

Event Document: 32

2023 REPCO SUPERCARS CHAMPIONSHIP RACES 1 & 2 "THRIFTY NEWCASTLE 500"

Newcastle East Street Circuit, Newcastle, New South Wales
8 to 12 March 2023

SUMMARY OF STEWARDS' HEARING INTO:

A charge brought by the DRD against Car 88, Triple Eight Race Engineering (Aust) Pty Ltd (Driver Broc Feeney)

AND

A charge brought by the DRD against Car 97, Triple Eight Race Engineering (Aust) Pty Ltd (Driver Shane van Gisbergen)

AND THE PROTESTS lodged by

Tickford Racing Pty Ltd against Car 88, Triple Eight Race Engineering (Aust) Pty Ltd (Driver Broc Feeney)

AND

Tickford Racing Pty Ltd against Car 97, Triple Eight Race Engineering (Aust) Pty Ltd (Driver Shane van Gisbergen)

AND

WAU Racing Pty Ltd against Car 97, Triple Eight Race Engineering (Aust) Pty Ltd (Driver Shane van Gisbergen)

PROCEDURE:

1. Race 1 of the 2023 Repco Supercars Championship was conducted on 11 March 2023 at the Newcastle East Street Circuit. The race ended at 1722hrs, and all Cars were placed under parc ferme conditions.
2. At 1730hrs the Stewards received via the Event Secretary two Form F8 Notices of Protest from Tickford Racing Pty Ltd. One Notice of Protest against Car 88 and the other against Car 97. The Protests alleged that both Car 88 and Car 97 were in breach of Rule C16.2.1.1 and Rule D3.5 of the Supercars Operations Manual.
3. At 1813hrs the Stewards received a Form F8 Notice of Protest from WAU Racing Pty Ltd against Car 97. The Notice alleged that Car 97 was in breach of Rule C16.2 of the Supercars Operations Manual.
4. Each of the respective Notice of Protest contained complete credit card details for payment of the prescribed fee for lodging of that Protest.
5. At 1845hrs the Stewards received two Stewards Referral & Charge Sheets from the DRD. One Charge Sheet against Car 88 and the other against Car 97. The Charge Sheets alleged that both Car 88 and Car 97 were in breach of Rule C16.2.1.1 of the Supercars Operations Manual.
6. At about 1900hrs the Stewards issued Summons to Attend a Stewards' Hearing to the Competitor of Car 88 and Car 97 (Triple Eight Race Engineering (Aust) Pty Ltd) and to the Competitors who lodged the respective Protests, to be conducted in the Race Control room in the Pit Building at 1930hrs.
7. At 1930hrs the following persons were present for the Stewards Hearing:
 - a. The Stewards.

- b. The DRD (David Mori, together with James Delzoppo).
 - c. The HOM (Adrian Burgess).
 - d. Mark Dutton, the Authorised Representative of Triple Eight Race Engineering (Aust) Pty Ltd (the Respondent).
 - e. Matt Roberts, the Authorised Representative of Tickford Racing Pty Ltd.
 - f. Anthony McDonald, the Authorised Representative of WAU Racing Pty Ltd.
 - g. Andrew Rogers, who acted as the Stewards' Assistant.
 - h. The RD (James Taylor) was present but played no part in the proceeding.
8. The Chair introduced the Stewards and enquired if any party objected to the composition of the Stewards' Panel. No objections were raised.
 9. The Chair indicated that the Stewards would first hear from the DRD in relation to the Charge.

ON THE HEARING OF THE CHARGE:

10. The DRD read out the Charges from the Stewards Referral & Charge Sheets aloud.
11. The Stewards asked Mr Dutton whether the Respondent accepts the Charge. Mr Dutton responded that the Respondent does not admit the Charges.

