



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by Team MRF TYRES**

**against**

**Decision No. 1 of 2 October 2020 taken by the Stewards of the Rally Fafe Montelongo counting towards the FIA European Rally Championship (ERC)**

**Case ICA 2020-05**

**Hearing of 1 December 2020, held via videoconference**

**Decision of 22 December 2020**



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Jean Gay (Switzerland), who was designated President of the Hearing, Mr Gérard Martin (Belgium), Mr Philippe Narmino (Monaco) and Mr Laurent Nuss (France), held a hearing via videoconference on Tuesday 1 December 2020.

Ruling on the appeal brought by Team MRF Tyres (“MRF” or “the Appellant”) against Decision No. 1 of 2 October 2020 taken by the Stewards of the Rally Fafe Montelongo counting towards the FIA European Rally Championship (ERC) (the “Decision”).

The following persons attended the hearing:

On behalf of MRF:

Mr Topi Lusenius (Lawyer)  
Ms Sanna Luoma (Lawyer)  
Mr Tuomas Kulomaa (witness)

On behalf of the FIA:

Mr Pierre Ketterer (Head of Department – Governance,  
Integrity & Regulatory Affairs, FIA)  
Ms Alejandra Salmerón Garcia (Senior Legal Counsel, FIA)  
Mr Vincent Pereme (Power Unit Senior Advisor, FIA)  
Mr Daniel Fasano (ERC Assistant Technical Delegate, FIA)

At the request of the Court:

Mr Emanuele Saglia (ERC Technical Delegate, FIA,  
knowledgeable person)

Also attending the hearing:

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

The parties filed written submissions and, at the hearing on 1 December 2020, set out oral arguments and addressed the questions asked by the Court. The witnesses and knowledgeable persons were heard and the Parties and the Court were able to put to them any questions that they deemed useful. 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 Court or to the manner in which the proceedings have been conducted, notably the simultaneous translation

## REMINDER OF THE FACTS

1. On the occasion of Rally Liepāja, which took place in Latvia from 14 to 16 August 2020 (“Rally Liepāja”) within the framework of the 2020 FIA European Rally Championship (the “Championship”), the FIA Technical Delegate, Mr Emanuele Saglia (the “Technical Delegate”) provided the Stewards of that rally with a report which stated among other things that *“During the fuel sampling in the TZ 7A [author: tyre zone] the car number 9 (driver Lindholm) [author: who is part of Team MRF Tyres] was found without a minimum quantity of fuel necessary to perform the sampling. [...] We split the small amount of fuel (around 1,5 liters) in the three sample bottles. The driver takes the bottle with the seal no. 028049.”*
2. After hearing MRF, the Stewards issued Decision No. 9 in which they ruled that the Competitor had breached Article 62.1.4 of Appendix V1A to the 2020 FIA Regional Rally Sporting Regulations (RRSR) and imposed on it a fine of 1,000 euros for having failed to provide a sufficient quantity of fuel.
3. Also, the Stewards established in that decision that *“the competitor waived his rights to examine his fuel sample [sample C] in the event of the positive result of the fuel sample taken by the FIA [...] The fuel samples are filled in 3 bottles [...] Two of them will be send to a FIA Laboratory and one will be given to the team concerned. Since there was not enough fuel in the tank of car no. 9, the bottle given to the team has probably not a sufficient volume of fuel to do a cross-check in case the FIA fuel samples are tested positive”*. Decision No. 9 was not appealed.
4. On 8 September 2020, the Technical Delegate provided the Stewards of Rally Liepāja with a report stating that, according to the test report No. 207880 from Intertek Caleb Brett, an FIA-recognised laboratory, the analysis of Sample A from Car No. 9 (the “Car”) showed a result for aromatics of 37.4%, the method of analysing the aromatics being “ISO 22854”, a method that provides for a reproducibility limit, or tolerance, of 1.7%. The report added that the maximum percentage of aromatics allowed is 35%, 37.4% thus being *“definitely out of the reproducibility limits based on max. value of 35%”*.
5. On 9 September 2020, MRF received from the Stewards of Rally Liepāja the individual communication No. 5 whereby MRF was informed that the Stewards had received

the report from the Technical Delegate which determined that the fuel from Car No. 9 did not meet the requirements of Article 252.9 of Appendix J to the International Sporting Code (the "Code") as the aromatics content (37.4%) was above the applicable limit value (35.0%). The Appellant was asked to decide either to send a written defence within 96 hours after the receipt of the notification and have a meeting via videoconference, or to attend a hearing at the next ERC competition, Rally Fafe Montelongo. MRF was given 24 hours to communicate its decision.

