INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Optimum Motorsport

against

Decision No. 2 dated 4 October 2023 of the National Court of Appeal and Discipline of the Spanish Automobile Federation (RFEdA) quashing Decision No. 27 dated 10 September 2023 of the Stewards of the event held at the "Red Bull Ring" circuit in Austria counting towards the 2023 International GT Open International Championship

Case ICA-2023-03

Hearing of 9 January 2024

Decision of 10 and 29 January 2024[1]

[1] The operative part of this decision has been notified to the parties on 10 January 2024 and the full decision (with grounds) on 29 January 2024.

The FIA INTERNATIONAL COURT OF APPEAL ("the Court"), which comprised Mr Gérard Martin (Belgium), who was designated President, Mr Laurent Nuss (France), Mr Robert Pergl (Czech Republic) and Mr Walter Sofronoff (Australia), held a hearing at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris, on Tuesday, 9 January 2024.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Optimum Motorsport, Motorsport UK, the RFEdA and the FIA.

The following persons attended the hearing:

On behalf of the Appellant, Optimum Motorsport:
Ms Sarah Franklin, Solicitor
Mr Jamie Wall, Team Manager

On behalf of the RFEdA:
Mr Andrés Fernández Cepeda, Deputy Secretary General

On behalf of the FIA:
Ms Alejandra Salmerón García, Head of Regulatory
Ms Prisca Mauriello, Senior Legal Counsel

On behalf of Motorsport UK:
Mr Jamie Champkin, Advocate, Regulatory Counsel and Disciplinary Officer
Ms Sian Woolley, Assistant Regulatory Counsel

On behalf of Team Motopark:
Mr Thomas Fleischer, Attorney at law

Also attending the hearing:
Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Ms Sandrine Gomez (Administrator of the FIA Courts)

The Parties filed written submissions and, at the hearing on 9 January 2024, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation in French and English. None of the Parties raised any objections, in relation either to the composition of the Court or to the manner in which the proceedings and the hearing were conducted, notably concerning the respect of the adversarial principle or the simultaneous interpretation.

I. REMINDER OF THE FACTS

1. The Safety Car was deployed three times during Race 2 of the Austrian round ("the Race") held at the Red Bull Ring on 10 September 2023 within the framework of the 2023 International GT Open ("the Championship").

2. One of the competitors, Team Motopark ("the Protester"), lodged a protest before the Stewards based on the fact that the restart after the second Safety Car period took place in the wrong order. According to the Protester, this situation penalised the cars that were placed between the Safety Car and the leader of the Race.

3. On 10 September 2023, the Stewards, after having heard the Protester, the Race Director and the Chief Timekeeper, issued Decision No. 27 ("the Stewards' Decision") whereby the Protester's request either to amend the classification or to cancel the results of the Race was rejected.

4. The Protester notified its intention to appeal the Stewards' Decision and then confirmed its appeal before the National Court of Appeal of the RFEdA ("the NCA"), i.e. the *Comité de Apelación y Disciplina*.

5. The NCA heard the Protester on 4 October 2023 and rendered its Decision No. 2 by which it cancelled the Stewards' Decision as well as the Race, and therefore its classification.

6. The NCA Decision was notified to the teams and competitors of the Race by means of a Notice of the Stewards.

II. PROCEDURE BEFORE THE COURT

7. The Appellant filed its Notification of Appeal on 26 October 2023 against the NCA Decision.

8. On that same day, another team (Torcello S.r.l) appealed the same NCA Decision. Ultimately, that team decided to submit a request for withdrawal of its appeal on 4 November 2023, which was accepted by the President of the Hearing on 8 November 2023.

9. The Appellant notified its Grounds for Appeal on 20 November 2023 (English version) and 21 November 2023 (French version), whereas Motorsport UK, the Appellant's ASN, notified its Written Observations in both languages on 20 November 2023.

10. On 19 December 2023, the RFEdA filed its Grounds in Response and the FIA filed its Written Observations.

11. On 28 December 2023, Team Motopark submitted a request to be authorised to support the RFEdA's position at the hearing.

