



## INTRODUCTION

1. Mr McMaster appealed to this Tribunal against a decision of Kartsport New Zealand Incorporated ("**Kartsport**"). That decision held that Mr McMaster had breached Rule E2.6 on 22 October 2005. He was fined \$1,000, had his licence endorsed for 12 months and his licence cancelled for a period of 6 months.
2. The grounds of appeal included jurisdictional matters. Kartsport applied to have the jurisdictional issues determined in a separate hearing. Mr McMaster agreed to this course and counsel for both parties agreed that a formal hearing was not required but that each party would make written submissions. One of the reasons for the application for a separate hearing was that if Mr McMaster succeeded on the jurisdictional points, certain provisions in the Constitution and Rules of Kartsport would not apply to a meeting to be held at Easter 2006.
3. To meet the wishes of the parties a decision was released on 11 April 2006. Because of the time constraints, the decision was issued without reasons which are now given. That decision quashed or set aside the decision of Kartsport but noted that the Tribunal was not finally determining a jurisdictional point which will have to await a substantive hearing if Kartsport decides to proceed further in this matter.

## BACKGROUND

4. Mr McMaster competed in a Kartsport Meeting in Nelson on 22 October 2005. As a result of an incident, Mr Love, the National Steward of Kartsport signed a written form of complaint which is dated 9.10am on 23 October 2005.
5. The complaint on a standard form referred to Mr McMaster and his Kart No 62 and its class. The form provided for details of the substance of the complaint and there was inserted at that stage:

Rule E2.6 see attachment dated 23 October 2005

6. The attachments were a plan prepared by Mr Love which evidently depicts certain manoeuvres allegedly taken by Mr McMaster on a public road outside the venue of the event, and a document dated 23 November which contained the provisions of the charge as presented by Mr Love to the stewards of the meeting. The charge read:

"On 22 October 2005 as a competitor in the South Island Kartsport New Zealand South Island Kart Championships, you acted in an unacceptable

behaviour, Rule E2.6 by operating a motor vehicle while the event was still in progress.

You are charged with operating this motor vehicle in an irresponsible and dangerous manner on the Moutere Highway Road being the public boundary road of the Kartsport Nelson Raceway.

You travelled in the motor vehicle from just past the main gate in an Easterly direction, with the wheels spinning weaving from side to side on a public road for a distance of approx 200m, causing a danger to members of the public, vehicles parked on the side of the road and oncoming and following traffic.

You then did a "U" turn, stopping on the side of the road to pick up 2 or 3 passengers.

On awaiting a vehicle to pass, you pulled back on to the road. As you went past the gate into the kart track you looked at the people standing at the entrance to the kart track then accelerated onto the bridge passing a vehicle in a series of sliding motions, crossing the white line on two occasions and then turning into Redwood Valley Road.

From your actions with this Motor vehicle on the evening 22 November (sic) you have brought Kartsport New Zealand and Kartsport Nelson into disrepute.

Kartsport New Zealand has a very low tolerance of their competition Licence holders bringing the sport into disrepute."

7. The charge brought by Mr Love concluded by stating:

"I recommend to the Stewards of this meeting they, after deliberation. Find:-

1. Under Section D8.3/unacceptable behaviour they issue the maximum penalty afforded them a \$1,000 fine and a 12 months endorsement of Cody McMaster's Kartsport New Zealand Competition Licence.
2. And, this be forwarded to the Kartsport New Zealand Executive for a further penalty of 12 months cancellation of Cody McMaster's Kartsport New Zealand Competition Licence.
3. And, Motorsport New Zealand be advised of the final penalty issued to Cody McMaster."

8. The standard written form of complaint completed by Mr Love had a section for notification of the stewards' finding. It is noted on that portion of the complaint that "*Defendant not available*". The form also states:

"After consideration the Stewards find the Complaint constitutes a breach of Rule/s 2.6 – during the event. and impose the following Penalty \$1,000 fine and endorsement for 12 months."

There was also a recommendation to Kartsport New Zealand's Executive Committee that there be a further penalty by suspending Mr McMaster's licence for six months. The stewards in effect adopted the penalty recommendation made by the National Steward.

