

Facts for Question 2

Two boats, A and B, are on a collision course in strong winds. A is required to keep clear of B. A holds her course and, when it becomes clear to B that A is not keeping clear, B immediately and rapidly makes a large change in course to avoid A. There is no contact between A and B. However, while manoeuvring to avoid potentially damaging contact with A, B collides with C, a third boat nearby. C is damaged and loses several places. A takes a Two-Turns Penalty and finishes the race. C requests redress under rule 62.1(b).

Question 2

Is C entitled to redress if her request is valid?

Answer 2

Yes, provided that the protest committee concludes that

- A broke a rule of Part 2;
- a collision was probable, and B took avoiding action as soon as it was clear that A was not keeping clear;
- the damage to C was the result of A not keeping clear and not the result of poor seamanship by B; and
- after B began to change course, it was not reasonably possible for C to have avoided the collision and resulting damage.

See also Case 110.

World Sailing 2014

CASE 136

Rule 29.1, Recalls: Individual Recall

Rule 63.6, Hearings: Taking Evidence and Finding Facts

In finding facts, a protest committee will be governed by the weight of evidence. In general, a race committee member sighting the starting line is better placed than any competing boat to decide whether a boat was over the line at the starting signal and, if so, whether she returned and started correctly.

Facts

At the starting signal, the race committee member sighting the line judged three boats to be over the line. Flag X was promptly displayed with a sound signal, and it remained displayed for the required amount of time (see rule 29.1). Another race committee member, at the other end of the line, confirmed the identity of the three boats and that they had not returned and restarted correctly. All three boats were scored OCS. One of these three boats completed the course and finished first. On learning that she had been scored OCS, she requested redress, maintaining that she had returned and started correctly. She called as witnesses two other competitors who had been close by and who believed that she had returned and started correctly.

Question 1

May the decision of the race committee that a boat has not started or restarted correctly be overruled on the basis of other evidence? If so, in what circumstances?

Answer 1

Yes, if the protest committee is satisfied on the weight of the evidence that the race committee members sighting the line and observing the boats after the starting signal were not watching while the boat was crossing the starting line or carrying out the returning manoeuvre, or were mistaken as to the identity of the boat.

Question 2

In assessing the weight of evidence in such a case, should the protest committee attach more weight to that of race committee members?

Answer 2

The evidence of race committee members, who are in the best position to judge, is usually more reliable.

Question 3

If the issue is simply whether a boat was ‘over’ the starting line, or whether it had ‘wholly’ returned, is a person who was not in a position to sight along the line a competent witness?

Answer 3

See Answer 2. A race committee member sighting directly along the line at all relevant times is in the best position to make such a judgment.

RYA 1984/8

CASE 137

Rule 63.4(b), Hearings: Conflict of Interest

When deciding if a conflict of interest is significant, the protest committee should take into account the degree of conflict, the level of the event and the overall perception of fairness.

Facts

After a declaration of a conflict of interest by a protest committee member, one of the parties does not consent to the person remaining as a member of the protest committee.

Question

How should the protest committee decide if the conflict is significant or not, as required by rule 63.4?

Answer

The member concerned should not be present during this decision process. Rule 63.4(c) requires the other members of the protest committee to consider the degree of conflict. For example, a parent/child relationship will almost certainly create a high degree of conflict, while more distant relationships will generally create diminishing degrees of conflict as the distance increases. Similarly, an employer/employee relationship could create a high degree of conflict.

Rule 63.4(c) also requires the level of the event to be considered. At some levels of event it is not practical to find suitable protest committee members who have no conflict of interest, yet the event still needs the service of a protest committee. It may be possible to balance the conflict between two or more protest committee members.

The protest committee should also consider if the perception of fairness is best served by having more members on the protest committee or by not including a person with a conflict. The protest committee may also take into account the strength of feeling of the parties and if their concerns are shared or confined to one party.

World Sailing 2016

CASE 138

Rule 2, Fair Sailing **Rule 69, Misconduct**

Generally, an action by a competitor that directly affects the fairness of the competition or failing to take an appropriate penalty when the competitor is aware of breaking a rule, should be considered under rule 2. Any action, including a serious breach of rule 2 or any other rule, that the committee considers may be an act of misconduct should be considered under rule 69.

