



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by the Haas F1 Team

against

**Decision No. 42 dated 2 September 2018, taken by the Stewards of the 2018
Italian Grand Prix held at Monza and counting towards the 2018 FIA Formula One
World Championship**

Case ICA-2018-10

Hearing of Thursday, 1 November 2018 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Jan Šťovíček (Czech Republic), who was designated President, Mr Laurent Anselmi (Monaco), Mr Harry Duijm (Netherlands), Mr Yves Fortier (Canada) and Mr Gérard Martin (Belgium), met in Paris on Thursday, 1 November 2018 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Haas F1 Team (“Haas” or the “Appellant”) against Decision No. 42 issued on 2 September 2018 by the Stewards of the 2018 Italian Grand Prix (the “Stewards”) at Monza, counting towards the 2018 FIA Formula One World Championship (the “Monza GP”), under which the Stewards decided to disqualify Haas’ car number 8 (the “Car”) from the Monza GP for an infringement of Article 3.7.1 (d) of the 2018 FIA Formula One Technical Regulations (the “2018-TR”).

The following persons attended the hearing:

on behalf of Haas:

Mr Guenther Steiner (Team Principal)
Mr Peter Crolla (Team Manager)
Mr Ayao Komatsu (Chief Engineer)
Mr Nigel Tozzi, QC (Legal Counsel)
Mr Andrea Fioravanti (Legal Counsel)
Mr Ben Agathangelou (Head of Aerodynamics, Witness)

on behalf of the FIA:

Mr Pierre Ketterer (Head of Regulatory, Governance and Legal Corporate Affairs)
Mr Jonathan Taylor, QC (Legal Counsel)
Ms Lauren Pagé (Legal Counsel)
Mr Nikolas Tombazis (FIA Head of Single-Seater Technical Matters, Witness)

on behalf of Renault Sport Racing (interested third party):

Mr Bob Bell (Chief Technical Officer)
Mr Alan Permane (Sporting Director)
Ms Marie Jourdain (Head of Legal)
Mr Andrew Ford (Principal, Lipman Karas LLP)
Mr Chris Atkinson (Senior associate, Lipman Karas LLP)
Mr Nick Chester (Chassis Technical Director, Witness)



Also present at 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)

Mr Oliver Rumsey (Head of Legal, Mercedes, Observer)

Ms Leslie Ross (General Counsel, Racing Point Force India F1 Team, Observer)

Mr Matteo Bonciani (F1 Head of Communications and Media Delegate, FIA Observer)

The parties filed their written submissions and, at the hearing of 1 November 2018, 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 translation. None of the Parties raised any objection, in relation either to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

The Witnesses Ben Agathangelou, Nikolas Tombazis and Nick Chester provided written testimony. They attended the hearing and questions were put to Messrs Ben Agathangelou and Nikolas Tombazis during the hearing. The Court was also able to examine the part of the Car which had been retained by the Technical Delegate and which is the subject of the case.

REMINDER OF THE FACTS

1. Haas is a Formula 1 team licensed by the Automobile Competition Committee for the United States (“ACCUS”).
2. Mr Nikolas Tombazis, FIA Head of Single-Seater Technical Matters, sent an email to Haas on 6 July 2018 asking it to clarify how it was meeting the requirements of Article 3.7.1 (d) of the 2018-TR.
3. Article 3.7.1 reads as follows:

“Step and reference planes

With the parts referred to in Articles 3.7.10, 3.7.11 and 3.7.12 removed all sprung parts of the car situated from 430mm behind the front wheel centre line to 175mm in front of the rear wheel centre line, and which are visible from underneath, must form surfaces which lie on one of two parallel planes, the reference plane or the step plane. This does not apply to any parts of rear view

mirrors which are visible, provided each of these areas does not exceed 16000mm² when projected to a horizontal plane above the car.

The step plane must be 50mm above the reference plane.

Additionally, the surface formed by all parts lying on the reference plane must:

a) Cover the area which is bounded by the two transversal lines, on [sic] 430mm behind the front wheel centre line and the other on the rear wheel centre line, and two longitudinal lines 150mm either side of the car centre plane.

b) Have a maximum width of 500mm.

c) Be symmetrical about the car centre plane.

d) Have a 50mm radius (+/- 2mm) on each front corner when viewed from directly beneath the car, this being applied after the surface has been defined.”

4. In brief, Article 3.7.1 (d) 2018-TR governs the underside of an F1 car, and in particular the surface formed by parts of the car on what is known as the “reference plane”, including a part at the front of that surface that is generally referred to as the “splitter” or “T-Tray”.
5. This article was introduced several years ago at a time when the F1 cars were around 20-30 kg lighter than the minimum weight requirement, which caused teams to add ballast to make up the regulatory weight. Teams were using small parts made of very dense metal and placing them at the front of the reference plane. There was thus a concern that any breaking off of those components could cause very serious damage if they were to hit another car or a driver. The purpose of the regulation was thus to round off the front corners of the surface of the reference plane for safety reasons.
6. A photograph of the Haas Car’s reference plane was attached to Mr Tombazis’ email. This photograph had been sent to the latter by the Renault F1 team (“Renault”), which was claiming that the Car’s reference plane breached the regulations.
7. Mr Agathangelou, Haas’ Head of Aerodynamics, replied on the same day to Mr Tombazis’ email by sending a diagram showing the solution adopted by Haas for the leading edge of its reference plane with the radius of 50mm imposed by Article 3.7.1 (d) of the 2018-TR (the “Radius”). According to this diagram the Radius was applied to the front corner of the reference plane but not to the outboard extremity of the leading edge of the floor where it transitions to the lateral edge of the reference plane.

