

## REPORT OF THE JURY HEARING OF PROTEST FROM COMPETITOR #43 PATRICK NILZ JR.

### Attendance

Jury President: John Grubstrom

Jury Member: Sandor Hidas

Jury Member: Paolo Oggioni

Competitor: Patrick Nilz Jr.

Assistant to Competitor: Chris Cliver

Event Director: Eugenjus Komasa

Deputy Event Director: Jan Gruszecki

The Jury informed the attendees that the meeting will be recorded and asked if anyone opposed. No one opposed.

The Jury President started the hearing asking everyone to introduce themselves and then asked if there was any conflict of interest. Seeing none the meeting was opened.

Prior to the meeting the jury received the written protest from pilot #43, stating that the relative facts and rules would be presented at this meeting (appendix B). The Jury has accepted the protest notwithstanding lack of full documentation.

The Jury President invited the protestor to present his protest.

Chris Cliver presented a four-page document (appendix B) with the full argumentation of the protest and went through each paragraph. The conclusion to the documentation presented is written at the end of the document presented and states: *"As soon as the ED chose to override and contradict rule 12.1.2. the task is invalid and should be cancelled for safety and other force majeure issues. The ED tried to amend the data without a briefing, in an ambiguous way over text message, and during the flight window with pilots in the air. This was not only unfair to certain competitors, but also a clear disregard for the rules stated above."*

Competitor #43 confirmed the tracks and time stamps of the various communications printed on appendix C (printed map with flight track and waypoints shown to competitor and his assistant).

After the hearing of the competitor the Event Director was then invited to present his statement.

The Event Director made a short statement similar to the answer of the complaint. He was then given the opportunity to read appendix B and the opportunity to eventually reply to the document if he deems necessary.

The protestor and the event director were invited to summarize their respective positions and to make their final statement.

Before adjourning the meeting, the Jury President asked the pilot if he wished to withdraw the protest. The pilot declined withdrawal.

The meeting was adjourned to give the Jury and the Event Director sufficient time to study the documentation presented.

 Pag. 1 a 4

Meeting was resumed at 20:12 of the 25th august. The ED stated that he had no further comments on the submitted documents (appendix A).

The Jury then retired for the deliberations and to reach their decision.

The Jury reviewed the relevant rules and documents referred to the protest.

We take note that in the General Briefing document in point 10 *“During this event, we are going to use WhatsApp for the recall procedure, for spreading competition-related and public information, etc.”* and *“The ED group is closed. Only the pilot, his crew chief, and officials can join this group. Most of the time, the ability to comment will be disabled in this group and only during the flight, and one hour before and after it, will be possible to write comments, questions, and other important information for the flight. This group will also be used by the measurement team to report the corrected coordinates of the targets used in a particular flight if such corrections occur. We will also use this group to collect pilot landing messages and pilots' confirmations about receiving important messages.”*

It is clear that these procedures regard this event only and does not necessarily set a precedent for future events. It is also clear that WhatsApp will be used to communicate change of target coordinates.

After reviewing the competitors result rescoring to the goal on the ground would result in a worse result.

The protest heavily refers to rule 12.1.2. *“A competitor arriving at an expected goal that was rebuilt or moved, should aim for the closest replaced goal within 100 m. If the goal has ceased to exist and no similar goal is seen within 100 m, the competitor should aim for the coordinates. These coordinates will also be taken to calculate/measure any other related tasks of that flight.”*

The goal declared in the task data sheet was re-positioned with new coordinates communicated to the pilots at their individual launch sites through WhatsApp 13 minutes before the start of launch period. Subsequently during the flight, a new message was sent and the goal with the same coordinates was reset to 500 ft AMSL which is at 254 feet or 77m change which is not in conflict with rule 12.1.2. and should be considered as moved within 100 meters.

These changes were acknowledged by pilot's crew chief and on direct question from the crew chief it was clarified that this goal is a 3D goal.

The jury's opinion is that the altitude change of the target was communicated as described in the General Briefing notes and therefore considers the new goal as a valid goal.

The jury concludes that the Event Director has not contradicted rule 12.1.2.

The protest also claims that the inflight information was received at different stages of flight for the competitors and that those who took off early did not have time to adjust. In this case the inflight change mentioned above, the variation of altitude to 500ft AMSL, is not significant enough to have a major impact to fairness. Pilot 43 had sufficient time from receiving the information to arriving to the goal where he made his logger mark 768ft AMSL.

We do acknowledge that the increasing use of high tech means of communication is very challenging for us all and can be improved.

The jury will suggest to the CIA Rules WG to review the use of technology for communication purposes in the rules in general and to this case scenario in particular.

The protest is rejected, The Jury decision was unanimous.

The protest fee is retained.