Question 1

When there has been an action by a person that might be considered to be bad sportsmanship or misconduct, what actions might constitute misconduct?

Answer 1

Rule 69 covers all acts of misconduct, and may range from a very minor misdemeanour to a very significant act of bad sportsmanship or bringing the sport into disrepute. The following actions should be considered as examples of acts of misconduct, but they are not exclusive examples and this is not a definitive list:

1. Engaging in any unlawful activity (for example, theft, assault, criminal damage)
2. Engaging in any activity which may bring the sport into disrepute
3. Bullying, discriminatory behaviour and intimidation
4. Physical or threatened violence
5. Acting recklessly or in manner that does, or is likely to, cause damage or injury

6. Disobeying the reasonable instructions of event officials
7. Intentionally breaking a rule or inciting others to break a rule
8. Interference with another competitor's equipment
9. Repeated breaches of a rule
10. Failing to act to prevent your boat or team breaking a rule when you are aware of that breach
11. Not telling the truth or the whole truth in a hearing
12. Other forms of cheating such as falsifying personal, class or measurement documents, entering a boat known not to measure, missing out a mark to gain places, etc.
13. Foul or abusive language that causes or may cause offence
14. Making abusive or disrespectful comments concerning race officials or their decisions (including via electronic means such as social media)

Question 2

When should a protest committee proceed under rule 2 and when should it proceed under rule 69?

Answer 2

A boat may be protested for a breach of rule 2 and the protest committee is required to hear and decide the protest. To uphold a protest for an alleged breach of rule 2, the protest committee is required to clearly establish that a boat has not competed in compliance with recognized principles of sportsmanship and fair play. It follows that the action must directly involve the competition for a breach of rule 2 to be established.

A protest committee may protest a boat for a breach of rule 2, but it may decide that action under rule 69 is more appropriate, or in some circumstances action under both. Generally, an allegation of an action that directly affects the competition should be subject to protest under rule 2.

An action that is considered to be an act of misconduct and that does not directly affect the competition should be subject to action under rule 69.

A protest and the subsequent hearing under any rule, including rule 2, may reveal conduct that the protest committee considers to be an act of misconduct. In that case it may be appropriate for the protest committee to take separate action under rule 69.

Facts for Question 3

A boat is sailing upwind on port tack and attempts to cross ahead of a boat on starboard tack. The port-tack boat misjudges the cross and fails to keep clear.

Question 3

Has the port-tack boat intentionally broken a rule?

Answer 3

No. A misjudgment such as this is common during a race and is not unfair sailing or an act of misconduct. In order for it to be unfair sailing or an act of misconduct, there must be evidence that the boat knew or should have known that she would not make the cross and attempted to do so anyway.

However, when the port-tack boat realizes that she has failed to keep clear, she has knowingly broken a rule and must take the appropriate penalty. Otherwise she has broken a recognized principle of sportsmanship (see Basic Principles, Sportsmanship and the Rules).

World Sailing 2016

CASE 139

Rule 69.2(j), Misconduct: Action by a Protest Committee

Examples illustrating when it would be 'appropriate' under rule 69.2(j)(3) to report a rule 69 incident to a national authority or World Sailing.

Facts

The protest committee has found that a competitor or support person has committed an act of misconduct and imposed a penalty under rule 69.

Question 1

When should the protest committee report the breach to the national authority of the person or to World Sailing?

Answer 1

Rule 69.2(j) requires a report to the national authority or to World Sailing when the penalty applied is greater than DNE for one race, if the person has been excluded from the venue or in other cases when the protest

committee considers it 'appropriate'. It would be 'appropriate' to report in the following circumstances, as examples:

- (1) In a single race event the protest committee believes that the penalty for the breach would have been more than DNE for one race if it were in a multiple race event. This might be because of the seriousness of a single breach or a number of lesser breaches.
- (2) A support person is found in breach of rule 69 and would have been excluded from the venue, but the event is now into its last day and exclusion from the venue would be ineffective.
- (3) The protest committee has good reason to believe that the person who has breached rule 69 has previously been penalized for a breach of rule 69.1(a) and especially if the breach is similar.
- (4) The breach has an impact on events beyond the jurisdiction of the protest committee. For example, selection or qualification for another event and the breach has adversely affected the selection or qualification of another competitor.

