

DECISION OF THE MOTOGP COURT OF APPEAL

Sitting in the following composition:

Mr. Robert HOFSTETTER (Chairman)
Mr. Manuel MARINHEIRO
Mr. Sakari VUORENSOLA

in the case:

- Championship:** *2022 FIM MotoGP World Championship - Moto3*
- Event:** *Round 8 of the 2022 FIM MotoGP World Championship
– Moto3 held on 29 May 2022 in Mugello, Italy*
- Case concerns:** *The Appeal against the decision of the FIM MotoGP Stewards Panel of 29 May 2022 rejecting the protest filed by Leopard Racing concerning the technical eligibility of KTM, GAS-GAS and HUSQVARNA motorcycles due to an alleged infringement of Articles 2.6 and 2.6.4 of the FIM World Championship Grand Prix Regulations (“the Regulations”) and deferred to the MotoGP Court of Appeal pursuant to Article 3.3.3.2 of the Regulations*

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**PARTIES PRESENT AT THE HEARING OF THE MOTOGP
COURT OF APPEAL 13 JULY 2022 IN MIES,
SWITZERLAND**

APPELLANT: LEOPARD RACING

Mr. Riccardo GIACOMIN

Legal Counsel for the Appellant

RESPONDENTS: KTM, GAS-GAS AND HUSQVARNA

Mr. Christian KORTNER

Head of Moto3 Motorsports at KTM AG

Mr. Philipp STOSSIER

Legal Counsel for the Respondents

EXPERT

Mr. Danny ALDRIDGE

*MotoGP Technical Director
(via videoconference)*

WITNESSES

For the Appellant:

Mr. Corrado FICUCCIELLO

*Engineer and aerodynamic consultant of
Leopard Racing S.A.
(via videoconference)*

Mr. Didier LAMBERT

Engineer of Leopard Racing S.A.

Mr. Christian LUNDBERG

Technical Director of Leopard Racing S.A.

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I. JURISDICTION

1. Pursuant to Article 3.3.5.3 of the Regulations (All references to Articles hereinafter in this Decision are references to the Regulations unless otherwise indicated), the MotoGP Court of Appeal will hear any appeals against decisions taken by the FIM Appeal Stewards.
2. The case was deferred to the MotoGP Court by decision of the Appeal Stewards in accordance with Article 3.3.3.2.
3. By virtue of Article 3.3.5.1 the FIM Legal Director appointed the judges constituting the MotoGP Court of Appeal for this case. There were no objections to the composition of the MotoGP Court of Appeal (“the Court”) pursuant to Article 3.3.5.2.

II. FACTUAL BACKGROUND

4. The 2022 Regulations contain new amendments under Article 2.6 and 2.6.4 whereby the motorcycle parts that are the subjects of this case (“the Disputed Items”, see Paragraph 26 below) become designated as “Performance Parts”. On 23 December 2021 these amendments were published by means of a FIM Press Release.
5. According to Article 2.6.4.c), d) and f), Performance Parts must be homologated, meaning that the concerned parts (with their technical details) of a motorcycle have to be submitted by a manufacturer to the Technical Director for approval at the latest at the end of the Technical Control of the first race of the season. In this case it was the Qatar round on 6 March 2022. Once approved, the technical details of the concerned parts are transparently shared with all manufacturers and teams with the consequence that the parts are freely available and useable to all teams using the motorcycle supplied by the manufacturer requesting the concerned homologation. The homologation was granted to the Disputed Items before the first Moto3 race of the 2022 World Championship.
6. On 29 May 2022 during Round 8 of the 2022 FIM MotoGP World Championship (the “Championship”) held in Mugello, Italy, Leopard Racing (hereinafter referred to as “the Appellant” or “Leopard”) lodged a protest against KTM, Gas-Gas and Husqvarna (“the Manufacturers”). In the protest, as well as in this case, Leopard contends that the Manufacturers breached Articles 2.6. and 2.6.4 by providing to the respective supplied teams motorcycles with updated Performance Parts from 2021 while such update was prohibited due to the combined reading of the mentioned Articles.
7. The protest was rejected by the FIM MotoGP Stewards Panel (“Stewards Panel”) on the same day by written decision stating that *“The protest specifically concerns the items that were added to the list of Performance Parts for the 2022 season, which were not considered as Performance Parts in the 2021 season,*

