

BETWEEN **TONY HEUVEL**

 Appellant

AND **SPEEDWAY NEW ZEALAND INC.**

 Respondent

DECISION OF TRIBUNAL

Dated the 24th day of September 2008

Date and Place of Hearing: 3 September 2008 at New Plymouth

Counsel: Steve Wragg for Appellant
 Susan Hughes QC for Respondent

Tribunal Members: Hon Barry Paterson QC, Chairman
 Adrienne Greenwood
 Ron Cheatley

Registrar: Brent Ellis

INTRODUCTION

1. This is an appeal against the decision of the Appeal Committee of the Respondent (the Appeal Committee) brought before the Tribunal by agreement.
2. The parties have agreed that the appeal is to be determined in accordance with the Tribunal's Rules, including in particular, Part C of those Rules. The parties also agreed that the decision of the Tribunal shall be final and binding.

BACKGROUND

3. The Appellant, Mr Heuvel, races as a hobby, a Holden Monaro motor car in the Saloon class events governed by the Respondent (Speedway). The engine in the Holden Monaro was transferred from his previous car, a Chevrolet Corvette, which was written off in an accident a couple of years ago.
4. Speedway promoted the NZ Saloon Car Championships at Waikaraka Speedway track between Thursday, 10 and Saturday, 12 January 2008. Mr Heuvel entered his car. It underwent scrutineering on the first day, the 10 January. It was scrutineered again before the qualifying events started on 11 January.
5. Mr Heuvel raced in the three qualifying races and qualified first for the final scheduled for 12 January.
6. There was a further inspection of his car before racing began on 12 January. Particular attention was given to the carburettor. Speedway officials determined that the carburettor was illegal and an infringement notice was issued to Mr Heuvel, suspending him until 2 February 2008. The Stipendiary Steward had the right to suspend a competitor for a limited time until the matter is considered by the Board of Directors.
7. Mr Heuvel made written submissions to Speedway in a letter dated 15 January 2008. The Board of Directors of Speedway met on either 19 or 20 January. It advised Mr Heuvel, in a letter dated 24 January 2008:

The outcome of the meeting is that your engine was deemed to be illegal on the race night. The Directors have confirmed this decision.

As per Board policy for an illegal engine, the penalty is 12 months suspension from the day of infringement.

As a result of the above outcomes, your Speedway NZ Inc licence has now been suspended. You will not be allowed to obtain a licence from Speedway NZ Inc until the 12 January 09.

8. Mr Heuvel appealed to the Speedway Appeal Committee. A hearing was held on 3 March 2008. Mr Heuvel was provided with the finding from that meeting but not the full written report, which was only made available to him at about the time of the hearing before the Tribunal. The appeal finding read:

APPEAL FINDING:

The Appeal panel deliberated for approximately two and a half hours, making further phone calls to Maurice Shepherd (SNZ Steward), Mark Walker and Ken Tyson (Technical Stewards) asking specific questions pertaining to the checking and the time taken to issue the infringement.

Point 1 T11-2-3c. The Appeal Panel could not confirm that the carburettor shown at the appeal was in fact the carburettor on the car in question.

Point 2 The SNZ Steward acted within the rules and followed procedure, acting on the information given by the Technical Stewards before issuing the infringement.

Point 3 The Appeal panel ruled the SNZ Directors decision for a 12-month stand down remains.

The Appeal Panel ruled: Under G12-4-10 that the \$500 appeal fee will not be refunded to the appellant Tony Heuval [sic].

9. Mr Heuvel appeals to the Tribunal against the finding of an illegal carburettor. In the alternative, he submits that the 12 month period of suspension was exceedingly severe. He relies upon several grounds of appeal and it will be necessary to go into the factual situation in more detail when considering those grounds.

