

FAI INTERNATIONAL APPEALS TRIBUNAL

FINDINGS AND DECISIONS ON APPEAL BY NAC OF UKRAINE

16TH FAI WORLD MICROLIGHT CHAMPIONSHIPS 2018 – NAGYKANIZSA, HUNGARY

1. An International Appeals Tribunal (IAT) was convened to hear the appeal by the NAC of the Ukraine in connection with the 16th FAI World Microlight Championships in Hungary (8 to 18 August 2018). The members of the Tribunal were:

Max Bishop, former FAI Secretary General (Chairman)

Arthur Greenfield, NAC of USA (Member)

Tormod Veiby, FAI Microlight Commission President of Honour (Member)

The Tribunal has completed its deliberations. These were based on the facts established and agreed by all parties involved and contained in the attached document (Appendix A).

2. The findings and decisions of the Tribunal are set out in paragraphs 4 to 17 below.

PRELIMINARY CONSIDERATIONS

3. If a FAI sporting contest is to be accepted as valid and legitimate by those participating, certain preconditions must be met:

- The rules must be clear and unambiguous.
- They must be applied fairly and rigorously
- Written and oral communications between competitors, event organisers and international officials must be clear, comprehensive and not capable of being variously interpreted.

In the case under consideration, there were shortcomings in all of these areas. Some of the relevant rules were not entirely clear. The rules were not all uniformly applied. And there were examples of inadequate communication among competitors; between competitors and contest organisers; and between the International Jury and certain competitors.

Some of these shortcomings could have been alleviated, remedied or at least prevented from happening again through discussion and administrative measures, both during the Championships and in the months thereafter. Even after the appeal had been submitted (6 November 2018), there was an opportunity at the subsequent FAI Microlight Commission (CIMA) meeting, held in Riyadh on 22/23 November 2018, for discussions on how to solve the problems identified in the Appeal, but the Minutes of the meeting contain no record of any such discussions. During the Appeal hearing, the CIMA President offered to establish a Working Group, on which the Appellant would be represented, to review the case and recommend solutions for future Championships. The IAT Chairman then asked the Appellant whether, in the

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light of the CIMA President's offer, he would be prepared to withdraw the Appeal. Although the IAT members all thought, at the time, that he had agreed to do so, the Appellant subsequently confirmed in writing that he would not withdraw the Appeal, at least until he had had an opportunity to consult with Team Leaders from other countries. It later became apparent to the members of the International Appeals Tribunal that the climate in the Microlight competition community was not conducive to consensual resolution of the problems identified, and that therefore a formal Tribunal decision was needed. Nevertheless, the IAT Members still take the view that this case should never have been made in the form of an Appeal under FAI Sporting Code General Section, Article 6.5. The Appellant (NAC of UKR) suffered no direct disadvantage as a result of what happened at Nagykanizsa. Their competitor does not stand to gain from any recalculation of scores, since he was the overall Gold Medal winner as well as the winner of Task 1 and joint winner of Task 2. The Appellant effectively claims for itself the role of self-appointed guardian of CIMA rules and procedures. In future, cases like this need to be handled through administrative action only.

In studying this case, the IAT Members quickly reached firm agreement that the Contest Director and his staff, the International Jury Members and the CZE Team Manager all acted in perfectly good faith, in what they thought were the best interests of the sport of competitive microlight flying. All of them had what they saw as good reasons for acting as they did.

In identifying areas where things went wrong, the IAT is not seeking to attribute blame, but rather to provide helpful guidance on how matters might be better organised in future.

FINDINGS

4. **Stewards**. FAI Sporting Code, Section 10, Article 4.13. lays down a mandatory requirement for the Organisers to appoint at least one steward for a Championship. However, to save money, no Steward was appointed for this event.

FAI Sporting Code General Section, Article 5.5.2.1. states "*Stewards are advisers to the Event Director. They watch over the conduct of the event and report any unfairness or infringement of the Rules and Regulations or behaviour prejudicial to the safety of other competitors or the public or in any way harmful to the sport. They assemble information and facts concerning matters to be considered by the International Jury.*"

The IAT finds that the Organisers and the CIMA authorities were at fault in not appointing a Steward, the first for failing to implement a mandatory rule and the second for backing the Organisers' decision. If one or more Stewards had been appointed, as required by the Sporting Code, they might conceivably have been able to prevent this whole case from arising.

