



**IMPORTANT INFORMATION REGARDING
UIM International Court Appeal Decision**

7th February 2020

For avoidance of any misunderstanding, we wish to confirm that the interpretation of the rules has **NOT** changed within the UIM.

In their sentence, the ICA does not rule that blueprinting by machining of powerhead and/ or cylinder block is allowed in low emission classes.

As in the past, any modification of engine parts like machining shall result in disqualification, regardless of the measurements.

The sentence of the ICA is based on the outcome of the hearing and the information available to the Panel and it is to be understood as an independent decision on a singular case.

UIM International Court of Appeal Secretariat

UNION INTERNATIONALE MOTONAUTIQUE

DECISION n. [2/2019]

IN THE CASE ICA [1 and 3/2019]

DELIVERED BY THE

UIM INTERNATIONAL COURT OF APPEAL

SITTING IN THE FOLLOWING COMPOSITION

PROF. BRUNO TASSONE (PRESIDENT), AVV. JEAN-CHRISTOPHE Breillat AND
AVV. RUI BOTICA SANTOS

in the proceeding between:

Alec Weckström, represented by himself (hereinafter the “Appellant” or “Driver”)

– *Appellant* –

v/

Union Internationale Motonautique (hereinafter the “UIM”), represented by the Prosecuting
Body, in the person of Mr. Kimon Papachristopoulos (hereinafter “UIM”)

– *Respondent* –

1. THE PARTIES

1.1 Alec Weckstrom (hereinafter the “Appellant” or the “Driver”) is a driver who took part in the F4 world championship race in Finland Kotka held on August 10 and 11, 2019 (hereinafter the “First Race”) as claimed in the appeal no. 1/2019 (hereinafter the “First Appeal”) and in the F4 Nordic championship race held in Finland Helsinki on August 31 and September 1, 2019 (hereinafter the “Second Race” and, together with the First Race, the “Races”) as claimed in the appeal no. 3/2019 (hereinafter the “Second Appeal” and, together with the First Appeal, the “Appeals”).

and

1.2. Union Internationale Motonautique (hereinafter the “UIM” or the Respondent) is the world governing body for all Powerboating activities, represented by Mr. Kimon Papachristopoulos in his capacity of the Prosecutor, 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 “Rules”).

BACKGROUND

- 1.1 The First Appeal is directed against a sanction imposed during the First Race and which consisted of the disqualification of the driver, because after the scrutineering it was deemed that the sparkplugs were not in conformity with the applicable regulations (hereinafter the “First Sanction”).
- 1.2 The Second Appeal is directed against a sanction imposed during the Second Race and which consisted of the disqualification of the driver too, because after the scrutineering it was deemed that the engine was not in conformity with the applicable regulations (hereinafter the “Second Sanction” and, together with the First Sanction, the “Sanctions”).
- 1.3 The First Sanction was not protested by the Appellant and was directly appealed, because *“due to the reason of not posting official results [...] after the Race 2 with reason of the DSQ and time of posting, I had no possibility to make a protest”*.
- 1.4 The Second Sanction was protested on September 1, 2019, but the Jury did not uphold it, so that the driver lodged the Second Appeal.

2. THE PROCEEDING

- 2.1 On August 13, 2019, the Appellant notified to UIM his intention to appeal the First Sanction.
- 2.2 On September 2, 2019, the Appellant notified to UIM his intention to appeal the Second Sanction.
- 2.3 With subsequent notes UIM acknowledged the reception of the above and of the deposit required by the Rules.
- 2.4 Within ten days from the said notes – as required by the Rules – the Appellant filed the Appeals and the related documents.
- 2.5 After sending to the Appellant 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 Rules, UIM received no objection.
- 2.6 Therefore, on November 25, 2019, the Appellant, UIM and other potentially interested Third-Parties were communicated by UIM that the hearing would be held through video conference on December 20, 2019, at 14:00 A.M.
- 2.7 Appellant, UIM and other potentially interested Third-Parties were also given a deadline to file – respectively – a brief illustrating the grounds of for appeal, a response and written observations, which had not been filed.