Question 2

Should the report be sent to the national authority or World Sailing?

Answer 2

The report is only sent to World Sailing when the breach occurs at specific international events as listed in World Sailing Regulation 35, Disciplinary Code. Otherwise the report is to be sent to the national authority of the person(s) found to have breached rule 69 (not necessarily to the national authority of the boat owner or venue).

World Sailing 2016

CASE 140

Rule 30.3, Starting Penalties: U Flag Rule

Rule 30.4, Starting Penalties: Black Flag Rule

Rule 62.1, Redress

Rule 64.1(b), Decisions: Penalties and Exoneration

How the rules apply when a boat is compelled to cross the starting line by another boat that was breaking a rule of Part 2.

Facts for Question 1

A race is started under rule 30.3, U Flag Rule, or 30.4, Black Flag Rule. Twenty seconds before the starting signal there is an incident between boats A and B. The race committee identifies part of A on the course side. A does not return to the pre-start side of the starting line, but continues sailing the course and finishes. The race committee scores her UFD or BFD, as appropriate.

A lodges a valid protest against B. The protest committee disqualifies B for breaking a rule of Part 2. The committee finds that B, as a consequence of breaking a rule, has compelled A to break rule 30.3 or 30.4. It also finds that there was no injury or physical damage, and that B did not break rule 2, Fair Sailing.

Question 1

May the protest committee exonerate A for her breach of rule 30.3 or 30.4, and score her in her finishing position, even though A has never started according to the definition Start?

Answer 1

No. A has broken rule 30.3 or 30.4, but she has also broken rule 28.1 by failing to start (see the definition Start). B's breach compelled A to break rule 30.3 or 30.4. However, it did not prevent A from sailing back to the pre-start side of the starting line and starting correctly. The protest committee may exonerate A under rule 64.1(a) for her breach of rule 30.3 or 30.4, and if so, the race committee shall score her DNS under rule A5.

Had A returned to the pre-start side of the starting line, started correctly, sailed the course and finished, the protest committee could have exonerated her for the breach of rule 30.3 or 30.4 and scored her in her finishing position.

Facts for Question 2

The race is started under rule 30.4, Black Flag Rule. The facts are the same as for Question 1, but this time there is a general recall. A's sail number is properly displayed as required by rule 30.4. Before the restart, A informs the race committee that she intends to protest B for breaking a rule of Part 2 in the recalled start. A starts, sails the course and finishes the restarted race. The race committee scores her DNE. A lodges a protest against B for the breach in the initial start and requests redress. In her request she claims that the race committee acted improperly when it scored her DNE.

Question 2

If the protest committee decides that B broke a Part 2 rule and, when she did so, compelled A to break rule 30.4, may the committee give A redress by scoring her in her finishing position in the restarted race?

Answer 2

No. A initially broke the first sentence of rule 30.4 and was identified on the course side of the starting line. Then her sail number was properly displayed according to rule 30.4. Because the race committee displayed A's sail number after a general recall, the penultimate sentence of rule 30.4 prohibited A from sailing in the restarted race. By starting in the restarted race, she breaks the penultimate sentence of rule 30.4. The race committee does not make a mistake when it scores her DNE. A is not entitled to redress because the race committee does not act improperly.

Facts for Question 3

The facts are the same as for Question 2 but this time A does not sail in the restarted race. When she comes ashore, she protests B for the incident in the initial start. The protest committee decides B broke a rule of Part 2 for which she cannot be penalized (see rule 36).

Question 3

If the protest committee decides that B broke a Part 2 rule and, when she did so, compelled A to break rule 30.4, may the protest committee change A's BFD score?

Answer 3

Yes, the protest committee will exonerate A for breaking rule 30.4 and will correct her score from BFD to DNS in the restarted race. However, she is not entitled to redress because the race committee did not act improperly.