



MOTORSPORT SOUTH AFRICA NPC

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MSA COURT OF APPEAL 388

APPEAL LODGED BY COMPETITOR THOMAS RUNDLE ARISING FROM A DECISION MADE BY THE STEWARDS WHICH WAS UPHELD AT THE TOYOTA DESERT RACE 1000 HELD AT BOTSWANA OVER PERIOD 24TH – 26TH JUNE 2011.

HEARING HELD IN THE MSA BOARDROOM, 9 MONZA CLOSE, KYALAMI PARK AT 17H30 ON MONDAY, 12TH SEPTEMBER 2011.

PRESENT

Glenn Rowden	:	Court President
Alan Kernick	:	Court Member
Elza Thiar	:	Court Member
Elvene Coetzee	:	Observer
Richard Schilling	:	Observer
Thomas Rundle	:	Competitor
Juan Möhr	:	Competitor
Karin Britton	:	Scribe

The court president introduced the court members.

The Off Road Car Commission President, Mr. Richard Schilling requested the court to be allowed to attend as an observer which the Court agreed to.

Mr. Schilling objected to the presence of Ms Elvene Coetzee as a court member, based on the grounds that she was a Toyota sponsored driver and as the outcome could affect Toyota it would be better for her to recuse herself.

The Court President acceded to this objection and invited Ms Coetzee to remain as an observer.

The appellant stated his case, including all evidence that was denied him in the original protest hearing. Interestingly the Court heard evidence that Competitor Rundle had been time barred at the event on the Saturday notwithstanding the supplementary regulations providing a time later than that at which the bar was imposed. This decision was the subject of some difficulty for the race officials when it was found that the time bar needed to be extended for other competitors. This fact alluded to and confirmed in the Stewards report from the event.

Competitor Rundle was called to a meeting with amongst others the Clerk of the Course and the MSA Series Steward as well as a number of other parties. He



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was informed that a mistake had been made in time barring him and that he was able to choose one of two options to correct this.

He was told he could not leave but needed to make a choice there and then. By all accounts the better option and that selected by Competitor Rundle was that he could compete on the Sunday but would be given 12, 5 points. Competitor Rundle made it clear that he had already indicated that if he were not awarded points he would rather not continue racing and save an estimated R60 000-00. This is however academic as Competitor Rundle was offered an option which he accepted. It may be pertinent to mention that the Steward calculated the points having interpreted the rule to reflect 12, 5 points.

The Court questioned why the Steward of the event and COC would have entered into a debate on the scoring given the provisions of GCR 152 (Note) on page 35 of the 2011 MSA Handbook; however that is a separate issue.

On the strength of the options presented and accepted, Competitor Rundle continued to compete in the event. At the conclusion of the event he noted he had been allocated, 5 points and not 12, 5 points, which he questioned.

It appeared from the evidence led by Competitor Rundle that he was informed that the interpretation of the applicable rules were somewhat unclear and that the agreement between he and the race officials was in fact incorrect in respect of the 12.5 points. His attempts at resolution, by approaching the liaison officer as set out in the documentation were met with no assistance.

Competitor Rundle explained that he had discussed the issue with the Commission President and that the debate over the clarity of the rule and in fact the implications of the rule were discussed. He acknowledged that the intention of the rule should have been to ensure all competitors who competed on both days would finish ahead of competitors only finishing on the Sunday. This however became academic as it was not mentioned before the event, was directly contradictory to what was agreed with the Steward and COC and lastly was only clarified post the event by way of a clarification circular.

Competitor Rundle made the point that he understood the rationale behind the rule clarification but that it should not be applied in his case as it was not in place at the time of the event. This supported by the obvious and in his view correct interpretation of the rule by the Steward and COC.

It was suggested that the decision as agreed between Competitor Rundle and the race officials was not confined to writing. The Court finds that the interpretation of the rule by the race officials was an interpretation directly from the rule book and in fact required no written finding as it existed within the rules. Simply put the race officials were applying the written rule.

The Commission President, Mr Richard Schilling questioned the appellant as to his intentions to continue competing if the point allocation was not as detailed in the SSR's. He pointed out he had met with Competitor Rundle and that he had tried to explain the position.



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Findings:

Having heard all the evidence, the court finds as follows:

- In terms of GCR's 63 and 64, and in line with FIA regulations, the wording of regulations is to be interpreted as for the purpose of the rule to bear the meaning assigned to such words and expressions in that rule.
- ART 4.2 of the 2011 Off Road Car Championship is specific in detailing the points allocated at the Toyota 1000 Desert race and the plain meaning of the wording dictates the allocation of points to a day 3 finisher as 50% of the points which would be given overall in a normal championship event and is based on the finishing order of the day.
- Although the court feels that it is unfair to be awarded points higher than that of competitors finishing the entire course, the plain meaning of the words dictates the point allocation.
- The court finds that the published regulations are a flawed document and no thought was given when formulating the rule of the possible implications. The Court however notes that the implication of this poorly worded regulation would only surface in events like the Desert Race which was a marathon event.
- The publishing of a circular after the fact in attempting to define the intent of the rule failed as it merely repeated the original wording. In any event the clarification after the event would and should not have affected the results at the event. The mere fact that the race officials interpreted the regulations in the same way as this Court has is in the view of the Court sufficient evidence to suggest that Competitor Rundle acted in good faith as did the officials who were to use an old adage all on the same page.
- A circular from ABSA OR Championship defines the intent of the rule but was published after the fact and is not an official MSA Circular. Intention is however not specific in the current rule as written and no matter the intention the facts are that the rules make no provision for intent.
- The Appellant will have to be re-scored for the event and is to be credited with 12.5 points being 50% of an event win as defined in Articles 4.1 and 4.2.
- The appeal is successful and the appellant is to have his appeal fee less 25% returned.
- In conclusion, the Court is of the view that this situation could have been avoided by a clear and unambiguous rule having been inserted. The



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very obvious interpretation made by the Race Officials at the event bear testament to the interpretation, one which the officials and competitor agreed on. The fact that the scoring changed between the time that the agreement was reached and the end of the event remains a mystery, as does the author or reason for the change. It is worth noting that at the protest hearing the Steward confirmed the meeting and what was discussed which was in no way contested. It appears unlikely that same would have been confirmed if the Steward was in anyway uncertain of his interpretation of the rule.

All parties are reminded of their rights to appeal to a MSA National Court of Appeal

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