

**DECISION OF THE INTERNATIONAL DISCIPLINARY COURT
(CDI)**

05 October 2022

Fédération Internationale de Motocyclisme (FIM)

Rider: *Mario ROMAN SERRANO*
FMN: *RFME*
Event: *FIM Hard Enduro World Championship*
Date: *25-30 July 2022*
IMN: *412/05*
Venue: *Sibiu / Romania*
Case concerns: *Appeal lodged by Mr. Mario Roman Serrano #3 against the decision of the International Jury dated 30 July 2022 rejecting his protest lodged against the decision pronounced by the Clerk of the Course (CoC) on 27 July 2022 in which rider Lettenbichler #1 was sanctioned for violation of Article 060.5.7 of the FIM Hard Enduro World Championship Regulations (the Regulations).*

COMPOSITION OF THE CDI

Mr. Robert Hofstetter, LJI Director

JURISDICTION

Pursuant to Article 3.2.5 of the FIM Disciplinary and Arbitration Code (CDA), the Director of the List of the International Judges (LJI), after having established that the procedures have been followed and/or that the case can be heard, will, in consultation with the FIM Chief Executive Officer, appoint members to form the appropriate disciplinary or arbitration body.

Pursuant to Article 4.7 para. 4 of the CDA, if the International Disciplinary Court (CDI) appeal was not lodged and/or the security deposit for appeal not paid in within the deadlines specified in Article 4.6, the LJI Director is entitled to declare inadmissible the appeal without hearing.

Pursuant to Article 060.4.4 § 2 of the section Protests and Appeals of the Regulations, all protests must be lodged to the FIM International Jury. According to § 5 of the aforementioned article, protests against results must be presented within 30 minutes following the announcement of the results.

Pursuant to Article 060.4.4. § 9 of the section Protests and Appeals of the Regulations, an appeal against the decision of the FIM International Jury (IJ) may be lodged to the CDI.

This appeal must be presented 5 days at the latest after the notification of the FIM International Jury's decision (Security deposit for appeal: EUR 1'320.-).

PROCEDURE

The LJI Director, acting in accordance with the provisions of the Regulations and of the CDA, took into consideration all documents and statements presented in the case file.

As stated under Article 060.4.4. § 2 and 6 of the section Protests and Appeals of the Regulations, protests must be lodged to the FIM International Jury, in accordance with the CDA and the Supplementary Regulations of the event and be accompanied by a fee of EUR 660 returnable if the protest is justified. According to § 5 of the aforementioned Article, protests against results must be presented within 30 minutes following the announcement of the results.

MAIN INFRINGED PROVISION

Article 060.5.7 para. 12, 13 and 14 of the FIM Hard Enduro World Championship Regulations states:

“Any outside assistance on the course to the riders is forbidden unless it is provided by a marshal carrying out his duty in the interests of safety or to prevent blockages. Outside assistance also means obtaining tools, spare parts, water and food and drink on the track, during the race. The rider may be liable to penalty up to and including disqualification for any infringement of this rule.

It is not permitted for team members, spectators, or other persons (except official marshals) to stand or walk in the track to give instructions, food, or drink to the riders or to give other assistance. For behaviour contrary to this rule, the rider will be penalised as follows:

From 30 seconds time penalty to disqualification, at the Clerk of Course discretion.”

FACTS OF THE CASE

1. Mr. Mario Roman Serrano is a Spanish Hard Enduro rider (hereinafter referred to as the “Rider”).
2. He is holder of a 2022 FIM rider Licence N° 401000053 and participates in the FIM Hard Enduro World Championship.
3. As holder of a 2022 FIM licence, the Rider has confirmed that he was cognisant with and had accepted the FIM Statutes in force and the relevant FIM Regulations and Codes, including but not limited to the FIM Sporting Code, the CDA, the Regulations and has undertaken to comply, without reservation, with all provisions and consequences thereof.

PROCEDURE OF THE CASE

4. At the FIM Hard Enduro World Championship in Sibiu (Romania), the Rider lodged a protest on 30 July 2022 stating that *“My letter is to protest against the result of Manuel Lettenbichler in the Red Bull Romaniacs 2022.”*

