

**NATIONAL COURT OF APPEAL**

**of the**

**AUTOMOBILE GENERAL ASSOCIATION MACAO-CHINA  
(AAMC)**

**Appeal lodged by Z-Challenger Racing on 22 November 2021**

**against**

**Decision of the Stewards No. 6 on 21 November 2021,  
of the disqualification of the car #28 from the final classification of  
Race 2 of the Galaxy Entertainment Macau Guia Race**

**Case n.º 001/2021**

**Hearing of Monday, 13 December 2021,**

**held via video conference**

**Decision of 15 December 2021**

The NATIONAL COURT OF APPEAL of the AAMC (the “Court”) is composed of Mr. André Santos RAQUEL (Macau, non-member of AAMC), who was designated President, Mr. Thomas George Tate MUNRO (UK, non-member of AAMC) and Mr. Rikki DY-LIACCO (Philippines, non-member of AAMC), all nominated by the AAMC on 3 December 2021, according to articles 15.1 and 15.3 of the International Sporting Code (the “Code”) of the FIA.

Due to the COVID-19 pandemic situation and travel restrictions, the Court decided to allow the Hearing to be conducted via zoom video conference on 13 December 2021, at 17:00 hours Macau Time.

Ruling on the appeal lodged by Z-Challenger Racing on 22 November 2021 against the Decision of the Stewards No. 6 (the “Decision”), on 21 November 2021, of the disqualification of the car #28 from the final classification of Race 2 of the Galaxy Entertainment Macau Guia Race (the “Race”) on account of its breach of article 5 of the Macau Guia Race Sporting Regulations (the “Race Regulations”).

The following persons attended the hearing:

On behalf of Z-Challenger Racing:

- Berry Lai (Team Manager)
- LO, Sze Ho (driver)
- Pluto MOK (witness)
- Andrea MASELLI (responsible in Hyundai Motorsport for Electronics Control) (witness)

On behalf of AAMC:

- TAM Ka Keong (Chief Scrutineer of the Race)
- LAM Ka Chun (Chairman of the Panel of the Stewards of the Race)
- António José DA SILVA LEITE (Secretary of the Meeting)
- LEI Chi Leong (AAMC Official)
- Florian EICH (Head of Data Engineering of WSC) (witness)

Also present at the hearing:

- CHU, Miu Lai (Secretary to the Court)
- Florence YAN (assistant to the Court in Hong Kong)
- Simão Ho (English-Chinese Interpreter)

The Appellant filed his written submission on 26 November 2021, and, at the hearing of 13 December 2021, set out oral arguments and addressed the questions asked by the Court. The witnesses and knowledgeable persons were heard and the Appellant 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 translation to the witness LEI Chi Leong. 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, or to any element of the translation.

Following the Hearing, the President informed the parties that the Court would likely hand down its decision on 15 December 2021.

#### **REMINDER OF THE FACTS**

1. According to article 5 of the Race Regulations, all vehicles must comply with the requirements specified in the 2021 TCR Technical Regulation. All competition cars must be in strict compliance with the BoP Chart. The Technical regulations of the race states that *"The Balance of Performance (BOP) of the MACAU GUIA RACE follows the Technical Bulletin n.º 14-2021, issued by the WSC on the 28<sup>th</sup> October 2021"*.
2. The Race 2 of Galaxy Entertainment Macau Guia Race was held on 21 November 2021 from 12:07 to 12:45. At 13:45, the Chief Scrutineer reported to the Secretary of the meeting that from the checking after race, they found car #28 turbo boost had fluctuations from Data logging, the Chief Scrutineer considered the car might gain advantage from that.
3. On the basis of the report from the Chief Scrutineer of the Race, the Stewards notified the competitor to have a meeting at around 17:30 and provided the competitor with the opportunity to find evidence to demonstrate that his car was in compliance with the BoP requirements.
4. A decision was taken by the Stewards at their Decision no. 6, signed at 18:53, to disqualify the Competitor Z-Challenger Racing, Car #28, driver LO Sze Ho, from the final classification of Race 2, which stated the facts: *"Car n.º 28 turbo boost has fluctuations, the car may gain advantage from that"* and the offence being: *"Breach of Art 5 of the MACAU GUIA RACE SPORTING REGULATIONS"*.
5. The decision was posted at 19:06 on 21 November 2021, without signature of the competitor acknowledging the receipt of notification of the same.