8. The Car took part in the Silverstone GP on 8 July 2018.
9. On 25 July 2018, Mr Tombazis sent to all Formula One Teams a technical directive No. TD/033-18 (the “TD/033-18”), signed by Mr Charlie Whiting, Head of the FIA Formula One Technical Department, which reads, in its relevant parts, as follows:

“Please find attached some previous correspondence with Renault on the subject of the front radii to be applied to the reference plane under Article 3.7.1 (d).

Considering the timing of this communication, we would be expecting full compliance with this clarification by the Grand Prix of Monza.

Generally speaking, this part of the Technical Regulations was introduced a number of years ago when teams used to run large amount of ballast in the floor. We feel that the reasons for this have now been superseded, and would be prepared to remove this specific Article from the 2019 Technical Regulations if there was unanimity amongst the teams. We will ask this question to establish this in the forthcoming Technical Working Group.

I trust the above is clear, but remain available should there be any further questions.

[footnote] REMINDER: Any FIA opinions given above are advisory in nature and do not constitute Technical Regulations. It is for the Stewards, and ultimately the FIA International Court of Appeal, to offer binding interpretations of the Technical Regulations.”

10. Mr Agathangelou had several telephone conversations with Mr Tombazis on 26 July 2018 with respect to the TD/033-18 and the definition of a “front corner”.
11. On 28 July 2018, Mr Tombazis proposed during a Technical Working Group (TWG) meeting to remove Article 3.7.1 (d) for 2019 “as it was proven to have multiple varying interpretations”. However, Mr Oatley from the McLaren team and Mr Monaghan from the Red Bull team explained that they would like the article to remain in the regulations.
12. One day before the TWG meeting, Mr Agathangelou had sent an email to Mr Tombazis containing the description of a solution that he was proposing to integrate into the existing leading edge of the Car’s reference plane. Given the circumstances, Mr Agathangelou asked Mr Tombazis to approve this proposal as soon as possible in order for Haas to be able to manufacture the new parts without further delay. Mr Agathangelou mentioned notably in his email that:

“Further to our discussions on this matter as applied to the Haas F1 car this week, please find our solution integrated into our forthcoming Bargeboard update. Following some of your suggestions on how to best interpret the ambiguity associated with defining the ‘front’ of the T-Tray. [...]

Given the forthcoming summer break, we will endeavour to introduce this upgrade for the Singapore GP, but will be somewhat at the mercy of our suppliers so would request some flexibility in this matter...”

13. Haas’ proposal was approved by Mr Tombazis on 29 July 2018, subject to compliance with a specific condition, namely: *“[...] we expect the radius to go around at least 45deg. Anything that lies behind that outer extremity of the radius would no longer be considered to be a front corner, and would hence not need receive the same treatment.*

[...] I hope this answers your question and clarifies this point, but remain available for further questions should they be needed.”

14. At the Hearing, Mr Agathangelou confirmed first that the reference plane of the Car described in his email dated 6 July 2018 had been used from the Canadian Grand Prix until the Grand Prix in Hockenheim. The litigious reference plane controlled at Monza was a different one, which had also been used for the Grand Prix at Spa.
15. Mr Agathangelou also confirmed at the hearing that the indent on the litigious reference plane had no other purpose than to ensure that the two corners located on each side of the forward-most corners were not rounded, in order to make it easier to fix the Car’s bargeboards on the reference plane.
16. Lastly, Mr Agathangelou explained to the Court that the solution adopted by Haas and submitted to Mr Tombazis on 27 July 2018 took more time to be implemented as Haas’ objective was to integrate that solution with its forthcoming bargeboard update.
17. Mr Tombazis explained at the hearing that only one other team had to correct its reference plane, but for different reasons. The radius applied on the other team’s car’s reference plane was indeed insufficient and had to be increased. This was fixed by the other team in time for the Monza event. However, Mr Tombazis also mentioned at the hearing that, to his knowledge, Article 3.7.1 (d) 2018-TR was not really taken into account by the teams and that it had been breached in multiple cases since its implementation back in 2001, without this attitude being sanctioned until the present case.
18. The Car took part in the Hungarian GP on 29 July 2018 and in the Belgian GP on 26 August 2018.