9. It is common ground between the parties that if the stewards had jurisdiction to hear Mr Love's complaint which was in the form of a protest, that protest was to be heard by a panel consisting of no less than three stewards of the event. Rule D4.5 of Kartsport's Judicial Code provides that:

"The concerned parties shall be summoned to appear at the hearing, and may be accompanied by witnesses". The stewards of the event must ensure that the summons has been personally received by all persons concerned."

Mr McMaster was not advised of the hearing and Mr Penlington, counsel for Kartsport New Zealand, rightly concedes that the stewards therefore had no jurisdiction to make the decisions they made on 23 October 2005.

10. The information before the Tribunal does not indicate what prompted a letter from Kartsport to Mr McMaster dated 11 November 2005. It is not known whether there was any contact between the parties between notification of the stewards' decision of 23 October 2005 and the sending by Kartsport of its letter of 11 November 2005 to Mr McMaster.

11. The letter of 11 November from Kartsport to Mr McMaster included the following:

"I am in receipt of the form of complaint 400241 where in your absence you were found to be in breach of Rule C2.6 (unacceptable behaviour) and fined \$1,000 and had your licence endorsed for 12 months.

The Stewards panel have referred the matter to Kartsport New Zealand's Executive and you are required to attend a hearing on 26 November 2005 at 9.30am at the Trafalgar Motor Inn, 66 Trafalgar Street, Nelson. 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."

12. The form of complaint referred to in the letter was the form completed by Mr Love. The reference to Rule C2.6 was an obvious error and should have been a reference to Rule E2.6. There was attached to the letter and referred to in the body of the letter, the form of complaint, the statement from the National Steward and an outline of the hearing procedure. It was also advised that the hearing would be conducted by three named persons and one to be appointed. Neither party has provided the Tribunal with a copy of the "*outline of the hearing procedure*" which was said to be attached to the letter.
13. On 18 November 2005, Mr Neave, counsel for Mr McMaster, sent an email letter to Kartsport advising that the date set for the hearing was not suitable for Mr McMaster and that a fortnight's notice of a hearing to be conducted in another centre was

simply not satisfactory. The email raised questions as to procedure and jurisdiction and ended with a warning that an attempt to deal with the matter in the absence of Mr McMaster "*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 clients will have no alternative but to consider an appeal to SPARC.*" The email referred to another case as well as that of Mr McMaster's. The email was preceded on the same day by an email from Mr I Hunter on behalf of Mr McMaster advising that Mr McMaster will be unable to attend.

14. The President of Kartsport New Zealand replied to Mr Neave by an email letter of 22 November 2005. That letter stated there had been no breaches in Kartsport's procedures or rules to the President's knowledge. There had been no hearing by the Executive "*but the Panel of Stewards found Cody McMaster guilty of bringing the sport into disrepute and has had a penalty applied. In addition the Panel have sought to have the matter referred to the Executive.*" The letter noted that Mr McMaster had not been able to be notified of the stewards' hearing but that the stewards were able to proceed in the absence of the competitor. The letter noted that the hearing was not to be an appeal and that the hearing could proceed in the absence of Mr McMaster. It said "*no requests for an adjournment has been made to date*". The Tribunal notes however that Mr Neave's letter of 18 November noted "*a perfectly reasonable request for an adjournment has been made*".
15. In its statement of defence, Kartsport alleges that it considered Mr McMaster's request for an adjournment and advised that the request was declined "*due to the gravity of the incident and the requirement to have the matter addressed quickly, a fortnight is reasonable*". The Tribunal has not been advised how this advice was communicated but because of the view which it takes, it does not need to consider this point further.
16. Mr Neave sent a further email letter to the President of Kartsport on 25 November. He noted that he understood that the hearing was to proceed which confirms that some advice was received from Kartsport that the adjournment application had been declined. The letter contained a further request that the hearing be postponed so that Mr McMaster could attend. There was also a request that the matter be transferred to Christchurch so that the witnesses who lived in the Christchurch area could also attend. The Tribunal notes that the letter applied to another hearing which was also to be held on that day and it is not clear whether the witnesses to be called

were for Mr McMaster's hearing or the other hearing. The letter which was lengthy made the allegation that the proceeding to date appeared to be fundamentally flawed in a number of ways and details were given of these alleged flaws.