12. Following that request, the President of the Hearing issued Decision No. 1 and decided that:

"*subject, by 3rd January 2024 at 5:00 p.m., to informing the ASN to which it belongs that it intends to take part in the hearing on 9 January 2024 as a third party (and to send a proof that this has been done to the Secretary General of the ICA), to paying the third party's deposit (€6,000) into the ICA's account and to informing the Secretary General of the ICA of the identity and quality of the persons who will attend the hearing on its behalf: Team Motopark will be authorized to take part in the hearing on 9 January 2024 (9:30 a.m.) in Paris, at the FIA headquarters (8, place de la Concorde) and to present its oral observations after those of the RFEdA, without being able to refer to evidence other than that contained in the other parties' written submissions;*

Team Motopark will not be entitled to submit a written brief;

Team Motopark will receive the documents in the case file;

the other parties will be informed of this procedural decision."

13. On 3 January 2024, Team Motopark fulfilled the conditions set out in Decision No. 1 of the President of the Hearing and was therefore definitively authorised to attend the hearing on 9 January 2024.

III. REQUESTS OF THE PARTIES

14. In essence, the Appellant asks the Court in its Notification of Appeal to set aside the NCA Decision and to reinstate the results of the Race.

15. In its Grounds in Response, the RFEdA asks the Court to reject the appeal and confirm the NCA Decision.

IV. ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

16. The Court notes that the Appellant brought its appeal in accordance with the provisions of the 2023 Judicial and Disciplinary Rules of the FIA (the "JDR").

17. The Court also considers that it has jurisdiction to hear this appeal.

18. Therefore, the Court deems the appeal admissible, which is undisputed.

V. ON THE PROCEDURAL SUBMISSIONS

19. The Appellant claims that it could not exercise its right to be heard before the Stewards and the NCA and submits that this should lead the Court to declare the NCA Decision null and void.

20. As the Court can review the case *de novo* in accordance with Article 10.11.1 of the JDR, any alleged violation of the right to be heard before a previous authority is cured by the devolutive effect of the appeal before the Court, save for those that have such an impact on the case that they can simply not be cured by the devolutive effect of the appeal [see ICA-2016-05 (*Yasir Seaidan*) and ICA-2020-06 (*Furon-Castelain*)], which is not the case here. As a consequence, any submission by the Appellant regarding any "procedural irregularities" is rejected by the Court.

VI. ON THE SUBSTANCE

a) Arguments of the Parties

21. The Appellant puts forward in essence the following grounds in support of the appeal:

    (i) The Appellant claims first in its Grounds for Appeal that the NCA acted outside of its power by cancelling the Race. The Appellant refers to Article 17 of the 2023 International GT Open Sporting Regulations ("the Regulations") and to Article 23.1 of the PCCCTCE (Prescripciones Communes de los Campeonatos, Copas, Trofeos y Challenges de España-Common regulations for Spanish championships, cups, trophies and challenges) of the RFEdA which both refer to the International Sporting Code ("the Code"). The Appellant further refers to Article 1.4.2 of the Code which provides that "*each ASN shall be bound by the Code*". Based on Article 15.6.1 of the Code, the Appellant submits that the Code does not give an ASN the ability to cancel a race entirely. Stressing that no such clause exists in the Regulations, the Appellant then refers to Article 2.1.6 of the Code which allows the postponement or cancellation of a competition only in case of *Force Majeure* or for safety reasons. In reference to the NCA's regulatory arguments to support

its Decision, the Appellant explains further that Article 11.9.3r of the Code only grants the Stewards the power to stop a race, not to cancel a result after the race has been run. On that point, the Appellant contends that the Regulations provide that when a race is stopped, results are still given and calculated on the basis of the percentage of the race effectively run.

