

**UNION INTERNATIONALE MOTONAUTIQUE**

DECISION no. [4/2023]

IN THE CASE ICA [4/2022]

DELIVERED BY THE

**UIM INTERNATIONAL COURT OF APPEAL**

SITTING IN THE FOLLOWING COMPOSITION

PROF. BRUNO TASSONE (PRESIDENT), AVV. FRANCESCO DE BEAUMONT AND  
AVV. XAVIER BONÉ

in the proceeding between:

Mr. Tobias Munthe Kaas, represented by Geir Lilletvedt, Esq. (hereinafter the “Appellants”)

– *Appellant* –

v/

UIM PROSECUTING BODY, in the person of Mr. Kimon Papachristopoulos (hereinafter  
also “Prosecutor”)

– *Respondent* –

## **1. THE PARTIES AND THE SUBJECT-MATTER**

- 1.1 The Appellant is a Driver taking part in the UIM F2 World Championship (hereinafter the “Championship”) Race, in Vila Vehl, Portugal, in September 17-19, 2022, running with the Boat no. 77 (hereinafter also the “Driver”).
- 1.2 The Prosecutor is Mr. Kimon Papachristopoulos, who is also the UIM Statutory Legal and represents UIM before the International Court of Appeal (hereinafter “ICA”) pursuant to Art. 3, Para. 1, of ICA Procedural Rules adopted by the UIM Council on March 16, 2018 (hereinafter the “ICA Rules”).
- 1.1 The Appeal is directed against the ODD Decision confirmed by the Decision of the International Jury under the Driver’s Protest (hereinafter the “Decisions”) to disqualify him from the Championship for the infringement of Rule 8.2.1 in the F2 blue pages of the 2022 Circuit Rulebook (hereinafter the “Sanction”).

## **2. THE PROCEEDING**

- 2.1 On September 20, 2022, the Appellant notified to UIM the intention to appeal the Decisions and the Sanction, also carrying out the deposit of Euros 4.000 required by the ICA Rules and reserving to file further documents.
- 2.2 On September 21, 2022, UIM acknowledged the circumstance and communicated the Appellant the deadline to file the Grounds of Appeal and further documents, which happened on September 29, 2022.
- 2.3 On October 11, 2022, UIM communicated to the Appellant that the sealed engines kept back in Vila Velha after the final round of the Championship were to be sent to the Carl Zeiss workshop in Eskilstuna, Sweden, for review of the engine measurements that had led to the Sanction and that he would be given the possibility to have an observer attending when the engine block would be measured.
- 2.4 In the meanwhile, UIM communicated the list of eight judges (hereinafter the “Short List”) drawn from the “UIM ICA list of judges” among whom at least three were to be nominated by the ICA President, as per Art. 2.4 of the ICA Rules, without no objection to their appointment being raised within the provided deadline.
- 2.5 On December 2, 2022, UIM notified the Driver the results and pertaining report of the engine measurement procedure conducted at the Carl Zeiss facilities in Eskilstuna (hereinafter the “Measurement Results”), informing him that such a procedure confirmed that the said engine was not compliant with the applicable UIM Regulations (hereinafter the “Rules”).
- 2.6 On January 4, 2023, the Prosecutor filed its Brief with the related exhibits, containing his response to the Appeal.

- 2.7 On February 26, 2022, the hearing – whose conduct is resumed below e during which the Parties declared that there was no urgency to decide the case – was held.
- 2.8 During the hearing Appellant was authorized to file Written Submissions to challenge the Measurements Results, as explained below.
- 2.9 At the end of the hearing the Panel reserved all decisions.

### 3. SUMMARY OF THE PARTIES' DEFENSES

- 3.1 The Driver generally criticizes the way UIM inspectors behaved when ascertaining the engine irregularities and the way the Jury Meeting was held after his Protest, as well as the composition and competence of the latter, but those allegations were not turned into specific Grounds of Appeal.
- 3.2 The only specific claims is based on the admission that the Driver machined the engine – in particular, removing material nearby the B3 port opening of the steel cylinder sleeve located in the cylinder block – but that such an operation was legal because it was carried out within the maximum measures provided by the Official Homologation Sheet in order to match the shape of the adjacent channel.
- 3.3 Therefore, according to the Driver there is not any violation of Rule 8.2.1., according to which “*[t]he SST.200 engine may not be modified in any manner other than the cylinder block, which be modified according to the measurements in the homologation file, file number 00501. When ports in cylinders are adjusted to the dimensions specified in the homologation sheet, material may only be removed in the specified opening to a depth of 10 mm, to match the shape of the original adjacent connecting passage (channel) outside the adjusted port opening*”.
- 3.4 Furthermore, according to Rule 503.04.02 “*[w]hen ports in cylinders are adjusted to the dimensions specified in the homologation sheet, material may only be removed in the specified opening to a depth of 10 mm, to match the shape of the original adjacent connecting passage (channel) outside the adjusted port opening. This also applies to other openings in the motor for which the dimensions are specified in the homologation sheet. For two stroke engines, ports in the cylinder shall be measured 1 mm in from the cylinder wall surface if nothing else is stated in the homologation file*”.
- 3.5 As a consequence, the Appellant alleges that the modified measures are within the specified tolerances.
- 3.6 The Prosecutor objects such a conclusion. In essence – he goes – the Driver should have kept the same shape when adjusting the said port instead of changing it from a square or rectangle into a kind of rectangular trapezium, pointing that such a conclusion is also supported by the Measurements Results.