and were therefore not homologated. Thus these parts were not defined in the 2021 machine specification, so the argument that KTM updated these parts from the “the 2021 machine specification” contrary to the regulations, is unfounded. This was confirmed in discussions KTM had with the MotoGP Technical Director, confirming that the newly listed 2022 Performance Parts were allowed to be homologated and not carried over from the 2021 parts.”

8. Following this, on the same day, Leopard Racing appealed against the decision of the Stewards Panel before the FIM Appeal Stewards.
9. The Appeal Stewards, then in turn on the same day, decided to defer the matter to the MotoGP Court pursuant to Article 3.3.3.2, as ‘further detailed technical evaluation was required’ and since it was not possible to do so given the time and available resources at the circuit’.

III. SUBMISSIONS OF THE PARTIES

10. The Appellant requests to set aside the Stewards Panel Decision and uphold the Protest filed by it. In addition, the Appellant requests the Court to take any necessary decision to ensure and enforce compliance by the Manufacturers with the Regulations to ensure a fair and regular competition in the 2022 Championship as well as to sanction the Manufacturers as it deems fit.
11. The main claims of the Appellant can be summarised as follows:
 - The Manufacturers breached Articles 2.6 and 2.6.4 of the Regulations, because the Disputed Items were developed and updated by the Manufacturers in breach of the provision of Article 2.6 stipulating that “2021 machine specification as declared by each manufacturer will be frozen for the 2022 and 2023 seasons.” (First claim)
 - There was a breach of the principles of legal certainty, good faith and prohibition of arbitrariness, because the Technical Director allowed the above-mentioned homologation of the Manufacturers’ developed and updated Disputed Items while denying the same modifications of the Appellants manufacturer (Honda Racing Corporation, HRC) by applying a contradictory interpretation of the relevant provisions. Therefore, the Technical Director has not respected the principle of legal certainty, good faith and prohibition of arbitrariness. (Second claim)
12. The Respondents request that the Appellant’s appeal be dismissed and that the decision of the Stewards Panel be upheld and/or that the Protest be rejected as inadmissible.
13. The Respondents’ main claims can be summarised as follows:
 - The Protest must be rejected, on the grounds that it was not submitted within the time limit stipulated in the Regulations. In addition, the Protest was lodged

against three separate manufacturers and concerning three different technical components, while according to the Regulations, a protest must refer to a single subject. Furthermore, the Protest does not contain a statement of reasons as required by the Regulations. (First claim)

- The Disputed Items were homologated in compliance with the relevant provisions of the Regulations. (Second claim)
- The Manufacturers were honest and transparent as regards their intention to homologate the new Performance Parts for the 2022 season and, therefore, there is a lack of fault on their side. (Third claim)