## PROCEDURE AND REQUEST OF THE APPELLANT

6. The intention of appeal lodged by the driver of car #28 of the Macau Guia Race, LO Sze Ho, was received by the AAMC by email on 22 November 2021 at 18:55, stating he would submit the information in 96 hours according to the rules.
7. AAMC received an email from the driver LO, Sze Ho on 25 November 2021, at 17:01, with the payment slip for deposit of the appeal fee in amount of HKD54,000.00 (fifty-four thousand Hong Kong Dollars), equivalent to €6,000.00 (six thousand Euros), according to the article 13.3 of the Race Regulations.
8. AAMC received an email from the driver LO, Sze HO on 26 November 2021, at 18:30, attaching an appeal report which stated that the Car No. 28 did not gain any advantage in Race 2, the appellant did NOT agree to the official decision to DISQUALIFY his results in Race 2 and requested AAMC to investigate the case. The appeal report was neither signed nor dated.

## ON THE SUBSTANCE

### *a) Arguments of the Appellant*

9. The Appellant submitted an Appeal Report as his evidence in these proceedings, arguing that the Car No. 28 did not gain any advantage in Race 2, and the appellant did NOT agree to the official decision to DISQUALIFY his results in Race 2 due to the following FACTS:
  - (i) The car was eligible because it has passed the official scrutineering and good to race on 18 November (Thursday) which the appellant claimed *"It means the mapping of the Car met with the official BoP Chart requirement"*.
  - (ii) Car No. 28 was eligible and all good in the official final classification for Free Practice, Qualifying, Warm-up and Race 1 sessions. Although there was a redo check by the scrutineers after race 1 *"due to boost fluctuations"*, the Car No. 28 finally passed the official scrutineering again.
  - (iii) *"All software and hardware remained UNTOUCHED."*
  - (iv) From data log checking, *"means the Car No. 28 ECU setting and mapping in Race 2 were exactly as same as Race 1."*
  - (v) *"As all the hardware of Car No. 28 were sealed, under TCR technical form that we passed the official scrutineering TWO times in the racing weekend (ie. 18th November on Thursday before the race event started and 20th November on Saturday after Race 1 respectively). It is undoubtedly Car No. 28 was considered fully eligible during this period (from 18th November on Thursday to 20th November on Saturday after Race 1)."*

- (vi) Towards the data log analysis that the Car No. 28 may gain advantage in Race 2, the Appellant claimed that by comparison the figures between Race 1 and Race 2 of Car No. 28 at both Sector 1 and lap times, Race 2 was actually slower than Race 1. *"It showed the Car No. 28 was definitely NOT gaining any advantage, and the Car was actually even slower in Race 2."*
- (vii) The Appellant further claimed that Mr. Andrea Maselli, the Electronic Control Group Leader of Hyundai Motorsport GmbH which developed the i30N TCR said after a quick data analysis from the HMSG engineering team, *"ECU software is the one homologated. The boost become unstable at high rev, but is not bringing any advantage!" "The boost oscillation observed is somehow already seen in case of issue. Is possibly due to an issue with WG valves or wg pipe, not related to any "cheat"."* *"Mr. Andrea Maselli pointed out the Car most likely suffering a mechanical failure (WG valves or wg pipe referred to Wastegate which was a component to control turbo boost level) during Race 2 and that was why causing to the boost fluctuations as observed."*
- (viii) The Appellant claimed the stewards had not considered the evidence provided by Mr. Andrea Maselli and refused to accept the zoom meeting with Mr. Andrea Maselli.
- (ix) The Appellant concluded in his appeal report that *"The Car was really suffering a mechanical failure which caused to the boost fluctuations [...] the mechanical failure caused to this DISADVANTAGE instead of ADVANTAGE to the car no. 28."*

#### ***b) Findings of the Court***

- 10. The Court has given the opportunity to the Appellant at the hearing to produce evidence of the arguments he presented.
- 11. After having carefully examined the various observations presented by the Parties to the procedure, and having listened to the statements made by the Appellant and the witnesses cited during the hearing, the Court rules as follows.
  - a. On the question of the eligibility of the car because it had passed the initial scrutinnering and the Race 1*
- 12. The Court noted that the Chief Scrutineer of the Race had confirmed that the procedures of scrutineering began with the initial scrutineering which was based on safety checks, to confirm if the car was in compliance to the homologation stated in the regulations. The engine management would only be checked after the qualifying, while for turbo boost checking would be done in one group parameter. Checking would confirm if engine gear box and turbo charger were

sealed.

