

BETWEEN **BROOK REEVE**

 Appellant

AND **KARTSPORT NEW ZEALAND INC.**

 Respondent

DECISION

Dated 12 October 2009

Appearances D Reeve and R Reeve for Appellant
 G McKenzie for Respondent

Date of Hearing: 24 September 2009 at Wellington

Panel: B J Paterson QC, Chairman
 R Cheatley
 A Greenwood

Registrar: B Ellis

Introduction and Background

1. The appellant, a 12 year old, appeals through his father against the placings in the Junior 100 CC Yamaha race at the respondent's National Sprint Championships 2009.
2. The declared winner of the race, Rhys Tinney, was joined as an interested party but took no part in the appeal.
3. The karts were fitted with transponders and an AMB TranX 160 timing system was in use.
4. The electronic system was linked to two remote large result screens and both screens showed that Kart 58 (the appellant's kart) had won the event. A public announcement was made to this effect and the appellant was interviewed as the winner. Shortly thereafter the displays showed that Kart 20 (driven by Rhys Tinney) had won the event. When the official result was declared, Rhys Tinney was shown as the winner.
5. There is no dispute as to the facts stated above. The respondent (KartSport) accepts that the timing system showed Brook Reeve as the winner. The judge of fact and the lap recorders who were at the finishing line saw the matter differently. They all believed that Rhys Tinney was the winner.
6. The issue is whether the judge of fact, was entitled to declare a result which was contrary to the result shown by the electronic timing system.

The Rules governing the Event

7. KartSport has a manual which contains its constitution and codes and racing rules. It relies on some of the provisions in the Manual. There was also a set of supplementary rules for the National Sprint Championships 2009.
8. The supplementary rules contained the following:

8.0 Format of Racing

Rules G19a to G19a.20 National & Island Sprint Championships

...

13.0 Finishing: E7.1D will be decided by transponders, in the event of equipment failure the manual system will be in place.

...

15.0 Transponders:

Competitors shall use their KartSport New Zealand AMB TranX 160 transponder.

9. Supplementary rules are referred to in rule D2.18 of the manual, in a section headed "Judicial Code". Supplementary rules are the rules issued by the organiser of an event or series. The organiser is required to issue and publish such supplementary rules. Rule D2.18(c) includes:

Such Supplementary Rules ... must be in compliance, unless specifically approved otherwise by KartSport New Zealand, with the rules and specifications contained in the KartSport New Zealand Manual.

10. Rule D2.17(b) requires there to be appointed a Finish Line Judge in a competition where a decision has to be given as to the order in which competitors cross a Finish line. Rule D2.17 refers to the appointment of Judges of Fact when a decision is required as to whether a competitor has touched or crossed a given line. A Judge of Fact, in this case, the Finish Line Judge, is required to judge the finishing positions (rule D2.17(h)). Lap Scorers are appointed under rule D2.11 and one of their tasks is "*to declare the positions gained by each competitor on completion of the course*".
11. Clearly the manual provides for a Finish Line Judge to determine the finishing positions. The Lap Scorers also have a role in declaring the positions gained by each competitor on completion of the course. On the face of it both the Finish Line Judge and the

Lap Scorers have the same role in declaring the finishing positions. Although the issue does not arise in this case, KartSport may wish to consider whether rules D2.11 and D2.17 are in part in conflict. If the Finish Line Judge and the Lap Scorers share different views, there may be controversy as to which view prevails. While this may be resolved by the provisions of rule E7.1, which will be referred to shortly, it is a matter which perhaps should be clarified in the rules. If the Finish Line Judge has the right to determine the result, this should be explicitly stated in the rules. The inconsistencies in KartSport's rules highlighted in this case suggest that it may be timely for a review of the manual.

12. The rules for determining the finishing order and the method of doing so are contained in the following rules in the manual:

E7. DETERMINING A RESULT

E7.1 FINISH LINE JUDGE

- a) At every event a Finish Line Judge must be nominated. In a competition where a decision has to be given as to the order in which competitors cross the finish line, the Finish Line Judge shall give such a decision.
- b) **Protests.** No protests against the decision of the Finish Line Judge shall be admitted concerning a question which they have been officially appointed to decide. The decision of the Finish Line Judge is final.
- c) ...
- d) At every event the supplementary regulations **MUST** state how the recording of the finish of a race will be determined. Manual, electronic, or a combination of both.
- e) When an electronic system is used, the traditional (manual) system must also be maintained and will be used in the case of a dispute.

G19A.9 FINISHER: Is any driver who takes the start of a race. Drivers will be placed based on the order they cross the Finish Line ...
The finishing order will be determined using the electronic system, however the manual system will be maintained and used in the case of a dispute/equipment failure ...

- G19A.2 **EVENT FORMAT:** ... The electronic timing/lap scoring system will be used. The traditional lap scoring system must be maintained and will be definitive in the case of a dispute. ...
- E5.4 **FINISH LINE:** The finish line is a line across the track identifying the point laps and finishing positions will be recorded.
- H24.7 **RESULTS:** Results of each race must be posted in the pits prior to the next race of that class. All final results are to be checked and signed by the KartSport New Zealand Chief Steward of the day When provisional results are posted, 15 minutes MUST be allowed before they are official.
...

The Evidence

13. Written statements of evidence were provided by Ms Richardson, the Finish Line Judge, the Chief Steward Wayne Croft, and the three Lap Scorers who were all stationed with Ms Richardson at the finishing line. Ms Richardson's evidence was that Kart 20 finished in first place. But the results on the electronic timer did not show Kart 58. All three Lap Scorers agreed with her that Kart 20 had won the race. The screens in the pits registered that Kart 58 had won but this was not what the Finish Line Judge saw and the result was changed on those screens as soon as possible to alleviate any confusion. Results were then posted with Kart 20 shown as the winner. The written statements of the three Lap Scorers, who were not cross-examined, confirmed the position.

14. During her cross-examination, Ms Richardson confirmed that there were no other problems with the AMB timing system that day and that she asked for the officials to check the transponders on the cars and the electronic system to find out what was wrong. It appears as though this was not done. Ms Richardson was adamant that her computer screen did not show Kart 58 as finishing the race. There was in her mind a dispute when the other screens showed Kart 58 as the winner when she and the three Lap Scorers were of the view that Kart 20 had finished first.

15. Mr Croft was also cross-examined. He was not at the finishing line and noticed that the monitor at the club rooms showed that Kart 58 had won and Kart 20 was second. Later it was pointed out to him that the result had been changed. He went to the control tower to see what was going on and was informed that there had been a technology error and further investigation would be done into the cause of the error. Due to that problem, Ms Richardson had used the manual lap scoring charts of the Lap Scorers and had declared the result. When cross-examined he said he did not inquire further into the technology error and did not understand what it was apart from the fact that there had been some malfunction.
16. KartSport in its deliberations when the matter was raised with it, and subsequently at the hearing, showed a video of the finish of the race. The video was not filmed at the finishing line but was filmed in front of it looking down the finishing straight. It is obvious that the finish was very close and possibly showed that Kart 20 had won the race. However, it is not necessary in the Tribunal's view to place any reliance on the video.

The AMB System

17. Each kart has a transponder which records its time when it passes over the transponder loop. The transponder loop is short of the finish line. Thus the position in time is recorded just short of the finish line. Further, each driver is required to have the transponder fitted at the back of the driver's seat. It follows that a transponder may not be in exactly the same position on each car and that the timing will be taken when the transponder crosses the loop which is short of the finishing line.
18. The supplier of the electronic timing system (AMB) had an engineer from its head office in The Netherlands look over the relevant data and his written advice was that the system appeared to have been working as per spec during the race.

There was no external noise recorded on the system and the strength of the transponders' signals appears to be within recommendation. The recorded difference between the two competitors when they crossed the transponder loop was 0.005 seconds. The system has a maximum timing accuracy of 0.003 seconds being a club level timing system. AMB has a system with a more refined timing accuracy. The report noted that "*the number of hits (times the signal was received) were lower for the competitors in question than for some of the other competitors; as the system would have less data to use in these computations, this may lead to a less than optimal timing accuracy.*" The report also noted that the transponder may be in different positions on different cars.

Discussion

19. The official entry form signed by Brook Reeve contained a declaration that he was conversant with the current KartSport rules, regulations and sporting codes governing kart racing, and that he would abide by any supplementary regulations which apply. The issue is the interpretation of the various rules against the facts.
20. The position under the rules contained in the manual is clear. Ms Richardson was the Finish Line Judge. It was her decision to fix the finishing order. She determined using the manual system that Rhys Tinney finished first. When she saw that some of the screens were showing that Brook Reeve finished first, she had them changed. The Tribunal accepts that Ms Richardson, applying the manual system, determined that Rhys Tinney was the winner based on her own observation and the confirmation from the three Lap Scorers. The question is whether she was entitled to do so.
21. Under rule G19A.9, the finishing order is to be determined using the electronic system but the manual system is to be maintained

and used in the case of a dispute/equipment failure. Rule G19A.2 provides that the traditional lap scoring system is to be maintained and to be definitive in the case of a dispute. Rule E7.1(e) also provided that the traditional (manual) system was to have been maintained and used in the case of a dispute when an electronic system was used. Then the supplementary rules provided in rule 13 that "*Finishing: ...Will be decided by transponders, in the event of equipment failure the manual system will be in place*".