GROUND OF APPEAL

10. The grounds of appeal relied upon at the hearing were:

- A. Speedway failed to accept the Appellant's protest in breach of Rules G10-1, G10-2 and G10-3-2 of Speedway's Rules;
- B. Speedway failed to impound the Appellant's vehicle, in breach of Rules G10-3-3 and/or T1-8 of the Rules;
- C. Ron Willoughby was not an official appointed by the directors of Speedway, in breach of Rule G7-1-1 of the Rules;
- D. Mr Heuvel was not given particulars of the allegations against him prior to the hearing of his appeal by the Appeal Committee on 3 March 2008, despite requesting those particulars prior to the hearing;
- E. Mr Heuvel was advised prior to the Appeal Committee meeting that he could only have one person in attendance;
- F. after the Appeal Committee heard from Mr Heuvel, its members spoke to three of the stewards who were present on 12 January 2008;
- G. the Appeal Committee did not speak to or consult Mr Willoughby;
- H. the Appeal Committee did not have an adequate evidential foundation for its decision;
- I. the Appeal Committee did not accept credible evidence presented to it by Mr Heuvel;
- J. the Appeal Committee applied a blanket policy suspending Mr Heuvel from competing in Speedway events for a period of 12 months without considering, in imposing the penalty, the particular circumstances of his case;
- K. no adequate reasons were given for the decision of the Speedway Board of Directors dated 24 January 2008 to suspend Mr Heuvel for 12 months and no reason was given by the Appeal Committee as to why it upheld the 12 month period of suspension;

- L. two additional grounds which did not appear in the case on appeal were advanced at the hearing, namely:
 - (a) the Directors when they met on 19 or 20 January did not give Mr Heuvel a hearing to which he was entitled; and
 - (b) Mr Kuriger, the President of Speedway, acted as a principal decision-maker, both at the Directors' meeting in January 2008 and on the Appeal Committee hearing on 3 March 2008.
- 11. Both counsel accepted at the hearing, that the Tribunal, in accordance with its Rules, if it found that there had been a breach of procedure which amounted to a breach of natural justice, was entitled to consider the matter *de novo*. For this reason, it is not necessary to go into some of the grounds of appeal in depth, as the Tribunal has come to its decision on a consideration of the evidence before it and has, in fact, reheard the matter.

RULES OF SPEEDWAY

- 12. Speedway, being an incorporated society, has its constitution. It also has Regulations (the Regulations). The first Regulation reads:

G1 INTERPRETATION AND APPLICATION

These regulations shall be considered the By-laws of Speedway New Zealand and shall be interpreted according to the Directors. The Directors shall be empowered to decide any question within New Zealand concerning the interpretation of these regulations.

Any technical matters must be referred to the relevant technical committees before the Director's rule on the issue concerned.

Competitions are held under the Regulations.

- 13. In addition, Speedway has Technical/Racing Rules. The Technical Rules cover matters such as vehicle inspections and specifications. The Racing Rules, which are included in the same section as the Technical Rules, cover rules as to racing in various classes.

14. The Technical Rules relevant to this appeal are:

T11-2 SALOONS (Became a National Class in 2007)

INTENT: The intent of SALOONS is to provide a low cost saloon racing class with rules which allow all cars to be equally competitive without unfair advantage.

It is the responsibility of the competitor to prove his vehicle is legal.

...

T11-2-3 Fuel System:

(a) 6 and 8 cylinder engines are permitted with one carburettor only.

(b) Carburettor may be of a four barrel configuration up to 600cfm maximum size all with vacuum secondaries. Holley #1850 or Holley #8007 carburettor; centre hung or side hung floats permitted.

(c) Carburettor body and venturi boosters, throttle body, throttle plates and throttle shafts to remain as OEM specifications. Choke butterfly and shaft is to be retained. These items must remain unchanged anyway. [i.e. no modifications permitted]

OEM means Original Equipment Manufacture.

15. Relevant Regulations are

G10 PROTESTS

G10-1 Any competitor considering themselves aggrieved in any competition by another competitor or by the decision of any SNZ official, may make a formal protest as provided by these regulations.

G10-1-1 All protests must be forwarded in writing on the official SNZ form and must be signed by the competitor actually engaged in the competition.

...

G11 PENALTIES

G11-1 (a) Any person or body of persons found guilty by a competent authority of a breach of these regulations may be penalised.

...

G11-1-1 Any or all of the following penalties may be inflicted:

...

(d) Suspension by Stipendiary or Technical Steward.

