



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Mr Josh Moffett

Against the

**Decision No. 1 dated 13 June 2022 of the Stewards of the Circuit of Ireland
International Rally counting towards the 2022 Celtic Rally Trophy**

Case ICA-2022-04

Hearing of 9 September 2022 (via videoconference)

Decision of 29 September 2022



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Nish Shetty (Singapore), who was designated President, Mr Harry Duijm (Netherlands), Mr Fabio Mattei (Italy) and Mr Philip Moser KC (United Kingdom), held a hearing via videoconference on Friday, 9 September 2022.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Mr Josh Moffett and the FIA.

The following persons attended the hearing:

on behalf of the Appellant, Josh Moffett:

Mr Josh Moffett, Appellant
Mr Feargal Logan, Solicitor

on behalf of the FIA:

Ms Alejandra Salmerón García, Senior Legal Counsel

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)



On 7 July 2022, the FIA requested that the Court take a preliminary decision on the issue of the admissibility of the appeal. The Parties filed written submissions and, at the hearing on 9 September 2022, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle. None of the Parties raised any objection, in relation either to the composition of the Court or to the manner in which the proceedings and the hearing were conducted, in particular the application of the adversarial principle.

I. REMINDER OF THE FACTS

1. On 28 April 2022, the competitor Mr Josh Moffett (“Mr Moffett”) submitted a “*petition for review*” to the Stewards of the Circuit of Ireland International Rally dated 15/16 April 2022 (the “*Competition*”). Mr Moffett requested in his petition that the “*decisions made by the Stewards of the Circuit of Ireland International Rally including multiple organisational failings by the Clerk of Course plus the signing of Final Results by the Stewards*” be reviewed.
2. On 7 June 2022, the Stewards summoned Mr Moffett and his co-driver Mr Andy Hayes (“Mr Hayes”) to a Zoom Video Conference.
3. On 13 June 2022, following this Video Conference, the Stewards issued Decision No. 1 (the “*Appealed Decision*” or the “*Decision No. 1*”), the operative part of which reads as follows:

“The Stewards made no decisions during the competition and there is no significant and relevant new element which was unavailable to the parties seeking the review at the time of which decisions were made by the Clerk of Course and at the time which the Stewards signed the Final Results.”

4. The Stewards based the *Appealed Decision* on the following reasons:

“The Stewards acknowledge that the request to review was submitted within the appropriate timescale however they had not issued any specific decisions during the running of the event and organisational decisions made by the Clerk of Course were available for review by the Stewards at any time during the event had the entrant and driver of Car No 2 (Josh Moffett / Andy Hayes) formally protested decisions made as per FIA RRSR Art 65 – Protests and Appeals. The inference that there was no availability for the crew of Car No 2 to protest the classification established at the end of the competition due to ongoing post-event scrutiny and prizegiving is also refuted as the Stewards were located in the same building as all these activities were taking place, with no indication that there was a formal protest being prepared or being imminent. It was also noted that both crew members had separate face to face discussions with each of the three Stewards at

the conclusion of the event with no request made for any protest to be lodged against the final classification.”

5. The Stewards added in the Appealed Decision that *“competitors are reminded that, in accordance with Article 14.3 of the FIA International Sporting Code (the “Code”), this decision is not subject to appeal.”*
6. On the same day, Mr Moffett sent an email to Mr Aiden Harper, the Motorsport Ireland President, informing him of his intention to appeal the Decision No. 1. Mr Moffett made the following observations in the same email:

“It is with deep regret that I am compelled to commit to writing the fact that I consider there to be a clear misrepresentation of the events on the day in question, in particular within the Reason: section of the Decision. This is particularly so in the last two sentences of this section which are completely at odds with the facts as they happened at the time. These facts cannot have been confused or been lost in the process when the three Stewards and signatories of the decision, were the very people with whom myself and my Co-driver spoke with, both over the phone and in person, immediately after the event. Moreover, it has been accepted by certain of these Stewards that they did not lift their phone to a number of calls as made by us and indeed the reason why they did not lift the calls in the immediate aftermath of the event has also been advised to us since that time. To assert that, “both crew members had separate face to face discussions with each of the three Stewards at the conclusion of the event with no request made for any protest to be lodged against the final classification” is patently wrong and unquestionably not in keeping with the true facts of the situation. The request for a Protest/Review was clearly indicated orally to the Stewards alongside a request that this be included in the Stewards Report. As outlined by myself and my co-driver in our Zoom call of 7 June:

