



INTERNATIONAL COURT OF APPEAL

INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal brought by the
Qatar Motor and Motorcycle Federation (QMMF)
on behalf of its licence-holder Nasser Al-Attiyah Team against
Decision n°1 dated 29 November 2014 of the Stewards of the 2014 Dubai
International Rally counting towards the 2014 FIA Middle East Rally
Championship**

Case ICA-2014-04

Hearing of 4 December 2014 in Doha



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The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr Jan Štoviček (Czech Republic), who was designated President, Philippe Roberti de Winghe (Belgium) and Felipe Zeraik (Brazil), met at the St. Regis Hotel in Doha, Qatar, on Thursday 4 December 2014.

Ruling on the appeal brought by the Qatar Motor and Motorcycle Federation (QMMF) on behalf of its licence-holder Nasser Al-Attiyah Team (the “Appellant”) against Decision n°1 dated 29 November 2014 of the Stewards of the 2014 Dubai International Rally (the “Stewards”) counting towards the 2014 FIA Middle East Rally Championship (the “Championship”) under which the Appellant’s protest against Abu Dhabi Racing Team’s car n° 2 was rejected on the basis of Article 40.6.2 of the FIA Middle East Rally Championship Sporting Regulations which are part of the FIA Regional Rally Regulations (the “FIA RRR”), under part “V3” (FIA RRR Appendix V3).

The following persons attended the hearing:

On behalf of the Appellant and of the QMMF:

Mr Nigel Heath (Attorney-at-law)
Mr Ken Skidmore (Team Manager)
Mr Nasser Al Attiyah (Driver)
Mr Tim Mayer (Advisor)

On behalf of the Automobile and Touring Club of the United Arab Emirates (the “ATC UAE”):

Mr Ronan Morgan (Director at ATC UAE)

On behalf of the Abu Dhabi Racing Team (the “ADRT”):

Mr Zeeshan Dhar (Al Tamimi & Co. Senior Associate)
Mr Muhammed Mahmood (Al Tamimi & Co. Associate)
Sheikh Khalid Al Kassimi (Driver)

On behalf of the FIA:

Mr Sébastien Bernard (FIA Legal Director)
Mr Pierre Ketterer (Head of Regulatory, Governance and Legal Corporate Affairs)



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Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)

Mr Nicolas Cottier (Clerk of the FIA Courts)

The parties filed their written submissions and, at the hearing of 4 December 2014, set out oral arguments and answered the questions asked by the Court. The hearing took place in accordance with the adversarial principle. No objection to the competence or the composition of the Court and to any element of the proceedings or of the hearing was raised by anyone.

The Parties accepted at the hearing that the order of the Court's decision be communicated after the hearing and that the complete decision be communicated later, in English only, thus the decision would be enforceable immediately upon notification of the order.

REMINDER OF THE FACTS

1. During the 2014 Dubai International Rally (the "Meeting") which took place from 27 to 29 November 2014, the Appellant lodged a protest against ADRT's car n° 2 claiming that this car had contravened the applicable sporting regulations as it did not comply with the itinerary and road book directions applicable to the Meeting (the "Road Book"), more precisely on the part of the itinerary described under box 9, page 60, of Road Book nr 2 and located 2.03 kilometres into the SS10.
2. The Stewards passed a decision on 29 November 2014 (the "Decision") and rejected the protest on the basis that ADRT's car n°2 complied with Article 40.6.2 of the FIA RRR Appendix V3.
3. The Appellant immediately declared its intention to lodge an appeal, which it did before the Court, acting through its national ASN, namely the QMMF.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

4. On 1 December 2014, the QMMF, acting on behalf of the Appellant, directly lodged an appeal against the Decision before the Court (the "Appeal").



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5. The Appellant and the ASN of the United Arab Emirates having agreed on the application of Article 14.1.1.b) of the Judicial and Disciplinary Rules (the “JDR”), the Court took note that it had direct jurisdiction on the case and the President of the ICA decided to apply the expedited procedure as provided for under Articles 13.1 and 18.1 JDR, subject to the approval of the Appellant and of the ASN of the UAE. Such approval was given on 2 December 2014.
6. The Appellant filed its grounds of appeal on 2 December 2014.
7. The Appellant contends, in essence, that the Court should set aside the Decision and sanction ADRT with a 30-second penalty.
8. The FIA filed its written observations on 3 December 2014 and invites the Court:
 - to assess the facts of the case;
 - to give a ruling on the possible commission of a breach of the FIA RRR and, if appropriate, on the “principle of a sanction”.
9. The ATC UAE filed its written submissions (a statement by Mr Ronan Morgan, Clerk of the Course, and a tracking report) on 3 December 2014.
10. ADRT, which had been informed of the procedure according to the JDR, made an application to take part in the proceedings and attend the hearing. This request was granted by the President of the Hearing.
11. ADRT filed its written submissions on 4 December 2014 and contends that the Decision should be confirmed by the Court and that its costs and defence fees should be borne by the Appellant.

