

**DECISION OF THE INTERNATIONAL DISCIPLINARY COURT
(CDI)**

Reasoned decision pronounced on 1 September 2022

Fédération Internationale de Motocyclisme (FIM)

Rider: Mr. Etienne BAX (NLD)
Passenger: Mr. Ondrej CERMAK (CZE)
FMN: KNMV / ACCR
Event: FIM Sidecar Motocross World Championship
IMN: 204/05
Venue: Lange / Estonia
Case concerns: Violation of Articles 4.21⁴ and ⁵ of the FIM Sidecar Motocross World Championship Regulations (the Regulations)
Hearing: 29 August 2022

COMPOSITION OF THE CDI

Mr. Robert Hofstetter, CDI Single Judge.

JURISDICTION

Pursuant to Article 5.36¹⁰ of the Regulations, an Appeal against the decision of the International Jury (IJ) may be lodged before the International Disciplinary Court (CDI).

PROCEDURE

The CDI, acting in accordance with the FIM Disciplinary and Arbitration Code (CDA), took into consideration all documents and statements presented in the case file.

MAIN INFRINGED PROVISIONS

Article 4.21⁴ of the FIM Sidecar Motocross World Championship Regulations

“The non-respect of the waved yellow and/or the medical flag by a rider (riders) will be considered as a statement of fact to which no protests are possible.”

Article 4.21⁵ of the FIM Sidecar Motocross World Championship Regulations

“The non-respect of the waved yellow and/or the medical flag by a rider will be sanctioned with a loss of 10 positions for the rider(s) in question. Such an action will be considered as a statement of fact to which no protests are possible.”

FACTS OF THE CASE

1. Mr. Etienne BAX is a Dutch professional Sidecar Motocross rider (the “Rider”).
2. The Rider is a multiple World Champion and the 2021 World Champion in the aforementioned discipline.
3. As a participant of the 2022 FIM Sidecar Motocross World Championship, the Rider holds a FIM rider Licence Nr. 204000002.
4. As a holder of a 2022 FIM licence, the Rider has confirmed that he was cognisant with and has accepted the FIM Statutes in force and the relevant FIM Regulations and Codes including but not limited to the FIM Sporting Code, the FIM Disciplinary and Arbitration Code, the FIM Sidecar Motocross World Championship Regulations and has undertaken to comply, without reservation, with all provisions and consequences thereof.
5. The Rider participated with his Passenger Mr. Ondrej CERMAK (CZE) at the 4th round of the FIM Sidecar Motocross World Championship held in Estonia on 3 July 2022.
6. During race 2, the Motocross Sidecar team Bax/Cermak #82 did not respect the waved yellow and medical flag when overtaking a backmarker, a slower competitor #54.

PROCEDURE OF THE CASE

7. After the race, the Rider, knowing the sanction of a loss of 10 positions imposed on the team, lodged a protest to the IJ at 19h05 against the results within 30 minutes after the publication of the results at 18h39 and paid a protest fee of EUR 660.-.
8. The IJ admitted the protest and convened a hearing. The Rider had the possibility to expose his explanations and arguments. A video footage was viewed by all present. The Jury President explained to the protesting Rider the interdiction of overtaking during waved yellow and white medical flags and that an infringement of such rule constituted a statement of fact within the meaning of Articles 4.21^{4 and 5} of the Regulations.
9. On 3 July 2022, following the hearing, the IJ rejected the protest pursuant to the Articles *supra* and pronounced its written decision at 19h20.
10. As the Rider Bax had already left the venue at that time, the written decision of the IJ was notified to him the day after by the FIM Motocross Commission Manager *via* registered letter and e-mail dated 4 July 2022.
11. On 8 July 2022, Rider Bax lodged a Notice of Appeal against the decision of the IJ, including a copy of the Appeal fee payment receipt of EUR 1320.- to the FIM *via* email and the registered letter with acknowledgement of receipt of this Notice of Appeal was received by the FIM on 18 July 2022.