(ii) According to the Appellant, the NCA erred with respect to the interpretation of the applicable regulations when it comes to the Race Directors' powers with respect to the use of the Safety Car during the Race. The Appellant claims, based on Article 13.4 of the Regulations and Article 11.10.3 of the Code, that the Race Director had overriding authority or "full power" when it came to the use of the Safety Car, regardless of whether a mistake was made or not. According to the Appellant, the Race Director's overriding authority regarding the use of the Safety Car means that no one should be able to question a decision made by the Race Director in this respect. The Appellant contends further that Article 13.4 of the Regulations takes precedence over any other article of the Regulations which describes the way a race should be run during the use of the Safety Car. The Appellant claims that the Race Director acted in good faith and that the fact that the pit stop window had started when the Safety Car was used for the second time only added complexity to an already difficult situation, so that nothing can be brought against the Race Director. The Appellant also puts forward that the Protester's car was in 7th position and then in 17th position when the Safety Car was brought out, followed by 13th position when the Race resumed, finishing 11th, meaning that the negative impact on the Protester was minimal. In addition, the Appellant stresses that no other team or competitor protested the result.

(iii) The Appellant submits that "general matters of fairness" were ignored by the NCA which should lead the Court to set aside the NCA Decision. The Appellant refers to Article 7.1 of the Regulations which provides that the Championship shall include 13 races to be held in 7 events and stresses that there is no article in the Regulations that provides for the cancellation of a race. According to the Appellant, cancelling one race would not only breach the articles of the Code and of the Regulations mentioned under (i) above, but would also lead to the invalidation of the whole championship. The Appellant further claims that, according to Article 10 of the Regulations, no driver or team could use the results of Race 2 as a "drop score". Considering that, as mentioned by the Race Director, it is impossible to know whether anyone gained an advantage from the Safety Car, the Appellant contends that it is the NCA Decision that causes unfairness in violation of Article 1.1.1 of the Code, noting that the cancellation of the Race also has an impact on subsequent races given the system of handicap set out by the Regulations.

22. The RFEdA contends in its Grounds in Response, in essence, the following:

(i) The Race Director made a mistake causing "irreparable damage" to nine cars, including cars Nos 17 and 65 of the Protester, which allegedly lost one and a half

minutes against the leader as the Safety Car positioned itself not in front of the leader, car No. 777, but in front of car No. 25.

(ii) The NCA did not cancel the Race but annulled its results. According to the RFEdA, Articles 2.1.6 and 15.6.1 of the Code are therefore not applicable. The NCA also did not order the Race to be re-run as this was prohibited by Article 15.6.1 of the Code. Ultimately, it could not increase or mitigate a penalty as the Stewards had not issued one.

(iii) The NCA Decision is based on Articles 11.9.3.j and 11.9.3r of the Code which grant the Stewards the power to amend the results of a race and to temporarily or permanently stop a competition. On this point, the RFEdA refers to ICA Decision No. 3/2006 and mentions that the chairman of the Stewards confirmed in writing that it was impossible to establish an alternative classification.

(iv) As to the "overriding authority" of the Race Director according to Article 13.4 of the Regulations and Article 11.10.3 of the Code, the RFEdA submits that the purpose of these articles is only to clarify the hierarchy among officials; they do not imply that they can apply the Regulations at their sole discretion or arbitrarily. According to the RFEdA, the Race Director must comply with the Regulations or the Code just like any other person taking part in a competition, as provided under Article 1.3 of the Code, in particular as the Race Director is an Official within the meaning of Article 11.1.1.b in relation to Article 2.3 of Appendix V of the Code.

23. Motorsport UK puts forward in its Written Observations, in essence, the following:

(i) The Stewards, and by way of consequence, the NCA, had no power to annul the result of the Race be it on the basis of the Code or the Regulations.

(ii) The Protester was the only competitor to protest the results of the Race. All other competitors accepted the result.

24. The FIA puts forward in its Written Observations, in essence, the following:

(i) The Code applies to the Championship, superseding any other applicable rules or regulations.

(ii) According to Article 2.1.6.a of the Code, a competition can be cancelled or postponed only in a case of *Force Majeure* or for safety reasons and the decision can only be made by the Organiser or the FIA. According to the FIA, the Stewards do not have the power to make such a decision, in particular on the basis of Article 11.9 of the Code.