...

G-11-4 Disqualification or Suspension may be pronounced by the Directors after a hearing before the said Directors. Refer also G11-1-1(d) and G-7-1-6.

...

G-12 APPEALS

...

G-12-1-1 Every competitor affected by a decision given under these rules shall have the right of appeal to the Appeal Committee of SNZ.

...

G-12-2 The Appeal Committee

G-12-2-1 The President of SNZ shall himself, or through his nominee, being a Director, chair each and every Appeal Committee hearing.

...

G-12-2-3 The Appeal Committee shall be constituted of the President or his nominee, as outlined above, together with two persons from the Appeal Panel. In selecting those two persons, the President or his nominee shall select one such person and the appellant the other.

...

G-12-4-3 Any appeal heard by the Appeal Committee is not a hearing de novo.

G-12-4-4 The burden of proving the appeal is solely on the appellant. SNZ and its officials shall not be required to prove or disprove anything.

G-12-4-5 At least one (1) week (7 days) prior to hearing the Appeal, the CEO shall furnish the appellant with any copies of written reports obtained from any officials present at the incident complained of, and any other written evidence it may have.

GROUND S A, B and C

16. The Tribunal is not satisfied that Mr Heuvel can succeed on any one of his first three grounds of appeal.
17. Mr Heuvel's evidence was that he wished to lodge a protest but was discouraged from doing so by Speedway officials. The Tribunal does not find the evidence conclusive either way but notes that Mr Heuvel can not succeed on this ground because he did not forward a protest in writing, nor did he pay the required fee of \$300. There was certainly some discussion on racing under protest but a formal protest was not lodged.
18. Mr Heuvel's complaint that the car or the carburettor should have been impounded can not succeed. Regulation G10-3-3 provides that "Any vehicle protested under G10-3-2 must be impounded. Refer to Rule T1-8". Regulation 10-3-2 refers to protests concerning engine and/or vehicle specifications, including fuel, that are not routinely inspected and sets out that the protest fee is \$300. While Technical Rule T1-8 states the Directors or Steward may order any vehicle there is reason to believe may not be in accordance with the regulations to be impounded at the end of the meeting, there is no provision requiring Speedway to impound in the absence of a protest.
19. Mr Willoughby inspected the carburettor on behalf of Speedway and, as a result of this inspection, the carburettor was subsequently held to be illegal because it had been modified. The submission was that Mr Willoughby had not been appointed in accordance with the Regulations. The evidence was that Mr Willoughby was appointed as an adviser to the Technical Stewards. The Tribunal does not find that the Regulations prevent the appointment of an adviser to the Technical Stewards, provided that it is the Technical Stewards who makes any decision and not the adviser.
20. An added factor in the submissions on behalf of Mr Heuvel was that Mr Willoughby is an engine builder who has built engines in cars which were competing with Mr Heuvel at the NZ Championships. It was suggested that his involvement in the events leading up to the issuing of the

infringement notice was not appropriate and tainted by bias. The Tribunal accepts that there is a danger of a perception of bias arising when a person in Mr Willoughby's position checks the technical aspects of an engine. Prudence suggests that it is inadvisable to use Mr Willoughby when he has built engines for cars which are competing with those which he is inspecting. However, in many sports it is inevitable that persons with a possible conflict may be required to undertake various roles. This is the reality of sporting administration in New Zealand. In the Tribunal's view, it would be necessary in most cases to prove actual bias in such circumstances. In this case, the decision was not made by Mr Willoughby and the Tribunal does not find that the decision was impugned because of Mr Willoughby's possible conflict.

GROUND D – NON-PROVISION OF PARTICULARS

21. This ground of appeal alleges that Speedway did not provide Mr Heuvel with the particulars of the alleged illegality at any time prior to or in:
 - (a) the decision of the Technical Stewards dated 12 January 2008;
 - (b) before the Directors made their decision on 20 January 2008;
 - (c) at the Appeal Committee hearing on 3 March 2008.
22. The infringement notice was issued by the Stipendiary Steward, Mr Miller. His evidence was that he accepted the advice of the Technical Steward, Mr Walker, that the carburettor was illegal. Mr Walker told him that the carburettor had been machined. His evidence in chief was very perfunctory as to what he told Mr Heuvel when he issued the infringement notice. When cross-examined, he said that he discussed with Mr Walker the nature of the infringement, namely shafts and machining but that there was no real discussion with Mr Heuvel when he called him up and issued the infringement notice.
23. The description of the infringement in the infringement notice read:

Fuel system T11-2-3c.

