

INTRODUCTION

1. This matter came before this Tribunal as an appeal by Mr Hunter against a decision of Kartsport New Zealand Incorporated ("**Kartsport**"). The incident which forms the basis of the proceeding occurred on 23 October 2005 after a prizegiving for the 2005 South Island Championships of Kartsport.
2. The grounds of appeal included jurisdictional grounds as well as an allegation that the rules of natural justice had been breached and a submission that the penalties which had been imposed were not imposed by those who originally heard the case.
3. Kartsport applied to have certain jurisdictional objections considered at a preliminary hearing. Both parties agreed to the jurisdictional matters being resolved prior to a substantive hearing and that the matter could be resolved on the basis of written submissions without a formal hearing. One of the advantages of a preliminary hearing on jurisdiction was said to be that if Mr Hunter's challenge on jurisdictional grounds succeeded, it gave greater clarity to what may happen at an event over Easter. For this reason the Tribunal undertook to deliver its decision by 5.00pm on 11 April 2006.
4. The Tribunal received submissions from counsel for both parties. Its view is that the jurisdictional points raised on behalf of Mr Hunter are in many respects not validly taken. However, it was apparent to the Tribunal that on the submissions of both parties, there was in this case a breach of the principles of natural justice to such an extent that the decision made by Kartsport must be quashed.
5. Although neither counsel had made submissions directly on the natural justice point, this was one of Mr Hunter's grounds of appeal. Because the Tribunal is of the view that the procedure followed in this case was so flawed, it did not invite further submissions from counsel, but issued a decision on 11 April 2006 quashing the decision of Kartsport both finding Mr Hunter liable and imposing penalties on him. It now gives the reasons for this decision.

BACKGROUND FACTS

6. The 2005 South Island Championships were held at the Waimea Town and Country Club. A prizegiving was held at that club after the conclusion of the event on 23 October 2005.

7. It is alleged that after the prizegiving had been completed, Mr Hunter was involved in a fight with two other members of Kartsport. It appears to be undisputed that damage was caused to the premises as a result of this fight and Kartsport Nelson has met the cost of this damage. It also appears as though a portion of the fight was captured on video.
8. Kartsport Nelson by letter of 27 October 2005 to Mr Hunter, copied to both Christchurch Kart Club and Kartsport, advised Mr Hunter that as a result of a special committee meeting, Kartsport Nelson had determined:
 - (a) Mr Hunter was not to practise or race at any time at its track for a period of one year from the date of completion of the following two items.
 - (b) Payment of \$260 to Kartsport Nelson which was his share of the replacement cost of a water cooler unit which was severely damaged in the incident.
 - (c) A written apology to Club Waimea, 345 Queen Street, Richmond, Nelson.

The letter advised Mr Hunter he had been involved "*in a nasty fracas, which has been deemed intolerable by Kartsport Nelson and indeed a lot of other people*". It also advised that the letter was being forwarded to Kartsport New Zealand with a recommendation that a licence suspension be instituted.

9. On 11 November 2005, Kartsport wrote to Mr Hunter and the relevant portions of that letter read:

"Kartsport New Zealand requires you to attend a hearing to determine what if any penalty should be imposed on you for your alleged actions at the prizegiving function following the completion of racing.

You are charged to be in breach of Rule C2.6 (unacceptable behaviour). The charge relates to an altercation in the Waimea Town and Country Club involving yourself and others.

Would you please inform me in writing no later than 20/11/05 of the names of your witnesses.

Please remember that your hearing is related to the penalty imposed for an incident which took place and evidence will only be admissible if it relates directly to that issue. Previous incidents and/or evidence which does not relate to this penalty will not be considered as admissible to this hearing. "

10. The hearing was to take place in Nelson at 10.30am on 26 November 2005, and was to be conducted by four named persons including the Chairman of Kartsport New Zealand. One member of the Hearing Committee was not a member of the

Executive of Kartsport New Zealand. If this were the case, the Hearing Committee was not the Executive of Kartsport but ultimately this point was not material to the decision of the Tribunal.