(iii) According to the FIA, Articles 11.9.2.a and 11.9.3.j of the Code must be interpreted within the framework of Article 11.9 of the Code, meaning that the Stewards cannot annul the results of a competition. Their prerogative to amend the classification under Article 11.9.3.j of the Code should be narrowly construed and the FIA contends that it does not extend to the right to annul the results.

(iv) The FIA disagrees with the decision taken by the ICA 17 years ago and quoted in the NCA Decision. The FIA submits that the interpretation of the Code made at that time by the ICA went beyond the powers granted to the Stewards. Only the ICA would have such authority.

(v) The ICA has indeed the express ability to annul or amend the results of a competition on the basis of Articles 10.10.1 and 10.10.2 of the JDR but, according to the FIA, this right should be restricted to very specific circumstances, notably within the framework of emergency proceedings, and provided that it does not impact the results of the other competitions of the championship at stake.

(vi) As to the National Courts of Appeal, the FIA contends that to ensure a consistent reading of the Code, it must follow that the National Courts of Appeal do not have authority to annul the results of a competition, at least, as far as international competitions are concerned, as in the present case.

b) Applicable Regulations

25. The applicable rules are the FIA Regulations in force at the time when the Race took place, namely on 10 September 2023.

26. As a result, the applicable regulations relevant to the merits of the present case are the 2023 editions of the Code and the Regulations of the Championship.

27. As to the Procedural Rules, and since the Notification of Appeal was filed on 26 October 2023, the applicable regulations are the 2023 edition of the JDR. As determined under Article 14.4 of the JDR, French law applies to the present proceedings.

28. Neither the Appellant nor the RFEdA dispute the above.

c) Conclusions of the Court

29. At the request of both Parties and for sporting calendar reasons, the operative part of the present decision was notified beforehand to the Parties on 10 January 2024.

30. Having carefully examined the written submissions made by the Appellant and the FIA, and the submissions and evidence addressed at the hearing, the Court rules as follows.

a. <u>On the question of the competence of the Stewards and/or the NCA to cancel the Race or annul the results of the Race</u>

31. According to the argumentation of the NCA in the Decision, the RFEdA seems to make a distinction between annulling the results of the Race and cancelling the Race, claiming that annulling the results corresponds to amending the classification of the Race, which the Stewards are clearly allowed to do.

32. The Court notes first that the NCA clearly states in its Decision that it decided to "*CANCEL Race 2 of the Race and, therefore, its classification for all purposes.*"

33. Based on the wording of the Decision, the Court finds that the NCA did indeed cancel the Race and considered the annulment of the classification only as a pure consequence of this decision to cancel the Race. The Court stresses further that cancelling or annulling all the results of the Race is clearly equivalent to cancelling the Race as such, and that such a decision cannot be compared with amending the classification of a race following, for instance, a time penalty imposed on a competitor or the correction of a mistake in the classification by the Stewards *ex officio* or following a protest filed by a competitor.

34. The NCA was thus wrong to refer to Articles 11.9.3.j and 11.9.3.r of the Code which respectively refer to "*amend the classification*" and "*the decision to stop temporarily or permanently, all or part of a Competition*", in order to support its decision to cancel the Race.

35. The distinction made by the RFEdA and the reasoning of the NCA made in its Decision must thus be rejected and the Court shall now determine whether the Stewards or the Court had the specific power to cancel the Race on the basis of the applicable regulations.

36. Article 1.3 of the Regulations states that the following rules shall apply to the Championship, in the following order of priority:

(1) The International Sporting Code and its appendices;
(2) The International GT Open Sporting and Technical Regulations;
(3) The cup, trophy or mono-brand challenge regulations;
(4) The Supplementary Regulations of each event.

37. Article 2.1.6.a of the Code reads as follows:

"*a Competition may only be postponed or cancelled for reasons of Force Majeure or safety, or if provision for doing so has been made in the applicable regulations.*"

38. Irrespective of the question of who has the authority to cancel a competition in accordance with Article 2.1.6.a in case of *Force Majeure* or safety issues, the Court notes that it is undisputed that the present proceedings do not deal with such cases.

39. The Court thus finds that the Stewards and/or the NCA could cancel the Race and the classification only on the basis of a specific provision in the applicable regulations, which granted them such power.