- 2.8 ICA has decided to consolidate both appeals and decide them in the same proceedings.
- 2.9 The hearing was duly held on the said date and time, without the participation of the Prosecutor, who was given a further 15 minutes lapse of time before starting it.

3. SUMMARY OF THE PARTIES' DEFENSES

- 3.1 In the First Appeal the driver explains that during the post-race technical scrutineering the sparkplugs were deemed illegal and that, despite his team's request, the officers did not inform him about the inherent reasons, not even posting such reasons during the First Race, as only overall points were displayed.
- 3.2 Therefore, the Appellant complains that it was impossible to lodge a protest during the Race weekend.
- 3.3 In particular, the Appellant claims that the official results and the said reasons were first made available to his team on August 13, 2019, that is two days after the Second Race, following his team's request to the organizers.
- 3.4 As to the sparkplugs the Appellant alleges that Official UIM Regulations (hereinafter the "Rulebook") – as well as the homologation documents – do not specify the type of legal and illegal sparkplugs, so that the First Sanction must be annulled as no violation exists.
- 3.5 Similarly, in view to support the Second Appeal the driver explains that his motor was deemed to have been illegally modified on the basis of an inspection – which showed 0,1 mm difference between the measurements of one cylinder –, while the divergence was within the tolerance's threshold set forth in the applicable homologation sheet, that is UIM Four Stroke Outboard Petrol Engine Homologation File – Mercury 60 EFI (4-stroke) (Low Emission).
- 3.6 The Appellant reiterates that *"(...) the measurements stated in the homologation sheet must be checked on the motor, if the results are within the specified tolerances the motor should be accepted as legal"*. He adds that *"[t]he measurements results of the motor checked at the scrutineering were within the tolerances set forth in the applicable homologation sheet (...). Thus, the motor should have been accepted as legal according to the UIM 2019 Circuit Rules"*.
- 3.7 The Appellant also adds that the cylinder was not compared with a standard one, but with the cylinder of another driver, so that the procedure is in principle flawed.
- 3.8 Eventually, the Appellant explains that the motor at stake was a secondhand one and had been subject to repairs and maintenance by his team and former users, so that the said discrepancy – if existent – was permitted by the Rulebook.

3.9 Therefore, the motor should have been accepted as legal and also the Second Sanction has to be annulled.

3.10 On December 2, 2019, the Finish Sailing and Boating Federation, Powerboating Committee provided their Submissions regarding the Appeals, and the following was stated:

1. With regard to the First Appeal:

a. The Driver was found using non-standard plugs in the engine. Sparks plugs must be original, they are not free (UIM rules 543.10 and 543.09). The First Sanction was well grounded on its merits;

b. Notwithstanding the above, the Appellant failed to do the required protest against the First Sanction at the race event. Therefore, the First Appeal should not be admissible (Rule 405.03). The Appellant had the opportunity to present the protest before the prize giving ceremony. It was also highlighted that the race jury was present all the time;

2. With regard to the Second Appeal:

a. As it is a low-emission engine in class F4, the details of which can be found in under arts. 540, 541.01 and 543.10 which states that specific modifications are not permitted on low emission engines;

b. For scrutineering, UIM has also produced homologation sheets for low emission engines. Homologation sheets are used to support the technical officers work in the race events and the final homologation file will display the specific UIM power boating category(ies) for which the engine is approved;

c. During post- race inspection in Helsinki, the Appellant's engine parts were not checked just by comparing them to another engine parts. The parts were checked by visual inspection, measuring the parts and also comparing these parts to another engine's parts;

d. Even though the parts were within the tolerances of the Homologation sheet, all the checks showed that these parts were modified;

e. Machining marks are clearly visible, and the dimensions of the parts do not match the original parts. Cylinder head was modified, insofar as it was 0.1mm thinner than original engine part and cylinder block was also modified.

f. The penalty imposed by the Helsinki race OOD and confirmed by the Jury after the driver's protest in the event shall remain in effect.

g. Considering the above, the Second Appeal should be rejected.

