

## **Appeal 200531**

### ***APPEAL FROM RICHARD MOORE KART # 10 AGAINST FORM OF COMPLAINT 408728, THE JUDICIAL PROCESS AND PENALTIES IMPOSED UNDER RULE 4.1 BY THE STEWARDS PANEL FOLLOWING A HEARING AT THE AUCKLAND SCHOOLS CHAMPIONSHIP AT KARTSPORT AUCKLAND, ROSEBANK DOMAIN ON THE 6TH APRIL 2008.***

A duly convened Appeal Board was established under clause D6.2 of KartSport New Zealand Judicial Code to hear the above Appeal.

The appeal was heard at the Grand Chancellor Hotel, Auckland on Saturday 7th June 2008.

The appeal board was : John Lennox (Auckland and Chair), Allan Wilson (Auckland), Peter Cartwright (Wellington), Brent Murgatroyd (Mt Wellington) and Steve Brown (Formula S).

The appeal was considered in two parts :-

1. That the correct procedure was not followed in raising the Form of Complaint, that the person bringing the Form of Complaint did not witness the incident and that the procedural paperwork formalities were not accurate.
2. That the decision of the Stewards Panel was against the weight of evidence and that the only witness called was a crewmember of a third party who stood to gain from a favourable outcome to the complaint. The decision ultra vires.

Richard Moore (the Appellant) as a minor was represented by Graeme Moore (Parent/Guardian).

KartSport New Zealand (the Respondent) was represented by Dave Young (Chief Steward of the Meeting and Grade One Race Official).

The Appellant presented 4 witnesses.

The Respondent presented 5 written statements and 2 witnesses, one witness to support the first part of the appeal and one a witness to the incident in the second part of the appeal.

The Appeal Board heard part one of the appeal first and then deliberated to come to a decision as to whether part two of the appeal would proceed. The Appeal Board decided after deliberation that the second part of the appeal would proceed by way of a complete rehearing of the Form of Complaint.

The first part of the hearing commenced at 9.35am and concluded at 10.45am.

The Appeal Board deliberated for 15 minutes before coming to their decision on part one of the appeal.

The second part of the hearing commenced at 11.10am and concluded at 2.20pm.

The Appeal Board deliberated for 1 hour and 50 minutes before coming to their decision.

Both the Appellant and Respondent acknowledged and confirmed that they were satisfied that they had received a fair hearing.

***FOLLOWING IS THE APPEAL BOARDS STATEMENT.***

1. With respect to the first part of the appeal the Board considered the arguments put forward by both parties and also considered the evidence of the Clerk of the Course who was called as a witness by the Respondent.
2. The Board accepted the reasons put forward by the Respondent for a member of the Stewards Panel on the day to be acting as the temporary Clerk of the Course due to circumstances that had temporarily rendered the Clerk of the Course for the event incapable of continuing at that time with the role.
3. The Steward who had assumed the role of Clerk of the Course had been replaced on the Stewards Panel by an Assistant Clerk of Course.
4. All of the officials on the day had been notified via radio communication from the Chief Steward of this change in personnel.
5. The change had not been officially notified by way of official notice on the notice board and while the Board feels that this should have been done it accepts that due to the temporary nature of this change and the time constraints involved this was not done. The Board would urge KartSport New Zealand to address this so that in future any change to Race Official roles on the day are notified officially on the notice board.
6. An Assistant Clerk of Course saw an incident at turn two of the first lap in the fourth heat of the Rotax Max Light class and confirmed via collaboration with another person on flag point four (beside turn two) that an incident had taken place.
7. The Board were satisfied that the Assistant Clerk of Course had in fact witnessed an incident although by his own written statement presented to the hearing admitted that "Part of the incident was obscured for a couple of seconds due to my position in relation to the flag point". Regardless of this fact, the Board were satisfied that the Assistant Clerk of Course had witnessed an incident and therefore was duty bound to report it to the Clerk of Course as per the Judicial Procedure Flow Chart on page 76 of the 2008 KartSport New Zealand Manual.
8. The Assistant Clerk of Course therefore asked the Clerk of Course to raise a Form of Complaint against kart 10 to review the incident and determine an outcome.
9. In consultation between the Assistant Clerk of Course and the Clerk of Course they determined and agreed that the incident did not constitute dangerous driving and requested on the Form of Complaint that the matter be considered under Rule 4.1 and requested a relegation.
10. The Form of Complaint was then correctly served to kart 10.
11. There was an issue with a particular kart number on the Form of Complaint and some of the wording used. The Respondent confirmed to the Board that the incident was not considered dangerous driving, that rule 4.1 as stated on the Form of Complaint was correct and the issue of the kart number was also confirmed as an error by the Clerk of Course which was subsequently successfully corrected at the time the Form of Complaint was presented to the Stewards Panel.
12. The Board decided that there was nothing in the content of the first two sections of the Form of Complaint that rendered it invalid, it was served correctly and the judicial process had been followed to a level that would not in any way prohibit the Form of Complaint from going forward to the Stewards Panel.
13. The Board decided that the Form of Complaint was therefore valid in all respects and that the original Stewards Hearing and decision would now be set aside and the Board would move to rehear the Form of Complaint as per the second part of the lodged appeal.
14. At this point the Board Chair clarified for all parties that as this was a complete rehearing the presumption of innocence on the part of Kart 10 would be upheld and asked Dave Young representing KartSport New Zealand to then present the case to support the Form of Complaint.