40. In this respect, the Court notes that the NCA in its Decision, and the RFEdA in its written submissions, refer first to Articles 11.9.3.j and 11.9.3.r of the Code, which are not a valid legal basis, as found above by the Court.

41. The NCA and the RFEdA further refer to a decision issued on 2 April 2023 by the College of Sports Commissioners of the GT-CER which itself refers to a decision issued by the ICA in 2006.

42. The Court notes that those decisions do not refer to any specific regulation that would grant the Stewards or the NCA the power to cancel a race and, consequently, a whole classification.

43. The Court also notes that neither the NCA in its Decision, nor the RFEdA in its written submissions, refer to any further provision that would grant such power to the Stewards or the NCA. After having thoroughly reviewed the regulations applicable to the present case, the Court did not itself find any such provision.

44. Based on all the above, the Court decides therefore that neither the Stewards nor the NCA had the power to cancel the Race.

b. <u>On the question of the competence of the ICA to cancel the Race or annul the results of the Race</u>

45. Articles 10.11.1 and 10.11.2 of the JDR state that "*the ICA has all the decision-making powers of the authority that took the contested decision* […] *In addition, the ICA may admit or dismiss the appeal, in whole or in part, and may decide to confirm, waive, mitigate or increase the penalty inflicted* […] ***it may annul or amend the results of a competition****, but it is not empowered to order any competition to be re-run.*" (emphasis added)

46. Based on those articles, the Court concludes that it has the power to annul or amend the results of a Competition, which is actually undisputed.

47. As the Court has such power and as it may review the case *de novo*, it must then go into the merits of the case, given the devolutive effect of the appeal. This is the direct consequence of the quite peculiar situation given by the above quoted articles of the JDR, where the ICA, as an internal court of third instance, has more power than the previous instances, namely the Stewards and the NCA.

c. <u>On the merits of the case</u>

48. Before analysing whether there are legal grounds to call for the annulment or amendment of the results of the Race or if those should be reinstated, the Court has to determine the exact scope of its particular power to annul or amend the results of a competition.

49. While confirming that the Court can annul or amend the results of the Race, the FIA puts forward that "*this right should be restricted to very specific circumstances, notably within the framework of emergency proceedings, and provided that it does not impact the results of the other competitions of the championship at stake.*"

50. When asked on which grounds the FIA based this statement, its representatives at the hearing acknowledged that they could not refer to any particular source of interpretation of those specific articles of the JDR.

51. Having taken note of the FIA's position, the Court then turned to the ICA case of 2006 quoted by the NCA, i.e. ICA Decision No. 3/2006 dated 9 November 2006.

52. In essence, the ICA in its 2006 decision decided to confirm the decision of the Stewards as it found that:

"[…] *it is legitimate to ask what the Stewards of the Meeting could do if, in circumstances where such confusion reigns, they could not annul results of an event when all possibilities of a fair classification were exhausted so as to avoid any unfair treatment of anyone* […]."

53. The Court notes therefore that the ICA grounded its 2006 decision on the principle of fairness in order "*to avoid any unfair treatment of* ***anyone***" (emphasis added).

54. In the present case, it is not disputed that the Race Director did not apply Article 37.6 of the Regulations and Articles 2.10.12 and 2.10.13 of the Code, even though it was her responsibility to use the Safety Car properly as provided under Article 11.10.3.e of the Code.

55. On this point, the Court rejects the Appellant's submissions according to which the Race Director did not commit a breach of the Regulations and the Code, but simply used her "*overriding authority*" to apply the rules on the Safety Car according to the circumstances of the Race. The Court finds that independently from all circumstances, the Regulations and the Code must be fully applied not only by the competitors, but also by the Race Officials. In other words, the "overriding authority" of the Race Director when it comes to the management of the Safety Car is not a *carte blanche* which would allow her to amend the rules when she deems it necessary.

56. Furthermore, the Court notes that, in the present case, the Race Director admitted that she had been confused and had not realised that the Safety Car had not been used until

the leader was behind it. It is therefore obvious that the Race Director took her decision by mistake and not on purpose, based on whatever specific circumstances.

