

UIM Appeal Board

Decision

Concerning the Appeal of
H.E. Sheikh Hassan Bin Jabor Al Thani

- Appellant No 1 -

Mr. Bard Eker

- Appellant No 2 -

against

the OOD's decision from 17. February 2006 to disqualify boat no. 96 from round 6 and 7 of the 2005 C1 World Powerboat Championship which was held in Dubai

On the basis of the documents, the UIM Appeal Boards session on 23th march at Düsseldorf, which was attended by the body:

Kimon Papchrisoptoulos, Chairman

Cees van der Velden, Member

Ugur Isik, Member

the Appellants

H.E. Sheikh Hassan Bin Jabor Al Thani

Mr. Bard Eker

testimonies

Ralf Fröhling

Tony Hall

in attendance

Gianfranco Venturelli

Donald Manasse

Sami Abu Shaikha

the UIM Appeal Board decided:

The appeal is upheld.

The costs of the meeting are beard by the Appellants and Mr. Mohamed al Marri jointly with 1/3 per party.

The appeal fees will be reimbursed to the Appellants.

Grounds

In the past years the engine rules for Class 1 racing suited, apart from diesel engines that are no longer used, only for specific V 12 engines. The need for a change of the rules in order to allow other engines racing was a general opinion for various reasons.

One type of suitable engines to C1 boats is the Mercury V8 SCi super-charged engine. The main problem of implementing this new engine was due to major differences in the conception of the engines to find rules providing parity in between boats racing the different types of engines. Nobody could predict to which power and eventual other specifications of the Mercury engine parity to the existing V12 engines would be provided.

The WPCC Engine Parity Working Group decided to recommend to the WPCC to find Parity in two steps. First step should be a dynamometer evaluation of V12 and V8 engines and a second step should be single boat performance trials with same boat, race course and drivers but with different (V12 and V8) engines.

It then was decided in December 2004 by the WPCC to first allow the Mercury engine race as it is and to gain through this first information on the way to parity. For this purpose at the beginning of the 2005 season dispensation from the engine rule was granted to Team Jotun allowing it to run the Mercury engine. A dispensation for team Qatar 95 which from that time ran Mercury as well was issued later.

On 18th September 2005 an extraordinary Meeting of the WPCC concerning was held in Frankfurt. So far parity could only be judged by the past performance of the racing boats in the 2005 season. Neither dynamometer nor single boat trials had been conducted. The minute's of the meeting read as follows:

.....

The dispensation of the Mercury 1075 SCi engines in the 200 UIM Class 1 WPC is confirmed under the following conditions:

The power of the Mercury shall be limited up to 930 hp. Mercury Racing has offered to adjust the power in a manner that cannot be violated by controlling the engine management system. The UIM Powertrain / Technical Commissioner will specify the components to be subject to inspection.

All Teams participating in the 2005 Class 1 WPC have to agree to this decision.

All dispensations have to be submitted to the Class I Committee and to Cominoff at the October Doha meetings.

Prior to and in the meeting it was confirmed by Mercury that they would be able to adjust the ECU in a way that cannot be violated to any power output and that they were willing to do so for C1 teams in communication with the U.I.M.

After this meeting and prior to the next race in Doha Mercury had not adjusted the ECU's to 930 hp which is less than the standard output of these engines. In the pits and prior to the first race they made a first adjustment to the ECU's of Jotun and Qatar 95 (the later Qatar 96) for the purpose of lowering the power output of the engines. The power was reduced to 930 hp said Mercury but due to black smoke produced by the engines it was obvious, that the mapping had to be optimised. After the race the U.I.M. Technical Commissioner did not find the teams driving Mercury engines, i.e. team Qatar 96 and team Jotun in disparity to the other teams and stated this to Mercury.

Mercury then adjusted new ECU's which they handed over to the U.I.M. Technical Commissioner for issuing the ECU's to the teams. Mercury again stated that the ECU boxes were set to 930 hp and the U.I.M. Technical Commissioner handed the boxes over to Team Jotun and Team Qatar 96 who raced these ECU's in the 6th round of the 2005 C1 WC in December at Dubai.

After the 6th round the engines of the first three finishers Spirit of Norway, Qatar 96 and Victory 77, were sealed and one ECU of each boat was removed and retained in U.I.M. secure storage.

It was then agreed in between the three teams and the U.I.M. Technical Commissioner to conduct a dynamometer testing of the engines at the Victory testing facilities in Dubai instead of mandating an independent testing institution in the UK due to logistic and cost reasons. There was a mutual agreement in between the U.I.M. Technical Commissioner and the Teams, that the purpose of the testing would be to gain information on the way to find parity in between the V12 and the V8 engine and that it was not intended to judge the legality of the tested engines.

No sample of the ECU's which the Teams raced in the 7th round of the 2005 WPC was deemed necessary to secure by the U.I.M. Technical Commissioner.