ON THE ADMISSIBILITY OF THE PROTESTS:

12. Attached to each Summons (Docs 21,23, 25) issued to the Respondent was a copy of the Notice of Protest form for each respective Protest. Mr Dutton confirmed having received a copy of each Notice of Protest.
13. The Chair indicated the time of receipt of each Notice of Protest form, noted that the credit card details of payment of the Protest Fee was provided with each Protest and appeared complete.
14. The Respondent was asked if it challenged the admissibility of any of the Protests. Mr Dutton replied that he did not.
15. The Chair noted each Protest in effect amounted to the same allegations being made against Car 88 and Car 97 as made by the DRD. The parties agreed that was the case.
16. The Chair proposed that the Hearing proceed by firstly the DRD presenting his case in relation to the matters, then giving each Protestor the opportunity to present their evidence and then an opportunity for the Respondent to present its case. There was no objection raised to proceeding this way.

HEARING OF THE PARTIES:

17. The DRD presented his case as follows:
 - a. That he had received a Report from Supercars Technical stating that Car 88 and Car 97 were not in conformity with the Rules in post-race scrutineering and the alleged breach of the Rules related to Rule C16.2.1.1.
 - b. That he had received a series of 6 photographs from the HOM taken of Car 88 and Car 97. It was confirmed by the HOM that he had taken the photographs of the Cars in parc ferme after Race 1. The series of photographs were shown to the Respondent and each of the Protestors on a tablet. Mr Dutton was asked if he accepted the photographs were of Car 88 and Car 97. He confirmed they were. The DRD said he would forward a copy of those photographs to the Stewards by email. The series of photographs were accepted by the Stewards on that basis and marked Exhibit A.
 - c. The DRD produced his phone and said he showed the report received from Supercars Technical. He showed the report to the Respondent and each of the Protestors. The DRD said he would forward a copy of the report to the Stewards by email. The was accepted by the Stewards on that basis and marked Exhibit B.
 - d. The DRD then said he would rely on the evidence of the HOM as to the issue of non-conformity with the Rules.
18. The HOM gave evidence as follows:

- a. During the Race he had observed on the broadcast vision that dry ice was placed in Car 88 and Car 97 during their last Pit Stops through the Driver's door. This placed him on notice of a possible issue with the Respondent's Cars.
 - b. Car 88 and Car 97 were inspected by his personnel in post-race scrutineering.
 - c. It was brought to his attention by his personnel of an issue with Car 88 and Car 97 and he went and inspected each Car and took photographs of the system installed to the right of the Driver's seat in each Car.
 - d. The system in each Car was the same and its purpose was as a Driver cooling system.
 - e. The systems, in his opinion, did not comply with Rule C16.2.1.1 because they were installed in the incorrect position and so not in conformity with the Rules.
19. Mr Roberts presented his case as follows:
- a. That his Team had observed the Respondent's Team add dry ice to each of Car 88 and Car 97 through the Driver's door during their last respective Pit Stops.
 - b. They rely on the HOM's opinion that the systems in issue were not in conformity with the Rules.
 - c. There was no further evidence presented by Mr Roberts.
20. Mr McDonald presented his case as follows:
- a. That his Team had observed the Respondent's Team add dry ice to each of Car 88 and Car 97 through the Driver's door during their last respective Pit Stops.
 - b. They rely on the HOM's opinion that the systems in issue were not in conformity with the Rules.
 - c. There was no further evidence presented by Mr McDonald.
21. Mr Dutton responded to the allegations as follows:
- a. He accepted the systems in issue were installed to the right side of the Driver's seat and that the systems were topped up with dry ice in the last Pit Stop for each of the Respondent's Cars through the Driver's door.
 - b. He denied the allegation that the systems were not in conformity with the Rules because of a discussion with the HOM that was had on Thursday 9 March 2023 in the Respondent's Pit Garage during which he showed the systems in issue to the HOM, the HOM did not tell him that the systems did not comply with the Rules and so it was his understanding that the Respondent had the HOM's permission to use the systems.
 - c. He requested the Stewards to accept that the context of this happening is the complexity surrounding the homologation of the GEN 3 Cars and that there are other examples of non-conformity with the Rules with most if not all of the Cars in the Race.
 - d. He stated that he considered there was no performance advantage to the Respondent's Drivers because of the systems being in place. He suggested that because of the additional weight of the systems and effect on the Car's centre of gravity, that it was a disadvantage but there was a benefit to Driver safety by the cooling of the helmet air.
22. The HOM was given an opportunity to respond to Mr Dutton's statement about the discussions held on 9 March 2023. He acknowledged that he went to the Respondent's Pit Garage on that day and had discussions with Mr Dutton. His presence there was in relation to other matters that had been raised with him by the Respondent. He admitted that while there, the system was shown to him on one of the Respondent's Cars but disagreed with the proposition that he had given permission to the Respondent to use the system or that he approved it for use in the Race.
23. The Protestors were given the opportunity to comment on these issues. They had no further questions.
24. The Chair raised the issue of whether the systems gave any performance advantage to the Respondent's Drivers. Mr Dutton remained of the view that the primary function of the systems was for Driver health and safety. The HOM disagreed and indicated there was a performance advantage. The Protestors also suggested there was a performance advantage gained.

