

NST-E24-58474

Glenn Allerton v Mike Jones & Cru Halliday (with Motorcycling Australia)

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Ms Venetia Bennett

in the arbitration between

Glenn Allerton

(Applicant)

Represented by Trevor Groeneveld, Authorised Representative

And

Mike Jones & Cru Halliday

(Respondent)

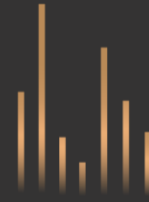
Represented by Akuna Oguz, Legal Representative and Scott Bishop,
Team Manager of Team Yamaha)

And

Motorcycling Australia

(Applicant Sporting Body)

Represented by Tony Hynes, Legal and Insurance Manager



PARTIES

1. The Applicant is an athlete in the sport of motorcycling, in the discipline known as superbike (**ASBK**).
2. The Respondents are also athletes in the ASBK discipline of motorcycling, and were competitors of the Applicant in race 2 of round 7 of the 2023 ASBK Championship (**Championship**), the race the subject of this Determination.
3. The Applicant Sporting Body (**Motorcycling Australia**) is the governing body in Australia for the sport of motorcycling, which includes the ASBK discipline. It is responsible for setting the relevant competition rules for superbike races, including the Manual of Motorcycle Sport, Australian Superbike Championship Sporting Regulations and Competition Manipulation and Sports Wagering Policy (**CMW Policy**), and implementing the competition rules and CMW Policy.

INTRODUCTION

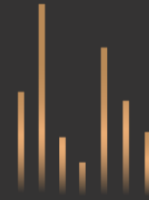
4. The Applicant applies to the NST seeking a declaration that the Respondents colluded to manipulate the result of Race 2 of Round 7 of the 2023 ASBK Championship, and in doing so, breached clause 3.1(a)(i) of the CMW Policy, and seeks a sanction against both Respondents.

NST JURISDICTION

5. The NST has jurisdiction under section 24(1) of the *National Sports Tribunal Act (Cth) 2019 (NST Act)*.
6. Whilst the dispute arises from an allegation by the Applicant that the Respondents breached the CMW Policy, the proceedings have been referred to the NST by Motorcycling Australia as a dispute between athlete participants in the sport of motorcycling, pursuant to clause 24 of the Non-NIF Dispute and Complaint Resolution Policy (**Disputes Policy**). That is, the matter was not raised as a complaint lodged with Sport Integrity Australia under the Complaints Disputes and Discipline Policy (pursuant to clause 5 of the CMW Policy) and subsequently referred to the NST under that policy.
7. Clause 24 of the Disputes Policy provides:

The Complaints Manager may at any stage refer the Dispute to the NST for determination in accordance with its processes. Any fees associated with having the Dispute brought to or determined by the NST will be the responsibility of the Applicant and the Respondent in such proportions as the NST determines in its absolute discretion.
8. The parties subsequently entered into an arbitration agreement dated March 2024,¹ by which they agreed that the NST's jurisdiction is engaged until resolution of the dispute.
9. No party objected to the NST's jurisdiction to hear and determine the dispute.

¹ The arbitration agreement was signed in counterparts, with each counterpart signed on a date between 8 and 20 March 2024.



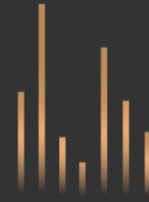
FACTUAL BACKGROUND

10. The 2023 ASBK Championship series concluded with a race event held on 3 December 2023 at Tailem Bend in South Australia (**The Bend**). The series was held over 7 rounds, and prior to the round 7 event at The Bend, the Championship podium positions were a contest between competitors racing for Honda, McMartin Racing, GT Racing and Yamaha. The race to determine the Championship was race 2 (**relevant race**).
11. The Applicant races superbikes for the “GT Racing Team”. Similarly to most participants in the superbike discipline of motorcycling, he is the only competitor in the GT Racing Team.
12. In 2023, the Yamaha team fielded two competitors in the Championship – the Respondents. Yamaha was the only team in 2023 with more than one competitor racing in its team for the whole season.
13. Prior to the relevant race, the top 5 competitors vying for the Championship, and their respective points total, were as follows:

1 st	Troy Herfoss	318 pts
2 nd	Josh Waters	313 pts
3 rd	Glenn Allerton (the Applicant)	242 pts
4 th	Cru Halliday (a Respondent)	240 pts
5 th	Mike Jones (a Respondent)	237 pts
14. In order for Mr Halliday to overtake the Applicant for the Championship, he needed to attain at least 3 more race points than the Applicant in the relevant race. That is, he needed to either finish 3 places higher in the field, or first (resulting in 25 race points), or second with at least one competitor finishing between Mr Halliday and the Applicant.
15. The relevant race result was:

1 st	Troy Herfoss	25 pts
2 nd	Cru Halliday (a Respondent)	20 pts
3 rd	Mike Jones (a Respondent)	18 pts
4 th	Glenn Allerton (the Applicant)	17 pts
16. The final 2023 Championship standings were:

1 st	Troy Herfoss	344 pts
2 nd	Josh Waters	324 pts
3 rd	Cru Halliday (a Respondent)	260 pts
4 th	Glenn Allerton (the Applicant)	259 pts
17. There is a dispute between the parties as to whether the Respondents acted together (and pursuant to “team orders” or “team rules” (**team orders**)) to ensure that Mr Halliday finished second and a competitor – being Mr Jones – finished between Mr Halliday and the Applicant, such that Mr Halliday would place third in the Championship and the Applicant would not.

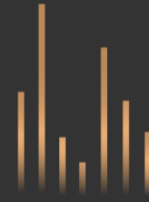


18. If it is established that the Respondents acted in the manner suggested by the Applicant, there is a dispute between the parties as to whether it is a breach of the CMW Policy for competitors to follow “team orders” to facilitate a particular outcome in a race for the benefit of the team,² and whether the Respondents’ actions contravened the CMW Policy.

PROCEEDINGS BEFORE THE NST

19. Motorcycling Australia lodged an application to the NST on 8 February 2024, having received notice of the Applicant’s concerns.
20. The application was put on the basis that the Applicant alleges a breach of the CMW Policy by the Respondents, and that the Respondents followed team orders. The application, as filed by Motorcycling Australia, noted “[t]eam orders are an entrenched part of the sport of motorcycling (and more broadly of motorsport) here in Australia and in many parts of the world”.
21. A preliminary conference was held between the NST Registry and the parties on 1 March 2024.
22. The CEO of the NST appointed Venetia Bennett as the Tribunal Member to hear the dispute. No party objected to the composition of the tribunal.
23. An arbitration agreement was executed by all parties in March 2024. The arbitration agreement provided a timeframe for the parties to file and serve submissions and any witness statements, evidence and other documents on which they wished to rely, including an opportunity for the Applicant to file material in reply. The timetable for the parties’ submissions was subsequently extended by agreement.
24. The parties each filed written submissions and documentary material. No party filed any witness statements.
25. The NST held a pre-hearing conference on 17 May 2024.
26. The hearing was conducted by videoconference on 24 May 2024.
27. At the hearing, the Applicant represented himself, and was accompanied by Mr Groeneveld of GT Racing. The Respondents were represented by Mr Oguz of Yamaha and did not personally appear at the hearing or attend to give evidence. Mr Hynes represented Motorcycling Australia.
28. At the conclusion of the hearing, the parties confirmed that their procedural rights had been fully respected.
29. During the course of the hearing, it was apparent that an issue between the parties, and for determination by the NST, would be the understanding and use of “team orders” in the sport of motorcycling. The NST indicated that, pursuant to s 68 of the *NST Act*, it would seek a report from a suitably qualified independent expert in the sport of motorcycling as to these matters.
30. The parties were invited to make, and each made, submissions as to an appropriate individual for the NST to appoint as an expert. After considering the parties’ submissions, on 13 June

² Note that a distinction is drawn between the 2023 ASBK Championship that was decided by the relevant race, and the Australian Superbike Championship - “Manufacturers”. Yamaha had an insurmountable lead in the latter before round 7 commenced, and the outcome of the relevant race did not affect its position in the Australian Superbike Championship - “Manufacturers”. The proceedings relate to the individual riders’ Championship.



2024 the NST appointed Troy Bayliss as an independent expert. Mr Bayliss has an extensive background in the sport of motorcycling, including as a former competitor and team manager in the superbike discipline.

31. Mr Bayliss provided the NST with a report on 24 June 2024.

APPLICABLE RULES

32. The applicable CMW Policy is the version in effect from 1 June 2022.³

33. Clause 3.1(a)(i) of the CMW Policy provides:

A Relevant Person commits a breach of this Policy when they, either alone or in conjunction with others, engage in any of the following conduct:

- (a) *participate (whether by act or omission) in improperly altering the result or the course of an Activity in order to remove all or part of the unpredictable nature of the Activity to obtain a Benefit for themselves or others by:*
 - (i) *the direct, pre-meditated or planned interference with the natural course of an Activity or element of an Activity.*

34. There is an explanatory footnote to clause 3.1(a)(i) which states:

Examples may include, but not limited to, intentionally conceding points, pre-arranging the outcome of a competition, deliberate underperformance (also known as “tanking”) in any manner (through selections or not playing to a person’s merits), influencing athlete selections and strategy, or intentional unfair or incorrect officiating.

35. The meaning of the defined terms in clause 3.1(a)(i) are as follows:

Relevant Person means any of the following persons: Individual Member, Participant, Employee, Contractor, Volunteer, ..., and any other individual who has agreed to be bound by this Framework / the Integrity Policies.

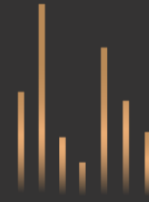
Participant means [relevantly] Athletes who are registered with or entitled to participate in a Motorcycling Organisation or a Motorcycling Australia Activity.

Activity means any activity (including training), whether on a one-off basis or as part of a series, sanctioned or organised by Motorcycling Australia or by an SCB.

Benefit means any advantage and is not limited to property.

36. In the circumstances of this matter, as athlete participants in the sport of motorcycling, the Respondents are Relevant Persons for the purpose of the CMW Policy; the relevant race and the 2023 Championship, each sanctioned by Motorcycling Australia, are each an Activity; and achieving a podium finish in the Championship is a Benefit.

³ The CMW Policy is to be read with Motorcycling Australia’s National Integrity Framework documents, including definitions or provisions derived from any associated policies in its National Integrity Framework documents that were current at the time of the relevant race.

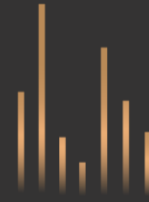


37. The Applicant seeks a sanction pursuant to clause 57.3 of the Disputes Policy: forfeiture of series or championship points. Clause 56 of the Disputes Policy confers on the NST absolute discretion to determine a sanction, with examples of sanctions set out in clause 57.

MAIN SUBMISSIONS OF THE PARTIES

38. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties, it refers in this Determination only to the submissions and evidence it considers necessary to explain its reasoning.
39. The Applicant's submissions are, in essence, that with two laps to go in the relevant race, Mr Jones – at the time comfortably running in second place ahead of Mr Halliday and the Applicant (who were racing for third position) – deliberately dropped his speed to allow his Yamaha teammate Mr Halliday to pass so that Mr Halliday would gain more points in the race and move past the Applicant in the Championship.
40. The Applicant relied on written submissions, as well as an article published by Cycle Online which included quotes attributed to the Respondents about their race tactics,⁴ and race data relating to the relevant race.
41. The Applicant drew the Tribunal's attention to the following evidence in support of his submissions, including during the hearing:
- a. Mr Jones' lap times for the final three laps of the relevant race, which reduced by 3 seconds in the second last lap and a further 2.5 seconds in the final lap of the race;
 - b. While he was dropping speed, Mr Jones was looking behind (over his shoulder) and waiting for Mr Halliday to catch up with him;
 - c. It is unusual for a rider to look behind during a race, because they are usually travelling at high speeds;
 - d. Mr Halliday and the Applicant were closing in rapidly on Mr Jones over the last two laps of the race, which the Applicant suggested indicates that Mr Jones was significantly slowing down;
 - e. Mr Halliday did in fact pass Mr Jones on turn 6 of the 18 turn course on the riders' final lap;
 - f. Mr Jones picked his speed back up after Mr Halliday passed him on turn 6, which the Applicant suggested showed that he had not suffered any medical, mechanical or equipment issue;
 - g. Mr Jones stayed on Mr Halliday's tail after turn 6 and rode with him all the way to the finish line, and the two Respondents finished the race less than 0.1 seconds apart.
42. The Applicant also relied heavily on the quotes attributed to the Respondents about their race tactics that appeared in the Cycle Online article. The article records the Respondents as having

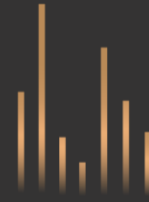
⁴ Cycle Online, *YRT tactics pivotal in series P3 result for Halliday*, 5 December 2023, <https://www.cycleonline.com.au/2023/12/05/yr%20tactics%20pivotal%20series%20p3%20result%20for%20halliday/> (Cycle Online article).



said that they discussed a race strategy whereby if Mr Jones was not able to win the race himself, and if the Respondents were “together”, that they “had to put a bike in between” Mr Halliday and the Applicant.⁵ The Applicant gave evidence at the hearing of having raised concerns about the Respondents’ actions with race officials immediately after the race, but said that his concerns were dismissed.

43. The Applicant acknowledges that he would have come fourth in the relevant race irrespective of the Respondents’ actions, but his concern is as to the riders’ standing in the Championship, in which the Applicant says that he would have finished at third overall had the raced “played out naturally”.
44. The Applicant gave evidence that he, and other competitors in the ASBK Championship, had been provided with a copy of the CMW Policy and other Motorcycling Australia integrity policies during a workshop run by Sport Integrity Australia at a race meeting at Phillip Island, Victoria. He said that he was motivated to bring an application before the NST after reading the Cycle Online article, because he interpreted the Respondents’ comments as gloating about the strategy.
45. In their written submissions, the Respondents asserted that the Applicant had not filed evidence to support his claim, nor had he detailed the application and alleged breach of the CMW Policy.
46. The Respondents relied on footage of the relevant race, and interviews with each of the Respondents in the race’s aftermath.
47. The Respondents did not concede in their submissions that they had facilitated a pre-planned result in the race, and at the hearing, denied executing a pre-planned race solution. However, in the alternative, the Respondents addressed the matter of team orders.
48. The Respondents acknowledged that “teams will have discussions and plan out a race depending on any multitude of scenarios which may be encountered”. They noted that there are no rules or regulations which prevent the planning of a race by a race team, and that doing so did not amount to a breach of any Motorcycling Australia rules or policy. The Respondents noted Motorcycling Australia’s acceptance of team orders as part of motorsports generally, and submitted at the hearing that there seems to be a general understanding in motorsports, including motorcycling, that team orders are permitted.
49. The Respondents did not directly address clause 3.1 of the CMW Policy in their submissions, and asserted that the Applicant had not provided evidence as to how the CMW Policy applied in the circumstances. At the hearing, the Respondents placed some reliance on the word “improperly” in clause 3.1(a), and suggested that it needed to be considered in context and in the spirit of what that word means, which the Respondents said was reflected in the amendments made in the revised version of the CMW Policy in effect from 1 January 2024.
50. Motorcycling Australia’s submissions detailed the framework for the sport, and the application of the competition rules and CMW Policy to the Applicant, Respondent, relevant race and the ASBK Championship. Motorcycling Australia confirmed that the Applicant and Respondents are

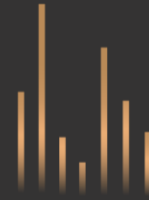
⁵ Cycle Online article.



each members of Motorcycling Australia and subject to its rules and policies, including the CMW Policy. This submission was not opposed by the Applicant or Respondents.

51. The focus of Motorcycling Australia’s submissions was on the status of team orders in the sport. Team orders are described in its written submissions as “a vagary of motorcycle sport, and of motorsport more generally”, and as “the practice of teams issuing instructions to riders to deviate from the normal practice of racing against each other as they would against other teams’ riders”. At the hearing, Mr Hynes confirmed that team orders had occurred in the sport over an extended period of time, although he said that they were “pretty rarely a topic of conversation” in the ASKB discipline – they were more common in other disciplines within the sport. The submissions suggest that team orders are most likely to be given when “one rider is behind in a particular race but ahead overall in a championship season, in which circumstances it is not uncommon for the team to order their riders to rearrange themselves on the track so as to give more championship points to the rider who is ahead in the championship”.
52. Motorcycling Australia explained at the hearing that as a national sporting organisation, Motorcycling Australia had little choice but to accept the National Integrity Framework, including the CMW Policy, without the ability to modify the policy to better suit the sport.
53. Motorcycling Australia confirmed that all competitors in the ASKB Championship had attended training delivered by Sport Integrity Australia about the National Integrity Framework, including the CMW Policy.
54. The Applicant did not address the status of team orders in his written submissions. During the hearing when questioned, the Applicant conceded that in 2008 he had been in a team which had more than one rider, and that the “crew chief” had approached the other rider and asked him to move over for the Applicant so that the Applicant could win that year’s championship (though the rider did not do so in that race). The Applicant is also quoted by the Cycle Online article as having reflected in the aftermath of the relevant race that “next year [GT Racing] might have a second rider so he can ride out on the track and get in front of some people and move over for me on the last lap, so that I can secure third as well”,⁶ which the Applicant explained during the hearing as being a tongue in cheek comment that he made because he was very angry after the relevant race. This evidence suggests that the Applicant is aware that team orders are at least known to participants in motorcycling.
55. At the hearing, the Applicant sought to draw a distinction between team orders historically playing a role in motorcycling, and the period after the introduction of the CMW Policy (from 1 June 2022), when the sport’s competition rules were silent with respect to the status of team orders, and there was an express provision in the CMW Policy that prohibited competitors from altering the result or the course of a race by direct, pre-meditated or planned interference with the natural course of the race.
56. The expert appointed by the NST, Mr Bayliss, offered the following opinion in respect of the meaning of team orders:
 - a. Team rules have been around for as long as Mr Bayliss could remember;

⁶ Cycle Online article.



- b. Everyone understands team rules without many people having had to take part;
- c. If you're riding for a team, normally it's two riders and if a situation occurs which can be altered by a teammate helping out or vice versa to normally gain a championship win or a podium it is done most often;
- d. It's all about the team and sponsors;
- e. They are used when they need to be used;
- f. There have been cases of late, of which Mr Bayliss had not taken too much notice; and
- g. Mr Bayliss recalled the circumstances of the relevant race and thought nothing of it; he thought it was logical.⁷

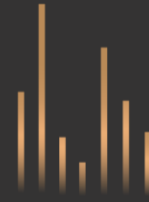
Orders sought

- 57. The Applicant seeks a declaration from the NST that the Respondents breached clause 3.1(a)(i) of the CMW Policy. In his submissions in reply, the Applicant confirmed that rather than referring the matter to Motorcycling Australia for determination of an appropriate penalty, if the Tribunal determines that the Respondents had breached the CMW Policy, he seeks a sanction from the NST in line with clause 57.3 of the Disputes Policy, being the forfeiture of the Respondents' Championship points attained in the relevant race.
- 58. The Respondents' position is that the application should be dismissed. Motorcycling Australia said that it would accept the NST's decision, but noted that its decision may impact sports other than just motorcycling, given the wide application of the National Integrity Framework.

MERITS

- 59. As members of Motorcycling Australia, and competitors in the relevant race and ASBK Championship, the Applicant and Respondents were each bound by the CMW Policy, as well as the competition rules that applied to the race and Championship.
- 60. Clause 3.1(a)(i) of the CMW Policy prohibits ASBK competitors from improperly altering the result or the course of a race, or of the ASBK Championship, in order to remove all or part of the unpredictable nature of the race or Championship to obtain a benefit for themselves or others, by the planned interference with the natural course of a race.
- 61. To determine whether the Respondents breached clause 3.1(a)(i) of the CMW Policy requires the Tribunal to consider the following matters:
 - a. whether the Respondents altered the result or course of the relevant race in order to remove all or part of its unpredictable nature by direct, pre-meditated or planned interference with the natural course of the race or element of the race; and
 - b. if the answer to (a) is "yes", whether the Respondents' actions amounted to a breach of the CMW Policy.

⁷ Whilst the NST is grateful for Mr Bayliss' input, the expert "report" that he provided was of such a high level nature as to be of limited assistance to the NST. For this reason, its contents were given little weight in this Determination.



Did the Respondents interfere with the natural course of the race?

62. Prior to the relevant race, any of the Respondents or Applicant could have finished third in the Championship, and none could have finished higher than third. The path for each to achieve third position in the Championship is as follows:
- Mr Jones needed to finish first in the relevant race;
 - Mr Halliday needed to either finish first (resulting in 25 race points), or second with at least one competitor finishing between Mr Halliday and the Applicant, or 3 places higher than the Applicant in the field; and
 - assuming that neither of the Respondents finished first, the Applicant needed to finish no more than one place behind Mr Halliday if Mr Halliday was second, or no more than two places behind Mr Halliday if he was third or lower; he needed to finish no more than 4 places behind Mr Jones (or 3 places behind if Mr Jones finished second).
63. The following statements are derived from footage of the race supplied by the Respondents.
64. In lap 10 of 11 in the relevant race, Mr Herfoss was 3.162 seconds ahead of Mr Jones, who was 5.942 seconds ahead of Mr Halliday. The Applicant was 3.466 seconds behind Mr Halliday.⁸
65. At the start of the final lap, Mr Herfoss' lead over Mr Jones had increased to 5.772 seconds, whose lead over Mr Halliday had reduced to 4.021 seconds. Mr Halliday was 4.096 seconds ahead of the Applicant.⁹
66. Part-way through the final lap, the gap between Mr Herfoss and Mr Jones had increased to 7.723 seconds, and the gap between the Respondents had decreased to 1.968 seconds. The gap between Mr Halliday and the Applicant remained at around 4 seconds (3.806 seconds).¹⁰
67. Midway through the final lap, Mr Herfoss was 7.461 seconds ahead of Mr Halliday, who was 0.147 seconds ahead of Mr Jones. The Applicant was 3.945 seconds behind Mr Jones.¹¹
68. Near the end of the final lap, Mr Herfoss started to celebrate his inevitable win, slowing his speed, and waving to and entertaining the crowd.¹² As a result, the overall race times for the top 4 riders suggest a closer race result than it actually was (Mr Herfoss' final lap was around 10 seconds slower than his previous 10 laps in the race).
69. At the last update of standings before the race concluded, Mr Herfoss was 5.455 seconds ahead of Mr Halliday, who was 0.277 seconds ahead of Mr Jones. The Applicant was 4.164 seconds behind Mr Jones.¹³

⁸ Race footage at 40.34

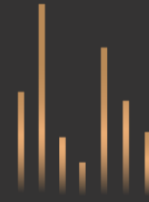
⁹ Race footage at 42.14.

¹⁰ Race footage at 42.39.

¹¹ Race footage at 43.20.

¹² For example, race footage at 42.44, 43.20, 43.57.

¹³ Race footage at 43.40.



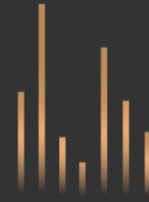
70. The relevant race concluded with Mr Herfoss winning the race 1.123 seconds ahead of Mr Halliday, who was 0.071 seconds ahead of Mr Jones. The Applicant crossed the line 4.477 seconds after Mr Jones.¹⁴
71. The Respondents crossed the line and are seen celebrating immediately afterwards with a handshake and thumbs up.¹⁵
72. The commentator, after noting that the Respondents would be on the podium and that Mr Halliday had received the point that “he needed to get across the line and maintain third in the Championship”, speculated that “I think Jonesy might have slowed down there at the end to let [Mr Halliday] through”.¹⁶
73. The significantly higher lap times recorded by Mr Jones in laps 10 and 11 of the relevant race, which were 3 seconds and 5.5 seconds, respectively, higher than his next highest lap time after lap 1, suggests that Mr Jones slowed his pace at a time when it was apparent that he would not win the race outright.
74. The fact that the Respondents then stayed for virtually “neck and neck” from the midway point of the relevant race, with Mr Halliday only a fraction of a second in front of Mr Jones, suggests that Mr Jones was not incapable of maintaining his speed in the race, but that he chose to allow Mr Halliday to finish in front of him.
75. At all times over the course of the final two laps, the Applicant remained around 4 seconds behind Mr Halliday (and for the second part of the final lap, Mr Jones). That is, if Mr Jones had truly been dropping speed over the last two laps for a medical, mechanical or equipment-related issue, he would have both fallen further behind Mr Halliday over the second half of the final lap, and the distance between the Applicant and Mr Jones would have narrowed.
76. Whilst the Respondents’ representative suggested that Mr Jones may have slowed down in the last two laps because he was tired from a hard season or fatigued, or his bike or tyres weren’t performing, however, this was not evidence before the NST, but speculation from Mr Oguz, and was not supported by any evidence from Mr Jones himself, or the footage and data from the relevant race.
77. The Respondents highlighted selective excerpts of their post-race interviews in their submissions apparently in support of a contention that the actions were not pre-planned. When viewed in context, however, the interviews in fact do not contradict a finding that, if presented with a scenario where the Respondents were the riders immediately ahead of the Applicant in the relevant race, the Respondents planned to ensure that Mr Halliday would finish ahead of Mr Jones. Mr Halliday’s interview is (relevantly) as follows:

Yeah, you know, first of all I’d like to thank ah, Mike, ah, [sheepish smile] you know, obviously, he must have run wide in a couple of those last turns on the last lap and I got by him, and ah, you know, hats off to him and ah, you know we’ve had our differences in the past but you know we’ve put them aside and I think we ended up third in the

¹⁴ Race footage at 45.35.

¹⁵ Race footage at 44.06.

¹⁶ Race footage at 44.28 to 44.32. Note that this is not noted to suggest that in fact Mr Jones did slow down to let Mr Halliday through, but to note the commentator’s speculation based on his observation of the race.

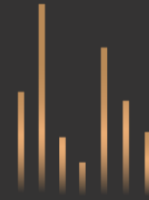


Championship so hats off to the guys at Yamaha ... so we got Yamaha up there for the Championship ... we had a bit of a team discussion where we knew where we had to be in front of BMW, so it actually went to plan for once which was good, so, yeah, once again I'd just really like to thank Mike.

78. It was notable that the Respondents did not attend the hearing as witnesses. Their absence was explained by Mr Oguz as being because Mr Oguz deals “with all of these matters for the organisation in totality”. The Tribunal infers from their non-attendance that the Respondents’ evidence would not have assisted their case – that is, the Tribunal infers that the Respondents would have given evidence that supported a conclusion that the Respondents had acted together to ensure that Mr Jones finished between Mr Halliday and the Applicant when the required circumstances arose during the relevant race, and in doing so, were acting consistently with team orders from Yamaha.
79. However, even without drawing the inference, there is sufficient evidence before the Tribunal, particularly the video footage of the relevant race and race data published by Motorcycling Australia, to reach the conclusion that the Respondents did act together to alter the result of the relevant race to ensure that Mr Jones finished between Mr Halliday and the Applicant.
80. Notwithstanding the Respondents’ position that they denied following team orders, it was implied in the Respondents’ submissions, and was evident from the footage of Mr Halliday’s post-race interview, that the Respondents discussed and planned a strategy for the race that included each competitor trying to win the race outright, and if that was not possible, how to achieve an outcome that would result in a Yamaha competitor being on the podium.
81. On the balance of the evidence, and particularly Mr Halliday’s post-race interview, it is more likely than not that in acting together to achieve a particular outcome in the relevant race, the Respondents were executing “team orders” (or team rules) to ensure that a Yamaha team competitor achieved a podium finish in the Championship.
82. Whilst the quotes attributed to the Respondents in the Cycle Online article were given little weight by the NST, they nonetheless align with the conclusion drawn by the Tribunal on the basis of the other evidence before it. That is, that the Respondents did interfere with the natural course of the relevant race when, consistent with team orders given to the Respondents prior to the race, Mr Jones slowed down in the last two laps to enable Mr Halliday to catch and then overtake Mr Jones to secure second position in the race, and third position in the ASBK Championship.

Did the Respondents breach the CMW Policy?

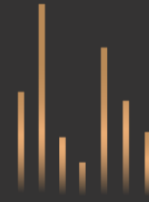
83. Having found that the Respondents did act together to alter the result or the course of the relevant race in order for Mr Halliday to place third in the Championship, and further, that the Respondents did so in line with team orders issued by their team, the NST must determine whether the Respondents’ actions amount to a breach of the CMW Policy.
84. As noted at paragraph 36 above, for the purpose of considering clause 3.1(a)(i) of the CMW Policy:
 - a. the Respondents are each a Relevant Person;



- b. the relevant race and the Championship are each an Activity; and
 - c. Mr Halliday achieving third place in the Championship ahead of the Applicant is a Benefit.
85. The question for determination by the NST is whether the Respondents engaged in conduct prohibited by the CMW Policy.
86. Mr Jones' decision to allow Mr Halliday to pass him in order to secure third place in the Championship ostensibly contravenes clause 3.1(a)(i) of the CMW Policy. It was the manifestation of a planned interference with the natural course of the race by Mr Jones' deliberate underperformance for a period during the final two laps of the relevant race. The question, however, is whether the Respondents' planned interference with the natural course of the race *improperly* altered its result.
87. "Improper" is defined as "not in accordance with accepted standards of behaviour",¹⁷ and "not proper; not strictly belonging, applicable, or right", "abnormal or irregular".¹⁸
88. The introductory section of the CMW Policy summarises the context in which the policy was created. It notes that the manipulation of sporting competitions undermines the integrity of sport, and that through the CMW Policy, Motorcycling Australia aims to ensure that its core values, good reputation and positive behaviours and attitudes are maintained.
89. Taking into account the meaning of the word "improper", and the context of the CMW Policy, the word "improperly" in clause 3.1(a)(i) is therefore construed to mean "not in accordance with the standards of behaviour and practices accepted in the sport of motorcycling".
90. Whether the Respondents' actions in the relevant race were improper then turns in large part on whether "team orders" are, and were in December 2023, an accepted standard of behaviour in the sport of motorcycling.
91. There is no reference to team orders in the competition rules that applied to the 2023 ASBK Championship. That is, they are neither expressly permitted as a means of facilitating an outcome in a race, nor are they prohibited; the competition rules are silent as to their status within the sport.
92. Similarly, the CMW Policy in effect during the relevant race did not carve out an exception for individuals following team orders from the definition of prohibited conduct in clause 3.1 or identify team orders as not being an "improper" interference with the natural course of a race or championship series.
93. There is therefore no evidence in the written rules and policies that applied to the 2023 ASBK Championship as to whether team orders were an accepted practice in motorcycling. The Tribunal then considered the evidence before it to determine whether team orders were generally recognised by participants in motorcycling to be an accepted practice in the sport.
94. Motorcycling Australia and Yamaha each submitted that team orders were an accepted part of motorcycling, although Motorcycling Australia clarified that they appeared to be less commonly used in the ASBK discipline than others. No evidence was specifically presented by either the

¹⁷ Oxford English Dictionary, "improper".

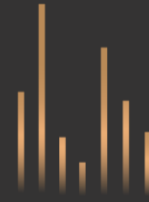
¹⁸ Macquarie Online Dictionary, "improper".



Respondents or Motorcycling Australia as to the general acceptance of team orders as normal practice in the sport, however, these submissions were supported at a high level by the “expert report” provided by Mr Bayliss. There was also evidence from the Applicant himself that he was aware that team orders were used in the sport, having been issued team orders with a teammate prior to a race in 2008.