19. Haas completed the design of the new parts integrating the new geometry approved by Mr Tombazis on 3 August 2018. According to Article 21.8 of the 2018 F1 Sporting Regulations (the “2018-SR”), all Teams and suppliers were shut down from 6 August 2018 until 19 August 2018. The new part including the new design of the front floor leading edge was therefore – according to the Appellant - not ready for the Monza GP on 2 September 2018, but only for the Singapore GP which took place on 16 September 2018.
20. At the Monza GP the Car underwent the scrutineering checks performed by the FIA technical delegates. No complaint was raised by the FIA before or during the Monza GP.
21. Immediately after the finish of the Monza GP, Renault lodged a protest against Haas’ Car (the “Protest”).
22. The Stewards listened to the submissions from Haas and Renault and considered the report issued by the FIA Technical Delegate following the Protest, in which the latter draws the conclusion that the Car’s reference plane did not comply with Article 3.7.1 (d) and the clarifications given in TD/033-18. The Stewards then inspected the Car themselves and photographed the relevant parts.
23. The Stewards then took their Decision No. 42 (the “Decision”) ordering that the Car, which had finished 6th in the Monza GP, be disqualified on the basis that it did not comply with Article 3.7.1 (d) of the 2018-TR, as clarified by the TD/033-18. The Stewards also ordered that the part of the Car at issue be retained and sealed. The Decision was notified to Haas on 2 September 2018, at 9.35 p.m.
24. The Decision reads, in its relevant parts, as follows:

“Renault submitted that Art. 3.7.1.d of the Technical Regulations of the FIA Formula One World Championship state that a radius of 50mm (+/- 2mm) must be applied to each front corner of the reference plane. (See Art.) The text of this Article was being applied differently by several different teams, and a clarification was sought. As a result, TD/033-18 was issued on the 25th of July, 2018, which in essence gave the teams until the Grand Prix of Monza to comply with the clarification indicated in the TD.

Renault provided a picture that they claimed was of Car 8, which they stated shows that the part in question, at the start of the Grand Prix of Monza was not in compliance with art. 3.7.1.d of the FIA Formula One Technical Regulations, as clarified with the TD, and therefore they protested against the compliance of Car 8.



Haas submitted that they understood the TD, and that they have been in contact with the FIA's head of Single Seater Technical Matters and stated "Given the forthcoming summer break, we will endeavor to introduce this upgrade for the Singapore GP, but will be somewhat at the mercy of our suppliers so we would request some flexibility in this matter".

[...] Haas submitted that it was their understanding, based on a lack of response on the matter of timing that their solution and timing were accepted.

[...] The Stewards contacted the FIA's Head of Single Seater Technical Matters, who [...] stated that in a subsequent conversation with Haas' Head of Aero and representative on this matter, that [...] if the car was not corrected by Monza – that they would leave themselves open to protest by other teams. [...]

Technical Directives are advisory in nature, but they provide a manner in which a competitor may satisfy the Technical Delegates and the Stewards with proof that their car is compliant. In this case the Competitor did not follow the Technical Directive, and the outboard front corner of the car does not have the requisite 50mm radius [...]."

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

25. On 2 September 2018, at 10.20 p.m., i.e. within the hour following the notification of the Decision, Haas notified its intention to appeal against the Decision.
26. Haas then filed its appeal before the Court on 2 September 2018, at 3.01 p.m., i.e. within 96 hours of the notification of its intention to appeal against the Decision.
27. In its Grounds for appeal, received by the Court on 1 October 2018, the Appellant invited the Court to:
 - "(a) Set aside the Decision;*
 - (b) In the alternative, should the Court decide that the Appellant must nevertheless be sanctioned, the penalty of disqualification shall be replaced by a less severe sanction;*
 - (c) Order the return of the appeal deposit paid by Haas;*



- (d) *Refrain from making any order that the Competitor should pay any part of the ICA's costs pursuant to Article 11.2 of the FIA Judicial and Disciplinary Rules;*
- (e) *Order the return for the sealed items deposited with the FIA and the removal of any additional seals places by the FIA in relation to this appeal."*
28. The FIA, in its Grounds in response received by the Court on 17 October 2018, asked the Court to:
- "(1) dismiss in its entirety Haas's appeal against decision no.42 of the Stewards at the Monza GP, further to JDR Article 10.9; and (2) to order Haas to pay the ICA costs of the appeal referenced in JDR Article 11.2."*
29. Renault, in its Written observations received by the Court on 15 and 17 October 2018, filed the following request for relief:
- "[...] Renault invites the ICA to make the following findings:*
- 49.1. That Haas F1 Team Car 8 was in breach of TR 2.7 and TR 3.1.7 (d);*
- 49.2. Disqualify Haas F1 Team Car 8 from the Monza GP;*
- 49.3. Deduct a further 10 points from Haas F1 Team, being equivalent to the points won by the team at the Spa GP;*
- 49.4. That the Competition and Championship classifications be amended to reflect the above; and*
- 49.5. That Haas F1 Team pay the costs of the Appeal in accordance with Article 11.2 JDR."*
30. During the course of the proceedings and prior to the Hearing, the President of the Hearing issued five preliminary Decisions, based upon the following requests received either from the Appellant, the FIA, Renault as interested third party, or Racing Point India Formula One Team ("Force India"):
- (i) The request to be heard as a third party, received from Renault, which was granted by Decision No. 1 dated 20 September 2018;
- (ii) The request for authorisation to submit only the English versions of the grounds for appeal and to hold the hearing solely in English, received from Renault, which was denied by Decision No. 2 dated 24 September 2018;



- (iii) The request for an extension of the time limit for submitting the French version of the written observations, received from Renault, which was denied by Decision No. 3 dated 2 October 2018;
- (iv) The request for authorisation to submit a letter of support to the proceedings, received from Force India, which was denied by Decision No. 4 dated 18 October 2018;
- (v) The request that the disputed part of the Car be brought to the hearing, received from the Appellant, which was granted by Decision No. 5 dated 20 October 2018.