Pag. 2 a 4  


**FAI JURY**

Jury President:

John Grubbström

Signature

Jury Member:

Sandor Hidas

Signature

Jury Member:

Paolo Oggiani

Signature

List of appendixes:

Appendix A – competitors protest

Appendix B – written presentation of protest

Appendix C – Map competitors flight track, waypoints, and time stamp of ED's communications

Appendix D – Competitors complaint

Appendix E – ED's answer to complaint

Appendix F – General Briefing notes

Appendix G – Task sheet

Appendix H – WhatsApp communications (six pages)

JK JAL  Pag. 4 a 4

I, Patrick Nilz Jr., pilot #43 declare my protest in response to the event director's written response on the ENB dated August 24<sup>th</sup>, 20:46.

I request an audience with the Jury. At that time, I will present the relevant facts and rules. Please acknowledge receipt of this

protest and the attached protest fee at the time and date of:

August 25<sup>th</sup>, at 10:07 Received

I request that the presented materials to the Jury and their decision be published AND included in the event debrief records for the CIA/FAI records.

Respectfully,

Patrick Nilz Jr.

Pilot #43



10:07 (25/08/2023)

Event Director



500 PLN received

JURY PRES.  
Jury Received  
27/8/2023 10:58

Official Protest of Pilot 43  
August 25<sup>th</sup>, 2023. Re: Task 23 @ 6<sup>th</sup> FAI Ballooning Jr. World Championships

Table of Contents for Protest

1. Request to publish
2. Introduction and verbal explanation of the events as experienced from Pilot 43's team perspective
3. Summary of the argument
4. A list of rules and specific infractions that should invalidate the task
5. Additional reasons to cancel the tasks
6. Counterpoints to the ED's written response to the complaint

**1. Request to Publish**

Firstly, we would like to request that the Jury's decision and the materials we present to them are published to the ENB. We also request that the nature of this protest and all relevant documents are recorded in this event's official debrief documentation and then discussed at the next CIA annual meeting.

Typically, the presentation would be verbal, but because of the language barriers, I will prepare our points ahead of time in a written document and read them verbatim for the jury. I will provide this written copy to each jury member to ensure nothing is lost in translation.

**2. Introduction and explanation of events from team #43 perspective**

Time	Event
Approx. 5:45	Pilot 43 launches and begins flight
05:45-06:44	Pilot 43 achieves results on tasks 21 & 22 and from original task data deferred task 20.
06:45	Event director sends WhatsApp attempting to amend task 23 and official task data without a supplemental briefing and while pilots are mid-flight
06:51 AM	Crew 43 sees WhatsApp for first time. Immediately replies asking for clarification
06:52-06:53	Crew 43 relays message to Pilot 43. Pilot 43 is now also confused and unsure how to proceed. Pilot 43 indicates his ETA to task 23 is Approx 8 minutes.
06:54	Crew 43 asks in WhatsApp for clarification AGAIN on altitudes and how to achieve best result
06:56	Event Director replies with another ambiguous WhatsApp message "no Task 23 is 3d." It does not clarify for team 43 if 500 ft is the exact altitude or minimum altitude.
06:58	Crew 43 asks for clarification a THIRD time in WhatsApp on how to achieve best result
06:59 – 07:00	Pilot 43 is less than 2 minutes from the goal. He must try and interpret event director's ambiguous texts. Pilot 43 decides to execute tasks at a minimum of 500 ft to respect the "landowner issues" and treat this like a PZ altitude.
07:01	Pilot 43 flies past coordinates and achieves a logger marker result on 23

**3. Summary of the Argument**

We appreciate the ED and his team's efforts under pressure during the flight to deal with landowner issues. I'm sure it was a difficult decision make so fast during the flight window and we respect their attempt to salvage the task. However, the way this it was handled in this case became very confusing from a competitor's perspective, created unfair advantages and we believe there are not any provisions in the rules allowing the Director to make such changes. The ED chose to act contrary to existing procedures (i.e. 12.1.2).

As a Jury, if you do not cancel this task, you will be setting a precedent that an Event Director can circumvent the current rules regarding valid tasks, rules regarding briefings, in addition to rule 12.1.2. Furthermore, if you do not cancel this task, you set the precedent that the ED can change task data **mid-flight** without formal briefings.

The event rule book and FAI Competition Operations Handbook (COH) only provide provisions to change task data prior to launch. There are no provisions provided to an ED to change task data once launch has occurred.

## Official Protest of Pilot 43

August 25<sup>th</sup>, 2023. Re: Task 23 @ 6<sup>th</sup> FAI Ballooning Jr. World Championships

Once competitors are in the air, it is impossible to change a task and provide an equal and fair opportunity because pilots are in different phases of flight, pilots are in different locations, and pilots have made flight planning decisions based on task data provided at the appropriate times.