57. The Court thus finds that the Race Director did commit a breach of the regulations and that given the devolutive effect of the appeal and the powers conferred to the Court under Articles 10.10.1 and 10.10.2 of the JDR, such breach could lead to the annulment or amendment of the classification, should the Court find such a consequence appropriate.

58. The Court decides however that, in the present case, the classification must not be annulled or amended.

59. The Court indeed finds that this power of the ICA must be used under very restrictive circumstances, given its specificity within the judicial framework of the FIA and its impact on a competition. In that context, the principle of "sporting fairness" anchored under Article 1.1.1 of the Code, which describes this principle as "*fundamental*", must be central in the decision of the Court. As a consequence, *the fundamental principle of sporting fairness* must be considered as one of the cornerstones of any action taken by the FIA, its internal organs or any legal entity subject to the Code.

60. As mentioned above, it is this fundamental principle that the ICA applied in 2006 when it took its decision.

61. In the present proceedings, it is undisputed that the annulment or amendment of the classification does not only have an impact on the Race as such, but also on the next races, as the classification of the Race impacted the competitors who were imposed extra handicap time penalties for the next race, which impacted the result of the next race and therefore the extra handicap time penalties for the race after the next race, and so forth.

62. For instance, the Appellant was imposed a five-second time penalty for the next race in Monza. Based on the exhibits provided in the present proceedings, it appears that if this penalty had not been imposed on the Appellant, this would have arguably given the Appellant two extra points in the Championship and the Championship title.

63. The Court further notes that if it is true that 9 cars were impacted by the incorrect use of the second Safety Car during the Race, it remains that other cars would also be impacted if the classification was simply annulled, although there is no way of knowing if and how much they benefited from the misuse of the second Safety Car.

64. The Court refers also to the statement by the Race Director before the NCA which reads as follows:

"*The fact the Race finished with the Safety Car* [i.e. the third Safety Car]*, meant that all the cars were regrouped so it is impossible to know whether anyone was advantaged or disadvantaged by the previous Safety Car.*"

65. The Court concludes that if it uses its specific power to annul or amend the classification, following the breach committed by the Race Director, it would try and rectify an unfair situation by creating another unfair situation.

66. Coming back to the 2006 case and noting that it is not bound by precedents (see for example ICA-2022-03 dated 4 July 2022, *Koski Motorsport* (§ 65) or ICA 03/2010 dated 30 November 2010, *Prospeed Competition* (§ 23)), the ICA stresses that in the 2006 decision, the cancellation of the race was decided in consideration of the principle of fairness in order "*to avoid any unfair treatment **of anyone**" (emphasis added).*

67. On the basis of the balance of interests, the Court thus decides that it must reinstate the classification of the Race and must not use its specific power to annul or amend the classification.

68. Given the above, the Court quashes the NCA Decision and upholds the Decision of the Stewards.

VII. COSTS

69. Considering the origins and the outcome of the proceedings, the Court leaves it the RFEdA and to Team Motopark to respectively bear 75% and 25% of the costs, in accordance with Article 11.2 of the JDR. The deposit paid to the Court shall be fully reimbursed to the Appellant.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

1. **Declares the appeal admissible;**

2. **Quashes Decision No. 2 dated 4 October 2023 of the National Court of Appeal and Discipline of the Spanish Automobile Federation (RFEdA) quashing Decision No. 27 dated 10 September 2023 of the Stewards of the event held at the "Red Bull Ring" circuit in Austria counting towards the 2023 International GT Open International Championship;**

3. **Upholds Decision No. 27 dated 10 September 2023 of the Stewards of the event held at the "Red Bull Ring" Circuit in Austria counting towards the 2023 International GT Open International Championship;**

4. **Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**

5. **Leaves it to the RFEdA and to Team Motopark to respectively bear 75% and 25% of the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**

6. **Orders the reimbursement in full to Optimum Motorsport of the appeal deposit paid to the Court;**

7. **Rejects all other and further conclusions.**

Paris, 10 and 29 January 2024

The President

Gérard Martin