ADMISSIBILITY

- 31. The Court acknowledges that the Appellant filed its Appeal in conformity with the FIA Judicial and Disciplinary Rules (“JDR”).
- 32. The Court also finds that it has jurisdiction in the matter.
- 33. Therefore, the Court declares the appeal admissible, which is undisputed.

ON THE SUBSTANCE

a) Submissions of the parties

- 34. The Appellant contends in essence that:
 - (i) The Car at the Monza GP did not breach Article 3.7.1 (d) 2018-TR. The Appellant explains in its Grounds for appeal, using various diagrams, that the leading edge of the Car’s reference plane is truncated at a narrower width and that there is a step in the leading edge construction of the Car’s reference plane. According to the Appellant, this means that the transition to the lateral edge is set back from the leading edge. The application of the 50mm radius to the front corner should thus be clear, the effect of the step rearwards being to detach the sidewall from the leading edge. Unlike in previous cases, notably the one put forward by Renault in 2016, the sidewall is discontinuous from the leading edge. The Appellant claims further that Article 3.7.1 (d) 2018 TR does not require a 50mm radius to be applied to a corner that does not lie on the leading edge of the reference plane. There is no definition in this article of what has to be considered as a “front

corner” and, if there were one, this would still not mean that it applies to a corner located in the lateral edge of the reference plane. The TD/012-16 and TD/033-18 did not bring any clarity on this point. Based on the above, and with reference to the ICA precedents ICA-2018-5 to 13, the Appellant contends that the lack of clarity of the regulations should lead the Court to interpret the latter in a way that favours the Appellant.

(ii) The sanction of Disqualification was disproportionate and/or unfair. Referring to Article 12.3.1 of the International Sporting Code (“ISC”), the Appellant puts forward that the Stewards had several options when it came to sanctioning its Car. Arguing that the circumstances of this case due to both the ambiguity of the regulations and the proactive attitude of the Appellant, the latter claims, with reference to the ICA case 2009-26, that a reprimand or a financial penalty would have been a proportionate sanction. In support of its position, the Appellant brings the following points to the attention of the Court:

(1) Article 3.7.1 (d) 2018-TR is ambiguous;

(2) Haas spontaneously disclosed the geometry of its Car to the FIA;

(3) this disclosure did not provoke any reaction from the FIA and the Car was thus able to compete at both Silverstone and Hockenheim;

(4) in TD/033-18, the FIA mentioned that it expected the cars to be compliant at the Monza GP, i.e. after the Hungarian and Belgian GPs, in which the Car took part without any complaint from the FIA;

(5) the FIA accepted a minimum 45° angle to separate the reference plane sidewall from the front edge,

(6) Haas proactively redesigned its reference plane, submitting the design to the FIA and making its best efforts to have its suppliers produce it ahead of the Singapore GP, thus admitting that it could not make it for the Monza GP;

(7) it sought flexibility from the FIA but did not get any feedback from it on this point;

(8) the mandatory shutdown prescribed by the 2018-SR prevented Haas’ suppliers from manufacturing the new parts in time;

(9) at Monza, no complaint was raised by the FIA, which was fully aware of the Car’s situation, until Renault had filed a Protest;



(10) the FIA never mentioned, and nothing proves, that the Car derived any performance or other benefit from the design used at Monza;

(11) the FIA recognises that the reason for Article 5.7.1 (d) 2018-TR has been superseded, as the new F1 cars do not use as much ballast as was the case when this regulation was introduced;

(12) Mr Tombazis, in his email to which the TD/033-18 was attached, wrote that *“we would be prepared to remove this specific Article from the 2019 Technical Regulations if there was unanimity amongst the teams”*.

35. The FIA contends in essence that:

- (i) The Appellant’s argument that “each front corner” means “each forward-most corner” is not sustainable.
- (ii) For performance-related reasons, the Appellant chose to integrate its new design with an update that it wanted to make to its bargeboards, which are connected to the corner of its reference plane surface, which caused the Appellant to miss the Monza GP deadline. According to the FIA, the Appellant could have done a quick fix for Monza or it could have got the new design in time if it had been prepared to pay extra for it.
- (iii) Having a square corner on the front surface of the reference plane, namely on the so called “splitter” or “T-Tray”, permits certain more complex designs for the bargeboards, which can result in a significant aerodynamic advantage. Applying a 50mm radius, as required by the regulations, to each front corner for the T-Tray makes the connection to the bargeboard more difficult. Haas thus made a small indent of 3 mm depth on the leading edge of the T-Tray in an attempt to avoid having to round off the corners of the reference plane surface where the leading edge meets the lateral edges.
- (iv) With reference to the case submitted by Renault on 17 November 2016, the FIA explains that it had indicated that in the option where the reference plane had two front corners on each side, the radii would have to be applied to both of those front corners.
- (v) Coming to the TD/033-18 issued on 25 July 2018, the FIA refers to Mr Tombazis’ witness statement where the latter explains that after a discussion with Charlie Whiting, the FIA Formula One Race Director, it was agreed to give a “grace period” to comply with the regulations,

due to logistical issues with engineering and manufacturing new parts. The FIA set the deadline for the Monza GP, i.e. 2 September 2018.