After round 6 Mr. Jean Marc Sanchez, Team Victory 77 protested against boat no. 90 and boat no 96 who raced the Mercury V8 engine. In the protest documents he refers to the C1 WPCC meeting minutes from 18th September 2006 stating that the power output of the Mercury V8 engine shall be limited to 930 hp. His protest was not upheld. He did not appeal against this Jury decision taken on the 1st December 2006.

The testing then was conducted on 7th – 9th January 2006 in Dubai. The facilities and the Fuel used for the testing were supplied by the hosting Victory Team. The testing took place in air conditioned rooms. Air and coolant temperature, air humidity and pressure were not taken to the minutes. The results of the testing of the engines were as follows:

Spirit of Norway	911 hp
Qatar 96	1014 hp
Victory 77	933 hp

The U.I.M. Technical Commissioner wrote his report and issued it on 31st January 2006 to the C1C Members. His conclusions and comments concern mainly the further actions necessary to reach parity and to reduce power in 2006.

On 17th of February 2006 the OOD of the 6th and the 7th round of the 2005 C1 WPC which was held in Dubai decided to disqualify boat Qatar 96 from the results of round 6 and round 7 on the basis of the report of the U.I.M. Technical Commissioner issued on 31st of January. He further issued a new over all world championship position sheet considering the disqualification of boat Qatar 96 and showing boat Victory 77 as World Champion instead of boat Spirit of Norway who became 2nd due to the disqualification of Qatar 96.

This decision and the new over all world championship position sheet was communicated to Team Qatar 96 and to Team Spirit of Norway on 9th of March 2006.

Both Teams i.e. H.E. Sheikh Hassan Bin Jabor Al Thani (Driver of Qatar 96) and Mr. Bard Eker (Driver of Spirit of Norway) appealed against this decision. All appeal documents and fees were received by the U.I.M. in due time.

The Appellants state for various reasons that the OOD did not follow the correct procedure as determined by the rules when he decided to disqualify boat no 96. They say that neither the 850 hp limit of Rule 860.47 nor the 930 hp limit determined by the WPCC on 18th September 2005 are strict limits with the meaning of an excess leading to disqualification. Furthermore the testing results would not be reliable due to the fact that they were not gained through an independent and suitable testing institution but by using the testing facilities of a competitor and due to various unknown conditions of the testing procedure. The engine of Victory 77 exceeded the relevant 850 hp limit by 10% without dynamic ram effect, the Engine of Spirit of Norway exceeded this limit by 7% without dynamic ram effect and the engine of Qatar 96 exceeded the limit of 930 % by 9 % but without increasing power through dynamic ram effect as this engine is aspirated with engine room air and not with ram air as the V12 are aspirated. It would be unfair to disqualify only Qatar 96 and not the other two boats under these circumstances say the Appellants.

For the reason of fairness and transparency the Victory Team, whose boat no. 77 became World Champion through the disqualification of Qatar 99 was heard in the meeting and their written statements were considered. Victory say that the 850 hp figure of rule 860.47 is not a strict power limit but only a guideline for the U.I.M, Technical Commissioner to determine the size of the air restrictor. An excess of the power of the engine would not lead to illegality of the engine as long the size of the air restrictor is correct. The excess of Power might only give reason to reduce the size of the air restrictor for the future. On the other hand, the 930 hp limit as decided by the WPCC in September 2005 would be a strict limit and any excess would automatically have to result in disqualification. The relevant Team could not excuse itself by the fact, that they have no influence on the power of the engine with ECU's calibrated by Mercury. They claim that the power testing was conducted by U.I.M. personnel and with their professional and precise equipment. They say that Mercury had stated that they could adjust the ECU to any power output no matter what the environmental conditions would be. On the basis of the testing results, the OOD was entitled to disqualify Qatar 96 from round 6 and 7 of the World Championship and he followed the correct procedure, said Victory Team.

The Appeal was to be upheld.

The OOD was not entitled to disqualify Qatar 96 on the basis of the testing results from 7th – 9th January 2006.

The deadlines for disqualification had obviously expired.

According to rule 406.02 penalties can only be imposed until the moment, the first results are posted. From this moment, the results shall stand and only be subject to protest subsequent appeals. The rules only allow close exemptions from this spirit of the rule. One is laid down in rule 406.02. In cases of post race technical scrutineering a penalty can be imposed by the OOD even after the posting of the first results. But such a penalty can not be imposed without prior notification and not at any time without any time limit after such inspection.

Rule 324.01 determines that boats have to be available for technical inspection one hour after the end of the race. For cases when the inspection cannot be conducted within this period of one hour rule 324.02 allows the Technical Officers to stipulate the time limit and the place, where the engines must be available for a late inspection.

Rule 406.02 again determines that after such late technical inspection the penalty has to be imposed as soon as possible after the receipt of the inspection results.