IV. ASSESSMENTS BY THE COURT

A. Admissibility (Respondents' first claim)

14. The Respondents submit that according to Article 3.4.1.3. a technical protest must be filed before the chequered flag of the race concerned. Furthermore, a protest against the eligibility of a motorcycle to enter a class or event must be made before the start of the official practice. A protest against a machine on technical control compliance grounds may be made after the start of official practice but must be filed before the chequered flag of the race concerned.
15. The Respondents argue that the protest was lodged on 29 May 2022 at 12:35 and the next Moto2 race started at 12:20. Accordingly, the protest could not have been filed before the chequered flag and, thus not submitted within the time limit stipulated in the Regulations. Therefore, according to the Respondents, the protest must be rejected for this reason alone.
16. The Appellant reminded during the hearing that it did send an email message at 11:08 indicating its intention to file a protest, in other words during the race and before the chequered flag. Evidence of this was present in one of the Annexes to the Appeal Brief.
17. The Court first notes that the protest was not against the (i) 'eligibility of a motorcycle to enter a class', because the eligibility of the Respondents' motorcycles to enter the Moto3 class has been verified already at the technical control of the first race of the season in March 2022 and, furthermore, the (ii) "eligibility of a motorcycle to enter the event concerned" was verified during the technical control before the concerned race. Therefore, the first sentence of fourth paragraph of Article 3.4.1.3 (stipulating the above) does not apply in this case. The protest was accordingly 'a technical protest' pursuant to the very last sentence of Article 3.4.1.3.
18. The Appellant's email sent at 11:08 indicating its intent to file a protest fulfils the requirement of the second bullet point of second paragraph of Article 3.4.1.3. The protest was, therefore, lodged in due time.

19. In addition, the Respondents argue that the protest was against three separate manufacturers, in other words the Manufacturers, and concerned three different technical components, i.e. the Disputed Items. According to the second paragraph of Article 3.4.1.3, each protest must refer to a single subject only. The protest against three manufacturers and concerning three different technical components at the same time is, according to the Respondents, in breach of this provision. Therefore, the Respondents submit that the protest is to be rejected as inadmissible also on this ground.
20. The Court considers that the subject of this case is to determine whether the Disputed Items are updated Performance Parts taken over from 2021, and therefore in breach of Article 2.6, or whether they are components not included in the 2021 machine specification, not updated and were not prohibited Performance Parts in 2021, but are rather new components declared as Performance Parts for 2022 that are to be homologated for the 2022 season. In other words, the protest was correctly referring to a single subject, i.e., the nature of the Disputed Items in the light of the above-mentioned provision.
21. Furthermore, as to the Respondents argument that the protest was against three separate manufacturers, this Court considers this allegation is unfounded as the manufacturers KTM, Gas-Gas and Husqvarna belong to the same industrial group and granted respectively a power of attorney to the same representative.
22. Furthermore, the Respondents submit that the protest does not contain any of the reasons provided for under Article 3.4.1.2. However, the Court finds that the protest is in breach of the second bullet point of first paragraph of Article 3.4.1.2 (“an alleged non-compliance of a machine with the Regulations”) and, therefore, also on this ground, was correctly lodged.
23. Finally, the Respondents argue that the protest was lodged only after 7 races, almost in the middle of the 2022 season. The Respondents remind of the basic principle laid down in the Regulations according to which any ambiguities, disputes and other irregular behaviour should be pointed out and responded to as soon as possible. The protest should have been lodged during the first race of the 2022 season in Qatar. The Appellant was aware of the homologation of the Disputed Items since the beginning and did not lodge a protest during the first seven races of the season. The protest was therefore untimely, also due this reason, according to the Respondents.
24. The Court has sympathy for arguments according to which a protest against technical non-compliance of a motorcycle should be submitted and solved as soon as possible at the beginning of the race season. However, the Court has found above (see Paragraphs 14 to 23) that the protest was lodged in compliance with the Regulations.
25. Based on Paragraphs 14 to 24 above the Court finds that the protest is admissible.

B. Disputed Items – in breach of the Regulations or correctly homologated] (Appellant’s first claim and Respondents’ second claim)