Illegal carburettor

Exclusion from 12/01/08 up to and including 2nd Feb. 2008

The penalty noted an exclusion period of 22 days and that the matter was "*Referred to Board*".

24. The Tribunal accepts that neither Mr Miller nor the infringement notice gave adequate notice to Mr Heuvel of the alleged infringements.
25. There were two Technical Stewards who inspected the vehicle, namely Mr Tyson and Mr Walker. Mr Tyson's evidence was that, during the inspection of the carburettor, the statement was made that it had been machined at the base and Mr Heuvel did not respond to this comment.
26. Mr Walker, who inspected the carburettor with Messrs Willoughby and Tyson, referred to Mr Willoughby using a right-angled scriber for checking for holes machined in the base plate of the carburettor. His evidence was that, upon inspecting the carburettor after Mr Heuvel had removed it, it was obvious that the main base plate in the centre had been machined to let air in and that the carburettor had flattened shafts and down leg boosters. He said he advised Mr Heuvel of the concerns and the Technical Steward's opinion that his carburettor was illegal. He said that at a subsequent drivers' meeting, Mr Heuvel asked him what was wrong with his carburettor and he informed him that it was non-compliant with the specifications for a Holley #1850 because of the machining, the flattened shafts and the presence of down leg boosters. In supplementary evidence at the hearing, he said he told Mr Heuvel that the carburettor was not OEM. He admitted, under cross-examination, that he did not give Mr Heuvel details as to why it was not OEM. It was Mr Walker who completed the Technical Stewards' report. He referred to three vehicles and the comment on Mr Heuvel's vehicle was:

17A Tony Heuvel – main body of carb altered – carb not OEM
throttle body as per rule T11-2-3.

27. Mr Heuvel wrote to the Directors of Speedway on 15 January 2008. That letter included:

Then asked to have carburetor checked again by Ron Willoughby, and Technical Inspectors, measured venturis – deemed OK. Then asked to remove carburetor to inspect bottom side. Ron then pointed out slat butterfly shafts, remark made its illegal then he just walked away!

I am very concerned about the way this was conducted. I was not informed clearly or shown what the problem was. We then tried explained that models 1850 – 2 through to – 6 come standard with slat butterfly shafts from factory. They then turned around and said it was not the shaft but holes machined into the bottom of the carburetor, but would not point them out. We had no opportunity to show them the carburetor again and point out that all 600 cfm holleys come with these holes. Of the front venturis one has one hole in the base, and the opposite venturi has two holes. These are idle air bleed holes and they have no enhancement of performance of the engine and are standard on all 600 cfm holleys. We tried to explain this to the Technical Committee but they did not want to hear. They went away for some time. I had to follow them up to see what was happening as was getting anxious as racing would be starting soon.

28. The Tribunal's conclusion is that in a general way Mr Heuvel was advised of the Technical Steward's concern. However, he was not given specific particulars and we note that some of the concerns expressed by the Stewards do not appear to be concerns still held at the hearing in front of the Tribunal. Speedway would be well advised to implement a procedure where specific details of alleged illegalities are given when an infringement notice is issued. Natural justice suggests that such a practice should be followed. The Tribunal is, however, not of the view that the procedure which was followed on the night was sufficient to allow this appeal.
29. The Tribunal is of the same view in respect of the information which Mr Heuvel had before the Directors made their decision. However, there is a more fundamental issue in respect of the Directors' hearing. The submission on behalf of Speedway is that the Directors' consideration was merely to consider penalty. Regulation G11-4 provides that the suspension is to be pronounced by the Directors "...after a hearing before the said Directors". The Tribunal has difficulty with the submission on behalf of Speedway that a driver has no right to appear before the Directors and that the latter's role is merely to consider sentence. Speedway's position is that the right to challenge the infringement notice does not arise until the appeal rights under Regulation G12 are exercised.