5. **Supplementary Rules**. FAI Sporting Code, Section 10, Article Sec. 10, 4.8.2, formerly 4.9.2, states:

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The organisers may supply competitors with a document of supplementary information upon their arrival at the championships site. Any matter intended to have the force of a competition rule must have been approved, as a minimum, by the CIMA Bureau. Only minor matters may be approved by this method. Local regulations and supplementary information must not conflict with the general rules.

Supplementary information, including the latest permitted time of arrival in quarantine during the Championships (07.50), and the % scoring penalty for being late in quarantine (- 20%), was given by the Contest Director to competing teams at the General Briefing held on 10 August 2018, the day before the first tasks. No evidence has come to light that these quarantine rules and penalties were formally approved by the CIMA Bureau, as required by the above article. However, since the International Jury President and one Jury member were respectively President and 1st Vice President of CIMA, it may be assumed that they would have taken some action to trigger a formal CIMA Bureau decision had they found the Contest Director's rules to be inappropriate.

The IAT finds that the supplementary rules promulgated by the Contest Director on 10 August 2019 were not formally approved by the CIMA Bureau, and that therefore, in a strict legal sense, were not valid. However, since they were accepted without demur by all participants, **the IAT finds** that for the purposes of this Appeal only, their tacit acceptance by consensus constitutes validation.

6. **Finality of Jury Decision.** FAI Sporting Code, Section 10, Annex 5 (Notes for Directors, International Officials, and Official Observers), states at Article 2.2.8.: "*The decision of the jury is final and applies for the remainder of the competition.*" One interpretation of this statement is that the International Jury had no right to re-open its consideration of the UKR protest, nor to change its original decision. However, it may be that the intention of Article 2.2.8. was not to restrict the freedom of International Juries to reconsider their decisions should new evidence come to light, but rather just to inform all concerned that – for as long as the competition is on-going – there is no way of appealing against a Jury decision.

A further relevant consideration is that the status of the Annexes to Sporting Code, Section 10, is not completely clear. Some (such as Annex 1 and Annex 6) appear to contain mandatory rules and regulations. Others, including Annex 5, seem mostly to be more for the guidance of officials and competitors.

The reason why the International Jury re-opened their proceedings is that it was brought to their attention that one of the affected parties, the CZE Team, had not been given an opportunity to present its case. FAI Sporting Code, General Section, Article 6.4.2 states: "*The Jury shall hear both sides on the matter of any protest, applying the relevant FAI regulations and the rules for the event.*" This rule implies that there are only ever two sides involved in a protest. However, in this case three parties were clearly involved: the UKR team that lodged the protest, the CZE team that had arrived late for quarantine, and the Contest Director.

The IAT therefore finds that the International Jury was justified in re-opening their proceedings once they realised that they had not given an opportunity to the Czech Team to state their case. The IAT does not consider this decision to have been a

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breach either of FAI Sporting Code, General Section, Article 6.4.2 or of FAI Sporting Code, Section 10, Annex 5, Art 2.2.8.

7. **Communications between Contest Director and Czech Team.** The Czech Team Manager gave notice to the Contest Director in good time that three crews would not be able to arrive on site until the morning of the first task, after the official latest arrival in quarantine time of 07.50 am. This was because they were taking part in another competition, in Slovakia, that only finished the previous day. The Contest Director authorised this late arrival, stating that all he could do was to place these crews at the end of the starting list. In their exchange of communications below, neither the Czech Team officials (CZE) nor the Contest Director's representative (his deputy - DCD) made any specific mention of penalties for late arrival in quarantine:

CZE: If we come before the end of quarantine, we can still participate in the first task, correct?

DCD: OK, local time 07.50 is quarantine.

CZE: OK, until when is quarantine? When the last aircraft takes off? When do we have to arrive?

DCD: OK, he (i.e. the Contest Director) still says all he can do is put you at the end of starting list. This would mean planning time about 10.00, take-off 10.40 for you.

CZE: OK that is doable if weather permits. We will arrive before 10.00

It might have been considered reasonable to expect that a team asking for permission to arrive late should have sought specific reassurance from the Contest Director that their late arrival would not incur penalties. However, the penalty of 20% for late arrival in quarantine was only announced at the General Briefing on the evening immediately preceding the first task day, by which time it was too late for the CZE team to adapt their travel plans.

