

**IN THE COURT OF ARBITRATION FOR SPORT
APPEALS DIVISION**

No. /2021

BETWEEN

Air Sport Australia Confederation Applicant / Appellant

AND

Fédération Aéronautique Internationale Respondent

AND

The Royal Aero Club of United Kingdom Affected Party

AND

The Deutscher Aero Club e.V. Affected Party

ANNEXURE 'B'

(Application and Statement of Appeal, R48 Code of Sports-related Arbitration 2020)

Applicant / Appellant's Statement of Appeal

In accordance with the requirements of Rule 48 of the Code of Sports-related Arbitration 2020 ('CAS Code'), the Applicant/Appellant's (ASAC) Statement of Appeal is as follows:

NAME AND ADDRESS OF THE RESPONDENTS

1. The Respondent to this Application/Appeal is the Fédération Aéronautique Internationale ('FAI'). The FAI's formal details (including its address) are set out in paragraph 3 of the accompanying Application and Statement of Appeal.
2. The Royal Aero Club of United Kingdom (**GBR**) has been named in the accompanying Application and Statement of Appeal as an 'Affected party'.
3. The Deutscher Aero Club e.V. (**GER**) has been named in the accompanying Application and Statement of Appeal as an 'Affected party'.

APPEAL

4. The Appellant appeals the decision of the FAI International Appeals Tribunal Report and Decision AUS, GBR & GER Appeals 10th FAI Women World Gliding Championships dated 1 December 2021 and delivered 2 December 2021 (**the FAI Decision**), which is referred to in paragraph 5 and 14 of the accompanying Application and Statement of Appeal.

RELIEF SOUGHT BY THE APPLICANT / APPELLANT

5. The Appellant seeks the relief set out in paragraph 16 of the accompanying Application and Statement of Appeal, in respect of the FAI Decision.

NOMINATION OF ARBITRATOR

6. The Appellant nominates **Professor Richard McLaren QC** as Arbitrator, as set out in the accompanying Application and Statement of Appeal.

STAY OF DECISION APPEALED AGAINST

7. The Appellant does not seek a stay of FAI Decision as indicated in paragraph 18 of the accompanying Application and Statement of Appeal.

COPY OF RELEVANT STATUTES AND REGULATIONS

8. The relevant statutes/regulations governing this application/appeal are:
 - (a) FAI Sporting Code General Section 2020 Edition effective 1st January 2020 (approved by the CASI on 6th December 2019)
 - (b) FAI Sporting Code Section 3 - Gliding 2019 Edition valid from 1st October 2019 (revised 24 November)
 - (c) FAI Sporting Code Section 3 – Gliding - Annex A (Rules for World and Continental Gliding Championships) Edition 2019 valid from 7 October 2019
 - (d) Local Procedures WWGC 2019 V9.1
 - (e) The CAS Code 2020 (not attached to this Application and Statement of Appeal)

JURISDICTION

9. The CAS has jurisdiction to receive and hear the appeal pursuant to FAI Sporting Code General Section 6.6.2.2, as addressed in paragraph 5 of the accompanying Application and Statement of Appeal.

DETAILS OF CLAIM

10. The appeal of the FAI Decision is to proceed before the CAS as a hearing *de novo* by reason of Rule 57 of the CAS Code.
11. The FAI Decision should be set aside and replaced, because the FAI International Tribunal erred in that the FAI International Tribunal:
 - (a) Misdirected themselves as to the applicable rules and regulations governing participation in the 10th FAI Women World Gliding Championships (**the Event**) [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1 section 4.2.2.c] in finding that the Applicant was not permitted to access or rely on data emanating from a public source (in particular the GNSS data) [**FAI Decision p.7**]:

- (i) During the Event real time GNSS data was publicly available to all competitors in the event through the *G-Track Live* webpage (in that the real time data was at no time secured behind a password protected barrier during the currency of the event);
 - (ii) The Gliding Federation of Australia *G-Track Live* system developer was administering the *G-Track Live* website and access to the GNSS data at the Event and failed to reapply the username and password requirement to access the administrator monitoring site for this Event;
 - (iii) The Applicant had access to and did rely upon this publicly available GNSS data along with other publicly available data from OGN, FLARM and meteorological sources;
 - (iv) While multiple sources were identified as having accessed the GNSS data, it is not known which other competitors had such access;
 - (v) The Applicant was not accused of, and nor did it, interfere with the GNSS equipment, GNSS data signal or GNSS internal program;
 - (vi) The Applicant did not unlawfully access the GNSS data through the *G-Track Live* webpage which was being publicly transmitted in real time during the Event.
- (b) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicants engaged in unsporting behavior in contravention of FAI Sporting Code – Section 3: Gliding - Annex A section 8.6.5 [**FAI Decision p. 8**];
- (i) The Applicant was not accused of, nor did it engage in, aggressive and abusive behavior to the Event organizers and/or the FAI or International Gliding Council officials;
 - (ii) The FAI Sporting Code – Section 3: Gliding - Annex A section 8.6.5 exclusively addresses aggressive or abusive behavior and does not address any other form of behavior or conduct.
- (c) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicants deliberately infringed the principle of fair-play in sport and engaged in unsporting behavior in contravention of FAI Sporting Code – Section 3: Gliding - Annex A section 8.6.5 [**FAI Decision p.8**];
- (i) the principle of fair-play (as referred to in the rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local

- procedures – WWGC 2019 v9.1]) in the context of the Event are vague, arbitrary and vulnerable to the caveat of moral relativism;
- (ii) The Australian Team was not accused of and nor did it attempt to deceive or mislead officials as to the use of the publicly available data. The Australian Coaches and Captains conveyed information to the Australian Pilots via the VHF radio frequency allocated to the Australian Team as described by the Local procedures – WWGC 2019 v9.1 sections 5.3.1, such VHF frequency was accessible by, and used by, other competitors as well as the Event organizers;
 - (iii) The Applicant was not accused of and nor did it interfere with the GNSS equipment, GNSS data signal or GNSS internal program;
 - (iv) The Applicant was not accused of, nor did it engage in, willfully interfering with other competitors;
 - (v) The Applicant was not accused of, nor did it engage in, the falsification of documentation;
 - (vi) The Applicant was not accused of, nor did it use forbidden equipment.
- (d) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicants engaged in behavior that was unethical **[FAI Decision p.8 & 9]**;
- (i) There was no evidence before the FAI International Tribunal as to what constitutes ethical conduct;
 - (ii) There was no specific standard as to applicable ethical conduct in the context of the Event expressly articulated in the rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1];
 - (iii) No specific ethical standard to which competitors in the Event were obliged to adhere to, was expressly declared by the Event organizers prior to, or during, the currency of the Event;
 - (iv) Otherwise, the FAI Code of Ethics to which the competitors were subject to during their participation in the Event, was in the circumstances unhelpfully general and insufficiently specific and as such, in its application to the Event (in the circumstances surrounding the allegations made against the Applicant) was vague, arbitrary and vulnerable to the caveat of moral relativism;
 - (v) The Applicant used a combination of public OGN data, publicly available GNSS data, publicly available meteorological data and independently entered data in a

- proprietary software program designed and built by one of the Australian Team Coaches to provide tactical advice, via a public VHF radio frequency specified in the Local procedures – WWGC 2019 v9.1 sections 5.3.1, to the Australian Pilots;
- (vi) The provision of tactical advice by Coaches to Pilots is not prohibited under the rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] applicable to the Event;
 - (vii) The use of proprietary software for the analysis of publicly available source data is not prohibited under the rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] applicable to the Event;
 - (viii) The Applicant did not engage in any unethical conduct.
- (e) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicants competed in irregular conditions which contravened the spirit of a fair competition [**FAI Decision p.8 & 11**];
- (i) the Applicant repeats and relies on the particulars advanced under paragraph 11(c) and 11(d) above;
 - (ii) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] do not prevent the Applicant from relying upon publicly available data;
 - (iii) The Applicant’s use of the publicly available GNSS data did not cause or create irregular conditions which contravened the spirit of a fair competition.
- (f) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicant gained a competitive advantage over other competitors through the use of the GNSS data [**FAI Decision p.8**];
- (i) the Applicant repeats and relies on the particulars advanced under paragraph 11(a) and 11(e) above;
 - (ii) The Applicant used a combination of public OGN data, publicly available GNSS data, publicly available meteorological data and independently entered data in a proprietary software program designed and built by one of the Australian Team Coaches;

