

DECISION OF THE MOTOGP COURT OF APPEAL

Sitting in the following composition:

Mr Sakari VUORENSOLA (Chairman)
Mr Robert HOFSTETTER
Mr Marek MALECKI

in the case:

- Championship:** *2023 FIM Grand Prix World Championship - MotoGP*
- Event:** *First round of the 2023 season of the FIM Grand Prix World Championship – MotoGP, held on 24 - 26 March 2023 in Portugal, the MotoGP™ Race of the Grande Premio Tissot de Portugal (hereinafter referred to as “the MotoGP Race of Portugal”)*
- Appellants:** *Mr Marc Márquez, rider #93 of the MotoGP class, and his team HRC - Repsol Honda Team*
- Case concerns:** *Appeal before the FIM Appeal Stewards against the Notice of Application of the Sanction issued by the FIM MotoGP Stewards Panel on 28 March 2023 in connection with the previous Notification of Sanction issued by the same FIM MotoGP Stewards Panel on 26 March 2023*
- The Notice of Application of the Sanction clarified the application of the Notification of Sanction which imposed a Double Long Lap Penalty on Mr Marc Márquez*
- The appeal was referred by the FIM Appeal Stewards on 29 March 2023 to the MotoGP Court of Appeal pursuant to Article 3.3.3.2 of the FIM Grand Prix World Championship Regulations*

I. JURISDICTION

1. Pursuant to Article 3.3.5.3 of the 2023 FIM Grand Prix World Championship Regulations (hereinafter referred to as “the Regulations”; all references to Articles in this Decision are references to the Regulations unless otherwise indicated), the MotoGP Court of Appeal adjudicates upon request of the FIM Appeal Stewards.
2. This case was referred to the MotoGP Court of Appeal on 29 March 2023 by decision of the FIM Appeal Stewards in accordance with Article 3.3.3.2.
3. On 29 March 2023, the judges constituting the MotoGP Court of Appeal were appointed in accordance with Article 3.3.5.1 for the present case. No objections were raised regarding the composition of the MotoGP Court of Appeal (hereinafter also referred to as “the Court”) pursuant to Article 3.3.5.2.
4. On the basis of the foregoing and considering that no claims against the jurisdiction of the Court were submitted, the Court has jurisdiction for this case.

II. FACTUAL BACKGROUND

5. On 26 March 2023 at the MotoGP Race of Portugal, the FIM MotoGP Stewards Panel decided to sanction Mr Marc Márquez (hereinafter also referred to as “the Rider”) because he was observed as being overly aggressive and causing a crash with another rider, that disrupted the session. This was considered as irresponsible riding causing danger to other competitors. It was therefore an infringement of Article 1.21.2 of the Regulations (“irresponsible riding causing danger”).
6. Before imposing the sanction, the FIM MotoGP Stewards Panel summoned the Rider to a meeting. The participants in this meeting were the Rider, the Rider’s Team Manager and the three members of the FIM MotoGP Stewards Panel. At the meeting, the FIM MotoGP Stewards Panel explained to the Rider and to the Team Manager that following the above-mentioned infringement, they intended to impose a double long lap penalty to be served at the next MotoGP Race taking place in Argentina (hereinafter referred to as “the MotoGP Race of Argentina”).
7. During the meeting, the Rider inquired whether the sanction would be served exclusively at the MotoGP Race of Argentina or at the next race in which he would be able to participate. The FIM MotoGP Stewards Panel confirmed verbally that the sanction to be imposed would have to be served at the MotoGP Race of Argentina. In the light of this answer, the Rider further asked the FIM MotoGP Stewards Panel whether the sanction would be deemed served at the MotoGP Race of Argentina in case he did not take part in said race. The FIM

MotoGP Stewards Panel confirmed verbally that the sanction would be deemed served in case the Rider did not take part in the MotoGP Race of Argentina.