- (vi) Still referring to Mr Tombazis' witness statement, the FIA claims that the solution adopted by Haas in order to meet the regulations was quite complex and part of a wider bargeboard and floor update that was likely already underway. The FIA stresses further that Mr Tombazi clearly indicated that if the new design was not brought in for the Monza GP, Haas would be non-compliant and so at risk of protest by other teams.
- (vii) The Appellant's interpretation of the regulations is totally inconsistent with the safety purpose of Article 3.7.1 (d) 2018-TR, as it would leave other far more prominent corners on the leading edge squared off, thus not achieving the safety purpose of the regulation. The FIA adds that the natural and ordinary meaning of the words used in Article 3.7.1 (d) 2018-TR and the necessary consistency of this Article with the other provisions of the regulations, where "front" as a meaning which cannot be replaced with "forward-most", exclude the Appellant's interpretation of it.
- (viii) The FIA contests the Appellant's argument that the outside corner of the Car's reference plane is "discontinuous from the leading edge". In the FIA's view, in order for a corner to become a side corner when it meets the lateral edge, the angle from the leading edge to the corner in question must be 45 degrees or more, which is not at all the situation in the present case.
- (ix) Considering that the FIA had confirmed that the T-Tray used by Haas was not compliant and that a sufficient grace period had been granted by the FIA to all competitors in a similar situation, the FIA contends that there is no reason in the present case to make an exception to the ICA's constant jurisprudence where, except in cases of a clerical error or of honest mistakes, disqualification is the appropriate sanction for breaches of the applicable technical regulations.
- (x) The FIA stresses also that Haas admitted that its T-Tray was not compliant as it decided to redesign it.

36. Renault contends in essence that:

- (i) Article 3.7.1 (d) 2018-TR was first introduced in the 2001-TR based on a decision taken by the Technical Working Group on 26 June 2000, the objective being that the corners of an F1 car's floor are as safe as the car's skid block. The minutes of this TWG meeting mention that "*the*



principle of the necessity of a 50mm radius on the forward extremity of the surface lying on the reference plane in plan view, was agreed.”
This particular clause has not been changed since then.

- (ii) According to Renault, which refers to various photographs of the Appellant's T-Tray, the Appellant ran a legal floor during the first 6 races of the 2018 FIA Formula One World Championship. The Appellant then introduced a new, illegal floor and upgraded it for the Belgian GP and the Monza GP.
- (iii) Renault stresses that it had informed the FIA of the situation and constantly warned that it would file a protest if the Appellant's Car still did not comply with the regulations. Renault mentioned this notably before the Monza GP.
- (iv) Based on the foregoing, Renault claims that, in accordance with the ICA's constant jurisprudence in relation to a breach of technical regulations, the Decision must be upheld.
- (v) Pointing at several allegedly aggravating factors, Renault mentions that the Appellant put performance before safety and ignored the FIA's warnings contained in TD/033-18, abusing the period of grace granted by the FIA, during which Renault had waived its right to protest against the Appellant's cars.
- (vi) Based on Mr Chester's evidence, Renault claims further that the Appellant could have fixed its illegal floor overnight.
- (vii) Pursuant to Article 10.9 JDR, Renault thus invites the Court to increase the penalty inflicted by the Stewards by also deducting points equivalent to those won by Haas at the Belgian GP, arguing that the Appellant had introduced a new and still illegal floor before that GP.
- (viii) In reply to the Appellant's submissions, Renault contends that the Appellant tried to circumvent Article 3.7.1 (d) 2018-TR in order to gain performance through the development of bargeboards.
- (ix) Renault further argues that the Appellant cannot blame the FIA for not having prevented it from using an illegal floor, as the regulations clearly provide that it is the competitor's duty to make sure that its car complies with the applicable regulations at all times.



b) Conclusions of the Court

37. Having carefully considered the various submissions made by the parties to the procedure and listened to the witness statements made at the hearing, the Court finds that the present case raises the following questions:

- a. What does “each front corner” mean under Article 3.7.1 (d) 2018-TR, and was the Appellant’s Car in breach of the Technical Regulations?
- b. Was the attitude of the FIA ambiguous in this case, and should this attitude legitimate that no sanction or a lesser sanction be imposed on the Appellant?
- c. Depending on the answers to questions a and b, was the sanction imposed by the Steward proportionate, should it be reduced as requested by the Appellant, or should it even be increased as suggested by Renault?

a. *What does “each front corner” mean under Article 3.7.1 (d) 2018-TR?*

38. In order to interpret Article 3.7.1 (d) 2018-TR, the Parties refer to Articles 1188 to 1190 and 1192 of the French Civil Code on the interpretation of contracts, which read as follows:

“Art. 1188

A contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms.

Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it.

Article 1189 :

All the terms of a contract are to be interpreted in relation to each other, giving to each the meaning which respects the consistency of the contract as a whole.

Article 1190

In case of ambiguity, a bespoke contract is interpreted against the creditor and in favour of the debtor, and a standard-form contract is interpreted against the person who put it forward.”