The Czech Team made an assumption that the Director's agreement to their late arrival implied that no penalties would be applied for late arrival in quarantine (an assumption that proved to be accurate). If, in FAI Championships, there had always been a significant penalty for late arrival in quarantine, experienced competitors such as the Czechs might have been expected to know this, and therefore to ask if they could be exempted. However, it seems that such penalties, introduced purely to facilitate smooth contest management, had always been left up to the discretion of the Contest Director.

Since the exchanges between the Contest Direction and the CZE Team took place weeks before the Contest began, it may even be that the Contest Director had not, at that time, made up his mind what penalties (if any) should be promulgated at the General Briefing as Supplementary Rules.

In any event, the Competition Direction seems to have failed to anticipate that authorising crews to arrive late would automatically create a problem if penalties were to be imposed for late arrival in quarantine. Either the crews concerned would be

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dissatisfied at being penalised after they had received permission to arrive late; or other competitors would be dissatisfied because a general rule was not fairly and universally applied

The IAT finds that the exchange of messages between the Czech Team and the Contest organisers lacked clarity. Although they had perfectly good reasons for assuming that they would not be penalised, the Czech Team could have made certain by specifically asking whether they would be penalised for late arrival. And in the absence of any question from the Czechs, the Contest Director could have stated clearly that they would be exempt from penalty (if that was to be his decision).

8. Application of Rules.

Nowhere in the documents governing the conduct of FAI Microlight Championships is there an indication of any hierarchy regarding the need to apply all rules fairly and rigorously. Therefore, supplementary rules that are issued just before the start of the contest have exactly the same status as rules that are in the pre-published Local Regulations or rules that are in the Sporting Code itself, even if these supplementary rules are introduced solely or partially as aids to effective contest management. Rules that the Contest Director himself promulgates (such as the time of arrival in quarantine, and the penalties for late arrival) must therefore apply equally to all competitors, just like rules that are in the Sporting Code.

Therefore, **the IAT finds** that the Contest Director did not have any discretion about applying the rule that he himself had made.

9. General Briefing – 10 August 2018

All competitors were informed at the initial General Briefing that 3 Czech crews would arrive late on the first contest day. The Contest Authorities made no mention of whether these crews would be penalized for their late arrival in quarantine. Nobody at the briefing objected to the late arrivals, and nobody asked whether penalties would be applied.

The IAT finds that at this General Briefing the Contest Authorities should have stated their intention not to penalise the 3 Czech crews for their late arrival in quarantine. Furthermore, the IAT finds that the UKR Team Manager should have used this opportunity to ask whether the CZE crews would be penalised.

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10. Advantage for CZE Crews?

In giving permission to the CZE crews to arrive late, the Contest Director by implication led them to believe that their late arrival in quarantine would not be a disadvantage to them. In the final view of the International Jury, exempting them from the quarantine deadline of 07.50 made no difference to their flight planning and task preparation, and gave them no competitive advantage. However, the UKR appellant pointed out that the Contest Director's decision (supported by the International Jury's second decision) not to apply the prescribed penalty for late arrival in quarantine automatically put the CZE crews in a more favourable scoring position than other competitors who might have arrived late without permission.

As can be seen from the data below, the rankings of some of the CZE crews rose after the International Jury had taken its second decision, to support the Contest Director's ruling:

The rankings for Tasks 1 were changed as follows:

- Crew 421 (JONAS/KRAMERIUSOVA) rose from 6th to 3rd
- Crew 444 (VELAT/KRAL) rose from 8th to 6th
- Crew 420 (CEKAN/RASOVA) rose from 7th to 4th

The rankings for Task 2 were changed as follows:

- Crew 421 (JONAS/KRAMERIUSOVA) rose from 4th= to 1st =
- Crew 444 (VELAT/KRAL) no change (scored zero)
- Crew 420 (CEKAN/RASOVA) rose from 4th= to 1st=

Although these changes had no impact at the end of the contest on the distribution of medals, they did result in the CZE crews finishing the contest with higher overall scores than they would have had if the quarantine rule had been applied.

The IAT finds that the International Jury was not able to predict, after the first day of the competition, what the impact of their decision would be on the final rankings. Therefore, the non-application of the quarantine penalty clearly gave the CZE crews an advantage.