6. On 10 September 2020, MRF notified the Stewards of Rally Liepāja of its decision to be heard at the next ERC competition.
7. On 24 September 2020, the Stewards of Rally Liepāja decided, in accordance with Article 11.9.3.t of the Code, to delegate their authority to the Stewards of Rally Fafe Montelongo.
8. On 30 September 2020, the Appellant received the individual communication No. 1 which stated that the Appellant was required to report to the Stewards of Rally Fafe Montelongo on 1 October 2020, at 18.30, for an alleged breach of Article 252.9 of Appendix J to the Code.
9. After analysing all the documents in their possession, and having heard MRF, the Stewards issued the Decision on 2 October 2020, at 13.00 (CET), determining a breach of Article 252.9.1 of Appendix J to the Code and deciding to disqualify MRF.
10. In particular, the Decision states the following:

*"The fuel analysis report of the laboratory shows that the aromatics in the sample from car no 9 are 37,4 % v/v. As explained from the analysis laboratory the reproducibility limits (tolerance) that should be apply is 1,7% v/v. This will result in a maximum of 36,7 % v/v. Even considering the tolerance the percentage of aromatics content found in the sample is above the limit. (...)*

*The aromatics of 37,4% v/v is an infringement of the sporting and technical regulation. It is not relevant that the aromatics are "only" 0,7 % over the defined limit including tolerance. Recalling that Article 1.3.3 of the International Sporting Code expressly provides that "it shall be no defence to claim that no performance advantage was obtained"; (...)*

*It is to the competitor to ensure that its car is always in conformity (FIA RRSR Art. 32.2.18), and the competitor is also answerable for its supplier's compliance [...] If the supplier knows that the aromatics content in the fuel could rise significantly when the fuel tank is almost empty, he should consider this when producing the fuel [...] it is not unusual that the fuel tank is almost empty when the car reaches the next refuelling zone. (...)*



*The Stewards conclude that, in view of the clear provisions of the relevant regulations, it was indeed up to the Competitor to ensure that its car/fuel was compliant. They cannot see any exceptional circumstances in this matter."*

11. On 2 October 2020, at 13.02 (CET), within one hour of the publication of the Decision, MRF notified the Stewards in writing of its intention to appeal.
12. On 27 October 2020, MRF requested the FIA "to proceed at its own expense (irrespective of the eventual outcome of the matter in the ICA) to test whether: (a) the bottle of the Sample B is hermetically sealed; and if yes, (b) the contents of Sample B is compliant with the FIA regulations".
13. On 29 October 2020, MRF informed the FIA that in the event that it did not provide any answer concerning its presence at the analysis of Sample B by 30 October 2020, the FIA was "free to proceed with the testing without representation [from MRF]" on 9 November 2020.
14. The analysis of Sample B was carried out by the laboratory SGS on 9 November 2020 in the presence of Mr Daniel Fasano, the FIA representative, and without any representative of MRF as per their decision. On that same day, the FIA received the results of the test, showing a result for the aromatics of 36.8%, thus still above the percentage allowed taking into consideration the reproducibility limits.

