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Sports Tribunal allows appeal against decision that Karter breached race rules

The Sports Tribunal has allowed an appeal by Christopher Cox (Christopher), a junior kart driver, against a decision of KartSport New Zealand (KartSport).

An official lodged a protest that Christopher breached KartSport rules during a Spirit of the Nation Mainland Series race by overtaking two other competitors after a yellow flag was shown. Stewards decided that there was a breach of the rules and imposed a relegation penalty on Christopher. Christopher appealed to the KartSport Appeal Board who upheld the finding of breach of the rules but overturned the relegation penalty which it thought "unsuitable" and imposed a fine instead. Christopher appealed to the Sports Tribunal on a number of grounds against the finding of breach and the penalty.

A yellow flag was shown during the race due to another kart going off the track and Christopher acknowledged the flag. The Tribunal emphasised that it cannot question whether a yellow flag should have been shown or not in these circumstances and the fact a competitor thinks it should not have been shown is irrelevant. However, this did not dispose of the issue of whether there was an overtaking in breach of the rules.

Evidence was given to, and accepted by, the Tribunal that Christopher passed two other karts as a result of these two karts sliding on the damp track and drifting to the outside of the track. Christopher gave evidence he took avoiding action to prevent a potential accident and simply found himself in front rather than deliberately overtaking in breach of the rules. The Tribunal concluded that this was not an "overtaking" within the meaning of the rules.

The Tribunal stated it was for KartSport to establish that there had been a breach of the rules and in order to do so they had to establish all elements of the breach. One of these elements was that there had been an "overtaking" within the meaning of the rules. KartSport did not establish that before the Tribunal. The Tribunal considered KartSport did not properly address or consider this aspect at the KartSport appeal hearing, which was a breach of natural justice. While the Tribunal has the power to remedy procedural breaches in earlier hearings into the same matter, here KartSport was unable to establish before the Tribunal one of the required elements, namely that there had been an "overtaking". Christopher acknowledged the yellow flag and, in order for there to be a breach of the rules, there had to be a finding that having done so, he ignored it. This was not adequately determined in the KartSport processes.

The Tribunal upheld the appeal, quashed the finding of breach, overturned the fine and ordered KartSport to pay Christopher half of his appeal filing fees.

The decision in this case is available for download from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Christopher Cox v KartSport New Zealand* (ST 16/08). Copies of the decision can also be obtained directly from Brent Ellis, Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: info@sportstribunal.org.nz).