

Protest Committee Decision.

Issue: Request for redress .

Summary of Facts: Boat A was approaching the last leeward mark on starboard in first place having passed Boat B. Within the three boat lengths circle, Boat B, approaching on Port, fouled Boat A and took the inside position at the mark.

Boat A protested Boat B as the boats rounded the mark. Boat A that Boat B then failed to round the mark in a seaman like manner, swinging wide, was slow in dousing their spinnaker, was slow in trimming in the main sail, and as a result failed to sail their proper course. Boat A also asserts that Boat B delayed in taking their turns which they ultimately did.

The result was that Boat A, on the outside was forced to go wide beyond the mark and its speed was cut in half by the presence of the windward boat B.

Boat A asserts that this result enabled Boat C, who was estimated to be twelve boat lengths behind before the foul, to round the mark and quickly head to weather above and ahead of Boat A. Boat C was able to maintain the lead and cross the line first. Boat A finished second.

Discussion: A request for redress is made under Rule 62, which provides, in part, “redress shall be based on a claim or possibility that a boat’s score in a race or series has, through no fault of her own, made significantly worse by . . .” In this case there is an allegation that Boat A’s score was made worse through not fault of her own. The Committee specifically did not rule on the issue of whether a result of second versus a first is “significantly worse” within the meaning of the rule.

Rule 62.1 provides for redress in only four situations. (a) provides for redress as a result of actions or race committees, protest committees, or organizing authorities. (b) provides redress in cases of injury or physical damage caused by a boat breaking a rule or a vessel not racing. (c) provides redress for boats that give help to another in compliance with rule 1.1. (d) provides redress when the affect on scoring has been cause by “a boat against which a penalty has been imposed under rule 2 or disciplinary action has been taken under rule 69.1 (b)” (Gross Misconduct).

The Committee considered the request under the first part of 62.1 (d). (There was no evidence that the conduct of Boat B was “Gross Misconduct” which is reserved for various serious breaches.)

The issue is did the conduct of Boat B rise to the level of a violation of rule 2. That rule provides:

2 FAIR SAILING

A boat and her owner shall compete in compliance with recognized principles of sportsmanship and fair play. A boat may be penalized under this rule only if it is clearly established that these principles have been violated. A disqualification under this rule shall not be excluded from the boat’s series score.

The Committee understands that every breach of the rules by one competitor against another can affect the results of the second boat as is alleged here. The provision for redress is limited to those cases in which the facts “clearly established” that the breach occurred as a result of a violation of “recognized principles of sportsmanship and fair play.”

Case 34 (attached) appears to be directly on point. Boat A needed only for boat B not to finish in the first three to win the series. At the start A was over early. They started to return to the start, but instead of returning all of the way, A turned and hindered B to the windward mark and then retired. B finished 22nd. The Race Committee observed the actions of A and protested them under rule 2. A which had been scored OCS was then

disqualified under rule 2. (A disqualification under rule 2 may not be excluded from the boat's series score thus affecting A's standing for the championship.)

In its discussion the Appeals Committee noted that had A returned and re-crossed the line it could have tightly covered B without penalty. It was only the "deliberate attempt to win" by unfair means that resulted in the violation of rule 2.

In this case Boat B attempted, but failed to gain the inside overlap. Having made a tactical misjudgment, they then failed to handle their boat in a seaman like manner. Incompetence does not necessarily violate the "principles of sportsmanship and fair play."

In support of the allegation that the conduct was unsportsmanlike, Boat A submitted an email from Boat B in which it is stated:

I was the one XXXX is referring to as having to do a 720 after fouling XXXX after he passed us to take the lead at the last mark in the final race. This warning for the rest of you if you . . . don't try to pass XXXX to take over the lead or we will foul you every time. (emphasis added; names omitted)

This is followed by an apology and an explanation that the skipper had been in some very heated racing this winter "so I have learned some very aggressive tactics!."

The Committee is unpersuaded. The descriptions of the actions of Boat B after the rounding do not show a violation of the principles "of sportsmanship and fair play." The email is consistent with poor tactical judgment.

Finally, there is the question of granting redress where there has not been a finding of a violation of rule 2. Rule 62.1 (d) provides for redress when the problem is caused by a boat "against which a penalty has been imposed under rule 2." In theory, Boat A is asking that the Protest Committee make a finding that Boat B violated rule 2. However, 60.3 specifically states that a Protest Committee may not protest a boat "as a result of information request for redress" Accordingly, the Committee is not on its own

motion able to protest and if warranted impose a penalty on Boat B. Thus technically there is no finding of a violation of rule 2 and 62.1(d) does not apply.

Accordingly, it appears that the proper procedure would have been for Boat A to protest Boat B for a violation of rule 2 and to seek redress under rule 62.1. Then Boat B would have been a party and a more detailed examination of sportsmanship could have taken place, although, on the record it does not appear that that would have changed this result.

Conclusion: Boat A is not entitled to redress under rule 62.1 as requested.

CASE 34

Rule 2, Fair Sailing

Rule 62.1(d), Redress

Rule 69.1, Allegations of Gross Misconduct: Action by a Protest Committee

Hindering another boat may be a breach of rule 2 and the basis for granting redress and for action under rule 69.1.

Summary of the Facts

As the sixth and final race of a championship series began, A's accumulated score was such that the only way she could lose the prize was for B to finish ahead of her and among the first three of the 48 competitors. A crossed the line early and was recalled by loud hailer. About 70 to 100 metres beyond the starting line, she turned back, but she had sailed only some 20 to 30 metres towards the line when she met B, which had started correctly. Instead of continuing towards the pre-start side of the line A turned and began to hinder B by covering her closely. The race committee hailed A again that she was still above the line and received a wave of acknowledgement in return, but A continued to sail the course, hindering B throughout the windward leg. When A and B reached the windward mark, they were last but one and last respectively, whereupon A retired. B ultimately finished in 22nd place. Since it was obvious to the race committee that A continued to race solely for the purpose of hindering B, it protested A under rule 2. A, which had been scored OCS, was then disqualified for breaking rule 2. She appealed, asserting that she believed she had returned and started correctly.

Decision

A's appeal is dismissed. It is clear from the facts found that A knew she had not started as required by rule 28.1, and that she chose not to do so. Facts are not subject to appeal. The disqualification of A for breaking rule 2 was appropriate.

A would not have broken rule 2 if she had returned to the pre-start side of the starting line and started and, after having done so and without intentionally breaking any rule, she had managed to overtake and pass B and then closely covered her. B could have requested redress and was entitled to receive it under rule 62.1(d).

The facts show a gross breach of sportsmanship and, therefore, of rule 2.

Such a deliberate attempt to win by unfair means should be dealt with severely. The protest committee could also have called a hearing under rule 69.1, as a result of which it could have disqualified A from the entire series.

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