The position was likened to that of a judge passing sentence after the jury had found the accused guilty.

30. There are two difficulties with the submission made on behalf of Speedway. First, Regulation G11-4 states that the Directors may pronounce disqualification or suspension "...*after a hearing before the said Directors*". This clearly infers that the driver has a right to a hearing. Secondly, notwithstanding the submission that the driver has no right of attendance, the letter sent by Speedway advising Mr Heuvel of the suspension included:

The outcome of the meeting is that your engine was deemed to be illegal on the race night. The Directors have confirmed this decision.

Although the evidence is that a driver never has the right to attend such a meeting and the Directors are merely considering suspension, the letter suggests that the Directors did, in fact, consider the issue of illegality. They confirmed that the engine was illegal. The analogy with a judge and jury is also not completely apt. At the sentencing stage, the accused has the right to appear with counsel and make submissions.

31. The Tribunal is of the view that Mr Heuvel was denied natural justice by the Directors. They determined his engine was illegal without hearing from him. In this case, Mr Heuvel has had two appeals since that denial of natural justice and the Tribunal would, therefore, not set aside the decision merely because of the lack of natural justice at the Directors' meeting.
32. The allegation of a lack of particulars prior to the appeal hearing on 3 March has some substance. On 25 February, Speedway wrote to Mr Heuvel, advising him of the date of the appeal hearing, namely 3 March 2008. The letter stated that: "*All the relevant correspondence and information pertaining to this appeal is enclosed.*" The letter also stated that if any further information was received, it would be forwarded to Mr Heuvel "...*no longer than 7 days prior to the appeal*". It is difficult to see how this could have been achieved in that the letter was dated 7 days prior to the date of appeal. Mr Heuvel's evidence was that the letter

enclosed a couple of memos relating to the incident and a copy of the Technical Stewards' report written by Mr Walker and dated 12 January 2008. This was the first time that the Technical Stewards' report had been made available to Mr Heuvel. The only written information he had prior to the letter of 25 February was the infringement notice itself.

33. Natural justice dictates that a person who has been penalised is entitled to full disclosure of the information upon which the penalty was imposed in ample time to prepare for an appeal. Mr Heuvel was not given sufficient time. This, in itself, may not be sufficient to set aside the Appeal Committee's finding but it is a factor which the Tribunal takes into account when considering that matter later.

GROUND E – PERSONS ATTENDING HEARING

34. There appears to have been confusion in that Mr Heuvel was initially advised he could only have one representative at the hearing. This was subsequently corrected. We do not see this as being a reason to allow the appeal. He was advised, albeit at a later stage, that he could have other people present and if he were unable to arrange for them to be present at short notice, he could have asked for an adjournment.

GROUND F – CONDUCT OF HEARING

35. This ground of appeal is based on matters which occurred before the Appeal Committee gave its decision. During the hearing, Mr Kuriger made a telephone call to Mr Walker, using his mobile phone. The evidence is that he did relay to those present, including Mr Heuvel, what Mr Walker said – although Mr Heuvel was unable to hear Mr Walker. Mr Heuvel's evidence was that Mr Walker was asked what was wrong with the carburettor and he said that the shafts were "*wrong*". He also said there was a vacuum secondary unit on the side. Mr Heuvel responded by saying that this was a standard Holley part and was not part of the main throttle body. He said Mr Kuriger agreed with him. Mr Walker also said that there was an issue with the grooves in the carburettor which had been machined deeper. Mr Heuvel was not given an opportunity to speak to Mr

Walker. Mr Heuvel also said that Mr Kuriger agreed that the carburettor, which was in front of him, and which Mr Heuvel said was the one in question, did not have grooves machined on it.