12. Subsequently, the Rider also sent an undated Appeal Brief along with 4 Appendices to the International Disciplinary Court (CDI) by registered letter with acknowledgement of receipt received by the FIM on 22 July 2022.
13. The CDI sent by email to the Appellant on 18 August 2022 a procedural order informing him about the composition of the CDI and of his right to make a duly documented objection to the composition of the CDI. The Appellant was also informed of his right to be assisted by a legal representative of his choice. The Appellant was also given the possibility to provide the CDI with further written observations, with further evidence and if he wished to have a hearing.
14. On 24 August 2022, the Appellant sent to the CDI a signed power of attorney granting power to Mr. Wouter Boshuis to represent him for the purpose of the current proceedings. He informed the CDI of his desire to have a hearing by videoconference, and sent his statement of defence to the CDI (which had also been sent to the FIM on 22 July 2022) along with 6 Appendices, including Appendices 2a, 2b, 2c corresponding to the video footage.
15. Based on the foregoing, the hearing took place on Monday 29 August 2022 at 10:00 by means of a videoconference in the presence of the following persons:

For the Appellant:

- Mr. Etienne BAX – *Appellant*
- Mr. Marco SLENDERS – *Team Manager of Etienne BAX*
- Mr. Wouter BOSHUIS – *Legal Counsel of Etienne BAX*

For the CDI:

- Mr. Robert HOFSTETTER – *CDI Single Judge*
- Mr. Arthur LOYE – *Clerk of the CDI*

CLAIMS OF THE APPELLANT

16. Pursuant to his Appeal Brief, received by the FIM on 22 July 2022, and his statement of defence, received by the FIM on 24 August 2022 (same document), the Appellant requested the CDI to consider the following claims:
 - *“to reverse the decision of the Jury President and the International Jury to impose a ten-position penalty”.*
 - *“If your Committee is of the opinion that I have committed the violation, I request that you mitigate the penalty – for instance, by imposing a five-position penalty instead of a ten-position penalty – given the above-mentioned details of the matter”.*

ASSESSMENT BY THE CDI

17. Competence. According to Art. 3.3.2 of the CDA, the CDI is competent to hear any appeals against decisions taken by an International Jury, the Race Direction or the Referee. The CDI is also specifically competent to adjudicate on the case at hand in application of Art. 5.36¹⁰ of the Regulations.
18. Composition of the CDI. Pursuant to Art. 3.3.1 of the CDA, the CDI is made up of 1 or 3 members appointed by the Director of the List of the International Judges (according to Art. 3.2.3). The Director, in virtue of his competence, has appointed himself as CDI single Judge for this case. In this regard and in accordance with Art. 3.2.5 of the CDA, the names of the members appointed to compose the CDI were communicated *via* a notification from the CDI sent to the Appellant and to his Team Manager by email on 18 August 2022. The Appellant had therefore the occasion to make a duly documented objection to the composition of the CDI. On 24 August 2022, the CDI received from the Appellant a communication containing different elements (point 14) but no objection was made concerning the composition of the CDI.
19. On the procedure. When examining the case, it is the duty of the Judge to assess whether the appeal lodged by the Appellant against the decision of the IJ on 3 July 2022 is admissible or not. The CDI notes that the legal deadline for filing an appeal before the CDI was respected (within 5 days from the notification of the IJ decision) and the security deposit for Appeal of EUR 1320 was paid. Based on the foregoing, the appeal must be considered as admissible.
20. On the merits. The motivation of the rejection of the Protest in the appealed decision of the IJ is well founded. In fact, according to Art. 4.21⁵ of the FIM Regulations, “*the non-respect of the waved yellow and/or the medical flag by a rider will be sanctioned with a loss of 10 positions for the rider(s) in question. Such an action will be considered as a statement of fact to which no protests are possible*”. The evidence of the infringement to Arts. 4.21^{4 and 5} of the Regulations, which was not denied by the Rider, are well shown in the video footage viewed during the IJ hearing. More specifically, the Rider did not contest at the IJ hearing nor at the hearing before this Court the fact that his team #82 overtook team #54 during a waved yellow and/or medical flag as shown in the footage.
21. The Appellant argued at the IJ and CDI hearings that when overtaking a backmarker to whom a blue flag was shown, he noted the waved yellow and medical flags but he could not brake sufficiently in order to stop the overtaking.
22. Precisely, during the multiple examinations of the video footage at the CDI hearing, the overtaking happened right after the location where the yellow and medical flags were waved and just before passing the place of the accident. This is clearly observable in the video footage submitted by the Appellant together with his appeal brief, Appendices 1 and 2, received by the FIM on 22 July 2022 and in the Appendices 2a, 2b and 2c received by the FIM on 24 August 2022. This is in contradiction with the Appellant’s statement in his appeal brief, denying the observation of the IJ that he overtook on a yellow and medical flag.
23. The Rider alleges that “*immediately after showing the blue flag, the yellow and medical flags were displayed because of the collision*”. Nevertheless, after further and closer inspection of the video footage, no waved blue flag can be seen at any point. In Appendix 1 sent by the Appellant along with his appeal brief received