Article 1192

Clear and unambiguous terms are not subject to interpretation as doing so risks their distortion.

39. Based on the information provided during the procedure and confirmed at the hearing, the Court finds first that the reason for the introduction in 2001 of the

clause which can currently be found under Article 3.7.1 (d) of the 2018-TR was to provide safety for the competitors should the components added at the front of the reference plane break off. The rationale of the provision, and therefore the intention of the parties which adhere to the 2018-TR, was thus to round off the corners of the reference planes in order to limit injuries and damage.

40. Going through the 2018-TR, the Court further notes that the reference to the word “front” is used in combination with the word “rear”. Article 3.2 2018-TR opposes for instance the “front wheel centre line” to the “rear wheel centre line”. Article 11.4 2018-TR opposes the “front brake” to the “rear brake”, etc.
41. There is therefore no doubt for the Court that the wording “front corner” refers to a corner which is oriented in the front of the reference plane and that there can be more than two front corners, which can be split along the front side of the reference plane based on the specific shape of the reference plane of each F1 car. If the intention had been to limit the scope of this Article to two corners, this would have to be clearly specified by using for instance the words “each forward-most corner” or “both corners”.
42. The Court therefore does not see any ambiguity in the wording of Article 3.7.1 (d) 2018-TR. The Appellant’s interpretation of Article 3.7.1 (d) 2018-TR can thus already be rejected on the basis of Article 1192 of the French Civil Code.
43. The Court finds that a “front corner” can also be defined according to the original purpose of the Article.
44. Being in the front of the reference plane, a “front corner” could hurt a competitor or damage another car if it were not duly rounded off. This is indeed the very purpose of the regulation put in place in 2001 and which is at the heart of the present case. The interpretation of Article 3.7.1 (d) 2018-TR made by the Appellant would thus simply mean that it would not reach its original objective. Indeed, the other front corners, located more at the edge of the Car’s reference plane, are of course at least as dangerous, if not more so, than the corners of the indent located in the centre of the reference plane’s front side.
45. The Appellant’s interpretation of Article 3.7.1 (d) 2018-TR can therefore also be rejected on the basis of Article 1188 of the French Civil Code.
46. The inspection of the Car’s litigious reference plane made by the Court during the Hearing confirms beyond any doubt the above arguments on the correct meaning of Article 3.7.1 (d) 2018-TR.



47. The Court stresses further that the Appellant did not follow the TD/033-18, in the sense that it did not correct its T-Tray before the Monza GP.
48. As expressly stated in the ICA precedent 2014-01, paragraphs 42-45, a competitor has to accept that if it does not comply with a Technical Directive, the evidence or the submissions it intends to bring as an alternative to those foreseen by that Technical Directive might not satisfy the Technical Delegate, the Stewards or, in the present case, the Court.
49. Lastly, the Court notes that the Appellant did not contest that it had to adapt the reference plane of its Car but requested some “flexibility” from the FIA to implement this adaptation.
50. Based on the foregoing, the Court concludes that the Appellant’s Car was in breach of Article 3.7.1 (d) 2018-TR.
- b. *Was the attitude of the FIA ambiguous in this case, and should this attitude legitimate that no sanction or a lesser sanction be imposed on the Appellant?***
51. The Appellant made various submissions on the attitude of the FIA that it qualifies as “ambiguous”.
52. The Court finds first that the FIA Technical Department certainly gave the impression that Article 3.7.1 (d) 2018-TR was not important and that implementing it no longer really made sense.
53. In the TD/033-18 and during the subsequent TWG meeting, the FIA itself suggested that this article should not be carried over to the 2019-TR, pointing out that when confronted with breaches of this Article, the FIA decided not to pursue the case but to give a “*grace period*”, “*expecting*” compliance by the Monza GP.
54. Considering the primary role of the FIA in Formula One, which is to make sure that the teams comply with the regulations and therefore to sanction a team in breach, the Court was very surprised, to say the least, that the FIA decided to refrain from making use of its power to prosecute any breach of the regulations, in particular when it comes to the breach of technical regulations.
55. Indeed, as developed by the Court further down in the present decision, a breach of a technical regulation leads almost systematically to the sanction of disqualification, which shows that such a breach is viewed by the disciplinary bodies as very severe.
56. The Court also finds the comment made by the representative of the FIA during the Technical Working Group (TWG) meeting, to remove Article 3.7.1 (d) for



2019 “*as it was proven to have multiple varying interpretations*”, to be particularly ill-advised.