17. On 26 November 2005, the hearing proceeded in Nelson in McMaster's absence. The committee comprised three members of Kartsport's Executive Committee and a former Executive member. The statement of defence provided by Kartsport noted there was also another Executive Committee member in attendance but it is not clear whether that person was part of the committee. Of relevance it is noted that one non-executive member was part of the committee. The statement of defence notes that Mr Love gave oral evidence of the incident and provided a copy of the form of complaint and that a signed letter of complaint from two persons dated 10 November 2005 was also considered. The position of Kartsport is that this committee determined that the stewards' decision on 23 October was without jurisdiction because Regulation D4.5 had not been complied with but that Mr McMaster had breached Regulation E2.6 (unacceptable behaviour) and D3.1 (breach of Regulations, Codes, Rules or Specifications).
18. The statement of defence says that the Executive determined that the penalties imposed be:
  - (a) cancellation of Mr McMaster's Kartsport licence for 6 months;
  - (b) fined \$1,000;
  - (c) Mr McMaster's competition licence to be endorsed for a period of 12 months as having breached E2.6 and D3.1.
19. The statement of defence also alleges that by means of an exchange of emails on 29 and 30 November 2005, Kartsport accepted Kartsport's Executive Committee's recommendations as noted above and imposed the penalties. No evidence has been produced as to how this exchange was effected and who on behalf of Kartsport New Zealand accepted the recommendation.
20. Mr McMaster was advised of the decision by a letter from Kartsport dated 14 December 2005. The letter advised that the hearing had proceeded at Nelson as scheduled and recommendations were made to Kartsport New Zealand. It confirmed that the Executive viewed the written evidence and determined that Mr McMaster breached Rules E2.6 and D3.1 and set out the penalties which were imposed. These

have been noted above. The letter did confirm that "*the Executive quashed the penalty imposed by the Stewards Panel as a result of the form of complaint 400241*".

The letter also stated:

"The charge specifically related to your driving a motor vehicle in a dangerous manner, namely doing burnouts on the road outside the Kartsport Nelson's track. Kartsport New Zealand fielded many written complaints and the writer personally inspected the site."

## **THE JURISDICTIONAL CHALLENGE**

21. Mr Neave for Mr McMaster raised two jurisdictional points. The first was that it was only the stewards who had the right to consider the protest in this case and as such the subsequent proceedings were flawed. There was no power to refer the matter to the Executive of Kartsport. This submission was based on Rule D2.8 of the Judicial Code of Kartsport which stated at the time:

"The stewards of the event shall have supreme authority for the enforcement of the Rules, Supplementary Rules and the Race Programme. They shall settle any claim that might arise during an event, subject to the rights of Protest (see D4) and Appeal (see D5 and D6) provided in this Code."

22. Mr Neave's second point was that under Rule E2.6 which relates to unacceptable behaviour, there must be both a temporal and geographical component to the alleged unacceptable behaviour. There was no temporal component nor was there a geographical component because the event took place outside the venue. The relevant provision of Rule E2.6 read:

### **"UNACCEPTABLE BEHAVIOUR:**

... 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."

23. Mr Penlington for Kartsport, submitted that the Executive Committee in this case did have jurisdiction. He conceded that the 2005 Manual was not clearly drafted and there is no specific section in that Manual which provides who is to determine whether a breach has occurred. He made detailed submissions that there are other provisions in both the Constitution and the Judicial Code (both of which are contained in the Manual) which enabled the Executive Committee to consider this matter.