- (iii) The publicly available GNSS data is only one source of data used in the proprietary software and is harmonized with other publicly available data;
 - (iv) The use of this proprietary software is not prohibited under the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] of the Event;
 - (v) The Australian Team did not gain an unfair advantage from the use of the publicly available GNSS data.
- (g) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] in finding that the Applicant acted in bad faith by accessing the publicly available GNSS data [**FAI Decision p.8**];
- (i) the Applicant repeats and relies on the particulars advanced under paragraph 11(e) above.
- (h) Misdirected themselves that the Applicants intentionally breached the rules and/or regulations in place for the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] and failed to properly consider whether the Australian Team was acting within the rules;
- (i) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] do not prevent the Applicant from relying upon:
 - (A) the GNSS data at such times when it is available and publicly accessible by all competitors;
 - (B) the OGN data at such times when it is available and publicly accessible by all competitors;
 - (C) the FLARM data at such times when it is available and publicly accessible by all competitors;
 - (D) publicly available meteorological data;
 - (E) proprietary software to consolidate and interpret the data obtained from public sources;
 - (ii) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] were not varied or altered at the Event.
- (i) Misdirected themselves as to the applicable rules and regulations [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures –

WWGC 2019 v9.1] in finding that there was a rule which prevented competitors using real time GNSS data when it was publicly available;

- (i) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] do not prevent the Applicant from relying upon:
 - (A) the GNSS data at such times when it is available and publicly accessible by all competitors;
 - (B) the OGN data at such times when it is available and publicly accessible by all competitors.
 - (ii) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] do not permit oral clarifications at official briefings as a means of varying or interpreting the Local Procedure, specifically [FAI Sporting Code Section 3 – Gliding - Annex A sections 1.4.5.1 and 5.2(c)].
 - (iii) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] were not varied or altered at the Event.
- (j) Erred in relation to the method and mode of clarification or variation to the Local Procedures during the competition [**FAI Decision p.7**];
- (i) The FAI International Tribunal relied on purported oral clarification by the Competition Director at two Team Captains meetings at the Event as justification for interpretation of the Local procedures – WWGC 2019 v9.1 section 4.1.1.c regarding GNSS data.
 - (ii) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] do not permit oral clarifications at official briefings or Team Captains meetings as a means of varying the Local Procedure, specifically [FAI Sporting Code Section 3 – Gliding - Annex A sections 1.4.5.1 and 5.2(c)].
 - (iii) The Competition Director did not publish a variation of the Local procedures – WWGC 2019 v9.1.
 - (iv) The applicable rules and regulations governing participation at the Event [FAI Sporting Code General, FAI Sporting Code – Section 3: Gliding - Annex A and Local procedures – WWGC 2019 v9.1] were not varied or altered at the Event.

- (k) Misdirected themselves that the perceived advantage gained by the Australian Team was comparable to doping [**FAI Decision p.8**].
12. In accordance with Rule 49 of the CAS Code, the Applicant is required to file with the CAS any appeal against the FAI Decision, on or before **23 December 2021**, being 21 days after ASAC received the FAI Decision on 2 December 2021 (See: Annexures A1 to Annexure 'A' of the accompanying Application and Statement of Appeal).
13. Accordingly, ASAC's Appeal Brief (CAS Code, R51), is required to be submitted to the CAS on or before **2 January 2021**, being 'ten days following expiry of the time limit for appeal'.

P. J. HAYES

K. J. McINTYRE

Counsel for the Applicant / Appellant

Dated: 22 December 2021

Mullins Lawyers

Solicitors for the Applicant / Appellant