57. As a legislator, the FIA’s duty is to propose and implement regulations which are as little as possible subject to interpretations and, in the case of Article 3.7.1 (d) 2018-TR, the Court finds that the FIA did reach this objective. In other words, this Article is definitely not subject to multiple varying interpretations. This has been explained by the Court above in its decision but this is also confirmed by the fact that only two teams were in breach and that, considering that the breach by the second team was not one of interpretation – it had merely applied an insufficient radius – only one team, namely Haas F1, interpreted that rule differently from all the other F1 teams.
58. One would thus expect FIA representatives not to create the false impression that the FIA legislation is ambiguous when it is not.
59. However, and as already explained by the Court, this attitude, as surprising and inappropriate as it might be, nevertheless does not lead to the conclusion that the article at issue could be considered as ambiguous by the Appellant and that this could justify no sanction or a lesser sanction for its breach.
60. The Court accepts of course that the FIA saw a need to clarify Article 3.7.1 (d) 2018-TR and therefore issued the TD/033-18. However, this does not mean that this article becomes unenforceable due to its alleged ambiguity. This means only that any competitor has been given the opportunity to correct any breach of the regulations by following the instructions provided under the relevant Technical Directive.
61. In the present case, the Appellant did not follow the instructions of the Technical Directive and did not adapt its reference plane on time, which is undisputed.
62. As to the Appellant’s request for flexibility, the Witness Statements of both Mr Agathangelou, for the Appellant, and Mr Tombazis for the FIA, confirm that the FIA confirmed to the Appellant that not being compliant in Monza would expose the Appellant to a reaction from the other teams. So, besides the clear wording of the TD/033-18, the FIA had confirmed the deadline to the Appellant during the exchanges between Mr Agathangelou and Mr Tombazis.
63. As a consequence, the Appellant did not make best use of the grace period that the FIA and obviously the other competitors – notably Renault, which had signalled the issue to the FIA before the TD was issued – had accepted to grant the Appellant and the other competitor that was in breach of Article 3.7.1 (d) 2018-TR.



64. The Appellant therefore misinterprets the scope of the Technical Directive. The latter was not a confirmation of the ambiguity of Article 3.7.1 (d) 2018-TR but a confirmation, for the sake of clarity, of the proper scope of that article, which had already been confirmed to Renault back in 2016.
65. The Court notes further that it has been confirmed at the hearing that the Appellant's reference plane was compliant with the regulations until the seventh race of the FIA 2018 Formula One Championship, i.e. until the Canadian GP. The Court finds that the Appellant's reason for using a new reference plane which was no longer compliant was based purely on performance and that the Appellant, rather than being misled by the regulations, was instead trying to circumvent them.
66. In any event, the Court stresses that according to Article 2.4. of the 2018-TR *"Automobiles must comply with these regulations in their entirety at all times during an Event. Should a competitor introduce a new design or system or feel that any aspect of these regulations is unclear, clarifications may be sought from the FIA Formula One Technical Department."*
67. Before implementing its new solution in Canada, the Appellant should thus have submitted it to the FIA, which would then have confirmed to the Appellant that this solution was not acceptable.
68. Obviously, this very strict and clear requirement of the 2018-TR applies even in cases where the FIA or the other competitors decide not to raise a claim or protest against a competitor in breach. In other words, in this type of situation, the competitor is still in breach of regulations but benefits from the decision of its fellow competitors and/or of the FIA. This situation of "breach without prosecution" is actually confirmed in the TD/033-18, where the FIA states that *"we would be expecting full compliance with this clarification by the Grand Prix of Monza"*. In other words the FIA clearly confirmed that the cars found in breach of Article 3.7.1 (d) 2018-TR were not compliant and that it was merely giving to the teams time to adapt their cars.
69. The fact that Appellant claims that it did not have time to make the necessary adaptations is therefore irrelevant. Not only was it able to escape a sanction during several GPs, thanks to the grace period, but it was up to the Appellant to meet the deadline. The fact that the Appellant decided to choose a more time-consuming solution, allegedly – according to Mr Agathangelou's statement at the hearing – for safety purposes, is also irrelevant.
70. As provided in the Court's constant jurisprudence (see notably ICA 2014-03 or ICA 2013-03), meeting the requirements set by the applicable technical regulations is an absolute and objective test.



71. In the present case, there is therefore no doubt that the Appellant's Car was in breach of Article 3.7.1 (d) 2018-TR during the Monza GP, and the attitude of the FIA in the present case does not in itself justify that no sanction or a lesser sanction be imposed on the Appellant and its Car.
72. The Court stresses again that the Appellant benefited from the attitude of the FIA and its fellow competitors, as it was able to participate in several Grands Prix without being prosecuted, although it was in breach of the applicable technical regulations. Without a grace period, it would have had to change its reference plane in haste. It is therefore obvious that the attitude of the FIA favoured the Appellant, and not the contrary.
- c. **Was the sanction imposed by the Steward proportionate, should it be reduced as requested by the Appellant, or should it even be increased as suggested by Renault?**
73. According to the constant jurisprudence of the Court and also the constant approach of other FIA disciplinary bodies, the breach of technical regulations leads to the disqualification of the car in breach (see notably ICA 2013-03).
74. In this respect, the Appellant's claim that there is no evidence in the present case that the Appellant's Car could gain any competitive advantage with the breach of Article 3.7.1 (d) 2018-TR is rejected by the Court.
75. The Court notes that the breach of the regulations was linked to the use of bargeboards in order to improve the aerodynamics of the Car and that Mr Agathangelou admitted that the purpose of the indent was only to avoid having to apply Article 3.7.1 (d) 2018-TR on the front corners located on the side of the front plane or T-Tray. It appears, therefore, that there are convincing reasons to believe that the breach provided the Appellant with a competitive advantage over other competitors. In this respect, the fact that the reason for the issuing of Article 3.7.1 (d) 2018-TR might be superseded is totally irrelevant, as this article has an impact not only on the primary safety reason for which it was implemented, but also on the collateral effects of its application in terms of the Car's performance.
76. In any event the Court refers to the very clear wording of Article 1.2.2 ISC, which states that *"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"*.
77. The Court further refers to Articles 3.2 and 3.3 of the 2018 Formula One Sporting Regulations (2018-SR), to Article 2.4 2018-TR and to its established precedents on issues related to cars' compliance with the applicable technical regulations, and emphasises that the obligation imposed on competitors to