26. The Appellant claims that the Manufacturers breached Articles 2.6 and 2.6.4 by providing to the teams updated Performance Parts as of 2021 while the 2021 machine specification as declared by each manufacturer shall be frozen for the 2022 and 2023 seasons. With the term “updated Performance Parts” the Appellant means “main loom” (which is in the Regulations referred to as “wiring harness”), “handlebar switch panel” and “fuel pump” (all together hereinafter “the Disputed Items”).
27. In other words, the Appellant argues that the Disputed Items are “performance parts from 2021” and included within the definition “2021 machine specification” and that the modification of those items was prohibited.
28. The relevant provision of Article 2.6 is its second subparagraph which stipulates that “The 2021 machine specification as declared by each manufacturer will be frozen for the 2022 and 2023 seasons”.
29. Paragraph f) of Article 2.6.4 stipulates that the items listed in that paragraph “will be designated as “Performance Parts” and must be homologated. Only homologated parts may be used in GP events.” The Paragraph then enumerates the “Performance Parts” (hereinafter referred to as “the Performance Parts list”).
30. On 23 December 2021 the FIM issued a press release publishing the “Decisions of the Grand Prix Commission” amending a number of different provisions in the Regulations (“the Amending Decision”). One of the amendments adds into the Performance Parts list three new items and stipulates that those added new items “will now be designated as Performance Parts and must be homologated”. Although the Parties’ briefs submitted to the Court do not use the same wording as the mentioned amendment, there is no dispute that the added new items have exactly the same meaning as the Disputed Items.
31. According to the Appellant, the Disputed Items were added to the 2021 Performance Parts list with immediate effect on 23 December 2021, and therefore, also became immediately subject to the freeze stipulated in Article 2.6 and, thus, could not be modified.
32. The Appellant argues, furthermore, that the Disputed Items were in any case included within the definition “2021 machine specification”, because they were listed already in 2021 in the List of Parts, which is a list indicating value, name and identification code as well as drawing or picture of different parts a manufacturer has committed to supply (“the List of Parts”). As the Disputed Items were already in 2021 listed in the List of Parts, they are subject to the freeze and could not be modified.
33. According to the Respondents the Disputed Items were correctly homologated for the season 2022 in compliance with the Regulations in March 2022 in the context of the race in Qatar on 6 March 2022 and the homologation was not

objected. The Disputed Items were not yet performance parts in 2021 and, thus, were not included in the 2021 machine specification and, therefore, could not be frozen pursuant to Article 2.6.

34. At this stage the Court notes that in the context of this decision, the term “homologation” is understood as meaning that a specific part of a motorcycle has been submitted by a manufacturer to the Technical Director for approval and, once approved, the technical details of the concerned part are transparently shared with all manufacturers and teams with the consequence that the part is freely available and useable to all teams using the motorcycle supplied by the manufacturer requesting the concerned homologation.
35. The Respondents argue that the Disputed Items were added by the Amending Decision to the 2022 Performance Parts list and subject to the homologation only for the 2022 season. The Disputed Items are, therefore according to the Respondents, not part of the 2021 Performance List and accordingly not subject to the freeze.
36. Furthermore, the Respondents argue that the List of Parts does not include technical details, and therefore, parts in that list are not included in the definition “2021 machine specification” and not subject to the freeze.
37. During the Hearing, the Technical Director stated that the purpose of the Amending Decision was to make changes to the 2022 Performance Parts list and not to the 2021 Performance Parts list. Furthermore, the Technical Director stated that no part could be homologated based only on the information included in the List of Parts since there are no technical details. With only the value, name, identification code and drawing or picture known, no homologation can be performed.
38. In the opinion of the Court, before ruling on the Appellant’s first claim and on the Respondents’ second claim the following two issues are to be decided by the Court:
 1. Are the Disputed Items included in the 2021 Performance Parts list or in the 2022 Performance Parts list?
 2. Are the Disputed Items covered by the term “*2021 machine specification*” under Article 2.6?
39. In legal environments, press releases are not the appropriate communication channel to introduce new legal provisions. Press releases serve the purpose of informing the public, whereas legally binding provisions are entered into force by legally binding decisions indicating the effective entering into force of such provisions. In this case, the exact time of entering into force of the effects of the Amending Decision is, therefore, unclear.
40. Neither of the Parties put forward direct arguments on this question, however, the Appellant’s argumentation indirectly refers to this question. The Appellant assumes that the Amending Decision entered into force immediately on 23

December 2021 and, thus, changed the 2021 Performance Parts list immediately.

41. On the other hand, the Respondents assumed that it is self-evident that the Amending Decision took effect only for the 2022 season and the changes affected the 2022 Performance Parts list only.
42. During the time before the 2022 season races started, and during the season, there was a number of email exchanges between Leopard and the Technical Director, as well as between HRC and the Technical Director, on this issue. In those emails, Leopard and HRC tried to clarify with the Technical Director whether similar parts, as the Disputed Items, that were developed by Leopard would be considered as performance parts and, therefore, subject to the freeze.
43. After assessing the email exchanges, the Court finds that the messages sent and received were apparently not always understood by receiver in the same way as the sender would have meant. Thus, on the basis of those exchanges, the Appellant might have grounds to consider the issue in a different way than the intended meaning expressed by the Technical Director.
44. However, such email exchanges are comparable to discussions between individual persons and cannot, therefore, have a decisive role in deciding on this issue. On the other hand, as the email exchanges might have affected the behaviour of Leopard team and its supplier manufacturer HRC, this will be taken appropriately into account below in Paragraph 59. This includes the assessment of the reasonable costs to be borne by the Respondents and the maximum amount to be covered by the Appellant.
45. Therefore, taking into account the statement of the Technical Director (see Paragraph 37 above) as well as the context in which the Amending Decision takes place, namely the annual cycle of the functioning of the Moto3 Championships starting with the publication of the calendar for the next year, the official entries of the riders for the coming season, manufacturers commitments to supply the machines for the next season, upcoming events and races themselves and ending to the declaration of the Moto3 World Champion of the season, this Court finds that it is only logical that the Amending Decision adds the three new items to the 2022 Performance Parts list and not to the 2021 Performance Parts list.
46. Accordingly, the Court finds that the Disputed Items are included in the 2022 Performance Parts list.
47. As regards the second issue, the Court first notes that the term “2021 machine specification” is not defined in the Regulations. The press release dated 8 June 2021, informing about the new freeze provision in Article 2.6 and including the term in question, mentions cost control as the reason for the new provision. This would speak in favour of extensive interpretation of the term.
48. On the other hand, the Court notes that a freeze means that an item or part has to stay the same as it was before the freeze. This means that all the detailed

technical properties of the item or part must stay the same. If the detailed technical properties are not known or if those properties are freely modifiable, such items or parts could not be frozen within the meaning of Article 2.6.

49. Therefore, the fact that the Disputed Items were listed in the List of Parts, that does not include technical details of the parts listed therein, cannot make such parts subject to a freeze within the meaning of Article 2.6.
50. In addition, The Technical Director, in his report of 29 May 2022 to the Stewards Panel, states that according to his understanding, as only Performance Parts are required to be homologated and therefore allowing teams to change and modify all other parts freely without penalty, the meaning of machine specification can only relate to the Performance Parts.
51. Accordingly, the Court finds that the Disputed Items are not covered by the term “2021 machine specification”.
52. On the basis of the above findings, the Court concludes that the Manufacturers did not breach the Regulations and that the Disputed Items are correctly homologated.

C. On legal certainty, good faith, prohibition of arbitrariness and lack of fault (Appellants’ second claim and Respondents’ third claim)

53. The Appellant argues that the Technical Director allowed the Manufacturers to homologate their “new” Performance Parts while denying the same modifications to HRC and, consequently, to the teams supplied by HRC. According to the Appellant this is due to different interpretations of Articles 2.6 and 2.6.4 made by the Technical Director, which is in breach of the principles of legal certainty, fairness, equality and fair competition.
54. The Court notes that the Protest contends that by having the Disputed Items homologated at the beginning of the season, the Respondents breached Articles 2.6 and 2.6.4. However, as the Court finds above in Paragraphs 26 to 52 above, the homologation of the Disputed Items did not breach the mentioned Articles. Therefore, the Appellant cannot invoke legal certainty in this case, which would entitle him to entertain legitimate expectations based on legal certainty.
55. The Court further notes that the protection of legal certainty requires that an act producing legal effects should be clear and precise in order to allow the person concerned to know without ambiguity what his rights and obligations are.
56. Nevertheless, the Appellant has not been able to establish that the homologation of the Disputed Items was not in compliance with the Regulations (see Paragraphs 26 to 52 above) and therefore, cannot invoke the protection of legal certainty nor that there was fault on the side of the Respondents.
57. Accordingly, the Court finds that there was no breach of fairness, equality or fair competition, thus, the Appellant’s second claim must be rejected.