5. According to this letter, the Rider alleged that another competitor, i.e. rider Lettenbichler received assistance from a non-competing KTM rider (“out of the race”) with a complete clutch set spare part in the middle of the forest on day 1, i.e. on 27 July 2022.
6. According to the IJ’s decision of 30 July 2022, rider Lettenbichler was sanctioned by the Clerk of the Course (CoC) on Wednesday 27 July 2022 for having received a spare part from this non-competing KTM rider (“out of the race”) with a 2-hour penalty in conformity with Article 060.5.7 that states “[...] *the rider will be penalised as follows: From 30 seconds time penalty to disqualification, at the Clerk of Course discretion.*”
7. After the notification of the CoC decision in the case Lettenbichler, on 30 July 2022 at 17h10, the Rider lodged a protest by e-mail against the result of rider Lettenbichler alleging that the penalty of 2 hours imposed to rider Lettenbichler by the CoC was by far too lenient and that he should have been disqualified from the event (0 points), similarly to the sanction imposed on rider Graham Jarvis in the 2022 Erzbergrodeo race on 19 June 2022.
8. The Rider also paid the protest fee of LEI 3250, corresponding to EUR 660, as stated in Article 060.4.4 of the Regulations.
9. According to the decision dated 30 July 2022, the IJ convened a hearing and the Rider was heard.
10. Thereafter, the IJ decided to reject the protest lodged by the Rider, as:
 - i) the results following Lettenbichler’s case were published on Wednesday 27 July 2022 and became official 30 minutes after approval by the IJ;
 - ii) no protest to the IJ was made on Wednesday 27 July 2022 against the decision of the CoC;
 - iii) the IJ was of the opinion that a protest against a decision taken on Wednesday 27 July 2022 could no longer be lodged on 30 July 2022.
11. The IJ decision to dismiss the protest as inadmissible was notified to the Rider on the same day, i.e., 30 July 2022 at 21h00 and the Rider signed the decision.
12. On 29 August 2022, the FIM Legal Department received by registered letter sent on 25 August 2022 an appeal brief dated 4 August 2022 called “*Appeal Result RedBull Romaniacs – FIM HardEnduro Championship*” against the IJ decision dated 30 July 2022.
13. The security deposit for appeal of EUR 1’320 was made by the Rider on 08 August 2022.

ASSESSMENT BY THE CDI

14. Competence of the LJI Director. Pursuant to Article 3.2.5 of the CDA, the Director, after having established that the procedures have been followed and/or that the case can be heard, will, in consultation with the Chief Executive Officer, appoint members to form the appropriate disciplinary or arbitration body (i.e. the CDI).
15. Therefore, when examining the case, and before the LJI Director appoints members to form the appropriate disciplinary or arbitration body, the duty of

the LJI Director is to assess whether the appeal lodged by the Rider against the decision of the IJ is admissible and whether the correct procedure was complied with, as provided for in the applicable disciplinary regulations of the FIM.

16. Moreover, as provided by Article 4.7 para. 4 of the CDA, if the CDI appeal was not lodged and/or the security deposit for appeal not paid in within the deadlines specified in Article 4.6, the LJI Director is entitled to declare the appeal inadmissible without hearing.
17. Procedures. By the decision of the IJ pronounced on 30 July 2022, the protest of the Rider was rejected. Following this decision, the Rider could have made an appeal to the CDI as explicitly stated by Article 060.4.4 § 9 of the Regulations: “*an appeal against the decision of the FIM International Jury may be made to the CDI. This appeal must be presented 5 days at the latest after the notification of the FIM International Jury’s decision (Security deposit for appeal: € 1’320.-)*”.
18. However, the Rider lodged an appeal to the CDI against the IJ’s decision 30 days after the notification of the IJ’s decision to the Rider (points 11 and 12). The Administration received no notice of appeal nor brief of appeal within the deadline of 5 days at the latest after the notification of the IJ’s decision.
19. Furthermore, the security deposit for appeal before the CDI was made by the Rider on 08 August 2022 (point 13), which is outside the deadline of 5 days at the latest after the notification of the IJ’s decision dated 30 July 2022.
20. Therefore, the LJI Director has no choice but to observe that the time limit of 5 days for lodging an appeal was by far exceeded by the Rider, considering that pursuant to Article 4.7 para. 1 of the CDA, to be admissible, the notice of appeal must be sent by registered letter or special courier to the Administration and postmarked within the deadlines specified within Article 4.6 CDA, i.e., 5 days.
21. The LJI Director established that the appeal lodged by the Rider was not in compliance with the Regulations nor the CDA and thus a hearing was not required, nor was it necessary to appoint members to form the appropriate disciplinary or arbitration body (i.e. the CDI).
22. Inadmissibility. Based on the foregoing, the appeal must be declared inadmissible according to the procedure provided for under Article 060.4.4 § 9 section Protests and Appeals of the Regulations and according to Articles 4.6 and 7 of the CDA.
23. Security deposit for appeal. In light of the specificities and the nature of the case, including for example the fact there was no hearing, the LJI Director is of the opinion that the security deposit for appeal of EUR 1’320 shall be exceptionally returned to the Rider.

DECISION

As a consequence of the foregoing, the LJI Director decides as follows:

- The appeal lodged by Mr. Mario Roman Serrano before the CDI is inadmissible.
- The decision of the IJ dated 30 July 2022 rejecting the protest of Mr. Mario Roman Serrano is upheld.
- The security deposit for appeal of EUR 1'320 shall be returned to the Rider.

Decision pronounced on 05 October 2022



Robert Hofstetter

LJI Director

After exhaustion of the FIM internal remedies, an appeal may be lodged before the Court of Arbitration for Sport (CAS) in Lausanne/Switzerland within 5 days from the date of receipt of this decision of the International Disciplinary Court pursuant to Article 4.5 of the 2022 FIM Disciplinary and Arbitration. Moreover, Articles R47ff. of the Code of Sports related Arbitration shall apply.