- 1. I made 3 phone calls to the Chairman of Stewards on the day to express my intention to appeal knowing that due to requirements of the event, I may not be in a position to physically meet the stewards. These phone calls went unanswered and were met with no reply. The Chairman of the stewards since acknowledged that he did see these incoming calls but felt it best not to answer them*
 - 2. My co-driver attended the Rally office immediately after we were released from requirements of the event and met with both the Chairman of the stewards and the FIA observer. He clearly voiced his concern at the decision of the organisers and stated his wish to appeal. He was told that this was not possible by both and furthermore the FIA observer stated that ‘bogey times’ were expressly disallowed under FIA sporting regulations, which it has transpired since, is not the case.*
 - 3. I spoke with the CRO immediately prior to the final stage of the event when he called to inform me of the organisers[‘s] decision. I made my intention to appeal clear, but was informed by him that he was ‘just the messenger’.*
- In the interest of fairness and so as to provide these Stewards with an opportunity to explain their position I would welcome such further commentary as is required by the Stewards in the event that their Decision has been misinterpreted by myself*



and my co-driver. Furthermore could you please provide me with the minutes of our meeting (07/06/22) which you were noting? This should be without prejudice to the right of appeal which I now wish to invoke. Again, whereas the Stewards in their decision refer to Article 14.3 as rendering the Decision incapable of appeal, this Article relates exclusively to the decision of the Stewards to determine if a significant and relevant new element exists. The initial finding that the Stewards made “no decisions”, during the competition should, I consider, remain capable of appeal and I wish to so appeal under Article 14.5 and all other relevant sections of the Code. Please provide particulars of the bank account into which the deposit should be paid and I will attend to this without delay. Please also set out the exact appeal procedures.

Regardless of, and in addition to the above, I would like [to] re-iterate my request for a simple answer to the following query. Given the information to hand now, do the stewards still believe that the correct decision was taken by the Organisers in removing the bogey times immediately prior to the last stage of the event, and if so, the reasoning behind this. To aid my understanding of the Stewards view on the day, I would like to request a copy of any and all Stewards reports from the event.

Accordingly I look forward to hearing from you by return and shall attend to any further matters arising with you. Again, I regret but cannot avoid the feeling that there is an element of bad faith at play in this matter.”

7. On 14 June 2022, the Stewards issued a communication (“the Communication No. 1”) by which they confirmed the receipt of Mr Moffett’s intention to appeal and indicated the applicable procedures to an appeal before the ICA.

II. PROCEDURE BEFORE THE COURT

8. The Appellant filed its Notification of appeal on 16 June 2022 at 13:57 (Paris time).
9. On 7 July 2022, the FIA sent an email to the Court requesting that a preliminary decision on the inadmissibility of the appeal be taken without a hearing given the alleged “straightforward elements of the case”.
10. Given the request filed by the FIA, the Court granted the Appellant a deadline until 15 July 2022, 17:00 (Paris time), to file its observations on the FIA’s request.
11. On 15 July 2022, the Appellant filed its observations and requested that a hearing be held.
12. The Court exercised its discretion and acceded to the FIA’s request for a preliminary decision and to the Appellant’s request for a hearing, on the basis of article 10.5 JDR which reads as follows:



“The judging panel, on its own initiative or upon reasoned request, may decide on the admissibility (Articles 9, 10.1, 10.3 JDR) of an appeal by a preliminary decision. The judging panel will decide at its sole discretion whether to hold a hearing prior to rendering its decision.”

III. ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

a) **Formal requirements (art 10.1 et seq. JDR)**

13. The Court notes that the Appellant brought its appeal in accordance with the formal requirements set in the provisions of the 2022 Judicial and Disciplinary Rules (the “JDR”), which is undisputed.

b) **Lack of competence of the Court – Submissions of the Parties**

14. The FIA claims that the Appeal is not admissible based on various grounds which can be summarised, in essence, as follows:

- (i) The only "*decision*" taken by the Stewards was their signing and confirming of the Final Results and classification of the race. No other "*decision*" was taken by the Stewards at that race that was capable of being a subject of review under article 14 of the Code.
- (ii) There was also no protest against any decision (allegedly) taken by the Stewards.
- (iii) The FIA contends that article 14 of the Code contemplates a two-stage process:
 - a. an assessment by the Stewards as to whether '*a significant and relevant new element exists*', which is at the sole discretion of the Stewards and cannot be appealed;
 - b. if the Stewards do consider that a significant and relevant new element exists, then they have to issue a new decision concerning their first decision which has been subject of a request of review. This new decision, and only this one, can be appealed before the ICA.
- (iv) The requirements of article 14.1.1. of the Code for the right for a review of a decision are not met in the present case as the Stewards considered and confirmed that Mr Moffett did not bring before them any significant and new element that would have been unavailable to the parties at the time when that decision, namely the signing of the Final Results by the Stewards, was made.