The spirit of the rule which is laid down in these rules is to create as early as possible clear results that stand and to avoid sudden and unexpected changes. If a change of the results is possible due to protest and subsequent appeal procedure or due to post race technical scrutineering it shall be clear for the teams and the public and the time period to take the final decision must be limited. According to this spirit of the rule it is common practice in cases of first results being posted before the finish of the post race technical scrutineering to publish the results with the clear remark that they are provisional and subject to post race scrutineering.

This has not happened in the case of Qatar 96. The results of the 6th and 7th round had been published without the remark “provisional, subject to technical inspection” or similar, which would have been necessary according to the spirit of the rule and rule 324.02.

Furthermore the Technical Commissioner did not even announce to the teams whose engines were to be tested that the test was intended to verify their legality. According to the Appellants statements which were confirmed by the U.I.M. Technical Commissioner there was agreement in between the teams and the U.I.M. Technical Commissioner that the testing would have only the aim to achieve information for next years decisions regarding parity.

Though the U.I.M. Technical Commissioner and the Teams agreed to test the engines at Victory Teams facilities, the U.I.M. Technical Commissioner did not stipulate a time limit as determined by rule 324.02..

Therefore the U.I.M. Technical Officer and the OOD did not abide by rule 304.02 what already makes the disqualification of Qatar 96 for the reason of post race scrutineering impossible.

The disqualification of Qatar 96 would as well have infringed the time limit of rule 406.02. According to this rule a penalty has to be imposed as

soon as possible after the receipt of the inspection results. The inspection took place from 7th – 9th January 2006 and the results were available to the U.I.M. Officials on 9th of January at the latest. It is obvious that a decision to disqualify taken more than one month later on 17th of February 2006 can under no circumstance be considered as being taken “as soon as possible” as required by rule 402.02..

To produce clear and safe results is an important issue of the sporting culture. To protect their interests, the teams may protest and if necessary appeal. If – as happened in this case – a team affected by the question of the legality of an engine does not protest or appeal if the protest is not upheld and thereby abstain from exercising their rights the interest of the penalized team in a procedure following the rules and the general interest of the sports in clear and non altering results must prevail.

The Appeal Board wants to clarify the following.

First of all the testing was conducted only with the ECU boxes which were raced in the 6th round. The ECU Boxes of the 7th round were not secured by the U.I.M. Technical Commissioner. Therefore the testing results can only be used to verify the legality of the engines raced in the 6th round but not to verify the legality of the engines that have been raced in the 7th round by Qatar 96.

The Appeal Board furthermore seriously doubts that the decision of the WPCC taken at 18th September 2005 was suitable to determine a strict limit of the power output of the Mercury engine as necessary details were not subject of the decision.

The main issue of the meeting was not the power of the Mercury engine and to limit its power but the main concern was legality of the use of this engine in the 2005 season in general. This figure of 930 hp was decided by the WPCC rather on the basis of estimating and (little) experience than on the basis of precise data which was not yet obtained as a dynamometer run had not been conducted at that time. The process of gaining and evaluating experience and data to determine parity rules more precisely was still at the beginning.

The wording of the minutes does not define the power output, more precisely as a “circa figure”. Different testing procedures and conditions may lead to different results of a power testing. If a strict limit shall be determined these procedures and conditions have to be determined as well. Such conditions are for example temperature, humidity and air pressure and of course the type of fuel. The type of testing device and method should be clearly ruled. It must be clear if the power shall be measured at the crankshaft, at the gear box or at the propeller shaft. All these issues have not been subject of the decision and prior discussion of the WPCC meeting. The wording of the minutes was no point of discussion as it is when rules are drafted. Furthermore it was clear that parity was not finally achieved with 930 hp but that further adjustments of the power to be done by the WPCC would be necessary to achieve parity. Taking finally into consideration the fact that the 850 hp figure of rule 860.47 is a “circa” figure as well it comes closer to the spirit of the rule to understand the 930 hp figure as guideline as well, and not as a strict hp limit.

As it was agreed to test the engine for the purpose of parity in the future the Appellants agreed to conduct the testing at Victory Teams facilities. Therefore they rightly object to use these results for the verification of the legality of their engine. Victory Teams argument that, sealing of the engines would not have been necessary, if not the verification of the legality of the engines was the purpose of the testing, could not be verified. The sealing was necessary as well if only parity reasons were the motivation for the testing because of Qatar 96's possible interest to show as little power as possible to avoid restricting actions for the future. The Appellant no. 1 would have objected to the testing at Victory's facility if he was advised that the testing would be used to verify the legality of the engine. Furthermore the Appeal Board had no reason to doubt in the Technical Commissioners testimony that there was agreement in between him and the teams that the testing was only conducted to gain information for parity and not to verify the legality of the engines.

Mr. Mohammed al Marri appealed against communications of the President of the U.I.M. This Appeal was with the agreement of all parties decides on the same occasion. Therefore it was fair to load the costs jointly and at the same amount to the three appellants (rule 405.10). As the appeal was upheld the appeal fees are to e reimbursed to the Appellants.

Signatures of the Appeal Board Members