ADMISSIBILITY OF THE APPEAL BEFORE THE ICA

12. According to Article 14.1.1.b) JDR, the Court “*will hear [...] appeals against decisions of the Stewards where the parties concerned have jointly decided to bring an appeal not before the National Court of Appeal of the country of the Meeting but directly before the ICA with the assistance and agreement of their respective National Sporting Authorities*”.
13. In the present case, the parties agreed to make use of Article 14.1.1.b) JDR and to apply an expedited procedure to the present case.
14. The intention to appeal against the Decision was immediately notified by the Appellant to the Stewards, and the QMMF lodged the Appeal before the Court on 1 December 2014, namely less than 96 hours after the notification of the Decision to the Appellant.



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15. Considering the above, the Court finds the Appeal admissible, which is undisputed.

ON THE SUBSTANCE

a) Submissions of the Parties

16. The Appellant puts forward, in essence, that :

- (i) The video evidence brought by the Appellant to the Court shows that ADRT's car n°2 passed in front of the marked earth mound.
- (ii) Given the fact that according to the Road Book, ADRT's car n°2 should have passed behind the marked earth mound, this car did gain an obvious unfair time advantage and breached Article 14.2 FIA RRR, which requires that each competitor follows the itinerary and the road direction diagrams.
- (iii) The Clerk of the Course confirmed at the outset of the Meeting that any route infringement would result in a 30-second time penalty;
- (iv) Article 40.6.2 FIA RRR Appendix V3, which was applied by the Stewards of the Meeting when they rejected the Appellant's protest, should not apply to the present case as (1) it falls under a section dealing with the Competitors' safety and (2) in any event, it does not supersede Article 14.2 FIA RRR.
- (v) ADRT's car n°2 of should be subject to a time penalty of 30 seconds or, at the very least, the obvious time advantage gained by the car should be adjusted towards other competing cars.

17. The ATC UAE produced as its written submissions a statement by Mr Ronan Morgan, Clerk of the Course, where the latter states, in essence, that during the compulsory drivers' briefing on Wednesday, 26 November , Mr Morgan drew the competitors' attention to Article 11.15 of the Supplementary Regulations of the Meeting "Tracking, Car Position and Movement" and reminded all present of this regulation, which reads as follows:

*"On special stages there will be a tolerance of 10 (ten) meters for straying from the centre line of the track as determined by the organisers. Each deviation from this corridor of 20 meters will incur a penalty of 30 seconds." (MERC 40.6.2).
"If the deviation results in a shorter distance (short cut) a penalty will be applied as follows; The time recorded for that missing distance by the slowest competitor*



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will be multiplied by 2 and added to the actual stage time. However, a minimum penalty of 30 secs. will apply in all cases. Should a crew deviate from the route on a number of occasions, the stewards may impose additional penalties upon a proposal from the clerk of the course.” (MERC 40.6.3).

18. The FIA puts forward, in essence, that:

- (i) The core body of regulations of the FIA RRR apply to all regional rallies organised by the FIA, whereas the FIA RRR appendices comprise variations and additional provisions which are applicable to the relevant region;
- (ii) Article 14.2 FIA RRR covers the obligation for each competitor to respect the itinerary and the road direction diagrams, whereas Article 40.6.2 FIA RRR Appendix V3 stipulates the obligation for the competitors to respect “*the centre line of the track as determined by the organisers*” (corridor of 20 metres).

19. ADRT puts forward, in essence, that :

- (i) The Stewards decided unanimously to reject the Appellant’s protest.
- (ii) The Court cannot set aside the Decision unless the Decision appears to be irrational. The International Sporting Code (the “Code”) provides that the Stewards have a large power to take decisions under the specific circumstances of each case, which means that the Court cannot substitute itself to the Stewards unless there are important grounds to do so.
- (iii) It is undisputed that ADRT’s car n°2 did not drive around the mound of earth of diagram 9, page 60, of the Road Book during its second round of the route after having passed the guidance poles.
- (iv) Article 1.1.1 FIA RRR reproduces Articles 12.2 and 12.3 of the Code and provides that the Stewards may impose a penalty but are certainly not obliged to do so.
- (v) Article 14.2 FIA RRR does not impose a penalty of 30 seconds as requested by the Appellant; in fact it does not mention any penalty at all. Should a breach of Article 14.2 be identified, it is necessary to consequently refer to Article 40.6.2 FIA RRR Appendix V3.
- (vi) The application of Article 40.6.2 FIA RRR Appendix V3, as a tool to impose a penalty, was within the discretion of the Stewards and was proportionate and pragmatic.