25. There was an allegation raised by Tickford that the system cooled the pedal box on the Cars in addition to the Driver's helmet. That allegation was denied by Mr Dutton who said that the system only cooled the Driver's helmet. The Chair asked the HOM whether he agreed with that. The HOM indicated he accepted Mr Dutton's assurance that they did not have that effect.
26. The Chair noted the Cars remained under parc ferme conditions and whether the HOM or either of the Protestors wished to further inspect the system. No party asked for any further inspection. The Stewards then asked if the Cars could be released from parc ferme. No party had any objection to that happening. The Stewards requested the RD to notify all parties of the release of the Cars from parc ferme.
27. Chair indicated that the Stewards would now deliberate and deliver their decision in the morning and adjourned the Hearing to a time and place to be notified to the parties.

OUTCOME

After the Hearing was closed by the Stewards at 2005hrs, the Stewards made the following decision after due deliberation.

Offence: Rule C16.2.1.1 of the 2023 Supercars Operations Manual.

Decision:

1. Each Charge is upheld.
2. Each Protest is admissible.
3. Each Protest is upheld in so far as the Cars were in breach of Rule C16.2.1.1.
4. The Protests by Tickford Racing alleging the Cars breached Rule D3.5 is dismissed.
5. That Car 88 was in breach of Rule C16.2.1.1 in Race 1.
6. That Car 88 is disqualified from Race 1.
7. That Car 97 was in breach of Rule C16.2.1.1 in Race 1.
8. The Car 97 is disqualified from Race 1.
9. That the classification for Race 1 be issued with Cars 88 & 97 noted as disqualified.
10. Each other Car be classified as though Cars 88 & 97 had not competed in the Race.
11. The Protest Fees paid in each Protest be returned to the respective Competitor.

REASONS

1. Division C of the Supercars Operations Manual is titled "VCS Technical Rules" and it was not in dispute between the parties that it applies with respect to the eligibility of Cars to compete in the 2023 Repco Supercars Championship (therefore it applies to Car 88 and Car 97 for their eligibility to compete in Race 1).
2. Rule C2.1 reminds those involved in the Championship of the requirement for a Car to comply at all times with the Rules and mandates that it is the Competitor's obligation to ensure compliance of their Car with the conditions of eligibility contained in the Rules throughout each Event.
3. The Stewards pay particular attention to Rule C1.1 (Preamble), which provides overall guidance for those involved in the Championship and specifically to sub-rules C1.1.4 (No part of a Car may be modified and/or deleted and/or added to unless permitted by the Rules) and C1.1.6 (For clarification, in these Rules, unless it says that you can, then you cannot).
4. It was not disputed by the Respondent that the components in issue in its Cars were additional systems placed into the Cars. The stated aim was to provide additional Driver comfort for their safety. This system was in addition to the Chillout Driver Cooling system. Again, the Stewards note Rule C1.1.5, which states that the primary function of any component is the overriding factor in determining its compliance with the Rules.
5. It was accepted by the Respondent that the systems in issue were not placed in the position specified by Rule C16.2.1.1 (mounted within the cockpit utilising the mounting points designated in

the GSD for the passenger seat). Therefore, the obligation is on the Respondent to establish that the systems were allowed by the Rules.