11. On 18 November 2005, counsel for Mr Hunter sent an email to the President of Kartsport. He advised that the date set for the hearing was not suitable for Mr Hunter and noted that a fortnight's notice of a hearing to be conducted in another centre was simply not satisfactory. Various procedural and jurisdictional points were raised in the email including the allegation that Kartsport had breached its own procedure as well as the rules of natural justice. There was also an allegation that there was no jurisdiction to hear the matter. A further allegation made was that the original hearing was conducted without reference to Mr Hunter and therefore the whole procedure was fundamentally flawed. The email concluded with the following paragraph:

"Any attempt to deal with these matters in the absence of the persons concerned will simply serve to compound the numerous breaches of the rules which have already occurred. A perfectly reasonable request for an adjournment has been made. If these hearings are carried out, my client will have no alternative but to consider an appeal to SPARC. I will write to you in fuller terms next week setting out in detail other problems with the procedure to date."

The reference to "*the persons concerned*" was a reference to other competitors involved in the incident as well as to Mr McMaster who was asked to appear in respect of an unrelated incident. A separate decision will be given in the case of Mr McMaster.

12. The President of Kartsport replied to Mr Hunter's counsel by an email dated 22 November 2005. It is not necessary to set out the reply in full but the President noted that to his knowledge there had been no breaches in procedures or rules. The President made it clear that what was proposed was a hearing and that there had been no hearing to date and acknowledged that the letter of 11 November 2005 may have given the impression there had been a hearing because of the proforma document sent. The email concluded:

"The Judicial Code provides for in any person's absence the hearing can proceed. No request for an adjournment has been made to date. The writer has merely been advised that Messrs McMaster ... and Hunter will be unable to attend. The email was sent by Ian Hunter. The writer spoke to Ian Hunter at length on Friday and no verbal request was made for either a different date or a change in venue."

13. On 26 November 2005, counsel for Mr Hunter both on behalf of Mr Hunter and Mr McMaster as well as a third person sent a lengthy email to the President of

Kartsport. He once again requested that the hearing be postponed and that it be transferred to Christchurch as the witnesses that his clients wished to call were mostly in the Christchurch area. He then set out his reasons for his allegation that the proceeding to date appeared to be fundamentally flawed. Kartsport was asked to reconsider the procedure in relation to the various matters and asked that if it went ahead with a hearing on 26 November 2005, the relevant correspondence be placed before the appeal panel for consideration. It was noted however that this did not cure the problem as the parties were unable to attend with any witnesses.

14. The meeting in Nelson went ahead on 26 November 2005 without Mr Hunter being present. On 14 December 2005, Kartsport wrote to Mr Hunter confirming "*that the matter was heard in Nelson as scheduled and recommendations were made to Kartsport New Zealand*". Part of the letter read:

"You have been charged to have breached Rule E2.6 (unacceptable behaviour) and D3.1 (any fraudulent conduct or any act prejudicial to the interests of any competition, administration, control or to the interests of karting generally).

The charge specifically related to a fight in the bar following prizegiving at the South Island 2005 Sprint Championships.

The Executive having viewed the written and video evidence determined that you are in breach of Rules E2.6 and D3.1 and have imposed the following penalties.

- (i) Licence cancellation – 6 months;
- (ii) Fined - \$500;
- (iii) Endorsement of competition licence – 12 months."

It is unclear from the letter and the evidence as to precisely what occurred in Nelson. It seems however that the Nelson hearing was not a hearing of the Executive but either of a subcommittee of the Executive or more likely a separate committee which comprised executive members and a non-executive member. This aspect is relevant because in the Tribunal's view the Kartsport Executive did not have the power to delegate its functions to a subcommittee even of the Executive.