4. ADMISSIBILITY AND JURISDICTION

- 4.1 The ICA acknowledges that the Appellant lodged its Appeals in conformity with the UIM International Court of Appeal and Procedural Rules.
- 4.2 The ICA jurisdiction to decide the Appeals have not been challenged by the Respondent. Therefore, ICA confirms having jurisdiction to decide the Appeals.
- 4.3 Apart from the general conformity of the Appeals to the said Rules, other specific issues of admissibility related to Sanction questioned will be dealt with below.

5. THE HEARING

- 5.1 As anticipated, the hearing started at 14:00h., but the Prosecutor was not present, so that the President postponed the hearing at 14:15h and send him an *email* asking for his presence.
- 5.2 As Prosecutor did not show up, which was not of great help for the Panel in terms of adversarial principle, the President of the Panel formally asked the present 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.
- 5.3 The Appellant declared they had no objection and accepted the three judges above as members of the Panel.
- 5.4 The Appellant was asked whether he wanted to integrate the allegations displayed in the First Appeal and emphasized that – apart from the Rulebook norms – there are not sparkplugs which can be defined “standard” or not according to other regulations.
- 5.5 Under the questions posed by the Panel, Appellant specified that he took no advantage from using the sparkplugs questioned by the officers.
- 5.6 Eventually, the Driver underlined that he realized he was disqualified on September 11, 2019, but that the final results and reasons were published only on September 13, 2019.
- 5.7 As to the Second Appeal, the Appellant explains that the said second engine was sent to Belgium to be examined through the Finnish National Authority, but that it has not been returned so far, nor the results of the checks have been communicated, so that he has not the right to defend himself.
- 5.8 Finally, the Panel asked the Appellant if he has any request concerning a specific evidence to be acquired on this last issue – for example a formal request to be addressed to the Finnish National Authority to know more about the engine and the checks carried out on it – and if the decision is going to affect any ongoing championship results and/or there are other reasons for a quick resolution.

5.9 The Appellant answers negatively to both questions.

6. DECISION

6.1 The first issue the Panel has to deal with is about the admissibility of the **First Appeal** without filing a protest as required under Art. 403 of the UIM Circuit Rules.

6.2 The Appellant's documents show that the final results and the reasons for disqualification were made available only on September 13, 2019.

6.3 Such defenses and evidences have not been opposed by the Respondent and they are consistent with the documents made available by UIM, as the Official Finale Results show the following stamp "Jarle Hagane Dato: 12.8.2019 KI.: 22:09", so that they were presumably made available on the night of September 12, 2019.

6.4 It is unquestionable that a decision of the officers can be protested only after it has been taken – and not before such a moment – and when its motivations are known, in order for the competitor to estimate his chances when lodging a protest and, subsequently, an appeal.

6.5 Art. 403.03 is clear in stating that "[a] *protest can be lodged against the posted provisional results or against any decision made by the Race Committee or against one or several competitors*" (emphasis added).

6.6 Nevertheless, during the hearing the Appellant declared that he knew about the disqualification before the First Race was ended and the Panel deems that – in such cases – each party who can be concerned by a decision has to diligently enquire about it.

6.7 This conclusion stems from the utmost importance of the protest for the correct management of the Rulebook and from the need to provide an incentive to sort out problems like the ones arisen in the First Race, during the course of the competition.

6.8 To this count it has to be noted that the Appellant alleged to have tried such an enquiry directly and/or through his team, displaying a defense which was not opposed by the Respondent, so that the standard of diligence required by this Panel is met.

6.9 Therefore, it is to apply Art. 403.03, second Para, according to which "[a] *driver can also appeal a penalty imposed against him without the prior lodging of a protest, but only if this was not possible, because the race jury has had dissolved itself before or within the protest period*". The Panel is of the view that the Appellant had no opportunity to make the protest and the lack of protest should not jeopardize his rights in relation to the challenging of his disqualification.

