

National Court of Appeal

RACB SPORT

Public hearing of 26 October 2016

Judgement

Mr Marijn van Kalmthout, as parent of Mr Rinus van Kalmthout

- Appellant –

with Mr Breus van der Horst as his legal counsel

Against:

RACB Sport

Department of the Royal Automobile Club of Belgium, seated in
1040 Brussels, Aarlenstraat 53

represented by its prosecutor, Mr Gérard Martin

I. Judicial procedure of the National Court of Appeal

Having seen the final standings published dated 8 September 2016 of the 2016 BNL Karting Series championship, Senior Max class, on the RACB Sport website.

Having seen the appeal dated 9 September 2016 lodged at the National Court of Appeal in compliance with article 19e, National Sporting Code, Judicial Procedure (hereinafter referred to as NSJP).

Having seen the payment of the right of recourse of € 1000 in compliance with article 19i, NSJP, on 9 September 2016.

Having seen the timely and admissible nature of the appeal.

Having seen the summon to appear of 13 October 2016 to appear before the sitting of the National Court of Appeal in Brussels on 26 October 2016 in which the Appellant was called for the 'Appeal against the decision of the Stewards of the BNL Karting Series, Round 2, Ostricourt (02-03/07/2016)'.

Having seen the filed documents.

Having heard the arguments of the prosecutor.

Having heard Mr Ben Vanderstukken and Mr Kris Lambrecht, chairman of the panel of the Stewards.

Having heard the plea for the Appellant through his legal counsel.

II. Decision by the National Court of Appeal

a) concerning the facts and retroacts:

Since Appellant was competing in the 2016 BNL Karting Series at Ostricourt on 1 to 3 July 2016.

Since Appellant was disqualified from the entire race meeting ('Exclusion of the entire Competition') by Stewards' decision no. 39 of 3 July 2016, 15.59, taken with the session 'Heat A-C, Day 2 Senior Max' as its cause.

Since this decision was notified at 16.15 hours.

Since an 'intention to lodge an appeal' against this decision no.39 was completed and signed on 3 July 2016 at 16.45 hours and was signed for receipt by the chairman and by a member of the panel of the Stewards at 16.50 hours.

Since said document shows that an appeal fee of € 1000 was paid.

Since according to the statement of the Appellant a 'gentleman's agreement' was reached in which the intention to lodge an appeal was withdrawn.

Since this gentleman's agreement was thus:

- Marijn van Kalmthout will withdraw his appeal;
- Accepting that Rinus had to start the final from last position on the grid (instead of seventh place);
- Rinus will be allowed to keep his result in Saturday's final and will be able to use his result in Sunday's final as a scratch result if necessary.

Since this is confirmed by Mr Ben Vanderstukken in the session of 26 October 2016.

Since this is formally denied by Mr Kris Lambrecht in the session of 26 October 2016.

Since appellant is classified 17th in the results Senior Max Finale Day 2 signed off by the stewards as 'Final at 18.29'.

Since there is no reservation announced in the classification related to kart no.202 raced by appellant.

Since in the 'BNL International Karting Series 2016 Class Seniors' final standings appellant is mentioned as 'EXC' in the Ostricourt Round 2 Sunday column.

Since appellant lodged an appeal for reasons explained in his protest of 9 September 2016 and the additional motivation brought forward by Mr Van der Horst in his plea and further clarified in the session of 26 October 2016.

b) the Court of Appeal decides as follows:

1. Considering that the appeal was brought before the Court in accordance with article 19c, NSJP, especially with regards to the final standings of a championship.

Considering that the summon to appear mistakenly mentions 'Appeal against Stewards' Decision'.

Considering that the appeal was lodged in time and is thus admissible.

2. Considering that the filed documents clearly prove that a legally valid appeal was lodged against Stewards' decision no.39.

Considering that the contradictory statements at the hearing on what happened afterwards.

Considering that the hearing of several of the parties involved has not led to clarification.

Considering that the lodged appeal was in any case not forwarded to the judicial institutions for further consideration.

Considering that this fact is in itself an indication of a possible agreement between Appellant and the Stewards of the meeting.

Considering that questions can be raised about the validity of such an agreement and decisions, which in any case are not in accordance with article 20, NSJP.

Considering that the results of the Day 2 final was declared final at 18.29 hours and was signed off by the Stewards, with no reservation whatsoever with regards to kart no.202.

Considering that Rinus van Kalmthout is classified 17th in this.

Considering that this once more indicates that an agreement was reached.

Considering that the National Court of Appeal will base its judgement on the Day 2 results as signed off as final by the Stewards at 18.29 hours.

Considering that these final results must be taken into account when compiling the final standings of the BNL championship.

3. Considering that the appeal is thus admissible and well founded.

4. Considering that applying article 22a of the National Sporting Code the paid appeal fee needs to be returned to appellant.

5. Considering that, in light of the validity of the appeal on the grounds mentioned above, all other arguments put forward to the Court have no relevance in this case.

ON THESE GROUNDS, THE NATIONAL COURT OF APPEAL

On the principle of contradiction by the Appellant;

Declares the appeal admissible and well founded;

Rules that the result signed off by the Stewards as final on 3 July 2016 at 18.29 hours, in which Mr Rinus van Kalmthout is classified 17th, must be included in the final standings;

Orders the adjustment of the final standings of the 2016 BNL International Karting Series in accordance with the Sporting Regulations that apply;

Also rules that the appeal fee must be returned fully to Appellant;

Thus is the verdict of the National Court of Appeal of RACB Sport in Brussels, consisting of chairman Mr Benoît Declerck and judges Mr Jean-Pierre Migeal and Mr Andy Lasure, handed down in public trial on 26 October 2016.

Signed,

Mr B. Declerck

Mr JP Migeal

Mr A Lasure

RACB Sport