



A KartSport New Zealand Appeal was received from Thomas Emmerson against the decision of a Stewards Panel following a hearing against the results of the Open class heat 1, Annual Points Championships, Christchurch Kart Club on 25-4-10.

A duly convened Appeal Board was established under clause C6.2 of KartSport New Zealand Judicial Code to hear the above Appeal.

The appeal was heard at the Grand Chancellor Hotel, Auckland on Saturday 7th August 2010.

The appeal board was : John Lennox (Chair), Robert Cunningham, Jeanette Smyth, Rod Gabb, Dave Young.

Thomas Emmerson (the Appellant) represented himself.

KartSport New Zealand (the Respondent) was represented by the National Secretary, Robert Hutton.

The Appellant presented 1 witness and a number of statements and written evidence.

The Respondent presented a written statement and written evidence.

The hearing commenced at 10.15am and concluded at 12.10pm.

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

The Appeal Board deliberated for 2 hours and 45 minutes before coming to their decision.

All decisions of the Appeal Board were unanimous.

FOLLOWING IS THE APPEAL BOARDS STATEMENT.

Jurisdiction

Thomas Emmerson's Form of Complaint (FOC #407605) was against the results of the Open class heat 1, annual points championships, Christchurch Kart Club on 25-4-10.

KartSport New Zealand submitted that Thomas Emmerson had entered the 125cc Rotax Max Light class at this event, supported by documented evidence. KartSport New Zealand therefore submitted that Thomas Emmerson had no right to protest the result of the Open class, as per clause C4.1 of the KartSport New Zealand Judicial Code, as he was not a competitor in the Open class. The appeal board accepts the interpretation of rule C4.1 made by the Executive under rule B6. The appeal board recommends that this interpretation be made clear within rule C4.1.

The Chief Steward of the event did however accept the Form of Complaint (albeit outside of rule C4.1) and subsequently a Stewards Hearing was held and a decision given.

Following the decision Thomas Emmerson then chose to exercise his right under C6.3 to appeal the decision of the Stewards Hearing and KartSport New Zealand accepted, without prejudice, that the appeal be heard.

The appeal board accepts that the original hearing should not have been heard on the basis that Thomas Emmerson had no right on the day to protest the Open class as he was not a competitor in that class and therefore did not meet the requirements of C4.1.

However as the Chief Steward allowed the protest, heard the matter and made a decision, the appeal board believes that it is correct to allow Thomas Emmerson the right of appeal under C6.3 and therefore, without prejudice, determines that the appeal board has jurisdiction to hear the appeal.

Appeal Outcome

The Appeal Board determined that the Open class at the Christchurch Kart Clubs annual points championship held on 25.04.10 was conducted in accordance with the current KartSport New Zealand codes, rules and specifications and further that the specific rule L4.1 was notified and implemented by the KartSport New Zealand Executive in accordance with the KartSport New Zealand Constitution and therefore the appeal is lost.

Appeal Fee and Costs

As the appeal is lost no part of the appeal fee will be returned to the appellant as per C6.4.

Thomas Emmerson may claim reasonable return travel costs (Christchurch – Auckland) from KartSport New Zealand for his attendance at the appeal. Such costs must be limited to 100% of the actual net costs incurred inclusive of GST and notification of such costs (with evidence of cost incurred) must be advised to KartSport New Zealand in writing by the appellant within 90 days of this appeal decision being made.

The Appeal Board instruct KartSport New Zealand under clause C6.4 to impose costs associated with the appeal upon Thomas Emmerson, limited to where any such costs exceed the appeal fee of \$500. Such costs must be advised to the appellant in writing by KartSport New Zealand within 90 days of this appeal decision being made.

Conclusion

The Appeal 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.

All references to Codes, Rules and Specification clauses above are from the 2010 KartSport New Zealand manual.

John Lennox
Appeal Board Chair
7th August 2010