6. Rule C2.3 requires that in the case of a dispute about a Car's compliance with any of the provisions of the Rules, that the matter is to be referred to the Stewards by the RD or DRD for determination (which has occurred) and that during any Hearing, if the Stewards determine that the matter is of a technically complex nature the Stewards will refer the technical issue to the HOM for a determination and that the determination of the HOM will be unconditionally binding on any Stewards' Hearing in regard to that issue.
7. The HOM's clear determination is that the systems in issue do not comply with the Rules. The Stewards are therefore duty bound to make that finding.
8. While that finding is final, it does not end all issues in dispute.
9. Firstly, the Respondent submitted that it considered that permission had been granted by the HOM to install the systems in its Cars during a discussion on Thursday 9 March between its Authorised Representative and the HOM. Mr Dutton said that discussion happened in its Pit Garage when the HOM came to inspect its Cars in relation to other matters that the Respondent had been in discussions with the HOM about. This is in the context that the Respondent is the homologation team for the Chevrolet Camaro and that the 2023 model Cars were until shortly before the Event started still in the homologation phase and designs of some systems in Cars were being negotiated.
10. The HOM confirmed that he did attend the Respondent's Pit Garage on Thursday. He said the primary purposes for his attendance there was to inspect the modifications the Respondent had made to its Cars which had been the subject of the prior discussions with the Respondent. These modifications did not anyway relate to the systems that are now in issue. He acknowledged that during his inspection, Mr Dutton made some reference to Driver Cooling systems and showed him some tubing, which he inspected. However, the HOM stated that while he did this, he did not grant permission to the Respondent to install and use the systems in exception to the Rules and that if Mr Dutton thought otherwise, then he was mistaken.
11. The Stewards find that the HOM did not grant his permission to the Respondent to install the systems. We find that there was a misunderstanding between the HOM and Mr Dutton as to the purpose of their discussions on 9 March as it related to the systems in issue. It is important to record here that the Stewards find both the HOM and Mr Dutton's evidence about this issue as genuine and credible. We accept that there was a miscommunication error as between them. However, the onus is on the Respondent to establish the systems are in accordance with the Rules and we find that they have not satisfied us that is the case.
12. We also address the grounds of Tickford Racing's protest alleging the Respondent was in breach of Rule D3.5 (It is not permitted to use dry ice other than in Driver cooling systems at any time during an Event) for adding the prohibited substance to Car 88 and Car 97 during their Pit Stops during the Race.
13. The Stewards have accepted the primary purpose of the systems in issue in the Respondent's Cars is for cooling of the Driver. As the use of dry ice is permitted for that purpose (assuming the system containing the dry ice otherwise is in conformity with the Rules), the grounds of protest on this basis must fail. However, the primary ground of protest is the non-conformance with the Rules of the systems, and so, the Protests otherwise are upheld.
14. The Stewards have carefully considered the penalty to be applied.
15. The Stewards are guided by that as well as the generally accepted principle in motor racing, that the penalty for a breach of a technical regulation is disqualification.
16. While on its face it is a harsh penalty, it is the appropriate penalty to be applied and the Stewards do so.
17. It is important to record that the Stewards find that there was no intention on the part of the Respondent to compete with a non-compliant Car and that it was an honest, though mistaken, belief that it had the permission of the HOM to install the systems in issue. Despite the honest, though mistaken belief, the breach has still occurred, and the penalty is both required and appropriate.



The Parties were reminded that Decisions and Penalties that may be subject to Appeal are set out in B7.7.2 and the Rights to and process for an Appeal are set out in B5.

Issued by the Stewards of the Event:

A handwritten signature in black ink, appearing to read "Chris McMahon".

Chris McMahon (Chair)
Motorsport Australia Stewards

A handwritten signature in black ink, appearing to read "Steve Lisk".

Steve Lisk

A handwritten signature in black ink, appearing to read "Bradley Tubb".

Bradley Tubb

DATE: 12 March 2023

TIME: 0915hrs

Receipt acknowledged by:

Date: 12 March 2023

Time: