

OSA Appeal 2003-05B

29er 453 vs. 29er 258

Rule 14, Avoiding Contact

Rule 18.2(c), Rounding and Passing Marks and Obstructions: Giving Room; Keeping Clear; Overlapped – Basic Rule

Rule 60.4, Right to Protest and Request Redress

Rule 61.1(a), Protest Requirements; Informing the Protestee

Rule 62.1(b), Redress

Rule 63.5, Protest Requirements; Validity of the Protest or Request for Redress

Rule 70.1, Right of Appeal and Requests for Interpretation

Abstract:

If a protest committee receives a report of an incident that may have resulted in serious damage, it may protest any boat involved. The protest committee must also find that serious damage or serious injury resulted from the incident in question in order for the protest to be valid and the hearing to proceed.

A boat that enters the two length zone around a mark has right of way and the boat clear astern shall keep clear. If the boat clear astern becomes overlapped inside the other boat she is not entitled to room. A boat may appeal a Protest Committee's interpretation of a rule or its procedures, but not the facts in its decision.

Summary of the Facts:

In race 7 in the last downwind leg to the leeward mark, 258 was 2 to 3 boat lengths ahead of 453 as 258 entered the two length zone. 453 acquired an overlap inside the zone. There was contact between the two boats. 258's mast fell down and there was damage to 453. Both boats protested each other.

The Protest Committee decided that both protests were invalid, and informed the parties that they would proceed with a hearing under Rule 60.4 as in their opinion there was "serious damage". The Protest Committee concluded that 453 did not keep clear and broke Rule 18.2. They awarded redress to 253 under Rule 62.1(b), giving her average points in races 7 and 8 as, through no fault of her own she was unable to continue in those races. CAN 453 appealed.

Decision:

Neither boat fulfilled her obligation under Rule 61.1(a) to inform the other boat of her intention to protest, or to hail “protests” at the first reasonable opportunity. The Protest Committee properly found both protests to be invalid and closed the hearing. Rule 60.4 permits the Protest Committee to protest a boat if it receives a report of an incident that may have resulted in serious damage or serious injury. Rule 63.5 requires the protest committee to find that serious damage or serious injury resulted from the incident for the protest to be valid and the hearing to proceed. 258’s mast fell down and she was unable to continue in races 7 and 8. The Protest Committee concluded that this was “serious damage”. While “serious damage” is not defined in any ISAF Case or CYA Appeal, Case 19 defines “damage” as “harm or injury impairing the value or usefulness of something, or the health or normal function of a person”. 258’s inability to continue in a race constitutes “serious damage”. This hearing was valid.

When 258 reached the two length zone clear ahead of 453, she had right-of-way under Rule 11 and 453 was required to keep clear of her. When 453 established an inside overlap on 258 inside the zone, she was not entitled to room to round the mark under Rule 18.2(c) and she was still required to keep clear of 258. Contact between the boats indicates that 453 failed to keep clear and broke Rules 18.2(c) and 14. 258’s mast came down as a result of the contact, resulting in serious damage. In her appeal 453 challenged the fact that 453 came from astern, but facts may not be appealed under Rule 70.1. The Protest Committee properly disqualified 453, and the applicable rules are 18.2(c) and 14.

258 was entitled to redress under Rule 62.1(b) because her finishing positions in Races 7 and 8 were made significantly worse through no fault of her own when she sustained physical damage because of the action of 453 breaking Rules 18.2(c) and 14. The Protest Committee properly granted redress to 258 for races 7 and 8.

The Appeal is dismissed and the protest Committee decision is confirmed.

OSA Appeals Committee, November 2003.

Dr. Lynne Beal, IJ/NU – Acting Chair

Dr. Andrew Wardle IJ/IJ

Dr. Mel Preston SCJ

Mr. Don MacIntyre, SCJ

Mr. Andrew Alberti, CJ/SCU