8. On the same date (i.e. 26 March 2023), the sanction was notified to the Rider directly at the event venue by means of the Notification of Sanction. According to the wording of the Notification of Sanction, the sanction was "*a Double Long Lap Penalty for the Gran Premio Michelin® de la República Argentina MotoGP Race*" (hereinafter referred to as "the Original Sanction").
9. Later on the same day, the Rider underwent surgery and ultimately decided not to participate and compete in the MotoGP Race of Argentina.
10. On 28 March 2023, the same FIM MotoGP Stewards Panel issued a notice called "**Application of the sanction imposed on Marc Márquez, Rider #93, by the FIM Stewards Panel**" (hereinafter referred to as "the Application of the Sanction").
11. The concerned wording of the Application of the Sanction read as follows: "*The FIM MotoGP™ Stewards Panel hereby clarifies its decision as regards applicability. Considering the injury and non-participation of Marc Márquez, Rider #93, at the GRAN PREMIO MICHELIN® DE LA REPÚBLICA DE ARGENTINA, and with a view to comply with the intention underlying the decision taken by the FIM MotoGP™ Stewards Panel, the Double Long Lap Penalty shall be served by the Rider at the next MotoGP™ Race in which he will be able to participate.*"
12. On 29 March 2023, the Rider and his team (HRC - Repsol Honda Team) (i.e. the Appellants) filed an appeal against the Application of the Sanction before the FIM Appeal Stewards.
13. On the same day, the FIM Appeal Stewards, considering the circumstances of the case and the legal issues raised in the appeal, decided, pursuant to Article 3.3.3.2, to refer the case to the MotoGP Court of Appeal to rule on the case.
14. On 30 March 2023 a non-dated MotoGP Information sheet titled "FIM MotoGP Stewards Information, Penalties Protocol Summary 2023 Season" was communicated to all teams and riders (hereinafter referred to as the "Penalties Protocol"). The Penalties Protocol provides guidance *inter alia* on "Serving a penalty" as follows:

"The philosophy that the FIM MotoGP Stewards follow for the application of a penalty is that penalties must be effective and that the rider must serve the penalty at the next event of the Championship where the rider participates in, even if it's at the next season of the Championship.

*However, if the rider does not participate at the next event due to a **subsequent and unrelated** injury or illness (not suffered during the incident itself), then the penalty is deemed to have*

been served and does not get postponed to subsequent events.

Medical judgements are and must continue to be independent from disciplinary decisions.

This exception for unrelated illness or injury is for 2 reasons; the FIM MotoGP Stewards deem that missing a race is a higher penalty than the penalty imposed (eg. Long Lap), and to avoid the situation that happened many times in the past where a rider started a race whilst injured with the sole purpose of completing the penalty, thereby endangering themselves and others.”

15. On 12 April 2023, the Court decided to grant the stay of execution of the Application of the Sanction.
16. On 17 April 2023, the Appellants submitted the Brief of Appeal along with six (6) Annexes (and their translations) and indicated also that they did not consider it necessary to hold a hearing before the MotoGP Court of Appeal in this case.
17. Therefore, on 2 May 2023, the Court informed the Appellants that a hearing shall not be held and that the Court shall issue its decision at the latest on 16 May 2023 in accordance with Article 3.4.4.

III. SUBMISSIONS OF THE APPELLANTS

18. The Appellants request, in accordance with Article 3.4.2 of the Regulations, that the Court (i) declares that the Application of the Sanction is contrary to the Regulations and general principles of disciplinary sports law; (ii) declares that the Original Sanction has been complied in full and duly served by the non-participation of the Rider in the MotoGP Race of Argentina; (iii) revokes and annuls the Application of the Sanction; (iv) orders to allow the Rider to compete in the next race in which he is available without a double long lap penalty; (v) and orders the FIM to pay all legal costs arising out of this appeal pursuant to Article 3.6 of the Regulations.
19. In support of the requests, the Appellants submit that the Application of the Sanction infringes (i) the right to due process and the principle of immutability of final disciplinary sanctions; (ii) the principle of legal certainty and (iii) the principle *ne bis in idem*. The arguments of the Appellants' submissions can be summarized as follows.
20. By the Application of the Sanction the FIM MotoGP Stewards Panel unilaterally and *ex post facto* amended the Original Sanction without hearing the Rider, without any additional evidence and without any reasoning. This infringes the right of the Rider to a due process. It also infringes the principle of immutability of final disciplinary sanctions, since the Original Sanction was not appealed and

therefore became final and definitive, having by analogy, acquired the force of “*res judicata*”.

21. The Rider and his Team took the decision not to compete in the MotoGP Race of Argentina in good faith in believing that they fully comply with the Original Penalty. This decision was taken voluntarily and not due to the injury related to the crash at the MotoGP Race of Portugal. Furthermore, they refer to the Penalties Protocol which was communicated only after the issuance of the Application of the Sanction. The content of the Penalties Protocol was not known at the time of the MotoGP Race of Portugal. Therefore, the issuance of the Penalties Protocol confirms that the Application of the Sanction did not have any legal basis at the time of the MotoGP Race of Portugal.
22. The Application of the Sanction would also potentially impose an additional sanction resulting in two separate sanctions in two different races; the first one as “zero points” in the MotoGP Race of Argentina due to non-participation and the second one an additional Double Long Lap Penalty in the next MotoGP Race where the Rider will be able to participate. This would be against the principle of *ne bis in idem*.

IV. ASSESSMENTS BY THE COURT

Admissibility

23. The Court takes note of the time limits stipulated in Article 3.4.2.2 according to which an appeal against a decision of the FIM MotoGP Stewards Panel must be lodged within one hour. However, in the present case the appeal to the FIM Appeal Stewards was lodged within 24 hours.
24. The Appellants argue that the appeal was “*filed within the time limit under clause 3.4.2.2 as clarified by the FIM Administration (e-mail from the CCR Sporting Manager of the FIM, of 28 March 2023, 14:09:26 CEST) in its communication to the Repsol Honda Team Manager confirming that the appeal could be filed within 24 hours counted from the previous e-mail sent by the Repsol Honda Team Manager (e-mail of 28 March 2023, 7:57 CET), that is, by 29 March 2023, 7:57 CEST.*”
25. The FIM CCR Sporting Manager has consequently “clarified” and “confirmed” that the appeal against the Application of the Sanction could be lodged within 24 hours. The Court considers that the FIM CCR Sporting Manager may have acted *ultra vires* since the Regulations do not allow such deviations from its provisions and no reasons justifying such exceptional extended 24 hours’ time limit were presented.

26. In addition, the FIM Appeal Stewards in their decision of 29 March 2023 did not try to give reasons for such exceptional extended time limit, but only noted that the appeal was regularly lodged within the deadlines stated by the FIM Administration.
27. The Court, nevertheless, considering the irregularities linked to the Application of the Sanction (see below Paragraphs 28 to 41), accepts in the present case such exceptional extended time limit for lodging the appeal.

Merits

28. The Court first takes note of the wording used in the **Notification of Sanction** of 26 March 2023 which states “*the FIM MotoGP Stewards Panel has imposed a Double Long Lap Penalty for the Gran Premio Michelin® de la República Argentina MotoGP Race.*” The wording does indicate the event where the sanction ought to take place, i.e. at the MotoGP Race of Argentina. The wording does not leave any other option on when and where the sanction must be served. Accordingly, the Court finds that the Original Sanction as specified in the Notification of Sanction was clear.
29. The Court then needs to assess the **Application of the Sanction** in the present case.
30. As the Application of the Sanction was an unilateral act of the FIM MotoGP Stewards Panel, the Court points out that a sanction could be unilaterally rectified by the sanctioning body only in limited circumstances where there are clear technical or spelling mistakes in the text of the sanctioning decision.
31. In the present case, the Original Sanction as provided in the Notification of Sanction was clear as regards its material contents. The Court finds that the Application of the Sanction does not limit itself to only rectifying technical or spelling mistakes but *de facto* amends the substantial content of the Original Sanction by introducing an additional possibility as to when and where the sanction should be served.
32. Therefore, the Court finds that the principle of immutability of final disciplinary sanctions is violated in the present case.
33. With regard to the wording the FIM MotoGP Stewards Panel uses in the Application of the Sanction, the Court notes that the Panel intends to “clarify” the applicability of the sanction imposed earlier. The Panel justifies the clarification by “considering the injury and non-participation” of the Rider at the MotoGP Race in Argentina and “with a view to comply with the intention underlying the decision taken” by the Panel.
34. The Court understands that, since the Rider had an injury and decided not to participate in the MotoGP Race of Argentina, the Panel wanted to stress its original intention in that the Rider must serve the Double Long Lap Penalty in

an actual race. The Court has some sympathy for this thinking of the FIM MotoGP Stewards Panel.