6.10 In the light of the foregoing, the Panel considers that the first appeal is procedurally admissible.

- 6.11 As to the merits of the **First Appeal**, Art. 543.09 no. 12 – about the “SOLE MODIFICATIONS ALLOWED” – states that “*Spark plugs are free*”.
- 6.12 Nevertheless, Art. 543.10 specifies that “[t]he following rules are NOT applicable to low emission engine: 543.09 Section: 5, 10, 12, 13, 16, 17 and 20”.
- 6.13 The Panel notes that in posting the race results, the Respondent has failed to mention in the grounds of the disqualification the reference to Art. 543.10 that establishes the exception to Art. 543.09 no. 12 which provides that modifications on spark plugs low emission engines are not free. In the Panel views, the omission of this reference should not grant any right to the Appellant because the grounds of the disqualification clearly indicate the finding, i.e. that the spark plugs are not free. The Panel also highlights that the Appellant cannot ignore the applicable rules, even if they are not completely quoted or referred in the decision.
- 6.14 The Technical Commissioner Report provided by UIM states that “*in boat number 22 in class F4 wrong spark plugs and DSQ in Sunday race. UIM Rulebook number 543.09 point 12 and 543.10 rules not applicable to low emission*”.
- 6.15 From the Appeals it results that the Driver was running with a low emission engine, event though this issue has not been further scrutinized. Although the wording used in the Technical Commissioner Report is misleading, it is clear from the applicable regulations and quoted articles that in low emission engines the modification made by the Appellant is not permitted.
- 6.16 Therefore, the Panel considers that the First Appeal must be rejected.
- 6.17 As to the **Second Appeal**, the Panel has a different view.
- 6.18 The Panel notes that on 1 September 2019, the Chief Technical Officer alongside with the Technical Officer conducted a post-race inspection to the Appellant’s motor and in their report it was submitted that: “*the engine has been tampered with by removing material from the cylinder group and cylinder head. The block length is 0.1 mm too short and the cylinder head 0.13 mm too short. We have measured several F4 engines several times this season and the differences in dimensions between these parts have been only 0.01 millimeters.*”
- 6.19 The Technical Officers found that the Appellant’s engine had been tampered due to modifications made on cylinder heads, not complying with the requirements of art.543.10 of the Rules.
- 6.20 The Respondent limits to refer that the dimension is 0.1 mm shorter without clarifying the comparison with the standard homologated dimension that the cylinder heads should have.
- 6.21 The Panel finds that the Respondent, in its submissions and reports, has failed to provide clarification as to what should be the dimension of the originals that should be taken as a reference.

- 6.22 According to Art. 503.04.02 “[m]easurements not quoted in the homologation sheet shall only be checked by visual comparison with standard parts. As the actual manufacturing tolerances are not published, small differences between the inspected part and the reference part must be accepted” (emphasis added).
- 6.23 The Homologation Sheet – Annex 1 – filed by the Appellant seems to demonstrate that there were small differences in the dimensions but there is no evidence that such differences are not within the accepted parameters.
- 6.24 The Panel finds that the non-participation of the Respondent has not allowed the Panel to understand the findings of the Technical Officers and for this reason the Second Sanction should be cancelled, and the Appellant should be reinstated to his original classification.

7. COSTS OF THE PROCEEDING

- 7.1 According to Art. 10 Para. 5 of the Rules, for the sustained Appeal the deposit is to be returned to the Appellant.
- 7.2 In the light of above, the Appellant is not charged with other costs.

February 3, 2020.

ON THESE GROUNDS

The UIM International Court of Appeal unanimously rules that:

- (i) The above sanction imposed to Alec Weckstrom as a driver who took part in the F4 world championship race in Finland Kotka held on August 10 and 11, 2019, is to be upheld and consequently
- (ii) The Appeal no. 1/2019 lodged by the above Appellant is rejected;
- (iii) The Appeal fee is definitely acquired by the UIM;
- (iv) The above sanction imposed to Alec Weckstrom as a driver who took part in the F4 Nordic championship race held in Finland Helsinki on August 31 and September 1, 2019, is to be cancelled and consequently,
- (v) The Appeal no. 3/2019 lodged by the above Appellant is sustained, with all consequences on the final rankings of the F4 Nordic championship;
- (vi) The Appeal fee is to be restituted by the UIM to the Appellant;
- (vii) All other motions or prayers for relief are dismissed.

Prof. Bruno Tassone
(President of the Panel)

Mr. Jean-Christophe Breillat
(Judge)

Mr. Rui Botica Santos
(Judge)