13. The Chief Scrutineer stated that from the initial scrutineering it was discovered that the car no. 28 ECU type and power level was C4 instead of M3 and had required the Competitor to change in compliance with the requirements, which was fixed before the free practice and kept for the whole race.
14. The Court noted that from the statement of the Chief Scrutineer, after Race 1, the car no. 28 was checked again due to some overboost found. Chief Scrutineer did not report this overboost to the stewards because, in his opinion, there was no violation to the BoP, as the integral value was negative after the race, meaning that car had not gained advantage because underboost was more than overboost. Chief Scrutineer explained that this means the average boost value is below the maximum limit under the applicable BoP requirement. Chief Scrutineer also asked if the competitor's team had any data engineer and asked to speak to the competitor, however the driver was not present during the redo check and the team didn't have any data engineer.
15. Referring to the hardware that was sealed, the Court noted from the statement of the Chief Scrutineer that the turbo charger was sealed but the waste gate was not a component required to be sealed.
16. The Court also noted that although the Competitor was aware of the fluctuations after Race 1 (the driver claimed he was also mechanic of the car), the Competitor claimed thinking there was not any problem and there was no need to adjust the mechanical setting, because he considered "*the car was all good in Race 1*" and he wanted to keep the same car condition "*ECU setting and mapping in Race 2 exactly as same as Race 1.*"
17. Chief Scrutineer confirmed that any parts of the car in question could have been replaced, "same-for-same", after Race 1 (even if it were a sealed part, in which case it would have to be re-scrutineered).
18. The Court concluded that having the car passed in initial scrutineering did not mean the car met the official BoP Chart requirement. As stated by the Chief Scrutineer, the initial check was safety check and the engine management and turbo boost would only be checked after qualifying.
19. The Court also concluded that although the Car had passed the scrutineering after Race 1, there was evidence of some fluctuations and overboost, a fact that the Competitor was made aware of, but neglected to fix the potential mechanical problem.

*b. On the question of the disadvantage and not advantage of the car in Race 2*

20. The Court noted, from the statement of the Chief Scrutineer, that the overboost in Race 2 was higher than in Race 1, with the integral value being positive, which was violation of the BoP.
21. The Court referred to the correspondence exchanged by the Competitor with Mr. Andrea Maselli, *"The boost oscillation is somehow already seen in case of issue. Is possibly due to an issue with WG valves or wg pipe, not related to any "cheat"."* Mr. Andrea Maselli, witness appointed by the Appellant, confirmed in his oral statement that the Hyundai Motorsport had uploaded the software mapping updated before the weekend, and the car mapping was in compliance with the BoP. The witness claimed the problem of the control of boost had occurred in the past, for this particular model. In his view, marshal should be the one to look at the boost level and overboost might be problems in wastegate.
22. As stated in the Data engineering report by the TCR Technical Delegate to the Data Engineering of the WSC Florian Eich, witness appointed by the Respondent, regarding the car no. 28, Hyundai i30N, it stated that *" during the checks we found irregularities, the car was not within parameters as set by WSC Technical Department -Bulletin no. 12-2021 (30-09-2021)" , "already during the formation lap various boost violations are detected, especially 120s after the start, 15 boost violations occurred."*
23. The same witness also explained that this car model's waste gate spring load was set manually by the mechanics responsible by the car, and the data observed suggested it was not set properly.
24. In conclusion, the report stated *"Car #028 is running a higher pManifold level during the full session. It is expected to be enforced due to a wrongly set or blocked wastegate actuator. Although the ECU is setting a correct target the regulation is not able to reach it."*
25. The Court had verified that the BoP for Hyundai i30N TCR was the same in either Bulletin no. 12-2021 (30-09-2021) and Bulletin no. 14-2021 (28-10-2021) followed by Macau Guia Race, therefore, the data comparison in the Data engineering report by the TCR Technical Delegate to the Data Engineering of the WSC could be adopted as evidence that car no. 28 had irregularities during Race 2.
26. According to article 5.2 of the Macau Guia Race regulations, *"All competition cars must be in strict compliance with the BoP Chart"*. The Court observed that there was a mechanical issue with the waste gate which should have been corrected by the Competitor and/or his team, as it had a direct impact on the performance control, but the Competitor had decided not to take action or make any changes.
27. The Court concluded that the responsibility of having a car in strict compliance with the legal requirement at all the times lies with the competitor and his team.