on 24 August 2022 by the FIM, the respective positions on the track where the blue flag and the yellow flag should be waved is shown. The Appellant claims that the blue flag should be waved in the corner right before the accident. Yet, again, when analysing the video footage provided by the Appellant, no trace of a waved blue flag was found. Only an official holding the blue flag under his arm is detectable in Appendix 2a.

24. On the basis of the foregoing, it must be deduced that either i) no blue flag was waved, or ii) the blue flag was not shown immediately before the yellow and medical flag but rather before in the direction of the circuit, or iii) that the waved blue flag was shown in a different location than what the Appellant alleged. However, the yellow and medical flags waved are clearly visible in the different videos sent as Appendices by the Appellant. This is not contested by the Appellant.
25. According to Art. 4.21² of the Regulations, a yellow flag, waved means “*great danger, prepare to stop, no overtaking. A significant reduction in speed must be observed*”. The same article provides for the medical flag that “*Medical staff on the track, proceed with extreme caution. Riders must roll each jump individually with no overtaking until past the area of concern*”. No such a “significant reduction in speed” could be evidenced by the Appellant nor noted by the CDI judge.
26. Therefore, the Appellant could not prove that the blue flag was effectively waved nor that he braked as much as possible in order to avoid the forbidden overtaking while yellow and medical flags were waved.
27. In addition, the principle of statement of fact is not only laid down in Arts. 4.21⁴ and ⁵ of the Regulations but also provided for in the FIM Disciplinary and Arbitration Code under Art. 4.1 para. 3: “*Statements of fact depend exclusively from a factual observation without any possible adjustment of the sanction which is statutorily and precisely stated in the relevant Appendices and Regulations*”.
28. The CDI single Judge has no choice but to note that the IJ correctly decided to reject (to dismiss) the Protest, as no Protest may be filed against a statement of fact.
29. Dismissal. Although the CDI considers that the appeal, on the procedural conditions laid out by the Regulations and by the CDA, was admissible (point 19), the Appeal on the merits of the case, however, must be dismissed, as no Protest and no Appeal may be filed against a statement of fact.
30. Before the hearing was concluded, the Appellant expressly stated that they did not have any objection with the procedure adopted by the CDI, that they had the occasion to express their opinions on the case, their arguments and that their right to be heard had been fully respected.

DECISION

As a consequence of the foregoing, the CDI decides as follows:

- The Appeal lodged by Mr. Etienne BAX before the CDI is admissible.
- The Appeal lodged by Mr. Etienne BAX before the CDI is dismissed and the decision of the International Jury of 3 July 2022 rejecting the Protest of Rider BAX is upheld.
- The Protest fee of EUR 660.- and the Security deposit for Appeal of EUR 1320.- pursuant to Articles 5.36⁶ and ¹⁰ of the Regulations shall be retained by the FIM.
- The costs of the CDI Decision shall be assessed by the FIM Administration in accordance with Article 6 of the FIM Disciplinary and Arbitration Code and the Protest fee as well as the Security deposit for Appeal shall be used to cover those costs.

Operative Part pronounced on 30 August 2022

Reasoned Decision pronounced on 1 September 2022

International Disciplinary Court (CDI)



Mr. Robert Hofstetter
CDI Single Judge

After exhaustion of the FIM internal remedies, an Appeal may be lodged before the Court of Arbitration for Sport (CAS) in Lausanne/Switzerland within 5 days from the date of receipt of this reasoned decision of the International Disciplinary Court pursuant to Article 5.36¹¹ of the 2022 FIM Sidecar Motocross World Championship Regulations. Moreover, Articles R47ff. of the Code of Sports related Arbitration shall apply.