



THE YACHT RACING ASSOCIATION of SAN FRANCISCO BAY
555 First St, Suite 200-E.
Benicia, CA 94510
Phone: 415-771-9500; Fax: 415-276-2378
E-mail: info@yra.org

9 November 2021

Appeal 2021-01

J/105 MAVERICK v J/105 NE*NE

Knarr and J/105 Regatta
San Francisco Yacht Club
June 12 - 13, 2021

DECISION

SUMMARY OF SITUATION

MAVERICK and NE*NE were competing in the Knarr and J/105 Regatta hosted by The San Francisco Yacht Club on 12 June 2021. At the end of racing on that day, MAVERICK submitted three protest hearing requests naming NE*NE as the protestee. Requests #1 and #2 involved two separate incidents that occurred at the first mark of Race #1. Request #3 involved an incident that occurred at the first mark of Race #2.

The hearings were held remotely via Zoom on 17 June 2021. The hearings were held consecutively and in the order that the incidents occurred during a single Zoom call.

In Hearing #1, the PC concluded that MAVERICK's protest flag was not flown conspicuously and the request was deemed invalid.

In Hearing #2, the PC decided that the protest was valid and that NE*NE had broken rule 31 and failed to take an appropriate on the water penalty. The protest committee disqualified NE*NE from Race #1.

In Hearing #3, the PC found that MAVERICK failed to fly a protest flag and decided that the protest was invalid.

At the conclusion of Hearing #3, and while the parties were all on the same Zoom call, the PC decided that they may have made a significant error during Hearing #2. They re-opened Hearing #2, calling it Hearing #4. At that hearing, the PC decided that they had made a mistake in concluding that MAVERICK's protest hearing request was valid. They changed their decision accordingly and the original protest was deemed invalid.

On 21 June 2021, MAVERICK filed a request to reopen Hearings #1 and #4 (Hearing #2) with a claim that they had new evidence that was unavailable at the time of the original hearings. A hearing was held remotely via Zoom on 22 June 2021. The protest committee consisted of the original three members of the jury. The protest committee decided that the evidence was neither new or significant and denied the request to reopen.

MAVERICK appealed on 7 July seeking to overturn the decisions made in Hearings #1, #4, and #5.

FACTS FOUND BY PROTEST COMMITTEE:

Hearing #1

1. Dennis Rowedder from JABORWOCKY did not see MAVERICK display a flag.
2. Brent Draney from BLACKHAWK did not see a protest flag flying on MAVERICK.
3. The protest flag on MAVERICK did not attract notice or attention and did not stand out so as to be clearly visible.

Hearing #2 (as amended by Hearing #4)

1. The protest flag on MAVERICK did not attract notice or attention and did not stand out so as to be clearly visible.

Hearing #3

1. NE*NE was beyond hailing distance at the time of the incident.
2. MAVERICK did not hail protest or raise a protest flag.
3. MAVERICK sent a text message after racing to the owner of NE*NE that they were protesting, approached on the sail-in to inform that they were protesting.

Hearing #5

1. MAVERICK presented photos showing the flag that was used aboard MAVERICK laid out on a flat surface with a tape measure and keys to reference, as well as a close-up of the flag deployed at the dock and a picture of the flag contained in its bag.
2. MAVERICK argued that there was inadequate time to prepare for the challenge to validity prior to Hearings #1, #2, & #4 because the challenge to validity was unforeseeable.
3. Hearing #1 was conducted 5 days after the incident.
4. Before Hearing #1, NE*NE had circulated hearsay evidence to the parties that indicated an intention to challenge validity on the basis of the display of the flag. The PC did not allow NE*NE to use the hearsay evidence.
5. During the validity portion of Hearing #1, NE*NE challenged the hail and display of the flag and MAVERICK responded "I have evidence of my own that I would be happy to share. I have photographic evidence. There are photos of the flag being displayed."
6. MAVERICK shared 2 images during the validity portion of Hearing #1 to direct the attention of the witnesses and committee to the attachment of the flag and bag on the backstay.

CONCLUSIONS, APPLICABLE RULES, AND DECISION OF PC:

Hearing #1

1. MAVERICK did not satisfy the requirement of RRS 61.1 to conspicuously display a protest flag at the first reasonable opportunity.

Decision – The protest is invalid.

Hearing #2 (as amended by Hearing #4)

1. MAVERICK did not satisfy the requirement of RRS 61.1 to conspicuously display a protest flag at the first reasonable opportunity.

Decision – The protest is invalid.

