

Case 4 revised after reopening

Protest, Race Committee v *Cheminées Poujoulat*

Summary

The evidence presented to the reopened hearing of Case No 4 confirms the previous evidence, and the decision that *Cheminées Poujoulat* is to be disqualified from the event is confirmed.

Proceedings

All times are UTC unless otherwise stated.

24 12 2012 at 12h13, the Race Direction sends the International Jury a report about an incident involving *Cheminées Poujoulat* while in the Auckland Islands

24 12 at 15h07, the Race Committee sends the International Jury and the Race Direction an intention to protest *Cheminées Poujoulat* for an alleged breach of NOR 3.2.

24 12 at 15h53, the Race Direction informs *Cheminées Poujoulat* of the intention to protest from the Race Committee.

26 12 at 12h57, the International Jury requests Bernard Stamm to give comments on the intention to protest, attaching the report from the Race Direction on which the protest is based

26 12 at 21h37, the Race Committee sends the International Jury the complete protest

27 12 at 07h31, the International Jury forwards to *Cheminées Poujoulat* the complete protest from the Race Committee

28 12 at 10h50, Regis Rassouli, from the *Cheminées Poujoulat* team, sends the International Jury a message saying that Bernard Stamm was back in the race and would send his response about the incident as soon as possible.

29 12 at 10h40 Bernard Stamm sends his response to the International Jury.

On 01 01 2013, the decision of the International Jury to disqualify *Cheminées Poujoulat* is sent to *Cheminées Poujoulat*. Bernard Stamm acknowledges receipt on 02 01 at 07h26

On 03 01, Bernard Stamm sends the International Jury a request for reopening based on expected testimony from Rodney Russ of *Professeur Khromov* being new evidence.

The written testimony of Rodney Russ is sent to the International Jury on 04 01 at 19h29. The document is accompanied with the comments of Bernard Stamm.

The International Jury decides that the evidence is new, that case 4 will be reopened, and informs Bernard Stamm on 05 01 at 17h46

Due to further damage occurred on 06 01 at about 03h30, *Cheminées Poujoulat* is deprived of almost all energy. Consequently the International Jury suspends the hearing until more information on Bernard Stamm's situation.

Learning of the inability of Bernard Stamm to communicate, the International Jury, on 07 01 at about 21h00, sends the *Cheminées Poujoulat* team a proposal for an easier procedure, e.g. proposing to appoint a representative entitled to act on behalf of the skipper for the rest of the hearing.

The *Cheminées Poujoulat* team answers this proposal on 08 01 around 15h50 by describing the current difficult situation for *Cheminées Poujoulat*, mentioning they are considering the possibility of a supply of fuel close to Cape Horn, and requesting, before answering the jury proposal, the extension needed for Bernard Stamm to ensure the survival for him and his boat.

By an email sent on 09 01 around 09h50, the International Jury grants *Cheminées Poujoulat* an extension of 24 hours from the time the refueling will have been completed to answer his questions, indicating that without response at this deadline, the jury would then decide the reopening based on the testimony presented by *Cheminées Poujoulat* as a new evidence

On 09 01 at 15h45, *Cheminées Poujoulat* informs the race direction that the refueling has been completed, and that Bernard Stamm has been informed he has to answer the request of the jury

On 10 01 at 15h45, Bernard Stamm sends the jury an email with the answers to the questions and his final statement

Facts found

On 22 12, Bernard Stamm decides to change course toward the Auckland Islands in order to repair the hydro generators.

Until 23 12 at 04h00, Bernard Stamm sails by his own means to Sandy Bay, prepared to anchor. At 04h53, Bernard Stamm anchors in the bay after having unsealed the engine and the heavy anchor.

At dawn (around 20h00 UTC), Bernard Stamm notices the presence of a ship, *Professeur Khromov*, moored close to his position. Then, within half an hour, Bernard Stamm notices his boat is drifting. Seeing the boat is getting closer to the ship, Bernard Stamm calls her by VHF, informs him he has mechanical problems and request permission to moor on the stern of the ship because he is drifting. The ship gives permission.

Then Bernard Stamm prepares the boat to move, sets the sails and turns on all devices. Coming back in the cockpit, Bernard Stamm notices that a person from the ship is on board his boat and has begun to recover the anchor.

The person is Rodney Russ, experienced sailor who knows perfectly the place and the local conditions. He is the author of the report and he states “If he didn't have power I would have to tow him back to our vessel and the further he drifted away the longer (and more difficult the tow would be because of extensive Kelp beds in the vicinity.)”

Bernard Stamm starts the engine and turns on the auto helm, then goes to the bow to recover the anchor.

Bernard Stamm decides not to ask this person to leave the boat “when I saw him on board I did not find any reason that could justify to send him back from the board”.

Bernard Stamm comes back to the engine controls and at the helm, motors to approach the ship, and Rodney Russ throws the line to the *Professeur Khromov* where a crew member makes *Cheminées Poujoulat* fast.

Immediately afterwards, Rodney Russ leaves *Cheminées Poujoulat* and returns to his RIB. Once the boat has been correctly moored behind the *Professeur Khromov*, Bernard Stamm goes to say hello to the two people in the RIB, and then they offer help. At this time, Bernard Stamm explains clearly the situation, that he is racing, that he is not entitled to any help and that he appreciates being tied up that he could work on his problem without worrying about anchor dragging. At about 17h00 (local time), Rodney Russ, coming back to *Professeur Khromov* after a day on shore, has a chat with Bernard Stamm who asks him about other suitable anchorages in the vicinity. *Cheminées Poujoulat* then remains moored on the ship for the whole day, before leaving at about 01h00 in the morning (local time) by his own means and sail towards another mooring.

Bernard Stamm considers that this was a case of absolute necessity for which it was needed to act in order to secure the boat and to prevent creating a problem for the ship moored nearby.

Conclusion

The statement of Rodney Russ confirms and amplifies the facts used by the International Jury to uphold the protest against *Cheminées Poujoulat*.

Mooring to another boat is a breach of the first sentence of NOR 3.2.

The mooring of *Cheminées Poujoulat* to the *Professeur Khromov* was made with the help of the person on board and the crew of the *Professeur Khromov*. This is a breach to the second sentence of NOR 3.2.

Even though not requested, the assistance received from the crew member by *Cheminées Poujoulat* to secure the *Cheminées Poujoulat* and to prevent creating problem for the *Professeur Khromov* constitutes a breach to NOR 3.2, and the material contact with another boat by mooring to her constitutes a breach to NOR 3.2 and to the principle of NOR 3.

The penalty imposed for any breach to NOR 3.2 is a disqualification, explicitly stated in the same article. Therefore, the international jury cannot apply the sailing instruction 11.2 to give a discretionary penalty lower than disqualification.

Decision

Cheminées Poujoulat is DSQ from the Vendée Globe under NOR 3.2,

Date 12 01 2013 at 12h00

The International Jury

Bernard Bonneau (FRA); Ana Sanchez (ESP); Trevor Lewis (GBR); Jack Lloyd (NZL); Georges Priol (FRA)