24. In reply to the geographic point made by Mr Neave, Mr Penlington accepts that the conduct must occur at a race meeting but says that this does not mean that it must be within the confines of the venue itself. Every meeting venue is different and it would therefore be arbitrary to say that for example the carpark outside the track was not "at the meeting" because it was outside the physical confines of the track. He submitted that conduct in the immediate vicinity of where a meeting is held, while the meeting is held and which can be observed and can affect members at the meeting, should be conduct which occurred at the meeting.
25. Mr Penlington also submitted that the definitions of 'practice' or 'competition' does not mean that the unacceptable behaviour must occur during practice or competition. That provision is merely in Rule E2.6 to provide the circumstances which allow disqualification to be imposed.
26. Both parties appeared to accept that the stewards would have had jurisdiction in this matter if they had followed the correct procedure and Mr McMaster had been summonsed to the meeting on 23 October 2005. The Tribunal does not need to determine this matter but notes that there must be doubts as to whether this in fact was the case. Under the Judicial Code, the stewards are "stewards of the event". Under Rule D2.7 which sets out the duties of the stewards, it is noted they are in no way responsible for the organisation and do not have any management duties in connection with an event. Their duties relate to the racing itself and the condition of the circuit and complex. The stewards under Rule D2.8 have the supreme authority for the enforcement of the Rules, Supplementary Rules, and the Race Programme. The Rules are defined in the Constitution as the "competition clauses" as covered in Sections E, G and H of the Rule Book. In the Tribunal's view, it must at least be arguable that events which take place outside the circuit do not come within the stewards' jurisdiction. It however makes no decision on this matter.
27. For reasons given in *Hunter v Kartsport New Zealand Incorporated* STD 6/06 of 26 April 2006, the Tribunal is satisfied that the Executive Committee does have power to consider the allegations against Mr McMaster. The Constitution and the Judicial Code which operated at the time (we understand it may have been amended since) are both deficient in procedures and authorities in respect of alleged violations which do not come squarely within the stewards' jurisdiction. Rule C11.5 of the Constitution provides that between National Conference meetings, the Executive Committee will attend to the affairs of Kartsport and will make such decisions as they may deem necessary in the interests of Kartsport. There are provisions in both the



Constitution and the Judicial Code which may not relate directly to the conduct of a race meeting and as such the Constitution and Judicial Code must be given a reasonable interpretation to fulfil their purposes. It follows in the Tribunal's view that Rule C11.5 does give the Executive Committee the power to consider the allegations against Mr McMaster. There are many other provisions in the Constitution and Judicial Code, which by implication suggest that the Executive Committee does have such power. Some of these are referred to in the *Hunter* decision.

28. The Tribunal is concerned at the geographical point. It accepts Mr Penlington's submission in respect of the temporal point, namely that the time limits only relate to offences in respect of which an additional penalty of cancellation can be imposed. If the unacceptable behaviour takes place outside a practice or competition, no penalty of disqualification can be imposed but there may still be unacceptable behaviour which falls within the jurisdiction of the Executive Committee.
29. The alleged offence here took place on a public road. The Tribunal understands Mr McMaster was in his own motor car and not in a kart. It was submitted on behalf of Kartsport that because Mr McMaster was a participant at the race meeting, and because he was driving at the time of the meeting immediately outside the track, the allegations if proven amount to an offence under Regulation E2.6. Similar submissions are made in respect of Regulation D3.1. It was further submitted that complaints were received by Kartsport about this conduct and because of all the circumstances, the behaviour was prejudicial to the interests of the 2005 South Island Championship competition, prejudicial to the interests of the administration control of karting and prejudicial to the interests of karting generally.
30. For there to be an offence under E2.6, the behaviour must be "*at a race meeting*". Obviously an event which may have occurred several kilometres away from the venue would not have been at a race meeting. For there to have been an offence under E2.6, Kartsport will need to be satisfied that what occurred did occur at the race meeting. It will need to be established that there was such proximity between the alleged events and the meeting itself that the requirements of E2.6 are met. The Tribunal does not preclude the possibility that something which happened outside the venue had an effect on the meeting and was experienced within the venue itself. It is of the view however that it would be necessary to hear all the evidence called before it can be determined whether the behaviour was at the race meeting. It was for this reason that the Tribunal was not prepared to rule on this jurisdictional point. The factual situation is relevant. Rule E2.6 is part of the competition clauses of the 2005

Manual. Thus the behaviour must in the Tribunal's view relate to events at the meeting itself. Something which was unconnected to the meeting or the racing, would not in the Tribunal's view fall within E2.6.

31. Similar considerations with some differences apply to the alleged breach under Rule D3.1. The behaviour which may be held to be "*prejudicial to the interests of any competition, administration, control, or to the interests of karting generally*" may take place outside the meeting. There would still however have to be a sufficient connection or proximity with a karting occasion to make it prejudicial to the interests of karting generally. If Kartsport determines to proceed with this matter, it will need to establish to the appropriate committee which hears the appeal that the action fell within the type of offence referred to in D3.1.
32. It was for the above reasons that the Tribunal was not prepared to hold that Kartsport lacks jurisdiction in this matter. The Tribunal is not prejudging this matter. If Kartsport proceeds further with this matter it will need to consider both whether the facts alleged are established and also whether those facts constitute an offence under either rule. It notes in passing that on its view of the Constitution any charge would have to be heard by the Executive Committee and a quorum of the Executive Committee would need to be present. The Executive Committee does not have any power to delegate and the committee which heard the matter in Nelson does not appear to have been the Executive Committee.