## PROCEDURE AND REQUESTS OF THE PARTIES

15. MRF notified its appeal to the ICA on 6 October 2020.
16. On the same day, the Appellant also paid an appeal deposit of 6,000 euros.
17. In its Grounds for Appeal, received by the Court on 28 October 2020 in English and in French, the Appellant asks the Court:

*"(1) to declare and rule that this appeal is admissible;*

*(2) to quash the contested Decision no. 1 of the Stewards of Rally Fafe Montelongo dated 2 October 2020;*

*(3) to order alternatively that, in replacement of the disqualification penalty, a penalty not more severe than a fine is imposed on the Team MRF Tyres from the Rally Liepāja held in Latvia on 14-16 August 2020;*

*(4) to order the Rally Liepāja to rectify the classification of the Rally Liepāja at Latvia on 14-16 August 2020 counting for the 2020 European Rally Championship series and including Team MRF Tyres in the 6th position;*

*(5) to pronounce any other measure which it deems appropriate; and*

*(6) to order Fédération Internationale de l'Automobile ("FIA") to bear the cost of the proceedings and the deposit of Appellant is returned."*

18. In its Grounds in Response, received by the Court on 16 November 2020, the FIA asks the Court:

*"i. further to Article 10.9 of the JDR, dismiss the Appellant' appeal, and confirm the Corse Decision in its entirety, both as to breach of Article 252.9.1 of Annexe J to the ISC and as to penalty for that breach; and*

*ii. order the Appellant to pay ICA costs of the appeal referenced in Article 11.2 of the JDR of the FIA."*

## **ADMISSIBILITY OF THE APPEAL BEFORE THE COURT**

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

20. The Court also considers that it is competent to hear this appeal.

21. Therefore, the Court deems the appeal admissible, which is not contested by the FIA which expressly recognises the admissibility of the appeal in its Grounds in Response.

## **ON THE SUBSTANCE**

### ***a) Arguments of the parties***

22. The Appellant puts forward the following grounds in support of its appeal:

- (i) The fuel used by the Appellant was compliant with the FIA regulations and the results of the analysis were likely due to the contamination of fuel Sample A;
- (ii) The penalty of disqualification is disproportionate;
- (iii) A precise calculation of the tolerance reveals that the results of the analysis of fuel Sample B are, in reality, within the tolerance.

23. The FIA, for its part, contends in essence as follows:

- (i) The fuel analysis procedure was carried out in a manner compliant with the applicable rules, and the Appellant fails to prove that fuel Samples A and B were contaminated;
- (ii) Fuel Sample C, on which the Appellant relies, is irrelevant as it is totally out of the control of the FIA, in its capacity as the body that controls compliance with the standards;
- (iii) Only the analysis of the samples taken and placed in the custody of the FIA, i.e. Samples A and B, can serve to establish the existence of a positive or negative result;
- (iv) Compliance with Appendix J to the Code must be absolute and objective (cf. Case ICA-2018-04, with references to other decisions of the ICA);
- (v) The effect of a breach of the regulations on a car's performance is irrelevant;
- (vi) The Appellant fails to prove, using the bottle containing Sample C, that there was a problem of evaporation of aromatics, which incidentally are heavy elements, on Samples A and B;
- (vii) The SGS expert has in any case confirmed that Sample B was in perfect condition;
- (viii) The Appellant's argument whereby evaporation can be greater when the fuel receptacle is too empty must be rejected, as it is in all cases up to the competitor and its supplier to take the technical measures necessary to avoid such a situation;
- (ix) The penalty of disqualification is the appropriate penalty whenever there is a breach of the technical regulations, as in the present case and as per the constant jurisprudence of the ICA.

**b) *Conclusions of the Court***

24. Having carefully examined the various observations presented by the Parties to the procedure, and having listened to the statements made by them and the witnesses and knowledgeable persons heard during the hearing, the Court rules as follows.

On the question of the breaching of Article 252.9.1 of Appendix J to the Code

25. On the subject of aromatic properties, Article 252.9.1 of Appendix J to the Code states the following:

*“The fuel must comply with the following specifications:*

<b>Propriété – Property</b>	<b>Unités – Units</b>	<b>Min.</b>	<b>Max.</b>	<b>Méthodes de test – Test methods</b>
(...)				
<i>Aromatiques - Aromatics</i>	<i>%v/v/</i>		<i>35.0</i>	<i>ISO 22854 ASTM D6839</i>

(...)”