THE POWERS OF THE EXECUTIVE OF KARTSPORT

15. Mr Neave, on behalf of Mr Hunter, submitted that the Executive of Kartsport did not have power to impose liability but merely had a power to impose penalties. Under the code which operated at the time, it was only the stewards who had power to find liability.
16. A further point taken on Mr Hunter's behalf was that there was in effect no jurisdiction in Kartsport to consider this matter because it took place after the prizegiving. This submission will be referred to later and in the Tribunal's view cannot succeed.
17. Mr Penlington, on behalf of Kartsport, submitted that the Executive of Kartsport New Zealand did have the power to consider Mr Hunter's alleged conduct on 23 October either under Rule E2.6 or D3.1. He did concede that the provisions of the Constitution under which Kartsport was operating at the time were far from clear. The Tribunal is of the view that Kartsport's constitution and judicial rules were deficient and did not address adequately the procedure for handling breaches by members of both the constitution and competition rules. Imprecise and unspecific provisions create major difficulties for both administrators and athletes. It is recommended that Kartsport takes early action to remedy these inadequacies.
18. It is understood that Kartsport has since amended its Judicial Code. That amendment does not apply to Mr Hunter's position and the Tribunal does not refer to it. It merely expresses the hope that it provides for appropriate procedure for alleged infringements to be investigated and provides for natural justice principles to apply.
19. The Tribunal is of the view that acts of the type alleged against Mr Hunter may fall within the provisions of Rules D3.1 of Kartsport's Judicial Code and probably Rule E2.6 of Kartsport's competition rules. Clause D3.1 of the Judicial Code provides for certain offences "in addition" to offences referred throughout the Regulations, Codes, Rules and Specifications. One of these additional offences is "*any act prejudicial to the interests of any competition, administration, control, or to the interests of karting generally*". In the Tribunal's view a fight between members of Kartsport in a room at premises at which a prizegiving has just been conducted, may fall within an "*act prejudicial to any competition, or to the interests of karting generally*". The prizegiving arose from a competition and the proximity of the alleged incident to that prizegiving may be an act prejudicial to the interests of the competition if it has an effect on the competition or karting generally. The Tribunal in determining jurisdiction

is in no way prejudging this issue. It is for the Executive Committee, if it proceeds further with this matter, to determine both whether the allegations against Mr Hunter are made out, and, if so, whether the matter comes within clause D3.1.

20. Clause E2.6 is part of the "Rules" which are defined in the Constitution (C7.25) as "Competition Clauses". The provisions of Section E deal with actual competitions. It is appropriate to set out E2.6 in full because of submissions made on behalf of Mr Hunter. It reads:

"UNACCEPTABLE BEHAVIOUR:

Physical or verbal abuse by an official or competitor of any kind will not be tolerated whether directed at a fellow competitor or official. Any behaviour at a race meeting which in the eyes of the organisers or Kartsport New Zealand officials is detrimental to the image of karting as a sport will not be tolerated. Any breach of this rule during practice or competition can result in disqualification and any further penalties that may be imposed. The definition of "practice" or "competition" shall mean from the time the gates open at the track to the completion of any prizegiving function at the end of the meeting."

21. The Tribunal does not accept the submission on behalf of Mr Hunter that any unacceptable behaviour must be from the time the gates open to the completion of any prizegiving function at the end of the meeting. The relevance of the definition of "practice" or "competition" is to indicate when the additional penalty of disqualification may be imposed for other breaches of Rule E2.6. If the breaches do not occur during practice or competition, then disqualification cannot be imposed.
22. The Tribunal is of the view that if there is verbal abuse or detrimental behaviour at a motorsport event, then there can be a breach of Rule E2.6. That the prizegiving may have finished is irrelevant. If there is sufficient proximity to the prizegiving, then in the Tribunal's view an offence may have been committed.
23. The other issue is which body of Kartsport New Zealand has the jurisdiction to consider Mr Hunter's position. The Tribunal is of the view that the jurisdiction rests with the Executive of Kartsport. The stewards' responsibility under the Constitution extends to matters relating to the race. It does not extend to matters which happen after prizegivings.
24. It is correct as Mr Neave submits that there is no express provision in either the Constitution or the Judicial Code which gives responsibility to the Executive. However, there is no express provision giving responsibility to any part of Kartsport. The matter must be addressed from a common sense point of view and the Constitution and Judicial Code given an interpretation which gives it efficacy. It

would be illogical to conclude that although there is a power in the Executive Committee to impose a penalty, there is no power in the Executive Committee or any other part of Kartsport to determine liability.