36. Mr Heuvel and Mr Calvert, who was accompanying him, were then sent away for two hours while the Appeal Committee deliberated. It was Mr Heuvel's evidence that, when they returned, Mr Kuriger said that all four carburettors in front of him were legal. Mr Heuvel had taken four carburettors to the appeal hearing. However, Mr Kuriger said that Mr Heuvel had to prove that the one which he claimed was on his car had been on the car on the night in question.
37. When the appeal finding was received (or, more correctly, the last page of it) it was revealed that the Appeal Committee had made further phone calls to Maurice Shepherd (a Speedway Steward), and Ken Tyson, asking specific questions pertaining to the checking and the time taken to issue the infringement.
38. Mr Kuriger, in his evidence in chief, did not directly address these allegations. He did say that the Appeal Committee did not say that any of the four carburettors produced were compliant with Speedway Rules and it was unclear as to which of the four carburettors had been present on the car when the car was disqualified. He said the call to Mr Walker was to identify features which could establish that the carburettor was the one on the car that night. Neither Mr Walker nor Mr Tyson addressed the phone calls in their evidence in chief. The Tribunal's view is that attempting to identify a carburettor in this manner is far from satisfactory.
39. In view of the stated purpose of the phone calls, there was an obvious breach of natural justice, even though Mr Kuriger conveyed what, he said, Mr Walker was saying, an appellant has the right to hear what has been said and to ask questions. This right was not afforded to Mr Heuvel. Further, the process of attempting to identify the carburettor was flawed. Mr Walker did not take notes at the time of the inspection and little, if any, evidential weight could be given to an identification by phone, relying upon memory, and without having the carburettor in front of him.

40. In the circumstances, the Tribunal is of the view that the Appeal Committee's decision can not stand. Natural justice was not complied with. There were several unsatisfactory features in the way Speedway handled this matter. These included the lack of information provided to Mr Heuvel before both the Directors' consideration and the Appeal Committee consideration, the failure to provide adequate details of the alleged infringement and the manner in which the Appeal Committee conducted its hearing. In the Tribunal's view, the Appeal Committee's decision must be set aside. A further concerning point is that a witness who was a member of Speedway and who, Mr Heuvel said, would support his appeal, was obviously dissuaded by Speedway officials from giving evidence before the Tribunal.

GROUND G, H and I

41. In view of the finding made, it is not necessary to consider these grounds of appeal. We note, however, that, while it may have been advisable to speak or consult with Mr Willoughby, this was not strictly necessary. He did not make the decision. However, his evidence would have been relevant and helpful in front of the Tribunal, as he was the person who discovered the alleged infringements.
42. While it is not necessary to determine the other grounds of appeal, it is relevant to note that minutes were taken of the meeting of the Appeal Committee. These disclose that Mr Heuvel and Mr Calvert, who was the drivers' representative, summarised what happened at Waikaraka Park on 12 January. These note that Mr Heuvel produced four 1850 model Holley carburettors for the Appeal Committee to observe, stating that one of the carburettors displayed was the carburettor actually used on the car on the night the infringement was issued. They pointed out various parts of the carburettors that were in dispute and deemed to be non-compliant. There was discussion about the ability of the technical stewards and the presence of Mr Willoughby.
43. The first two findings made by the Appeal Committee are, in the Tribunal's view, suspect. The first was that the Appeal Committee could not confirm

that the carburettor shown at the appeal was, in fact, the carburettor on the car in question. In other words, the Appeal Committee was not prepared to take the evidence of Mr Heuvel and Mr Calvert on this point. They give no reasons for not accepting this evidence.

44. Secondly, it is apparent from the second finding that the Appeal Committee was, in effect, rubber stamping the decision of the Technical Stewards. While accepting that Regulation G12-4-3 provides that the appeal is not a hearing de novo, there is no point in an appeal unless the merits are taken into account. An appellant must have the right, in the Tribunal's view, to satisfy the Appeal Committee that the Technical Stewards were not correct. In this case, the Appeal Committee, on the face of it, did not do that. It placed an impossible burden on Mr Heuvel, notwithstanding the provisions of Technical Rule T11-2. While that rule provides that it is the responsibility of the competitor to prove his vehicle is legal, that provision merely places the onus on the competitor. It does not specify the burden of proof which, in the Tribunal's view, must be the ordinary civil burden of the balance of probabilities. The Appeal Committee appears to have adopted at least the criminal standard of beyond reasonable doubt or an even higher standard in determining that it did not accept the evidence of Mr Heuvel as to the carburettor produced being the correct carburettor. It is difficult to see how the Appeal Committee could reject that evidence by phone calls to stewards who were not present at the hearing and were not available to be cross-examined, and upon a Technical Steward's report which, to say the least, was minimal in detail.
45. Finally, it is noted that, although in most circumstances, Mr Kuriger's chairing of the Appeal Committee would be a further breach of natural justice, it was not so in this case. The Regulations provide for the Chairman of the Board or his nominee, who must be a Director, to chair the Appeal Committee. This is obviously an undesirable practise but is permitted by the Rules and Mr Heuvel can not avail himself on that point.

