

## **Appeal NSW 161201 – van Kerkwyk**

APPEAL SUBMITTED TO YACHTING NEW SOUTH WALES BY BOAT SPARTACUS AGAINST THE DECISION OF THE PROTEST COMMITTEE AFTER AN INCIDENT THAT OCCURRED DURING RACES CONDUCTED BY THE SYDNEY AMATEUR SAILING CLUB AND THE ROYAL SYDNEY YACHT SQUADRON ON 11<sup>TH</sup> NOVEMBER 2016.

### **Summary of the Circumstances**

Following a collision that resulted in damage Beowulf and Spartacus protested and counter protested after a collision.

A protest hearing was held on 16<sup>th</sup> November 2016.

The protest committee found the following facts:

### **FACTS FOUND**

1. As both protests relate to the same incident they were heard together with the consent of both parties.
2. There was a collision between the yachts that resulted in damage that was obvious to both boats and one of them intended to protest, the protest is declared valid in accordance with RRS 61.1 (a)(4)
3. Beowulf was sailing close hauled on starboard tack.
4. Spartacus was sailing close hauled on port tack.
5. Beowulf and Spartacus were sailing on a collision course.
6. Beowulf hailed “starboard” on at least three occasions
7. Beowulf luffed in an attempt to avoid contact with Spartacus.
8. Spartacus held her course.
9. A collision occurred between the port side aft of the cabin of Beowulf and the bow of Spartacus.
10. Both boats retired from racing.

### **They then concluded:**

1. Spartacus as port tack boat failed to keep clear of Beowulf a starboard tack boat RRS 10.
2. Spartacus failed to avoid contact with Beowulf when it was reasonable possible RRS 14.

### **The applicable rules were**

10, 14, 61.1(a)(4) WS Case 50 & 99

### **And they decided that**

As Spartacus retired from the race no further penalty can be applied.

## Grounds of the appeal

The comprehensive appeal document may be summarised in three main points:

1. Beowulf should not have been exonerated
2. The protest committee failed to properly consider rule 16
3. Spartacus disagrees with some of the facts found and the conclusions of the protest committee.

As supporting documentation, the appellant submitted a video which was also presented at the protest hearing. The appeal panel viewed the video.

## Discussion on the appeal

### Appeal ground 1

There is no indication in the documentation that Beowulf was 'exonerated' and the appeal panel notes that she was not granted redress.

Fact 7 advises that Beowulf's change of course was an attempt to keep clear.

The protest committee has not found any other facts and has not made any conclusions relating to Beowulf and rule 14. The appeal committee respectfully refers the protest committee the World Sailing International Judges manual para K.22.<sup>1</sup>

The appeal committee considered returning the protest and asking them to reconvene to find further facts and decide on rule 14 relating to Beowulf. However, as Beowulf retired little can be gained from this course of action as, even if she was found to have broken rule 14, there could be no further penalty.

It is recognised that this aspect may be of interest to the respective insurance companies but protest committees are only required to make decisions relating to the Racing Rules of Sailing. Decisions are not made to suit insurance requirements and, indeed, protest committee decisions do not necessarily bind insurance companies.

As Beowulf was not 'exonerated' by the protest committee this ground of appeal is denied.

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<sup>1</sup> K.22 Recording the Facts and Decision; Rule 14

When there is contact between two boats, a rule has been broken. Therefore, the protest committee must, under rules 63.6 and 64.1, find the relevant facts and give a decision, i.e. penalize, (at least) one of the boats.

This is important if the contact caused damage. In these cases, it is essential for the protest committee to decide whether the boats fulfilled their responsibilities under rule 14. In every case involving contact, a rule other than rule 14 was broken. However, rule 14 specifically forbids avoidable contact between boats. Take care to record the necessary facts to indicate whether either the right-of-way or give-way boat broke rule 14, and whether any penalty applies.

## **Appeal ground 2**

The facts found that the boats were on a collision course. Whilst the video presented shows that Beowulf made a change of course immediately before the collision there is nothing to indicate that this caused the collision. The comments made by the appellant that Beowulf's change of course was more like tacking is not borne out by the video.

Again, from fact 7, which advises that Beowulf's change of course was an attempt to keep clear, it can be concluded that the change of course by Beowulf did not cause the contact.

As there is no evidence to support that a change of course by Beowulf caused the contact this ground the appeal is denied.

## **Appeal point 3**

The appeal sets out to dispute some of the facts found and, in the summary, relies on the disputed facts to contest the decision.

Whilst it is open for a party to appeal a protest committee's decision or its procedures it is not open to appeal the facts. (Rule 70.1(a)).

On this ground the appeal is denied.

## **Other comments from the appeal committee**

Spartacus states in her appeal that Beowulf could, and should, have borne off to pass behind her. However, the racing rules make it clear that it is in fact Spartacus that, as correctly concluded by the protest committee, should have kept clear. It is clear from the video that there was nothing to prevent Spartacus from bearing away and she should have taken appropriate avoiding action earlier. If, as stated by Spartacus, she had Beowulf in full view it is only reasonable for Beowulf to assume that Spartacus would bear away or take other appropriate action to avoid contact.

The appeal committee refers the parties to World Sailing case 87 which states:

*'A right-of-way boat need not act to avoid contact until it is clear that the other boat is not keeping clear'*

## **Appeal Decision**

For the reasons stated above the appeal is denied.

Signed



***On behalf of the Appeal Committee***

*John Standley IJ (Chairman), Benedict Fels IJ, Andrew Waterman NJ, Christina Heydon NJ, Claire Cunningham SJ.*

Date: 24 January 2017