts have been withdrawn, sealed and preserved. In such a case, these parts can be examined at a later stage, including by any representative of the competitor (provided he does not refuse to do so !).

At any rate, appellant does not explain which prejudice he would suffered by checking the parts later rather than at the race track. As already considered, the Court is satisfied that these are the parts taken away at the race track.

- j. It should be stressed that the Court knows of no structured FIA regulation in connection with the whole process of dismantling, sealing and preserving parts.

These processes are actually dealt with by the scrutineers to the best of their ability but without specific rules, a breach of which consequently cannot be called upon.

There seems to exist only fractional regulations (e.g. art. 63 of the Blancpain Sporting rules, describing the technical sealing of an engine but without reference to any procedure.

- k. Appellant acknowledged at the hearing that “*someone from his team*” attended the scrutineering of the fuel tower, but said it could be anyone (implying it was not a “responsible”, with the consequence that the scrutineering was not properly carried out).

If Appellant knows that such person was present, he consequently must know *who* that “someone” was and he should have informed the Court, instead of stating (again) that he does not know who that person was (which can hardly be true) or that “maybe he was just a floor sweeper” (which is unlikely).

Whoever that person was, he handed tools to assist in the disassembly of the fuel tower. [2]

- o According to the last paragraph of art. 6.1.4 of Appendix J to the ISC, art. 257A, the refuelling pipe should have a minimum length of 250cm (flexible part only).

This minimum length was not affected by the BOP.

As a consequence of it all, the appeal is ill grounded.

## **6. ON 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 of the non-conformity is irrelevant. The obligation to comply with the relevant technical regulations consequently does not depend upon a fault being established.

This is a matter of principle based upon art. 1.3.3 ISC (“*If an Automobile is found not to comply with the applicable technical regulations, it shall be no defence to claim that no performance advantage was obtained*”).

The standard sanction in case of technical non-conformity is exclusion from the race, as usually applied by the Stewards and the Sport Courts.

Only once did this National Court of Appeal apply a sanction milder than exclusion in a case of technical non-conformity, but it was in connection with *very specific circumstances* (very minor non-conformity, no advantage, witnesses from other competitors in connection with a common practice, withdrawal of the protest by the plaintiff) [Belgian National Court of Appeal, case Gustavo YACAMAN-TEC AUTO, 24/06/2008].

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<sup>2</sup> Scrutineers do not carry any tool. Most teams use different and specific tools anyway. Moreover, dissembling a refuelling tower is not easily or quickly done (and the fuel tank first needs to be completely emptied).

The International Court of Appeal of the FIA recently took a similar stand [ICA, case G-Drive Racing, 10/09/2013] <sup>[3]</sup>.

The responsibility of the competitors to ensure technical conformity of their car is absolute and objective. This however does not mean the responsibility is without any limits, as there could potentially occur a *very rare and exceptional situation*, where *highly exceptional circumstances* may be a reason for application of a less severe sanction than exclusion (not in that case, so that exclusion was confirmed).

This Court does not see any exceptional circumstance at all in this case, and it consequently sees no reason to deviate from the standard sanction, i.e. exclusion from the race.

It is moreover indisputable that the non-conformity gave a measurable advantage to the competitor (shorter refuelling stops, with positive consequences in time and possibly also while reinserting the track).

The Stewards decision should consequently be confirmed.

The Court has ruled that it is satisfied that the two parts presently under the custody of the RACB belong to Appellant (even if he “does not know” it). The Court sees no ground for not giving these parts back to Appellant once this case has been finally judged.

## **7. FINAL COMMENTS**

Though the following comments were not decisive in the Court opinion as it is a guess, it is likely that Appellant did not intend to “cheat”.

Due to the large discrepancy between the expected diameter (31mm due to BOP) and the diameter actually measured (32,7mm, i.e. a safe diameter in comparison to the standard 33mm), it is conceivable that someone forgot to replace the standard rig restrictor by the adapted restrictor.

Even more so as the beginning of the whole event in Monza was rather hectic, due to travel and other difficulties.

The case being (which is obviously not known), it would have been a mere human failure, as they happen every day, and it would have been sport and fair play to acknowledge it.

The Court finally regrets the non-cooperative attitude adopted by Appellant (even though it was probably his best “right”).

A Sport Court is not a criminal court. It is expected from all participants in the sport that they respect fair-play towards one another and also towards the sport jurisdictions, regardless of possible consequence. It might be questioned whether a procedural attitude pursuing one’s strict interest, putting questions marks while not

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<sup>3</sup> The technical non-conformity related to a fuel tank with a capacity of 75,4 liters while it should not have been more than 75,0 liters.

contributing to the truth is truly compatible with the fair-play which should be the basis of sport.

**FOR THESE REASONS,**

The National Court of Appeal,

- Rules the appeal admissible but ill grounded;
- Confirms the appealed decision of the Stewards;
- Says that the parts presented to the Court will remain in the custody of the ASN RACB but that they may be given away to the Appellant after this judgement is final; if they have not been taken away by Appellant one month after this judgment is final, the RACB may dispose of them;
- Says that the Appeal fee will not be refunded to the Appellant, and condemns the Appellant to pay the administrative costs, i.e. 600 €.

Heard at the public hearing of 20 May 2015, the bench being composed of

Jean-Pierre MIGEAL  
President

Frédéric FRENAY  
Judge

Philippe NORMAND  
Judge