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- (vii) This Article 40.6.2 FIA RRR Appendix V3 is certainly not exclusively applicable to issues related to the competitors' safety, as it is reproduced in the Supplementary Regulations of the Meeting under the headings "Tracking, Car Position and Movement" and "Features of the Rally".
- (viii) Mr Nasser Al Attiyah and Mr Ken Skidmore's recollections of the Clerk of the Course's statement as to the communications which were made to the competitors before the Meeting does not seem to be correct.

b) Conclusions of the Court

- 20. The Court refers first to its constant jurisprudence on that matter (see notably ICA-2013-05, 10 January 2014, Romeo Ferraris Srl; ICA-2014-03, 26 September 2014, Campos Racing) and finds that according to Article 17.9 JDR, it has full power to review the case *de novo*, with respect to all available information, facts and evidence, and to the applicable law and regulations.
- 21. The Court thus has full authority to substitute the Stewards' Decision under appeal by its own decision in its full scope.
- 22. This being stated, the Court now considers the merits of the case.
- 23. Based on the evidence produced, namely the videos of the race of cars n°1 and 2 at the point of the itinerary which is in question, the Court notes first that it is clear that ADRT's car n°2 deviated from the mandatory itinerary.
- 24. In its statement of 3 December 2014, the driver of ADRT's car n°2, Sheikh Khalid Al Qassimi stated himself that he had deliberately passed in front of the earth mound and therefore deviated from the mandatory itinerary, claiming that many other drivers had done the same without being sanctioned.
- 25. Based on the written observations and the statements of all parties made during the hearing, the deviation of ADRT's car n°2 is in fact undisputed.
- 26. Referring to the issue of the breach of the articles of the FIA RRR, the Court first notes that Article 14.2 FIA RRR provides that:

"All the crews will receive a road book containing a detailed description of the compulsory itinerary. This itinerary and the road direction diagrams must be followed. Any deviation will be reported to the Stewards."
- 27. Based on the clear wording of this article, the Court finds that in deviating from the compulsory itinerary of the Meeting provided in the Road Book, ADRT's car n°2 breached Article 14.2 FIA RRR.



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28. ADRT claims however that the Stewards applied another article, namely Article 40.6.2 of Appendix V3 which provides under Chapter 40, “COMPETITORS’ SAFETY”, that:

“(...) On special stages there will be a tolerance of 10 (ten) metres for straying from the centre line of the track as determined by the organisers. Each deviation from this corridor of 20 metres will incur a penalty of 30 seconds.”
29. According to ADRT, the fact that the Stewards did not apply Article 14.2 FIA RRR and only referred to Article 40.6.2 of Appendix V3 shows that they considered that only the latter article should be applied or should at least prevail over Article 14.2 FIA RRR.
30. The Court rejects those submissions. Indeed, Article 14.2 FIA RRR deals with the so-called “FIA Standardised documents” governed by Chapter 14 of the FIA RRR, and more precisely with the Road Book, which provides detailed information on a rally’s compulsory itinerary.
31. As mentioned above, the purpose of this article is to ensure that all competitors follow the same itinerary.
32. The Court finds in this respect that ensuring that all competitors follow the same itinerary during a rally is a specific sporting objective and that this objective is essential in order to ensure the fairness of the competition, besides the impact on the safety of the spectators if a competitor could, at his/her own discretion, benefit from a 20 metre corridor along the whole itinerary.
33. The purpose of Article 40.6 FIA RRR Appendix V3 is of a different nature as it deals specifically with the Competitor’s safety and/or the use of a tracking system.
34. One can absolutely not deduce that the purpose of Article 40.6 FIA RRR Appendix V3 is to allow competitors to deviate from the mandatory itinerary as long as they remain within the tolerance margin mentioned under this article. In other words, the Road Book instructions must be respected as prescribed under Article 14.2 FIA RRR; therefore the tolerance margin can only be used where the Road Book does not prescribe a more precise itinerary.
35. The fact that Article 40.6 FIA RRR Appendix V3 is reproduced in other additional regulations is irrelevant and in any event does not impact the scope of application of Article 14.2 FIA RRR, which has a specific purpose.
36. The Court concludes that both articles are applicable with equal effect, and that, in any event, based on the clear wording of those articles and on a systematic analysis of the FIA RRR including Appendix V3, Article 40.6 FIA RRR



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Appendix V3 does not prevail over Article 14.2 FIA RRR. Furthermore, the Court finds that there is no direct link between these two articles which would imply that Article 40.6 FIA RRR Appendix V3 would have to be examined once a breach has been found as regards to Article 14.2 FIA RRR.