15. This then comprised the second part of the hearing.
16. In respect to the rehearing the Board considered all of the written statements, evidence and witnesses presented.
17. The Board found that there was clearly conflicting evidence and in some cases was unable to corroborate some witness testimony and written statements. These written statements therefore had to be taken at face value.
18. On weighing the evidence and on the balance of probability the Board agreed that :-
  - Contact had taken place between kart 10 and kart 98 at a position on the circuit relevant to the start of the kerbing leading into turn two.
  - At the point of contact kart 10 did not have any wheels on the grass.
  - Kart 98 would have been compromised in terms of performance and speed coming into turn two as a result of an earlier incident at turn one which had resulted in kart 98 going wide at the exit of turn one fully onto the grass and needing to recover onto the racing surface part way down the straight into turn two.
  - Kart 10 had carried more speed than kart 98 into turn two.
  - Kart 10 and kart 98 were not overlapped by 50% or more at the braking point to turn two.
  - An overlap of 50% or more occurred during braking.
  - Kart 10 and kart 98 during braking progressively moved to a side by side position and at this stage began making continuous contact.
  - Kart 98 started entry to turn two at least one kart width out from the inside of the racing surface and possibly moved toward the outside (right), to cover kart 64 who was to the right of kart 98 entering turn two and then kart 98 turned down (left) into the apex of turn two.
19. The Board questioned but was unable to clearly determine how much racing room kart 98 had afforded kart 10 or if in fact kart 98 had seen kart 10 to his left.
20. The Board felt that as kart 98 would have been compromised in performance and speed coming into turn two due to the earlier incident at turn one, that kart 98 may have been preoccupied with defending track position and his racing line for turn two against kart 64 on his outside and to his right.
21. The incident had not been considered dangerous driving by the Race Officials nor was there any evidence that kart 10 was not in control at any point.
22. The Board was unable to determine fault to any one party and felt that both kart 10 and kart 98 may have contributed to the incident. Both karts arriving at the same section of track with at least a 50% overlap, if not side by side, with both failing to meet their obligations under rule 4.1 resulting in a racing incident.
23. Both kart 10 and kart 98 lost position and/or track as a result as did kart 64, an innocent party. While kart 10 and kart 98 were penalised through their own actions no restorative position can be awarded to kart 64.
24. The Board felt that the point needed to be made that at no time during the original Stewards Hearing nor during this rehearing at the appeal was kart 98 called to give evidence.
25. Although the Respondent was able to present a written statement to the Board from kart 98 this was unable to be questioned by the Board nor was there any opportunity for cross examination.
26. The Appellant listed kart 98 as a witness in his original disclosure documents however for reasons of his own then chose not to ask kart 98 to appear at the appeal.
27. The board found this very disappointing and felt that had kart 98 been asked to appear by either party, or in fact the Stewards Panel themselves, during the original hearing that his evidence may have had a degree of influence over the decision and may have provided greater certainty to the outcome at the time.

28. In fact the Appellant in his submissions to the Board pointed out that the KartSport New Zealand Judicial Procedure Seminar Workshop document on page 21 paragraph 11 states "It is very important that if a competitor took out another competitor, that both parties should be a part of the hearing".
29. The Board suggests that KartSport New Zealand should review this with a view to making this a mandatory requirement.
30. In summary the Board rejects the first part of Appeal 200531 and upholds the second part.
31. The penalty logged in Richard Moore's competition licence will be cancelled.
32. As the appeal is considered partially founded the Appeal Board leaves it up to KartSport New Zealand to determine the outcome of the return of the Appeal Fee as per rule D6.4.
33. The Board did not impose any costs in relation to this appeal and both the appellant and respondent will bear their own costs.
34. Finally the Board recognises and appreciates the complexities and difficulties of the issues traversed throughout this appeal and thanks all parties for the exemplary manner in which they conducted themselves.
35. The decisions of the Appeal Board are unanimous.

John Lennox  
Appeal Board Chair  
8<sup>th</sup> June 2008.