



Ontario Sailing Appeal #OS2006-10

Bandit v Rum Runner – 9 August 2006

Rum Runner is appealing the decision on 30 September 2006 of the protest committee to not reopen a hearing from 31 August 2006 at the National Yacht Club

Rule 63.3(b) Right to Be Present

Rule 63.6 Taking Evidence and Finding Facts

Rule 66 Reopening a Hearing

Rule 70.2 Appeals; Confirmation or Correction of Decisions; Rule Interpretations

Rule 71.2 Appeal Decisions

ISAF Case 48 “A protestee has a duty to protect herself by acting reasonably before a hearing”

ISAF Case 104 “A national authority can change a protest committee’s decision and any other findings that involve reasoning or judgment, but not its findings of fact”

A reasonable effort should be made to take the evidence of the parties, their witnesses and any other evidence necessary to find the facts of an incident.

Summary of the protest committee’s facts:

1. An arbitration hearing was held on the evening of the event; the outcome was that the recommendation of the arbitrator was rejected and a full hearing was scheduled.
2. A hearing of this protest was conducted on 31 August 2006, which was the scheduled and published date for protest hearings.
3. Notice of the hearing was posted in timely fashion, in the location specified in the Sailing Instructions.
4. Rum Runner did not attend the hearing; it was held under rule 63.3(b).
5. In the hearing Rum Runner was disqualified.
6. Rum Runner requested that the hearing be reopened, on the grounds that she had believed that the hearing might be put over.
7. No official word was given in this regard, and no member of the protest committee was approached by Rum Runner prior to the original hearing.
8. The request to reopen was considered by the original protest committee at its regularly scheduled meeting on 30 September 2006.

Conclusion of the protest committee:

The original hearing was properly conducted, and proper notice was given. Rule 63.3(b).

Decision of the protest committee:

The request to reopen is denied.

Rum Runner appealed the decision to not reopen the hearing, claiming that she had not been informed that her request to reschedule the original hearing had not been granted and thus was denied the right to be present under rule 63.3 and to present evidence under rule 63.6.

Decision of the appeals committee:

Appeal upheld. The protest committee is to reopen the hearing of 31 August 2006.

Rum Runner had a scheduling conflict with the hearing on 31 August and attempted to protect herself by making a request to reschedule the hearing to a race officer she believed represented the protest committee. The race officer assured Rum Runner that the hearing would be rescheduled. The race officer informed the protest committee prior to the day of the hearing of the conflict, but no action was taken to either reschedule the hearing or to inform Rum Runner that the hearing would take place as scheduled. As a result, Rum Runner did not attend the hearing and subsequently made a request within the proper time to have the hearing reopened.

While it is not mandatory for a protest committee to reopen a hearing under rules 63.3(b) and 66 when a party is unavoidably absent, a decision regarding reopening is a matter of reasoning and judgment, not fact, and such a decision may be changed by the appeals committee.

In hearing the request to reopen the hearing under rule 66, the protest committee only considered if the original hearing had been properly conducted under rule 63.3(b), concluded there was no error in that respect, and denied the request.

Rum Runners' failure to appear at the original hearing was the result of a misunderstanding between her, the race officer and the protest committee, not because of any lack of interest in the outcome of the hearing. The protest committee did not consider the possibility that it had made an error in not addressing Rum Runners' request to reschedule the original hearing.

The appeals committee finds that the protest committee contributed to Rum Runners' misunderstanding by not addressing the request to reschedule after being informed of it by the race officer, prior to the original hearing. This omission by the protest committee is an error in judgment which denied Rum Runner the right to be present at the hearing, prevented her from presenting evidence and questioning any person who gave evidence at the hearing. A reasonable effort should be made to take the evidence of the parties, their witnesses and any other evidence necessary to find the facts of an incident.

Ontario Sailing Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Mr. Alex McAuley, IJ

Dr. Andrew Wardle, IJ

Ms. Kathy Dyer, SNJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