If the car was already having some mechanical issues to control the boost in the first race, the team should have fixed those mechanical issues before entering the second race to be in strict compliance with the regulations.

28. It should be mentioned, at this juncture, that on the first paragraph of page 12 of the Appeal Report, the Appellant in fact recognized that “[...] *the Car was really suffering from a mechanical failure which caused to the boost fluctuations.*”.
29. The Court therefore concluded, based also on the depositions of the witnesses during the hearing, that car no. 28 was not in strict compliance with the applicable BoP chart, and therefore not in compliance with the requirements specified in the 2021 TCR Technical Regulation.
30. That being the case, it bears no relevance whether or not car no. 28 gained any performance advantage as a result of the non-compliance with technical regulations.
31. In fact, according to the Article 1.3.3 of the International Sporting Code, *“If an Automobile is found not to comply with the applicable technical regulations, it shall be no defense to claim that no performance advantage was obtained.”*.
32. Therefore, the Court rejects the argument that the mechanical failure caused a DISADVANTAGE instead of an ADVANTAGE to car no. 28.

## THE APPEAL

### ***a) Arguments of the Appellant***

33. During the hearing, the Court made enquiries regarding the time limit for the submission of this appeal, and the Appellant claimed:
  - (i) He was not aware of the appeal time limit set in the Race Regulations nor in the International Sporting Code, before the race.
  - (ii) He was present at the driver’s briefing meeting, but not aware of the time limit for submission of an intention to appeal.
  - (iii) He had not seen any QR code for downloading the briefing notes, therefore he had not seen or perused any briefing notes.
  - (iv) The Appellant’s witness, Pluto MOK had asked a AAMC Official for advice, during the prize giving dinner, at around 21:30 on 21 November 2021, and had got the information, provided to the Appellant at around 22:00 on the same day, that they could formally lodge an appeal within 24 hours.
34. Concerning the reason why the Decision of the Stewards was not signed, the Appellant stated:
  - (i) He did not accept the decision;



- (ii) He also did not want to sign an acknowledgement of receipt of any decision while he was still trying to find evidence (as had been instructed by the stewards at around 17:30) that the car had not committed any violation. Although the Decision no. 6 was posted at 19:06, he tried to find such evidence until 22:00.

**b) Findings of the Court**

a) On the question of the time limit of appeal

35. The Court noted that Chairman of the Panel of the Stewards of the Race stated that based on the scrutineer's report, the Stewards called the Competitor for a meeting at around 17:30, given him time of about one hour and thirty minutes to find more evidence to support that his car was in compliance with the BoP. The Appellant showed an email to the stewards claiming it was from the manufacturer and hold a phone for zoom call. The Chairman of the Stewards claimed the stewards could not accept, as they could not confirm the email was sent from a manufacturer or that the person over the phone was a representative of the manufacturer. The Stewards had requested the Appellant to supply evidence as further data to prove to the scrutineer that the car was in compliance with the technical regulation, the content of the email could not be accepted. At 18:53, with no further evidence provided, the stewards had made their decision which was posted by the Secretary of the Meeting at 19:06.
36. The Court noted the time limit of the appeal was informed by the Race Director to the drivers in their driver briefing on 18 November 2021 at 19:30. The time limit was written in no. 2.1 of the Briefing Notes (second paragraph: "*Appeals shall be made in accordance with Article 13 [...]. It will be accepted within 60 minutes [...].*") The Appellant, both team manager and driver had signed the attendance in the Driver Briefing and, as stated by the witness António José da Silva Leite, a QR Code with a link to the briefing notes was made available during said meeting for all the drivers.
37. The Driver claimed at the beginning of the hearing that he would be the spokesman of the Appellant as he was the one who knew the regulations but then he argued in Court that he was not aware of the appeal time limit set in the Macau Guia Race regulation nor in the International Sporting Code, before the race, and he had not seen any QR code of the Briefing notes, therefore, he did not download the notes.
38. The Court noted from the Secretary of the Meeting that the QR code was prepared and showed to the drivers by the officials of the Secretary of the Meeting, after

the driver briefing, at the exit. The Secretary of the Meeting assured that the content downloaded from the QR code was exactly the same as the Briefing notes of the Race director.