11. Reasons for International Jury's Change of Decision

After the International Jury's first decision (to accept the UKR protest and apply penalties to the CZE crews) had been promulgated, the Jury was approached by the CZE Team Manager who objected that he had not been given an opportunity to state his case. The International Jury therefore re-opened the case (see para 5 above) and considered fresh evidence. This evidence took the form of oral testimony from the CZE Team Manager about the conversations that had taken place with the Contest Management well before the Championships started, and presentation of the emails and social media messages that had been exchanged between them. The Jury was persuaded that the CZE crews did not obtain any competitive advantage from being exempted from penalties. Furthermore, they were persuaded that, in effect, the fact

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that the Contest Director had granted permission to the CZE crews to arrive late authorised him to use his discretion on whether or not to apply the penalties laid down in the rules that he had published just a couple of days previously.

In his statement of 7th February 2019, the Jury President (acting in his capacity as CIMA President) acknowledged that the Contest Director could either have suspended the "late arrival in quarantine" penalty for all competitors on the first day of competition, or could have specifically mentioned at the opening General Briefing that the three late-arriving crews would not be penalized, so allowing other competitors to object if they so wished.

The IAT finds that the International Jury's first decision was the correct one. Contest Directors do not have any discretion over whether or not to apply a rule. All rules must apply fairly to all competitors. The Contest Director certainly made his decision for the best possible reasons. He wanted to help the CZE team participate in the Championship, and it would understandably have seemed to him strange to authorize a late arrival and then penalize it. However, the ramifications and implications of that decision seem not to have been fully explored, either by him or by the International Jury when they changed their initial decision.

12. Justification for Appeal

Although the findings of the IAT in the paragraphs above confirm the substance of the UKR appeal, the purpose of Appeals is to seek remedy for some wrong that has befallen the Appellant. In this case, the UKR team (which won the Gold Medal) suffered no competitive disadvantage as a result of the Jury's decision. The effect of the request in the UKR Appeal for recalculation of scores was not to improve its own results, but rather to reduce the scores of other competitors. The Appeal from the NAC of Ukraine seems to have been motivated more generally by a desire to force change upon the way FAI Microlight Championships are managed. The IAT does not know whether or not other participating countries welcomed or supported the UKR initiative.

The IAT finds that an Appeal under the provisions of Article 6.5. of the FAI Sporting Code, General Section, is not the way to achieve changes to the way FAI Championships are managed. This should be done through the democratic decision-making processes of the FAI Microlight Commission. No single nation has the right to create a substantial workload for unpaid volunteers external to the Microlight community without the democratically established support of at least the majority of the nations represented on the FAI Microlight Commission.

DECISIONS

13. The Tribunal decided unanimously that despite all the mitigating circumstances, and the fact that all parties involved acted in good faith (and in the case of the Contest Director in generosity of spirit), one basic principle must be maintained in all sporting contests: **All rules must be applied fairly and equally to**

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all competitors. To maintain a level playing field, there can be no exceptions or exemptions unless these are unanimously agreed by all competitors.

14. The Tribunal therefore directs that the prescribed 20% penalty be applied to the scores of crews 420, 421 and 444 for Tasks 1 and 2 at the 16th FAI World Microlight Championships in Hungary (8 to 18 August 2018).

15. The Tribunal further directs that the Protest Fee paid by UKR at Nagykanizsa, if it has been retained by CIMA, be reimbursed immediately to the NAC of UKR from the Deposit lodged with FAI for this Appeal.

16. The Tribunal further directs that the balance of this appeal Deposit be held in a FAI Microlight Commission reserve account until the next Plenary Session of the FAI Microlight Commission in November 2019. That Plenary Session of the Commission shall be required to decide democratically on the allocation of the balance of the appeal Deposit between the following options:

- Total amount to be reimbursed to NAC of UKR
- Partial reimbursement to NAC of UKR, with the balance to be allocated by CIMA to the future development of international microlight competitions
- No reimbursement – total amount to be allocated by CIMA to the future development of international microlight competitions

17. The Tribunal's decisions are final unless an appeal is filed within 21 days of the publication date of the Tribunal's decision to the Court of Arbitration for Sport (CAS) in Lausanne, or unless major new factual issues which could have affected the decision are revealed after the decision, in which case CASI shall decide on further action.

Signed:

Max BISHOP Tribunal Chairman

Arthur GREENFIELD Member

Tormod VEIBY Member

Lausanne, 18 July 2019

15.35 CET.

Appendix: Statement of Facts