D. Costs of Procedure

58. In accordance with Article 3.6, the costs of the disciplinary or arbitration decision will be assessed by the FIM Executive Secretariat and will be borne by the unsuccessful party, unless the Court decides otherwise. In this context, the security deposits provided by the Protesting Party and by the Appellant pursuant to Articles 3.4.1.4 and 3.4.2.4 remain to the FIM.
59. Since the Respondents seek the reimbursement of their legal costs, the Court, taking into account of the outcome of this case as well as the point considered in Paragraph 44 above, deems that an amount of EUR 7,500 would be reasonable and fair to cover the corresponding legal costs.

<h4>V. FINDINGS</h4>

60. In meetings held in November and December 2021, the Grand Prix Commission approved the amendment to Articles 2.6 and 2.6.4 stating that the following items, i.e., the Disputed Items, will now be designated as Performance Parts and must be homologated. This amendment to the Moto3 Technical Rules was published by way of press release on 23 December 2021 and is reflected in the 2022 FIM World Championship Grand Prix Regulations and were printed in bold.
61. The Protest of Leopard Racing against KTM, Gas-Gas and Husqvarna for breach of Articles 2.6 and 2.6.4 was lodged within the time-limit and the protest fee of EUR 600 was granted by IRTA. The FIM MotoGP Stewards Panel, after hearing the Protesting party and the Technical Director (TD) Danny Aldridge, rejected the Protest considering that the newly listed 2022 Performance Parts were allowed to be homologated.
62. Thereafter, Leopard Racing lodged an Appeal against the Stewards Panel's decision to the FIM Appeal Stewards on the same grounds and granted the requested Appeal fee of EUR 1320. The Appeal Stewards, after hearing the now Appellant and the TD and by virtue of Article 3.3.3.2, referred the case to the MotoGP Court of Appeal considering that "further detailed technical evaluation was required and that this was not possible given the time and available resources at the circuit".
63. The MotoGP Court of Appeal, by virtue of its authority and competence, and pursuant to Article 3.3.5.3, dismisses the Appeal lodged by Leopard Racing before the FIM Appeal Stewards and upholds the decision of the Stewards' Panel of 29 May 2022. The Court considers, as did the FIM MotoGP Stewards Panel, that the Disputed Items were not yet Performance Parts in 2021 but were designated as new Performance Parts by virtue of the 2022 Regulations.
64. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Court, that they had the occasion to express their opinions on the case, their arguments, to present their witnesses and that their right to be heard had been fully respected.

**On these grounds,
The MotoGP Court of Appeal rules that:**

- I. The Appeal lodged by Leopard Racing to the Appeal Stewards is admissible.
- II. The Appeal lodged by Leopard Racing to the Appeal Stewards is rejected and the decision of the Stewards Panel of 29 May 2022 is upheld.
- III. The costs of the procedure leading to this decision are assessed by the FIM Administration and are borne by Leopard Racing. Reasonable costs of the Respondents are borne by Leopard Racing against verified invoices and other supporting documents up to the maximum amount of EUR 7500.

Operative part pronounced on 14 July 2022

Reasoned decision pronounced on 8 August 2022

On behalf of
MotoGP Court of Appeal



Robert Hofstetter
Chairman

An Appeal against this decision 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 MotoGP Court of Appeal pursuant to Article 3.4.2.2 of the 2022 FIM World Championship Grand Prix Regulations. Moreover, Articles R47ff. of the Code of Sports related Arbitration shall apply.