#### **SETTING ASIDE THE PREVIOUS DECISION**

33. The Tribunal quashed or set aside the previous decision because in its view Kartsport had so infringed the rules of natural justice that it was inevitable that the appeal must succeed. While the matter was not directly addressed in submissions, it was raised on the pleadings and the facts upon which the decision was made are agreed. Because the parties wanted a decision prior to Easter, there was no point in requesting counsel to make further submissions on a point which in the Tribunal's view was conclusive and unanswerable.
34. The Constitution of Motorsport does not set out the grounds on which there may be an appeal to this Tribunal. Accordingly, the rules of this Tribunal apply. They provide that in the absence of grounds in the Rules or policies of the National Sports Organisation, an appeal may be brought on several grounds. The first of these is

"*that natural justice was denied*". It is clear from what happened in this case that natural justice was denied.

35. A requirement of natural justice is that a party be advised of the charges against him or her, have an opportunity to answer those charges and to be entitled to a fair hearing. In this case, Mr McMaster was originally found guilty by the stewards who then referred the matter to the Executive Committee of Kartsport. Mr Penlington is correct when he submitted that an appropriate hearing of the Executive Committee of Kartsport could have remedied the lack of jurisdiction which the stewards had. However, for there to have been an appropriate hearing, the charges would need to have been spelt out and Mr McMaster would have needed to have had an opportunity to meet those charges and to a fair hearing.
36. If Kartsport had forwarded details of the complaint to Mr McMaster and given him an opportunity to answer that complaint and advised him of the procedure to be followed on a hearing *de novo*, it could have considered the matter. However, its initial letter of 11 November 2005, although containing the form completed by Mr Love and a copy of his statement, stated he had been found to be in breach of Rules C2.6. This in itself was in error and should have been Rule E2.6. The letter made it clear that it was only the penalty which the hearing would be considering (see paragraphs 11 and 12 above). The President's letter of 22 November (paragraph 14 above) took the point that the stewards were entitled to hear the matter in Mr McMasters' absence. It made it clear that there was to be a hearing and not an appeal. The only sensible construction that could be given to that letter is that the finding of the stewards remained intact and Mr McMaster had no right to appeal that finding. As he was copied the form of complaint which had the notification of the stewards' finding on it, the reasonable assumption would have been that the hearing was for Kartsport to consider a further penalty of suspending the licence as recommended by the stewards. To have participated in such a hearing could have been a tacit acknowledgement by Mr McMaster that the stewards had the jurisdiction. However, the more important point is that the only construction that could be given to the letter is that what the stewards had decided stood and it was only a further penalty which was under consideration.
37. Presumably alerted by Mr Neave's letter, the members that met at Nelson on 26 November realised that the stewards had miscarried and purported to consider the charges anew. They considered two charges, one of which had not been advised to Mr McMaster, namely a breach of Rule D3.1. For this to be considered a new

hearing, Kartsport would have been obliged to have provided Mr McMaster with an opportunity of responding to the charges under both Rules. It did not give him an opportunity to respond to the charge under either rule because he had been informed that he could only address the question of penalty. Mr McMaster was not given the opportunity to meet the charges against him either by the stewards or the committee which met at Nelson on 26 November. He is entitled to a fair hearing after being advised of the charges against him and being given reasonable opportunity to answer those charges.

38. It is not a sufficient response to submit that if Mr McMaster had attended the Nelson hearing, he would have been able to answer the charges made against him. Up until the day before the hearing, the clear advice to him by Kartsport was that the issue was one of penalty only.
39. The Tribunal thereby concluded that the denial of natural justice was such that it had no alternative but to set aside the decision made by Kartsport New Zealand as a result of the hearing held in Nelson on 26 November 2005.



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**Hon Barry Paterson QC**  
**Chairman**

**28 April 2006**