DETERMINATION

46. Having decided that the Appeal Committee decision can not stand, it is necessary to consider the appeal on its merits.
47. The Tribunal is confronted with conflicting evidence. The Appeal Committee, in effect, determined that Messrs Heuvel and Calvert deliberately misstated the truth in front of them and intended to mislead the Appeal Committee. The Tribunal, having heard both Mr Heuvel and Mr Calvert, had no reason to doubt their credibility.
48. The issue, therefore, in the Tribunal's view, is whether the evidence satisfies the Tribunal that the carburettor infringed Technical Rule T11-2-3(c), as alleged in the infringement notice dated 12 January 2008. The starting point is the evidence of Mr Heuvel, supported by Mr Calvert, in respect of what happened and, in particular, that the carburettor produced both to the Appeal Committee and to the Tribunal hearing was the carburettor on the vehicle at the time in question. It is accepted that the carburettor produced to the Tribunal was not an illegal carburettor.
49. While the onus rests with Mr Heuvel, he gave credible evidence before the Tribunal that the carburettor produced was the carburettor in question. The onus then shifts to Speedway to counter that evidence.
50. The evidence from Messrs Walker and Tyson was that the carburettor that they inspected was not the carburettor produced to the hearing. In this respect, the evidence of Mr Willoughby would have been of some assistance. It was he, with the scribe, who indicated that there may have been problems. The inspection was then carried out by Messrs Tyson and Walker. They did not provide any credible evidence to support what they say they saw. No measurements were taken, nor were photographs taken, nor were notes taken, apart from the brief notes on the infringement notice and the Technical Steward's Report. While Speedway relied upon three modifications, the primary one upon which the witnesses relied upon at the Tribunal hearing was that the channels on the base of the carburettor had been machined deeper. There was no substantive evidence of this and the Tribunal was confronted with

conflicting evidence from Mr Heuvel, on the one hand, and Messrs Tyson and Walker, on the other. The evidence was not persuasive in respect of the other two alleged modifications, namely the butterfly shafts and the down leg boosters.

51. In the Tribunal's view, the evidence from Speedway does not overcome the onus which has shifted to it. While the Tribunal is unable to make credibility findings against either Mr Heuvel or the stewards of Speedway, it is left in the position that Mr Heuvel has given evidence which, if correct, would allow his appeal to succeed. This evidence has not been satisfactorily answered by Speedway. When deceit is alleged, a serious allegation is being made, and strong evidence is required to establish that allegation. In this case the evidence falls short of the required standard on the balance of probability. In the circumstances, the Tribunal is of the view that the appeal must be allowed.

DECISION

52. The appeal by Mr Heuvel is allowed and the suspension imposed by Speedway's Directors in January 2008 is set aside.

COSTS

53. As the Appeal Committee's decision has been set aside, Speedway is to refund to Mr Heuvel his filing fee of \$500.
54. In the circumstances of this case the Tribunal has determined that a modest award is appropriate and orders that Speedway pay Mr Heuvel the sum of \$500 costs in addition to refunding his filing fee.

ADDENDUM

55. The Tribunal believes the Regulations of Speedway are in some respects repetitive and ambiguous. It recommends that they be revised.

Dated 24 September 2008

A handwritten signature in black ink, appearing to read 'Barry Paterson', written in a cursive style.

.....
Hon Barry Paterson QC
Chairman