In the event a cross/ground target MMA cannot be displayed, as in the case of Task 23, the rules provide for a procedure in 12.1.2 where the competitor should aim for the coordinates. In this case, the task would have remained a 2D / 3D combination according to the altitude separation rules. However, when the Director communicated a change in task data (i.e. Altitude should be 500 ft), it created confusion, potential unfair advantages and disadvantages, and therefore, the task should be thrown out under rules 8.2, 8.2.2.

### 4. Rules that Apply:

#### Rule 8.2

*VALID TASK 8.2.1 "A VALID TASK IS DEFINED AS ONE IN WHICH ALL ENTERED COMPETITORS WERE GIVEN A FAIR OPPORTUNITY TO MAKE A VALID TAKE-OFF, UNLESS THEY HAD WITHDRAWN OR HAD BEEN DISQUALIFIED. (S1 5.9.1)."*

In the case of Task 23, rule 8.2 of the event rules applies because the task was fundamentally changed after take-off, therefore, all entered competitors were *not* given fair opportunity to make a valid take-off.

The original scoring with the physical target would have been 2D and 3D, separation altitude 700 ft MSL. That should have remained, but was unclear and actually changed. This confusion makes it an invalid task.

*Rule 8.2.2 The Director has the authority to cancel a task(s) for safety reasons and for reasons out of the control of the director, at any time before the official status task scores are published."*

Even though scores have been made official, 8.2.2 should still apply. **Refer to 2.7.1 of the CIA Competition Operations Handbook.** The ED should have made an effort to avoid seeing the Provisionals as he knew of these verbal complaints received on the morning of August 24 before the scores were posted. The ED has authority to cancel a task for force majeure type situations outside of his control (such as the landowner issues combined with unfair advantage of the launch window being open for an hour, and pilots not all having the same fair chance or even the same understanding of the new task.)

*Rule 8.7.1 TASK BRIEFING Task briefings will be called by the Director at times published on the official notice board. Alternative methods may be used as announced in the GB. At the briefing the following information will be given verbally, by written circular or by posted notices. a. Meteorological information b. Air traffic and safety information (if any) c. Task data 8.7.2 Where written information is supplied, adequate study time should be allowed before briefing proceeds (as specified in the COH)."*

There are no procedures and/or no precedent for task changes by WhatsApp or any other method other than a Task Briefing or a Supplemental Briefing. The Director did notify competitors in General Briefing that WhatsApp could be used during the flight as official communication, but there is no written procedures in the event rules or the COH, nor is there any precedent of similar operations at other competitions to give a competitor any expectation that a task could be fundamentally changed by the ED at any time during a flight.

*Rule 8.9 supplemental briefing "...All competitors will be deemed to have proper notice of the information. Alternatively, an official may circulate a written notice to each balloon and obtain the signature of the competitor or crew member."*

In accordance to rule 8.9, Pilots did not all receive proper notice of the new information for changing this task. Specifically for pilot 43, the initial WhatsApp communication was read by a ground crew a mere 10 minutes before

Official Protest of Pilot 43

August 25<sup>th</sup>, 2023. Re: Task 23 @ 6<sup>th</sup> FAI Ballooning Jr. World Championships

pilot 43 arrived at the goal. And the information received was ambiguous and left the pilot confused with another distraction as he approached the altered goal. Pilot 43 was left wondering how to achieve the best result regarding altitude. The ambiguity was never clarified, and the pilot had no time to understand how to fly the changes to the task. What may have seemed clear and simple to the ED, was not clear and simple to competitors from different countries and with different understandings of English language phrasing. Again, "should be 500 ft"... "due to landowner issues" is entirely too unclear to change a task midflight and understand if we should fly exactly at 500 ft or at a minimum of 500 ft.

Again to reiterate, there are no procedures and/or no precedent for task changes by WhatsApp or any other method other than a Task Briefing or a Supplemental Briefing. The Director did notify competitors in General Briefing that WhatsApp could be used during the flight as official communication, but there is no written procedures in the event rules or the COH, nor is there any precedent of similar operations at other competitions to give a competitor any expectation that a task could be fundamentally changed by the ED at any time during a flight.

*Rule 12.1.2 "If the goal has ceased to exist and no similar goal is seen within 100 m, the competitor should aim for the coordinates. These coordinates will also be taken to calculate/measure any other related tasks of that flight."*

The ED showed a clear disregard for rule 12.1.2. The WhatsApp message was unnecessary, inappropriate, and added ambiguity as to how the task should be flown. 12.1.2 has clear instructions for how to handle the situation that unfolded for task 23 whenever a cross cannot be displayed. Simply removing the cross would have indicated to competitors that 12.1.2 applies and the task would remain valid. By communicating a fundamental change to the task data after launch, the Director created confusion and unfair advantages that make the task invalid.