35. Nevertheless, the legitimate expectations of the Rider and his Team must be respected. A person can rely on the principle of legitimate expectations if consistent and unconditional information has been communicated to the person from an authorised and reliable source giving him precise assurances regardless of the form in which the information is communicated.
36. In the present case, the FIM MotoGP Stewards Panel during the meeting on 26 March 2023 orally confirmed to the Rider that the sanction would be deemed to be served at the MotoGP Race of Argentina even in case the Rider did not participate in that race (see above Paragraph 7). Additionally, the wording of the Original Sanction clearly indicated the time and place of the execution of the sanction (see above Paragraph 28).
37. The Rider and his Team took the decision not to participate in the MotoGP Race of Argentina in good faith based both on the oral confirmation and on the unambiguous language of the Original Sanction. There was no evidence presented to the Court against this good faith. Therefore, the Court finds that the Appellants have been given such assurances that they could rely on the principle of legitimate expectations. Thus, the issuance of the Application of the Sanction violates the legitimate expectations of the Appellants.
38. In addition, the Court takes note of the fact that the Rider was not heard in the context of the decision making leading to the Application of Sanction. In this regard the Court reminds that pursuant to Article 3.5.1 the right to a hearing to defend themselves is an unquestionable right of any person or body charged with any offence under the Regulations.
39. That right requires that the persons subject to a decision which significantly affects their interests, should be given the opportunity to effectively make their views known on the correctness and relevance of the facts and circumstances. A violation of this right is alone such fundamental irregularity in a disciplinary process that could justify an annulment of a sanction.
40. Since the Application of the Sanction significantly affects the interests of the Rider and his Team, the Court finds that the Rider's right to a due process was violated in the present case.
41. Based on the above, the Court finds that the Application of the Sanction without justifying reasons irregularly and wrongly amends the Original Sanction, and therefore must be annulled.
42. As regards the Penalties Protocol, the Court considers it as a useful guidance for possible similar cases in the future. However, for the purpose of the present case, it was communicated after the Application of the Sanction was issued. Therefore, the Court finds that the Penalties Protocol cannot impact this decision.

43. With regard to the remainder of the Appellants' requests, the Court considers them implicitly covered by the annulment of the Application of the Sanction. Therefore, the Court considers that the Original Sanction has been complied with and served by the non-participation of the Rider in the MotoGP Race of Argentina and that the Rider is allowed to compete in the next race in which he is available without any further sanction based on the infringement mentioned in Paragraph 5 above.

Costs

44. The appeal in the present case is upheld, therefore, in accordance with Article 3.4.2.4 the security fee of € 1'320.- shall be returned to the Appellants.
45. Furthermore, as provided by Article 3.6, it is up to the Court to award the costs of the present proceedings. In the present case, the Court considers that, first, the FIM shall bear all administrative costs of the present proceedings and second, that there are no reasons presented by the Appellants justifying that the FIM should cover the Appellants' legal costs. Thus the Appellants shall bear their own legal costs.

On these grounds,

The MotoGP Court of Appeal rules that:

The FIM MotoGP Stewards Panel Notice of 28 March 2023 related to the Application of the Sanction imposed on Mr Marc Márquez issued in connection with the previous Notification of Sanction by the same FIM MotoGP Stewards Panel of 26 March 2023 is annulled.

The security fee of € 1'320.- is to be returned to the Appellants.

The FIM covers all administrative costs and the Appellants cover their own legal costs in the present case.

Pronounced on 9 May 2023

On behalf of

MotoGP Court of Appeal

[Signed]

Sakari Vuorensola

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 decision of the MotoGP Court of Appeal pursuant to Article 3.4.2.2 of the 2023 FIM Grand Prix World Championship Regulations. Moreover, Articles R47ff. of the Code of Sports-related Arbitration shall apply.