#### **4. ADMISSIBILITY AND JURISDICTION**

- 5.1 The ICA acknowledges that the Appellant lodged his Appeal in conformity with the (said) UIM International Court of Appeal and Procedural Rules.
- 5.2 Even though the ICA's jurisdiction has not been challenged, ICA confirms their jurisdiction to decide the case.

#### **5. THE HEARING**

- 5.1 As anticipated, the hearing was held on January 26, 2023, and the President of the Panel formally asked the Parties to state whether they had any objection with regard to the way the proceeding had been managed up the hearing and/or whether they felt that their right to defend themselves had been guaranteed.
- 5.2 The Parties declared they had no objection and accepted Mr. Bruno Tassone, Mr. Francesco De Beaumont and Mr. Boné Xavier as Members of the Panel.
- 5.3 All Parties fully illustrated their respective positions and discussed the other Parties' arguments, declaring that there was no urgency as to the decision of the case.
- 5.4 The Appellant concluded asking the Appeal to be sustained and the Prosecutor asking it to be rejected.
- 5.5 In particular, Appellant asked to file Written Submissions to display his allegations.
- 5.6 The Panels asked the Prosecutor whether he had any objection and, should him have not, whether he needed to reply in writing.
- 5.7 The Prosecutor responded negatively to both questions and the Written Submissions were acquired.
- 5.8 The Appellant also asked to file Taped Recordings of a witness to be called.
- 5.9 The Prosecutor opposed the acquisition of the Taped Recordings and the Panel rejected the request both because of its atypical nature in consideration of the rules about the evidence and because the Panel had not decided yet to admit witnesses.
- 5.10 In any case, the Panel asked what was the witness to be heard on and the Appellant declared that he would refer about the right interpretation of the Rules.
- 5.11 The Panel then rejected the request also because the interpretation of the Rules cannot be the subject matter of a testimony.
- 5.12 Leading to me merits, during his very long discussion the Appellant repeated the said criticisms about UIM without turning them into specific Grounds of Appeals.
- 5.13 The Appellant also pointed that the connecting passage to the said port in the aluminum block can be modified and that even though the said shape is different the modifications follow the line of the channel.

- 5.14 The Prosecutor stressed that the said shape was not respected because the connecting passage was too small and that this is enough for the violation to occur.
- 5.15 Under a first question of the Panel the Appellant declared that “*the machining was made to make a better flow*” and to “*to have more fair racing*”.
- 5.16 Under a second question of the Panel Appellant explained that “*other teams were buying ten engines and using the best ones, so it determined and advantage on the ones could not. This is why machining was permitted*”.
- 5.17 At this point Prosecutor called for an expert witness about the fact that the said modification give a substantial advantage
- 5.18 Appellant reserved the same possibility.
- 5.19 As also anticipated, the Panel reserved all decisions.

## **6. DECISION**

- 6.1 The Measurements Results explain that from the Official Homologation File measure and picture and the manufacturers drawing it is clear that the shape of the boost ports are square: therefore it is not allowed to reshape the port to a tapered configuration, even if it is with in the dimensions given in the Homologation File (15.8-17.8 mm).
- 6.2 The Measurement Results also explain that taper angle of the outer side wall is around 10° at the cylinder surface and 5.5° 1.0 mm into the port: even if giving a reasonable tolerance the boost port cannot be considered to be square shaped.
- 6.3 As a consequence, the Measurements Results state that outer boostports shape are tapered and not square as the original ports are in both the Homologation File and at manufacturers drawing, so that the ports are not compliant with the Rules.
- 6.4 The detailed assumptions grounding the Measurements Results were not specifically or – in any case – convincingly challenged by the Appellant.
- 6.5 Furthermore, with the said declarations Appellant implicitly admitted that the modifications were not carried out just to make possible the match between the two said components, but rather to gain some advantage.
- 6.6 Therefore, the appeal has to be rejected.

## **7. COSTS OF THE PROCEEDING**

- 7.1 According to Art. 10 Para. 5 of the UIM Rules, the deposit is to be acquired by UIM.  
February 27, 2023.

## ON THESE GROUNDS

The UIM International Court of Appeal, confirming the verdict issued on February 23, 2023, unanimously rules that:

- (i) The ODD and International Jury Decisions to impose the disqualification during the UIM F2 World Championship Race, in Vila Vehla, Portugal, in September 17-19, 2022, to the driver running with the Boat no. 77, is to be upheld and consequently;
- (ii) The Appeal lodged by Tobias Munthe Kaas is rejected;
- (iii) The Appeal fee is definitely acquired by the UIM;
- (iv) All other motions for relief are dismissed.

Prof. Bruno Tassone  
(President of the Panel)

Avv. Francesco De Beaumont  
(Judge)



Avv. Xavier Boné  
(Judge)