95. The tenor of the Cycle Online article, including the Applicant’s comments quoted in that article, as well as officials’ dismissive response to the Applicant’s concerns, suggest that at the time of the relevant race, team orders were generally understood by the sport’s stakeholders – including officials, motorcycling media / commentators and competitors – to be used by teams competing in motorcycling events. There was no evidence before the NST to the effect that team orders were not an accepted practice in motorcycling, or that it would be unexpected or unusual for team orders to have been issued in the circumstances of the relevant race. The Applicant’s submissions focussed on the impact of Motorcycling Australia having introduced the CMW Policy in June 2022 as marking a change in conduct that would be prohibited from that date, rather than the general acceptance of team orders in the sport.
96. On balance, the limited evidence before the NST in this matter supports a finding that team orders are, and were in December 2023, an accepted practice in the sport of motorcycling, including in the ASBK discipline.
97. Whilst the adoption of the CMW Policy from 1 June 2022 may have created confusion about whether individuals implementing team orders that interfered with the natural course of a race would thereafter be considered to have engaged in prohibited conduct, there is no evidence to suggest that the introduction of the CMW Policy displaced the general understanding across the sport of motorcycling that team orders were an accepted practice in the sport.
98. Having concluded that on the date of the relevant race team orders were an accepted behaviour in motorcycling, it follows that the Respondents’ planned interference with the natural course of the relevant race undertaken pursuant to team orders (by Mr Jones taking steps to ensure that Mr Halliday finished the race before he did, ahead of the Applicant) did not improperly alter the result or course of the relevant race or the Championship. For this reason, the Respondents did not breach the CMW Policy.
99. A revised version of the CMW Policy took effect from 1 January 2024. The text of the equivalent provision in the CMW Policy (clause 3.1(a)(i) in the 1 June 2022 version, and clause 4.1(a)(i) in the 1 January 2024 version) are substantively the same. The concerns raised by the Applicant in these proceedings may have been addressed by the inclusion of an additional note in clause 4.1(a) of the revised CMW Policy which provides:

*“Improperly” in this context means **not** in accordance with standard sets of behaviour accepted in the participant’s sport. Some practices in a sport may, when applying a strict interpretation without context, be seen as Prohibited Conduct, however, given the behaviour is culturally acceptable among participants and spectators of the sport, this conduct is, therefore, deemed not “improper”. Refer to Appendix A for examples of acceptable and improper practices.*
100. The examples provided in Appendix A do not expressly permit an individual, or individuals, to follow team orders, nor do they extend to the specific scenario of a competitor allowing a



teammate to beat them in a race in order to ensure that the teammate achieves a higher level of success in an overall series.

101. As the note to clause 4.1(a)(i) and Appendix A were not incorporated in the CMW Policy at the time of the relevant race, they have not been taken into account in the Tribunal's consideration of this application, although the definition of "improperly" in the revised CMW Policy broadly aligns with the meaning of that term adopted in this Determination.

ADDITIONAL COMMENTS

102. This determination demonstrates the difficulties that may arise when a template document or standardised approach is applied across different sports without careful consideration of the nuances associated with each sport. Motorcycling Australia highlighted in its submissions to the NST the fact that it had not been able to modify the CMW Policy that it was required to adopt as part of the National Integrity Framework. This is regrettable, as greater flexibility would allow for sports to mould the standard policy for their unique circumstances, although the Tribunal notes that Motorcycling Australia did not state that it would in fact have altered the wording of clause 3.1(a)(i) to address the reality of team orders had it been given the opportunity to do so.
103. As noted at paragraph 100 above, the examples provided in Appendix A to the revised CMW Policy do not expressly permit individuals to follow team orders, or permit a competitor to allow a teammate to beat them in a race in order to ensure that the teammate achieves a higher level of success in an overall series. Whether this is permitted conduct in the sport of motorcycling will therefore depend on whether team orders "accord with standard sets of behaviour accepted in the sport" – a consideration which will be subject to evidence and analysis, and ultimately, a decision by a decision-maker (that may or may not follow the decision in this Determination).
104. If Motorcycling Australia is of the view that team orders are an accepted part of the sport, then for the sake of clarity, Motorcycling Australia may wish to amend either its competition rules or CMW Policy to expressly refer to their role in the sport so that it is clear to all participants in motorcycling events the circumstances in which following team orders will not contravene the CMW Policy.

THE TRIBUNAL THEREFORE DETERMINES:

1. *The application is dismissed.*

Date: 20 September 2024



Ms Venetia Bennett