As jurors, you're responsibility is to protect the rules. As presented above, I believe the rules must be enforced here to cancel task 23 based on an invalid task, not adequately using supplemental briefing for task data, and circumventing the proper procedure for the situation (12.1.2).

#### **5. Additional reasons to cancel**

If you do not cancel this task, you are setting the precedent that an event director can change task data when pilots are in flight. Currently, there are no rules or procedures that enable this. Changing task data mid-flight is fundamentally unacceptable for the safety and integrity of competition.

WhatsApp and similar apps are valuable communication tools for event staff, however, it is not practical for pilots to be expected to monitor such channels for communications other than recall.

We already have so much technology these days in ballooning. I can accept the WhatsApp for changes and notifications when the pilots are still on the ground. But pilots cannot be expected to be flying, and doing so much all at once, (e.g. doing electronic tasks such as declare and fly through a donut, focus on navigating towards a JDG, think about the wind data for a future angle task, AND BE CHECKING THEIR PHONE DURING FLIGHT). This is inappropriate use of the technology and changing a task using cell phones during a flight should not be the precedent we set.

In this protest, I mainly wanted to focus on the rules and that there are not rules and or provisions to allow for such a task change via WhatsApp. However, for completeness, I would like to refute all the following points that the ED used to justify his decision in his response.

#### **6. Counterpoints to the ED's written response to our complaint:**

**Regarding the fairness of the task - the ED argues that he reviewed the tracks and believes that Pilots 41 and 43 had sufficient distance remaining to achieve a result and should have just flown 250 meters higher. See the reasons this statement by the ED is incorrect below:**



Official Protest of Pilot 43

August 25<sup>th</sup>, 2023. Re: Task 23 @ 6<sup>th</sup> FAI Ballooning Jr. World Championships

- The more important consideration is the **time left** until the goal, not the distance.
- His argument incorrectly presumes we understood how to achieve the best result based off his ambiguous text message that was read less than 10 minutes before achieving a result.
- The language of the WhatsApp text for a native English speaker is easily interpreted to mean that removing the ground target/MMA at the coordinates was not a sufficient safety measure and corrective action, so the ED tried to additionally implement a PZ immediately mid-flight.
- The ED poses a SUBJECTIVE opinion that pilot 41 & 43 had enough time to course correct and achieve a result. OBJECTIVELY, Pilot 43 had significantly less time (<10 minutes) as some pilots taking off at the end of the launch window (who would have had much more time - 1+ hour) to plan and execute. This is an unfair competitive advantage. Also, I disagree with his opinion that 10 minutes is a long time. When you consider a timestamp of a WhatsApp message by a crew chief still does not mean the pilot has acknowledged the information or had time to process that information on a busy radio frequency. The pilot is also busy flying a balloon, planning other task strategy, communicating with teammates, etc. – 10 minutes is not that much time when moving 20+ kph in the air performing all the actions that competition flight entails.

**The ED claims that WhatsApp has proven to be reliable system for such situations. See the reasons why this claim is false below:**

- There is no procedures or past operational precedent of using WhatsApp or any similar communication tools to communicate task changes during flight.
- Several pilots did not ever read or acknowledge receipt of the message sent at 6:45 AM in the flight window. So this system has NOT worked properly.
- There is also a lot of room for misinterpretation and misunderstandings lost in translation of international language barriers using such short/brief text messages for important task data changes. For this reason, there is a very formal presentation of data on the Task Data Sheet, which is defined in the event rules.
- Regardless of what the ED informs us of in general briefing regarding his intent to use WhatsApp, there are rules to follow regarding supplemental briefing and task data. There are no provisions in the rules for the ED to change task data other than at a Task Briefing or at a Supplemental Briefing.
- This event director had a very similar issue with WhatsApp during the 2021 5<sup>th</sup> FAI Jr World Championships. He texted competitors changing task data after the launch window and after competitors were in the air.
  - The only reason that event did not receive similar protests as this one, is because he cancelled the tasks.
  - The issues all started from the ED using WhatsApp to send official briefing information and significant changes to the task data sheet over cell phones via WhatsApp when pilots were already airborne.
  - In 2021, after several mistakes, this ED made the wise decision to cancel the tasks. That day PROVED that the WhatsApp system does NOT work properly for these unique unprecedented situations for changing task data mid-flight.
  - In yesterday situation from August 24, 2023, the mistakes are not as egregious as in the prior 2021 situation, but the outcome should have been similar – cancel this task.

**Conclusion:**

As soon as the ED chose to override and contradict rule 12.1.2. the task is invalid and should be cancelled for safety and other force majuer issues. The ED tried to amend the task data without a briefing, in an ambiguous way over text message, and during the flight window with pilots in the air. This was not only unfair to certain competitors, but also a clear disregard for the rules stated above.