ensure that their cars comply with the relevant regulations is an absolute and objective one, and that the breach of that obligation does not even depend upon a fault being established (see ICA 2010-03, *RACB Prospeed ASBL*, dated 30 November 2010, no. 20; ICA 2013-03, *G-Drive Racing*, dated 10 September 2013).

78. Although there is no particular rule in the International Sporting Code, nor in other regulations, providing for a mandatory sanction of disqualification in case of a technical non-conformity discovered in a competitor's car, it is well established, through numerous precedents of the Court, that to ensure fairness and sporting equity the sanction of disqualification must be imposed in such situations.
79. In the ICA precedent 2013-03, the ICA already mentioned that the sanction of disqualification may appear severe. However, the ICA insisted on the fact that a technical non-conformity is widely considered as one of the most serious breaches of the regulations.
80. The responsibility of the competitors to ensure the technical conformity of their car is absolute and objective, as explained above. The Appellant does not put forward any extenuating and exceptional circumstances that could be considered as a good reason for the application of a less severe sanction than disqualification. Certainly such circumstances would be based on an absolute lack of any intention and negligence on the part of the competitor. Based on the clear facts of the present case, the Court reaches the obvious conclusion that there are no such extenuating and exceptional circumstances.
81. Indeed, and with reference to previous decisions of the ICA (ICA 21/2009, *FFSA Hexis Racing AMR*, dated 14 October 2009; ICA 26/2009, *Pekaracing NV*, dated 23 February 2010; ICA 1/2010, *DMSB Young Driver AMR*, dated 18 May 2010), it is undisputed that the breach committed by the Appellant was not caused by a clerical error or a mistake on the official homologation documents as was the case in those ICA precedents, where the sanction of disqualification was converted into a fine.
82. In the present case, the FIA's misleading is not insignificant, but – however – does not reach the intensity level set in the Court's jurisprudence to justify the modification of the sanction from disqualification to a lesser penalty.
83. Based on the foregoing, the Court finds that the penalty imposed on the Appellant is proportionate and that the Decision must be upheld.
84. Coming now to Renault's submission on the increase of the sanction and its request to "*deduct a further 10 points from Haas F1 Team, being equivalent to*



the points won by the team at the Spa GP”, the Court finds that Renault refers to facts that are not within the scope of the appealed Decision.

85. The Stewards were indeed competent to deal with a breach during the Monza GP only. All other factual elements of the Decision which did not take place at Monza are only relevant for interpreting whether the Appellant committed a breach during the Monza GP.
86. As provided under Article 11.9.1 ISC *“the stewards shall have supreme authority for the enforcement of the Code, of the regulations of FIA [...] within the framework of the Event for which they are appointed (author’s emphasis.)”*
87. The Stewards of the Monza GP were thus simply not competent to decide on a breach of the regulations during the Belgian GP.
88. According to Article 10.9 JDR par. 1, *“the ICA has all the decision-making powers of the authority that took the contested decision”*. In French, which is the prevailing language of the JDR, the same article provides that the ICA has *“les mêmes pouvoirs”* (translation in English: *“the same powers”*) as the authority that took the contested decision.
89. Renault makes also a wrong interpretation of Article 11.3 JDR.
90. Indeed, this article provides that *“after the ICA has issued a decision, if any important new evidence is discovered which was unknown at the outset of the case before the ICA [...], the ICA may decide to re-examine its decision.”*
91. As mentioned above, the present case deals with a breach of the 2018-TR by the Appellant’s car during the Monza GP and not during the GP at Spa.
92. It goes without saying that the present decision is the first decision dealing with this case. Article 11.3 JDR is therefore not applicable.
93. The Court therefore finds that it cannot, in the present case, take a decision related to an event other than the one for which the Stewards were competent, namely the Monza GP.
94. As far as the increase of the sanction decided by the Stewards is concerned, the Court thus rejects Renault’s request.
95. Based on all the above, the Appeal is rejected and the Decision is upheld.

COSTS

96. Considering that the Appeal is rejected, the Court leaves it to the Appellant to bear the costs in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeal admissible;**
- 2. Upholds Decision No. 42 of the Stewards of the 2018 Italian Grand Prix held at Monza and counting towards the 2018 FIA Formula One World Championship;**
- 3. Confirms the exclusion of Haas F1 Team's car No. 8 from the 2018 Italian Grand Prix held at Monza and counting towards the 2018 FIA Formula One World Championship;**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to Haas F1 Team to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 6. Orders the return to Renault F1 Team of its third party deposit;**
- 7. Rejects all other and further conclusions.**

Paris, 16 November 2018¹

The President

Jan Šťovíček

¹ The operative part of this decision (without the reasons) had been notified to the parties on 2 November 2018.