26. The Court notes that the Appellant disputes in particular the claim that the results of the tests carried out on Sample B are outside the tolerance.
27. If the position of the Appellant were to prove justified, there would then be no breach, and no sanction could be pronounced against the Appellant in pursuance of Article 252.9.1 of Appendix J to the Code.
28. As the FIA states in its Grounds in Response, the method “ISO 22854” is the applicable test method regarding aromatics according to Article 252.9.1 of Appendix J to the Code.
29. If the maximum limit is set at 35.0% in the aforementioned article, one must refer to the standard ISO 2284 to calculate the tolerance.
30. On the basis of the information provided by the laboratories in charge of controlling Samples A and B, the FIA puts forward that the tolerance is limited to 1.7%.
31. As the result of Sample A is 37.4% and that of Sample B is 36.8%, the standard indeed seems in both cases to be exceeded but by only 0.1% in the case of Sample B, such that it would suffice that the tolerance was 1.8% for the Appellant to be compliant with the technical regulations.
32. However, the method for calculating the tolerance is described as follows in the standard ISO 22854:

“

<b>Component or group</b>	<b>Repeatability<sup>a</sup> <i>r</i></b>	<b>Reproducibility<sup>a</sup> <i>R</i></b>
(...)		
<i>Aromatics</i>	<i>(0.009 5 X + 0.195 2) % (V/V)</i>	<i>(0.045 0 X + 0.1384) % (V/V)</i>



<sup>a</sup> X is the mean of the two results being compared unless otherwise stated

### 10.1 Procedure A

The results are reported in a volume fraction of % or a mass fraction of % (see 9.5) according to the following requirements:

- saturates content, aromatics content and olefins content to the nearest 0.1%;
- benzene content, oxygenate content and total oxygen content to the nearest 0.01%.”

33. In applying the calculation method clearly described in the extract from the applicable standard reproduced above, the Court notes that the tolerance concerning Sample B is not 1.7%, as the laboratories in charge of analysing Samples A and B and the FIA wrongly indicate, but is indeed 1.8% given that the result of the calculation is as follows:

$$(0.0450 \times (35+36,8)/2 + 0.1384)\% = 1.6155 + 0.1384\% = 1.7539\%$$

34. As the standard explicitly provides under Article 10.1 that the figure resulting from the calculation should be rounded to the nearest decimal place and not stop at the first decimal place, it emerges that the tolerance is 1.8% and not 1.7%.
35. With a maximum of 35% v/v fixed in Article 252.9.1 of Appendix J to the Code, to which a tolerance of 1.8% should be added, it appears that the result of the test on Sample B, at 36.8%, is just within the tolerance.
36. According to Technical List No. 2 “FIA Fuel Sampling and Analysis Procedure” issued by the FIA, “*If the result [of the test on Sample B] is still outside the tolerance of the method, the matter will be referred to the Stewards. If the result is within the tolerance of the method no further action will be taken and the matter shall be referred to the Stewards.*”
37. Given that it is proved that the result of the test on Sample B, carried out by the laboratory SGS, is in fact within the tolerance of the method stipulated by the standard ISO 22854, recognised as applicable by the FIA, the Court notes that according to Technical List No. 2, no further action needs to be taken and that the Appellant has thus not committed the infringement with which it is charged.
38. It is therefore unnecessary for the other grounds raised by the Parties to be examined further, and Decision No. 1 must quite simply be quashed.



## **COSTS**

39. Considering that the Appeal is fully accepted, the Court leaves it to the FIA to bear all the costs, in accordance with Article 11.2 of the JDR.

## **ON THESE GROUNDS,**

### **THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal admissible;**
- 2. Accepts the appeal and quashes Decision No. 1 of 2 October 2020 taken by the Stewards of the Rally Fafe Montelongo counting towards the FIA European Rally Championship (ERC);**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Leaves it to the FIA to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Orders the return of the deposit in full to the Appellant;**
- 6. Rejects all other and further conclusions.**

**Paris, 22 December 2020**

**The President**

**Jean Gay**