22. The rules referred to in the previous paragraph are inconsistent. Two provide that the manual system may be used in the case of a dispute, another provides that it is to be used in the case of equipment failure, while the fourth provides that it be used if there is a dispute or equipment failure. These inconsistencies lead to difficulties in interpretation.
23. KartSport's position is that rules E7.1(d) and (e) must be read together. Thus while the supplementary rules must state how the recording of the finish of a race is to be determined (E7.1(d)), the provisions of E7.1(e) must be read in conjunction with that rule and provide that if there is a dispute, the traditional (manual) system is to be used.
24. The basic problem in this case is that rule 13 of the supplementary rules, if construed in isolation, provides that the manual system can only be used if there is equipment failure. In other words, it cannot be used if there is a dispute. KartSport's position is that the rules in the manual take precedence. This means that rule G19A.9 takes precedence over supplementary rule 13.
25. The difficulty with this submission is that rule D2.18 provides that supplementary rules must comply with the manual rules "*unless specifically approved otherwise*". Thus if a supplementary rule conflicts with a rule in the manual and the supplementary rules

have been approved by KartSport, it follows that a supplementary rule prevails over a conflicting rule in the manual. In this case the supplementary rules were approved by KartSport.

26. It follows that if rule 13 were the only reference in the supplementary rules to the manner of determining the winner, the manual system could only be used if there were equipment failure. However, the supplementary rules also incorporate rules G19A to G19A.20. Here again there is an error in the wording of the supplementary rule and the reference should presumably read "*G19A.1 to G19A.20*". The Tribunal interprets it accordingly. Rules G19A.2 and G19A.9 both provide for the use of the manual system in the event of a dispute. In these circumstances the Tribunal is of the view that both supplementary rule 13 and rule G19A.9 must be given effect. The Tribunal therefore considers that the rule and the supplementary rule both apply. The combined effect is that transponders were to be used but in the event of either equipment failure or dispute, the manual system is to be reverted to.
27. In the Tribunal's view there was a dispute in this case. On two screens around the ground Kart 58 was shown as the winner. The four officials at the finishing line who were all Judges of Fact concurred that in their view Kart 20 was the winner. The computer screen in front of the Finish Line Judge did not show Kart 58 on the last lap. In the circumstances, there was a dispute between what the four officials saw and what the screen showed. The computer screen appeared to have malfunctioned or for some reason not show Kart 58 on the last lap. A reason for this may have been the number of hits recorded (see paragraph 18 above). Another reason may have been the positioning of the electronic loops and the transponders.
28. The winner is to be determined by the crossing of the Finish Line (rules E5.4, E7.1(a) and G19A.9) and not by crossing the AMB

loop. Usually the result will be the same, but in the case of a very close finish, as this was, that may not necessarily be so.

29. In the circumstances, the Tribunal is of the view that the Finish Line Judge was entitled to determine that there was a dispute and adopt the manual or traditional system. Under rule H24.7 a final result must be signed by the Chief Steward, and the initial finishing order on the screen is not the final result. The Chief Steward, on the determination of the Finish Line Judge determined Kart 20 was the winner. On the facts, this determination was correct and the appeal will therefore be dismissed.
30. The circumstances suggest that there may have also been an equipment failure but it is not necessary, in view of the previous finding to make a determination on this fact.

Protest

31. KartSport also submitted that rule E7.1(b) prevents any protest in this matter. This rule is a regulatory statement of the field of play rule, which states that a field of play decision cannot normally be reviewed by an appeal panel. They can only be reviewed if there is direct evidence of bad faith and there is no suggestion of that in this case.
32. We agree that in the circumstances of this case the appellant had no right to protest the decision of the Finish Line Judge. This is because Ms Richardson made a decision on "*a question on which she had been officially appointed to decide*". The rules appointed her to decide under the manual system the winner in the event of a dispute or electronic failure.
33. We observe that if supplementary rule 13 of the supplementary rules had stood on its own and the Tribunal had determined that there had not been an equipment failure, KartSport may not have been able to rely upon rule E7.1(b). This is because the Finish

Line Judge was not appointed to adopt the manual system unless there was equipment failure. This issue is not relevant and it is not necessary to make a finding on it.

Decision

34. For the reasons given the appeal is dismissed.

Dated 12 October 2009



.....
B J Paterson QC
Chairman
for and on behalf of the Tribunal