37. The Court thus finds that ADRT's car n°2 did not breach Article 40.6.2 FIA RRR Appendix V3, which is actually undisputed, but this does not cure the fact that it did breach Article 14.2 FIA RRR.
38. Having found that ADRT breached the FIA RRR, the Court comes to the issue of the sanction and refers first to Article 1.1.1 of the FIA RRR with reference to Articles 12.2 and 12.3 of the Code, which provides that:

“Any breach of these regulations will be reported to the Stewards, who may impose a penalty as in articles 12.2 and 12.3 of the International Sporting Code.”
39. ADRT claims that there is no obligation for the Stewards, respectively the Court, to impose a sanction and that, in any event, the FIA RRR do not provide for any specific sanction with respect to a breach of Article 14.2 FIA RRR.
40. In the present case, the Court notes first that no specific sanction is provided as far as Article 14.2 FIA RRR is concerned. Based on the clear wording of Article 1.1.1 FIA RRR, which makes reference to the relevant articles of the Code, this of course does not mean that no sanction may be imposed in case of a breach of Article 14.2 FIA RRR.
41. Given the strict wording of Article 14.2 FIA RRR and its purpose, namely to ensure that all competitors follow the same itinerary, the Court finds that a sanction may be imposed in case of a breach of this article and that applicable sanctions are governed by Articles 12.2 and 12.3 of the International Sporting Code.
42. Article 12.3.1 provides for the following sanctions which may be imposed in case of a breach of the regulations:

“a Reprimand (blame);

b Fine;

c Obligation to accomplish some work of public interest;

d Deletion of a Driver's qualifying lap(s);

e Drop of grid positions



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f Obligation for a Driver to start a race from the pit lane;

g Time penalty or penalty lap;

h Drop of places in the classification of the Competitor;

i Drive-through penalty;

j Stop and go;

k Exclusion;

l Suspension;

m Disqualification;”

This scale of sanctions includes the time penalty, Article 12.3.2 providing that “*Time penalty means a penalty expressed in minutes and/or seconds*”. The selection of respective penalty in each given case is left to the discretion of the disciplinary decision-making body.

43. Referring now to the FIA RRR and Appendix V3 to the FIA RRR, the Court notes that Article 40.6.3 provides for a minimum sanction of 30 seconds in case of a deviation which results in a shorter distance (short cut).
44. Given the similarity of the case contemplated under Article 40.6.3 FIA RRR Appendix V3 and the breach of Article 14.2 FIA RRR committed by ADTR in the present case, the Court decides that it shall apply the sanction provided under Article 40.6.3 per analogy.
45. The Court decides therefore to set the Decision aside and to sanction ADTR’s car n°2 with a 30-second time penalty.

COSTS

46. Considering that the Appeal was admitted and that ADTR was sanctioned, the Court leaves it to ADTR to bear all the costs in accordance with Article 18.2 JDR.
47. In its written submissions, ADTR requested that its expenses and legal defence fees be borne by the Appellant.
48. Besides the fact that Appellant won the case, the Court stresses that according to Article 18.2 JDR, the expenses or legal defence fees of the parties are not part of the costs awarded by the Court, so that ADTR’s submission would in any event have been rejected, notwithstanding the outcome of the procedure.



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ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Sets aside the Decision n°1 of the Stewards of the 2014 Dubai International Rally;**
- 3. Declares that Abu Dhabi Racing Team's car n°2 committed a breach of Article 14.2 of the 2014 FIA Regional Rally Regulations;**
- 4. Imposes a penalty of 30 seconds on the Abu Dhabi Racing Team's car n°2;**
- 5. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 6. Orders the reimbursement to Nasser Al-Attiyah Team of the deposit paid to the Court;**
- 7. Leaves it to Abu Dhabi Racing Team to pay all the costs, in accordance with Article 18.2 of the Judicial and Disciplinary Rules of the FIA;**
- 8. Rejects all other and further conclusions.**

Doha, 4 December 2014

Jan Štoviček, President