39. The Appellant stated that he had not informed the stewards of his intention of appeal, because from 21:00 to 22:00, all officials have left to prize giving dinner.
40. The Court noted that the Appellant's witness, Pluto MOK, who claimed to be Team Principal of the Competitor, stated that when he looked for the AAMC Official during the prize giving ceremony, he was looking for advice regarding the appeal. Both the Appellant and the witness Pluto MOK admitted that the AAMC Official was not a steward.
41. The Court called the AAMC Official, LEI Chi Leong to clarify his position and suggestion given to Pluto MOK, witness of the Appellant. LEI Chi Leong stated he was working as secretariat in AAMC and had no knowledge of the details concerning decision no. 6 (other than knowing it was a disqualification decision, he was unaware of details such as the time that the decision was issued or posted) and admitted having suggested to Pluto MOK that a formal request to the appeal would be required, like sending an email, within 24 hours, as he was only aware of a disqualification and that the team might lodge an appeal. When LEI Chi Leong was asked by the Court if he has any authority to deal with appeal matters, he admitted that he did not have the responsibility to work on the appeal matters nor having authorization for such.
42. The Court noted that Decision no. 6 was posted at 19:06 and the Appellant received information about the 24 hours to appeal at around 22:00 on the same day.
43. The Appellant claimed to the Court that as 24 hours limit was given by a AAMC Official, he sent the appeal by email to AAMC on 22 November at 18:55, just within 24 hours.

b) On the question of not having signed the acknowledgment on the Decision

44. According to the Appellant and to the Secretary of the Meeting, the Decision was notified to the Appellant on 21 November 2021 after it had been posted.
45. The Appellant did not sign to acknowledge the receipt of the Decision, according to the article 11.3 of the Macau Guia Race regulations: "*Any decision [] must be acknowledged*".
46. The Appellant claimed that he did not accept the decision, therefore he did not sign the respective acknowledgement of receipt.

**Conclusion of the Court:**

47. Article 13.3 of the Macau Guia Race Sporting Regulations stipulates: *“Appeals shall be made in accordance with the International Sporting Code.”*; and Article 15.4.2.a of the International Sporting Code stipulates: *“They [Organisers, Competitors, Drivers and others addresses of, and affected by, a stewards’ decision] must, however, under pain of forfeiture of their right to appeal, notify the stewards in writing of their intention to appeal within one hour of the publication of the decision.”*
48. The Court noted the competitor signed the entry form, which stated in no. 1 of the declaration: *“I have read the Regulations issued for this Meeting and agree to bound by them and the provisions of the International Sporting Code of the FIA and the FIA Technical regulations for Road Racing-Grand Prix”.*
49. There was no decision by the stewards, set down in writing, granting any additional time for the lodging of an appeal in relation to their decision no. 6, according to Article 15.4.2.b of the International Sporting Code.
50. The Court cannot accept this argument as time limit of appeal was plainly stated in the Macau Guia Race Sporting Regulations and in the International Sporting Code. It was the competitor and Appellant’s responsibility to peruse the rule books when wanting to lodge an appeal.
51. Taking the above into account, the Appeal is rejected and Decision no. 6 taken by the Panel of Stewards, is upheld.

**COSTS**

Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 15.7 of the International Sporting Code.

**ON THESE GROUNDS,****THE NATIONAL COURT OF APPEAL of the AAMC:**

- 1. Having heard all of the evidence presented, rejects the Appeal and upholds Decision no. 6 of the Panel of Stewards, given on 21<sup>st</sup> of November 2021,**

regarding Race 2 of the Galaxy Entertainment Macau Guia Race;

2. Leaves it to the Appellant to pay the costs, in accordance with Article 15.7 of the International Sporting Code of the FIA.

Macau, 15 December 2021

The Judging Panel



André Santos RAQUEL (President)



Thomas George Tate MUNRO



Rikki DY-LIACCO