- (v) Articles 14.1 and 14.3 of the Code exclude any right to appeal against the Stewards' decision as to whether significant and new element(s) exist or not. The FIA contends that such a decision is therefore final and binding. The second stage of the two-stage process is therefore not engaged.
 - (vi) The FIA then argues that the Appellant mistakes the Appealed Decision with one that would be relevant if the second stage of the process had been engaged - namely, a further decision that would have been taken by the Stewards **if** they had found that significant and new element(s) had been provided by the Appellant justifying a review of the Stewards decision. The FIA accepts that **if** such a decision had been issued, that could have been subject to an appeal before the Court, but that is not the case here.
 - (vii) During the hearing, in response to the Appellant's below submissions, the FIA argued that the English version of article 14.3 of the Code makes the above clear but that, in any event, the French version prevails and that such version confirms beyond any doubt that the Appeal is inadmissible for the reasons set out above.
 - (viii) The FIA then states that one should not consider the indication by the Stewards in their Communication No. 1 of the applicable procedures of appeal as the acceptance, by the Stewards, that an appeal against Decision No. 1 would be admissible. The FIA contends that only the ICA can decide on the admissibility of an appeal to the ICA.
15. The Appellant argues that the Appeal is admissible for the following reasons:
- (i) The wording of article 14.3 of the Code *"does not render the matter incapable of appeal, being either Decision No.1 or all the decisions made by the Stewards as referred to."*
 - (ii) The Appellant explains that he does not accept the statements made by the Stewards in the Appealed Decision where the latter explain that they were not aware of his protests and objections that were allegedly made before the final stage or after the provisional classification.
 - (iii) As to the form of the protest, the Appellant puts forward that the use of the word *"shall"* under article 13.4.1 does not mean that it is mandatory that a protest be filed in writing.
 - (iv) The Appellant claims that he was denied a fair proceeding from the very beginning and that now *"to render the Appeal inadmissible is a further attempt to deny fair procedures."*
 - (v) The Appellant then explains that during the Zoom Video Conference held on 13 June 2022, the Stewards did not agree to receive any evidence *"in particular in circumstances where there was a direct conflict in relation to the facts on the day and the conversations and attempted communications between the Competitor, his Co-driver and [the] Stewards in the immediate aftermath of the event."*



- (vi) According to the Appellant, “*Video evidence was referred to and offered by the Appellant, together with significant evidence which could have been checked by reference to third parties but none of this was attended to.*”
- (vii) The Appellant then claims that the Stewards having set out the procedure for appeal and allegedly accepted the competitor’s notification of appeal, the Appeal cannot now be denied given the application of the principle of estoppel.

c) *Lack of competence of the Court - Conclusions of the Court*

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

a. On the question of the scope of the Appeal

- 17. As to the scope of the Appeal, the Court notes that the Appealed Decision was issued after the Stewards had received a “*petition for review*” (“the Petition”) **pursuant to Art. 14 of the Code** which was filed by the Appellant through its solicitors. This is undisputed.
- 18. Although the submissions made in the Petition appear to be of the sort that one would expect to be made in a protest before the Stewards, it remains nevertheless clear that the Appellant referred in his Petition to the procedure applicable to the review of a **decision under Art 14** and the Stewards conducted the review accordingly.
- 19. The Petition, in its relevant part, reads as follows:

“I, Josh Moffett (Motorsport Ireland licence #18461), would like to formally request a Review of the Stewards’ decisions of the 2002 (sic) Circuit of Ireland International Rally, held on 16/17 April 2022 under FIA VISA 01ERTCE/250322 and MSA permit numbers 125480 and 125482. I am requesting a Review in accordance with article 14.1.1 of the FIA International Sporting Code.” [emphasis added]

20. Article 14.1.1 of the Code reads as follows:

“ARTICLE 14 RIGHT OF REVIEW

14.1.1 *If, in Competitions forming part of an FIA Championship, cup, trophy, challenge or series, or of an international series, a significant and relevant new element is discovered which was unavailable to the parties seeking the review at the time of the decision concerned, the stewards who have given a ruling or, failing this, those designated by the FIA, may decide to re-examine their decision following a petition for review by:*



- either one of the parties concerned and/or a party that is directly affected by the decision handed down, or

- the Secretary General for Sport of the FIA.

The stewards must meet (in person or by other means) on a date agreed amongst themselves, summoning the party or parties concerned to hear any relevant explanations and to judge in the light of the facts and elements brought before them.