Hearing #3

1. MAVERICK did not fly a red flag as required by RRS 61.1a.

Decision – The protest is invalid.

Hearing #5

1. The hearing to consider reopening was requested within a reasonable time under RRS 66.1.
2. The contents of the photos that were provided by MAVERICK were available prior to the hearing and are therefore not “new” as defined by Case 115.
3. The protest committee considered all of the evidence that was presented during the original hearing and concluded that MAVERICK failed to display a protest flag conspicuously as required by RRS 61.1. The committee had no doubt that MAVERICK was equipped with a flag large enough to be conspicuous. The photos that were presented by MAVERICK to request reopening were not significant.
4. MAVERICK was given adequate time to prepare for Hearing #1.

Decision – Request for reopening denied.

APPELLANT BASIS FOR APPEAL:

MAVERICK appealed the decisions on the following grounds:

1. The panel erred in concluding that MAVERICK failed to display a flag that complied with the requirements of RRS 61.1(a) in Race 1.
2. The panel erred by failing to consider whether NE*NE had gained a significant advantage in the race by her breach.
3. The panel erred in failing to re-open the hearings on the grounds of new evidence.
4. The panel erred in failing to add another member to its panel when it decided to re-open Hearing 1 and failing to re-open the other hearings.
(*n.b. This should have referred to Hearing #2 which was re-opened as Hearing #4.*)

ASSOCIATION APPEALS COMMITTEE DECISION:

The appeal is denied.

While it is unusual to appeal decisions of multiple hearings in a single appeal, the AAC decided that because of the similarities and interrelationships between the hearings it was appropriate to do so in this case. The protest hearing decisions were written on 17 June and the decision not to reopen was written on 22 June. Decisions were communicated by posting them on a website, so it is not reasonable for the appellant to have received them until 23 June. The appeal was therefore filed within 15 days of receipt of the decision being appealed, as required by rule R2.1.

Addressing the appellant’s specific points:

1. The PC found as fact that the flag, as flown, did not attract notice or attention and did not stand out so as to be clearly visible. Based on this, they concluded that the flag was not displayed conspicuously as required by rule 61.1(a). The AAC is required to accept the facts found by the PC. The conclusions reached by the PC are reasonable given the facts found.

2. As each protest hearing request was found to be invalid, the PC was prohibited by rule 60.3(a) from acting on anything learned during those hearings. As such, whether NE*NE properly took a penalty, gained an advantage, or even broke a rule is moot.
3. The decision by the PC not to reopen the hearing was correct based on Case 115. The evidence presented by MAVERICK during Hearing #5 consisted of photos of their protest flag and MAVERICK flying that flag. The PC found as fact that the flag itself and the photos of MAVERICK displaying it were available to the appellant at the time of the first two hearings. Under Case 115 that evidence was not “new”.
4. There were two decisions made regarding the reopening of hearings. The first was to reopen Hearing #2. In this case the PC initiated the reopening under rule 66.1 immediately after Hearing #3, during the same Zoom meeting as used for Hearing #2, after 2100. Rule 66.3(b) applies. Under the circumstances, it was not practicable to add a new member to the protest committee. Given the direct contradiction between the decisions of Hearing #1 and Hearing #2, which were about incidents at the same mark, the concern that the protest committee may have committed a significant error was reasonable. The second reopening decision was in response to MAVERICK’s request to reopen Hearings #1 and #4 (reopening #2) based on new evidence. Rule 66.3(a) applies. The PC that heard the request was comprised completely of members of the original committee and therefore the requirements of that rule were met.

The appeal makes an additional argument not contained in these four points and therefore not addressed in the AAC responses above. The appellant claims that the notification requirements of rule 61.1 do not apply because, by not taking a penalty, NE*NE failed to *sail the course*. The AAC rejects that claim. Rule 44.1 is permissive, not compulsory, so a boat that breaks a rule and does not take a penalty for doing so can still meet all the requirements contained in the definition of *Sail the Course*. If the AAC were to accept the appellant’s interpretation, the requirements of rule 61.1(a) to notify the protestee by hailing ‘Protest’ and conspicuously displaying a red flag at the first reasonable opportunity after an incident in the racing area would never apply.

The Appeals Committee of the Yacht Racing Association of San Francisco Bay
John Christman, Acting Chair (john@christman.org)

Cc:

D. Mays Dickey, MAVERICK (dmaysdickey@gmail.com)

Tim Russell, NE*NE (tim@valleyoakwm.com)

Paul Zupan, PC Chair (pzupan@yahoo.com)

Appeals Committee Members:

Rob Overton (rob.overton1@gmail.com)