25. The Tribunal's view is that the Executive has power because under Clause C11.5 of the Constitution "*the Executive will attend to the affairs of Kartsport New Zealand and will make such decisions as they may deem necessary in the interests of Kartsport*" between national conference meetings. Decisions made under C11.5 are stated to be binding from the time the decision is made. The Executive clearly has the power in the Tribunal's view to implement the objects of Kartsport. There are several objects which in the Tribunal's view entitle the Executive to take all steps necessary to determine whether there have been infringements of either Rule D3.1 of the Constitution or Rule E2.6 of the Competition Rules. These include:
 - (a) C8.1 – to administer and control the management, growth and development of the sport of kartsport ... and to work towards the elimination of fraudulent, corrupt, unsporting and undesirable practices and tactics on the part of any person ... and generally to maintain the dignity and uphold the standards of the same.
 - (b) C8.2 – to promote, organise ... and assist kart racing and other kartsport activities.
 - (c) C8.3 – to foster and encourage good relations among members and to exist for their mutual advantage and understanding.
 - (d) C8.14 – to do all such other things as are incidental to or conducive to the attainment of these objectives and generally to exercise the powers and undertake all the operations and acts and other things that a person of full age and capacity can exercise, undertake and do according to law.
26. It is therefore the view of the Tribunal that there is jurisdiction in the Executive of Kartsport to consider breaches of Rules D3.1 and E2.6.
27. The Executive clearly has power under Rule D7.1 of the Judicial Code to impose penalties. Under Rule D7.3, any member who acts in any way prejudicial to Kartsport or whose actions bring Kartsport New Zealand generally into disrepute, may be disciplined and penalised by the Kartsport Executive in accordance with the Constitution and the Judicial Code. Unfortunately there appears to be an error in

D7.3 as it refers specifically to Section D8.4 which does not deal with individual members as D7.3 does. However, in the Tribunal's view the clear intent is that the provisions of D8.3 would apply in this particular case if Mr Hunter were ultimately found to be liable.

NATURAL JUSTICE

28. Neither the Constitution nor the Judicial Code set out the grounds of appeal to this Tribunal. In the circumstances, the Tribunal's own rules apply. One of the grounds of appeal which Mr Hunter has under the Tribunal's Rule 12.1.3 is that he was denied natural justice. He relies on this ground. It is the Tribunal's view that he was denied natural justice.
29. Natural justice requires that a person charged with an offence is advised of the particulars of the charge and is entitled to hear the evidence against him and to respond to that evidence.
30. In this case Kartsport Nelson obviously held some form of hearing which could not have any official status. Mr Hunter was not advised of it or of the particular charges against him. However, it is clear that that particular meeting considerably influenced what happened subsequently. Kartsport New Zealand then advised Mr Hunter that he was to appear before it to determine what, if any, penalties should be imposed. The letter of advice made it clear that only matters relating to penalty would be considered. Taken at its face value, Kartsport was saying to Mr Hunter without having given him a hearing or advising him of the charges against him that he was guilty of the offence.
31. It is accepted that the President of Kartsport resiled from that position in an email 3 days before the date of the hearing. However, by that date the damage had been done. Even then no details were given to Mr Hunter of the particulars of the charge against him. The initial letter to him had wrongly advised that he was in breach of Rule C2.6 which was an incorrect reference. In fact, he was held to have violated rules E2.6 and D3.1. Mr Hunter was neither given particulars of the charges against him nor was he given a hearing under the rules of natural justice. These are two prerequisites which must be observed.
32. It was also unreasonable in the circumstances not to have granted Mr Hunter an adjournment. Serious procedural and natural justice rules had been raised by his counsel. The proposed hearing was away from where Mr Hunter and his witnesses

lived. The appropriate action would have been for Kartsport to have adjourned the hearing to a date to give Mr Hunter reasonable time to respond to the allegations against him, once they had been reduced to writing and served on him, and to allow him to call witnesses and be represented. These breaches were more than sufficient to enable the Tribunal to quash the decision.

THE WAY FORWARD

33. It is now up to Kartsport to determine whether it wishes to proceed with the charges against Mr Hunter. The Tribunal has determined that the Executive Committee has jurisdiction. It notes however that there is no power for the Executive Committee to delegate and in the circumstances a meeting of the Executive Committee at which a quorum of the Executive Committee is present will be required to consider the matter.
34. If Kartsport decides to proceed, it should reduce to writing the charges against Mr Hunter setting out the essential ingredients of them. It would also be advisable to give him prior to the hearing copies of the witness statements and any other evidence against him. Mr Hunter is then entitled to a hearing at which he is entitled to be present so that he can test the evidence against him and give his evidence which in turn can also be tested by Kartsport New Zealand.



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Hon Barry Paterson QC
Chairman

28 April 2006