21. The Court accordingly finds that the Appealed Decision was issued within the framework of the requested review of previous decisions pursuant to Art 14 of the Code. Any appeal to this Court from a resulting decision of the Stewards must also be so limited to the decision made by the Stewards under the said framework.
22. To the extent that the Appellant has sought to make arguments in support of its appeals concerning other matters extraneous to the decision of the stewards emanating from its request or a review under Art 14, those arguments will be disregarded.

b. On the question of the requirements set under article 14.1.1 of the Code

23. The Court notes that Article 14.1.1, quoted above, sets very clear and strict requirements for stewards to review a decision already made.
24. More importantly, Article 14.3 of the Code provides that:

“The stewards shall have the sole discretion to determine if a significant and relevant new element exists. This decision of the stewards as to whether or not such an element exists is not subject to appeal before the national court of appeal or the International Court of Appeal.”
25. It is undisputed that the Appealed Decision is a decision taken by the Stewards based on article 14.3 of the Code.
26. The Court notes first that the Code explicitly excludes any right of appeal against such a decision. In this respect, the Court rejects the Appellant’s submission when it comes to the use of the word “*subject*”.
27. The wording is clear in English, and if need be, *quod non*, one can refer to the French version of Article 14.3 which is equally clear as it provides that: “*Leur décision quant à l’existence de cet élément n’est pas susceptible d’appel (...)*”.
28. Therefore, both the English and the French versions of the Code exclude clearly – by the use in English of the words “*is not subject to*” and in French “*n’est pas susceptible de*” - that an appeal be lodged against the Appealed Decision.



29. As a judicial body of the FIA, it is the duty of the Court to apply the Code as adopted by the FIA General Assembly and the appeal must be declared inadmissible as the Code expressly excludes any competence of the Court on that matter.

c. On the principle of estoppel

30. The Appellant also claims that a right of appeal against the Appealed Decision can exist based on the principle of estoppel. He appears to rely on the reference by the Stewards in their Communication No. 1 to articles 15 of the Code and 15.3 of the Supplementary Regulations of the Circuit of Ireland International Rally 2022 to suggest that there must be an estoppel against anyone suggesting that an appeal is inadmissible.
31. This point was not pursued by the Appellant counsel in detail at the hearing in earnest but does appear in some earlier submissions and was referred to in oral argument. The Court was not provided with any legal authorities suggesting any particular definition of estoppel was to be adopted for these proceedings, whether by the Appellant or the FIA. The Court notes that according to the Cambridge Dictionary, “estoppel” can be defined as “a legal rule that prevents someone from changing their mind about something they have previously said is true in court” (see <https://dictionary.cambridge.org/dictionary/english/estoppel>).
32. The Court notes that in the Appealed Decision, the Stewards referred clearly to article 14.3 of the Code, stating that “this decision is not subject to an appeal”.
33. The Court notes further that the Appellant, who was assisted by his solicitor Mr Logan from the outset of the procedure before the Stewards, then filed his intention of appeal through an email, to which his solicitor was copied, explaining that he considered that “the initial finding that the Stewards made “no decisions”, during the competition, should (...) remain capable of appeal” and that he wished “to so appeal under Article 14.5 and all other relevant sections of the Code.”
34. Based on the foregoing, the Appellant requested specific information from the Stewards, as follows:
- “Please provide particulars of the bank account into which the deposit should be paid and I will attend to this without delay. Please also set out the exact appeal procedures.”*
35. The Stewards addressed the request through a “communication” indicating under Communication No. 1 where the procedures to appeal were mentioned in the Code and in the Supplementary Regulations of the Circuit of Ireland International Rally 2022. Still in response to the Appellant’s requests, the Stewards also indicated the coordinates of the ICA bank account on which the appeal deposit must be paid.



36. The Court concludes that the Communication No.1 is not a statement of the Stewards, whether made in court or otherwise, with the purpose of admitting that the Appealed Decision could be subject to an appeal. Nor would it be capable of doing so in any event.
37. First, the Stewards had stated clearly in the Appealed Decision that the latter was not appealable. One cannot deduce from the information provided to the Appellant by the Stewards on his request, that the Stewards departed, in their “communication”, from their clear statement made in the Appealed Decision.
38. On this ground alone, the Appellant’s submission on the application of the principle of estoppel must be rejected.
39. Secondly, as an internal authority of first instance of the FIA, the Stewards do not have any capacity, by way of a communication, to establish a right of appeal and therefore amend the FIA JDR or the Code, which have been adopted by the FIA General Assembly, as the competent body to establish such procedural rules.
40. On this ground as well the application of the principle of estoppel in the present case is excluded.

IV. COSTS

41. Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 11.2 JDR.
42. In view of the above and in consideration of the work already carried out by the administration of the Court but also of the fact that no physical hearing implying additional costs has been organised, the Courts decides that the appeal deposit will be kept in full but that that no additional costs will be charged to the Appellant.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal inadmissible;**
- 2. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 3. Leaves it to Mr Josh Moffett to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 4. Decides that the appeal deposit be kept in full;**
- 5. Rejects all other and further conclusions.**

Paris, 29 September 2022

The President

Nish Shetty