



MOTORSPORT NEW ZEALAND (INC)

DECISION OF THE JUDICIAL COMMITTEE APPOINTED BY THE BOARD, NAMELY:

- Mr Graeme Robertson (Chair)
- Mr Martin Fine
- Mr Kelvin Booth

The parties concerned or interested;

- Mr Billy Frazer (Competition Licence 161437X)
- Mr James Frazer
- Mr Bevan Godfrey (Officials Licence 007324Y) - Race Director
- Mrs Tracey Stringer (Officials Licence 088620Y) - Competition Relations Officer

Representing MotorSport NZ: Mr Terry Carkeek

TAKE NOTICE that the **BOARD of MOTORSPORT NEW ZEALAND (INC)** under the powers set out in Articles 118 to 122 of the National Sporting Code, considered the issues brought to its attention and has convened a hearing to be held before the Judicial Committee appointed by the Board.

The Committee, under NSC 122 (3) determined that as a matter of procedure the hearing could be conducted based on the documents previously circulated between the parties. All parties were advised of this. The procedure adopted allows for the Decision to be circulated to the parties for comment and to allow for submissions in regard to penalty to be dealt with prior to the matter being finalised.

BACKGROUND

At the completion of Qualifying for Round 1 of the ITM New Zealand Formula Ford Championship on 13 September 2019 at Pukekohe, Car 14 Billy Frazer, was found in breach of Schedule F Article 10.8 and 10.8.1, maximum valve lift.

A Race Director Hearing was held on Saturday morning, 14 September 2019 and Penalty CH 40.9 was applied to Car 14, that being:

- Fine \$600
- Exclusion from Qualifying results
- Endorsement of Competition Licence until 22 March 2020 (Six Months endorsement)

During or at the completion of the Hearing the Race Director advised Billy Frazer that the infringement was Judge of Fact, had been proven, and that a judge of Fact decision was non-protetable, the Race Director also stated that he had applied the minimum Penalty.

The statement from the CRO indicates that, from her recollection, no advice was given to Billy Frazer about the ability to protest the penalty and that she had taken for granted that the minimum penalty had been applied as had been stated by the Race Director.

Based on the advice that the infringement was non-protetable and that the minimum penalty had been applied, the matter was not pursued any further at the event by Billy Frazer.

Subsequently, it was discovered that the penalty that was applied by the Race Director in Decision FF01 was not the minimum specified in Schedule CH 40.9. Schedule CH 40.9, as published at the date of the event, detailed:

- Maximum Fine \$30.00
- Exclusion from Meeting or Event or part of Meeting or Event
- Endorsement of competition licence for minimum of 1 month and Maximum of 12 months

It was also ascertained that, had the competitor been properly advised as to the right to protest the penalty, then this would have happened at the meeting.

PURPOSE OF HEARING

Accordingly, MotorSport New Zealand determined to hold a Judicial Hearing pursuant to the provisions of Part X, Articles 118 to 122 of the National Sporting Code and to consider the following issues:

- The competitor was entitled to rely on the advice of the Officials at the event and was entitled to be advised of his right to protest under the provisions of NSC 113(3).
- The advice provided to the competitor by Officials was incorrect which influenced their decision not to protest the penalty at the event.
- These errors and omissions likely impacted the rights the competitor should have had to protest the severity of the penalty in particular the length of the licence endorsement and the fine.
- The Hearing was authorised to hear submission as to the severity of the penalty applied in Race Director Decision FF01 and any other matter arising as a consequence of the actions taken.

HEARING PROCEDURE

The Hearing was conducted in accordance with National Sporting Code (NSC) Article 122(3).

Papers were distributed to all parties prior to the Hearing.

The Panel on reviewing those papers determined that as a matter of procedure the matter could be determined "on the papers". This is provided for under Art 122(3)(a) of the Sporting Code in determining the Panel's own procedures.

The Judicial Committee had been provided with statements from James Frazer, Bevan Godfrey and Tracey Stringer. A copy of Schedule CH, dated 12 September and Schedule F _ Formula Ford Technical Regulations were provided.

Further clarification was sought and received from Terry Carkeek and Bevan Godfrey.

FINDING

The Judicial Committee having considered evidence and documents presented reached the following findings:

- The measurement of the valve lift was a Judge of Fact decision and was accepted by the Competitor.
- The penalty for a performance technical irregularity is provided in CH 40.9.
- The Race Director, in applying the penalty, told Competitor he was applying the minimum penalty allowable.
- 2019/20 Schedule CH was only issued on the Thursday prior to the event.
- The Race Director's evidence confirmed that he had not received a copy of it and had only briefly sighted a copy of the 2019/20 version.
- Schedule CH was reissued in October 2019 with among other amendments, an altered CH 40.9.
- This Schedule was discounted as an administrative error and the penalty provided in the previous year's Championship Articles was applied.
- There was no evidence from the Race Director and CRO from which to determine that the competitor was properly advised that he had the right to protest the penalty decision.

Summary of findings

Taking account of all the findings the Judicial Committee concludes that:

- Penalty CH 40.9, as issued on the Thursday was valid and binding at the time of the offence, and should have been applied to Competitor Billy Frazer.
- Having advised the Competitor that he was applying the minimum penalty prescribed, the Race Director was obliged to impose that penalty.
- The minimum level, for both fine amount and endorsement duration, was not applied by the Race Director.
- Confusion existed as to whether the Competitor had been properly advised as to his right to protest the penalty applied to the Judge of Fact decision.
- Had correct information regarding NSC 113(3) been given then a protest could have been lodged and the matter finalised at the meeting.
- A Competitor can rightly expect to receive accurate information from an Official acting within the area of authority to which they are appointed and a Competitor is entitled to be able to rely on that advice.
- Schedule CH had been issued so late that neither Competitors nor Officials could logically be expected to have had sufficient time to study it.

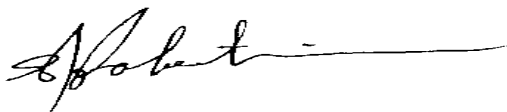
Decision

Taking account of all the factors put before it the **JUDICIAL COMMITTEE DECISION** is that:

1. Penalty CH 40.9 is to be applied to Billy Frazer - Licence 161437X
 - \$6 fine (20% of maximum fine - Sch P 2.1 (3) (b));
 - Exclusion from Formula Ford Qualifying session;
 - Competition licence endorsed until 14 October 2019.
2. Bevin Godfrey (Licence 007324Y) is reprimanded for use of incorrect Schedule and failing to provide accurate guidance to a competitor.
3. Concern is expressed at the manner and timing with which Schedule CH was issued having regard to the requirements of NSC 18.
4. Costs shall lie where they fall.

It is further recommended that an internal investigation should be undertaken by MSNZ to determine whether the process used to issue Schedule CH and its subsequent reissue were correct and whether the Sport complied with its own rules.

The Judicial Committee was unanimous in making its decision.



G J Robertson
Chairman
For and on behalf of the Judicial Committee

DATED: 8 November 2019

This copy of the decision was forwarded to all parties for penalty comment. Two working days was provided for this until 1700hrs 11 December 2019. No adverse response was received and this copy of hearing proceedings and decision were provided to Chief Executive Officer, MotorSport NZ, by email **at 17:20hrs, 11 December 2019** as required by Article 122 (5) (b) of the National Sporting Code.