



Ontario Sailing Appeal #2007-06

Alpha Dog vs PF Flyer – 12 September 2007

Alpha Dog is appealing a decision of the protest committee on 17 September 2007 from a race of the MORC Station 26 Frostbite Series on 12 September 2007

Rule 11 On the Same Tack, Overlapped

Rule 16.1 Changing Course

Rule 18.1(a) Rounding and Passing Marks and Obstructions;

When This Rule Applies

Rule 31.1 Touching a Mark

Rule 61.2(c) Protest Requirements; Protest Contents

Rule 63.1 Hearings; Requirement for a Hearing

Rule 63.4 Hearings; Interested Party

Rule 64.1(a) Decisions; Penalties and Exoneration

Definitions, Start

ISAF Case 104 A national authority may apply logic to derive additional facts and conclusions from a protest committee's written facts or its diagram

Summary of the facts:

(Including additional facts, *in italics*, provided by the protest committee under rule F5)

1. PF Flyer was approaching the starting line on port tack, late for the start of fleet 1.
2. Alpha Dog established an overlap to windward of PF Flyer just prior to the start of fleet 2.
3. The windward end of the starting line (flag) was on the starboard stern of the race committee boat, which was anchored at the bow, with the bow on the course side of line.
4. All boats were behind but close to the starting line at the flag/gun for the start of fleet 2.
5. At that time Alpha Dog was still overlapped with PF Flyer and perceived enough room to pass between the committee boat and PF Flyer, and was moving faster.
6. As Alpha Dog was passing the committee boat, that room decreased and Alpha Dog's port stanchions came in contact with the committee boat's starboard side bow pulpit. There was no damage to the committee boat; there was a cracked deck at the base on Alpha Dog.
7. Alpha Dog hailed protest, continued to race and did not do any penalty turns.
8. There was no contact with PF Flyer.

9. *There was a current of 1–1.5 knots flowing perpendicular to and towards the starting line.*
10. *Alpha Dog testified that PF Flyer changed course to windward. PF Flyer testified that she did not change course. The protest committee is not convinced that PF Flyer changed course.*

Decision of the protest committee

Alpha Dog touched a mark and did not exonerate herself. Rule 31.1 applies. Rules 17.1 and 18.2 do not apply. Rule 11 requirements were met by Alpha Dog.

Decision of the appeals committee

Appeal denied. The facts found by the protest committee support the conclusion that Alpha Dog broke rule 31.1 and did not exonerate herself.

In her appeal, Alpha Dog alleges that PF Flyer broke rule 18.5. Both boats were approaching the line to start even though PF Flyer's starting signal had already been made and Alpha Dog's starting signal was imminent. The race committee boat was a starting mark surrounded by navigable water and both boats were approaching it to start so according to rule 18.1(a), no part of rule 18 applied, therefore Alpha Dog was not entitled to room from PF Flyer to pass between PF Flyer and the mark.

Alpha Dog also alleges that PF Flyer broke rule 16.1. As there were no facts relating to the course steered by PF Flyer, the appeals committee asked the protest committee to provide additional facts or other information under rule F5 on this point. The protest committee's response to this request was that the parties' testimony was diametrically opposed: Alpha Dog was insistent that PF Flyer changed course to windward and PF Flyer was equally insistent that she did not change course. In its deliberations, the protest committee weighed the conflicting testimony and were not convinced by Alpha Dog's evidence that there was a change of course by PF Flyer.

The protest committee also confirmed that there was a current of 1–1.5 knots flowing perpendicular to and towards the starting line. This current would have the effect of pushing the boats towards the mark. The protest committee found as fact that PF Flyer's boat speed was less than that of Alpha Dog. It also found as fact that Alpha Dog perceived sufficient space to pass between PF Flyer and the mark – it did not find as fact that sufficient space existed.

ISAF Case 104 allows a national authority (appeals committee) to apply logic to derive additional facts and conclusions from the protest committee's written facts or its diagram. Taking the above three facts into consideration, it is logical to conclude that the decrease in the space that Alpha Dog perceived was caused by factors other than a change of course to windward by PF Flyer. The appeals committee is satisfied that PF Flyer did not break rule 16.1.

The remainder of Alpha Dog's appeal questions the protest committee's procedures. She complains that there was prejudice before the hearing because a member of her crew had "already been told that we were disqualified from the race" by someone on the night of

the incident. She does not present any evidence that she was disqualified prior to the hearing or that any member of the protest committee made such a statement. Alpha Dog's protest was heard and her disqualification was the result of that hearing which was conducted as required by rule 63.1.

Alpha Dog alleges that a member of the protest committee was an interested party by virtue of the fact that this member competes in the same fleet as Alpha Dog. At the outset of the hearing, the protest committee explained to the parties that it was virtually impossible to form a protest committee that did not have some appearance of conflict. Both parties agreed to have the protest heard by the protest committee without objection, a fact that is clearly noted on the protest form. If Alpha Dog believed that any member of the protest committee was an interested party, she should have objected to that member as soon as possible, but did not. The protest committee acted properly within rule 63.4.

The appellant is also concerned that the rules alleged to have been broken were not recorded on the protest form at the time she delivered her protest and that she cited the wrong rules when asked by the protest committee what rules she believed had been broken. According to rule 61.2(c), any rule the protestor believes was broken may be identified before or during the hearing. Under rule 64.1(a), when a protest committee decides that a boat has broken a rule, a penalty shall be imposed whether or not the applicable rule was mentioned in the protest. The protest committee followed the procedures of rules 61.2(c) and 64.1(a).

Alpha Dog touched the starting mark, breaking rule 31.1. She did not exonerate herself as permitted by rule 31.2 and was properly disqualified by the protest committee.

OS Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Alex McAuley, IJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ

January 8, 2008