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Appeal 2021-02

J/111 SWIFT NESS v J/120 CHANCE

2021 Aldo Alessio Race; 2021 Phyllis Kleinman Swiftsure Regatta; 2021 Santa Cruz 27 National
Championship
St. Francis Yacht Club
August 20-22, 2021

DECISION

SUMMARY OF SITUATION

SWIFT NESS and CHANCE were competing in the ORR Division consisting of six races over the two days of the regatta. In Race 2, SWIFT NESS and CHANCE protested one another over an incident that occurred during a rounding at the second windward mark.

The two protests were heard in a single hearing that was held remotely via Zoom on 21 August 2021. The protest by CHANCE (28484) alleged that SWIFT NESS (101) failed to give mark room which resulted in a collision between the two boats. The protest by SWIFT NESS alleged that CHANCE took mark room to which she was not entitled, breaking rule 18.2.

SWIFT NESS appealed on 27 August 2021.

FACTS FOUND BY PROTEST COMMITTEE:

1. Boat 28484 was on port close hauled approaching the second windward mark to pass to starboard.
2. Boat 101 was on starboard close hauled approaching the windward mark.
3. Boat 28484 altered course to leeward to avoid Boat 101 as she crossed ahead before her tack.
4. Boat 101 crossed ahead of Boat 28484 and tacked to starboard to windward and ahead inside the zone.
5. Boat 28484 became overlapped to leeward of Boat 101 before Boat 101 completed her tack.
6. Boat 101 altered course to leeward towards the mark and boat 101's stern collided with Boat 28484's port bow while Boat 28484 was between Boat 101 and the mark.
7. Boat 28484 suffered cosmetic marks on the port side bow from the collision.
8. Boat 101 suffered a cracked toe rail on her starboard stern quarter.
9. Neither boat performed a penalty turn.

No diagram was endorsed or produced by the protest committee.

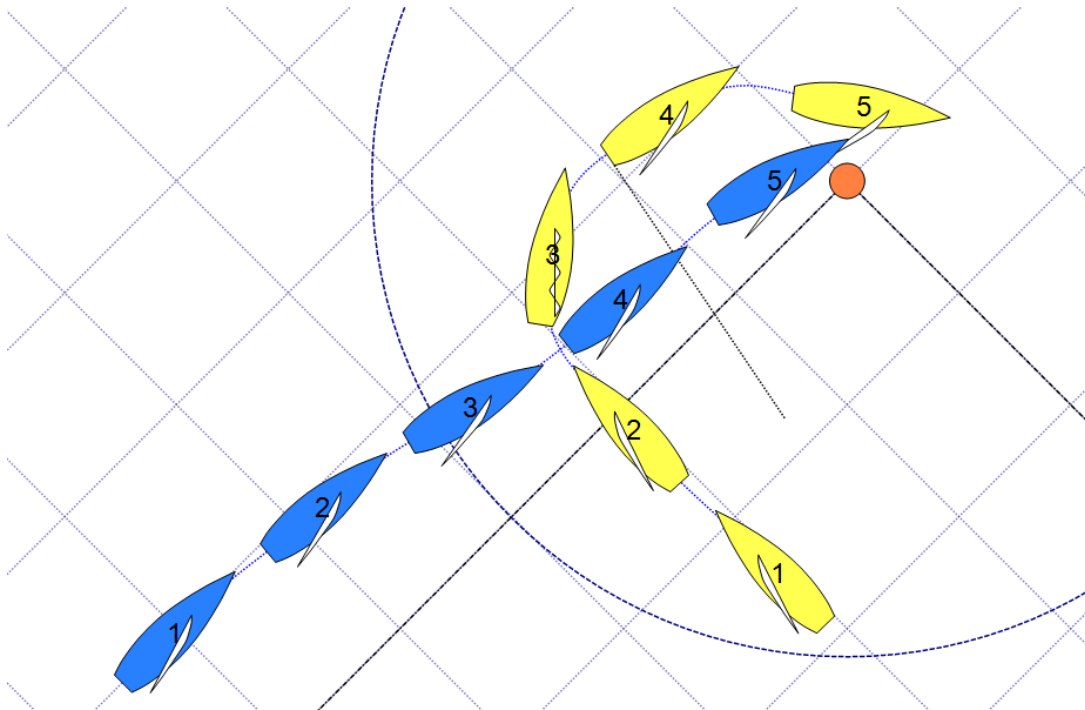
CONCLUSIONS, APPLICABLE RULES, AND DECISION OF PC:

1. Boat 101 to windward failed to keep clear of Boat 28484 to leeward, and broke RRS 11.
2. Boat 101 was able to give Boat 28484 mark-room but failed to do so, breaking RRS 18.2(a).
3. Boat 28484 obtained an inside overlap from clear astern and from the time the overlap began, Boat 101 was able to give mark-room, thus 18.2(f) does not apply.
4. Boat 101 did not avoid contact when it was reasonably possible, and broke RRS 14.
5. It was not reasonably possible for Boat 28484, the right-of-way boat to avoid contact with Boat 101 when it was clear that Boat 101 was not keeping clear. Boat 28484 did not break RRS 14.

DECISION: Boat 101 was disqualified from Race 2.

SUBSEQUENT ACTIONS BY APPEALS COMMITTEE

The Appeals Committee initially determined that the facts found by the protest committee were inadequate and, acting under rule R5.4(b), asked the protest committee to supply additional facts to clarify those already found. The protest committee responded with the following diagram and additional written facts.



1. The hearing was conducted via Zoom as indicated in the Sailing Instructions. CHANCE submitted a request for hearing at 16:24. At 16:28 both parties were notified via email and text message that a hearing had been scheduled and the notification was posted on the online notice board. SWIFT NESS submitted a request for hearing at 16:50. The hearing was scheduled to begin at 17:30 and the start of the hearing was delayed by other Zoom hearings until 17:40. The parties had more than an hour before the hearing to find or construct diagrams, videos, graphics

etc. to support their narrative. The parties connected from separate, quiet locations and had the opportunity to use whatever props were at their disposal to present their cases during the hearing. The PC had no difficulty understanding the testimony that was presented on Zoom and verified that the parties had no difficulty understanding the proceedings.

2. Prior to the incident, CHANCE was approaching the windward mark on port tack above the layline for a starboard rounding and on a collision course with SWIFT NESS, who was close-hauled on a starboard-tacked course that passed within 2-boatlengths of the mark.
3. CHANCE bore off to a course that would pass astern of SWIFT NESS
4. SWIFT NESS crossed CHANCE and tacked at least one boat-width above the layline, and to windward of CHANCE.
5. CHANCE became overlapped to leeward of SWIFT NESS just before SWIFT NESS completed her tack.
6. After completing her tack, SWIFT NESS bore off more than slightly to round the mark.
7. When it became clear that SWIFT NESS was not keeping clear, CHANCE bore off.
8. Contact occurred between SWIFT NESS at her rear starboard quarter (causing no major damage) and CHANCE, 7 feet aft of her bow on the port side (causing minor damage.)

APPELLANT'S BASIS FOR APPEAL:

SWIFT NESS appealed the decision on the following grounds:

1. The verbal online period of the zoom/protest hearing was very short and sometimes not clear.
2. The protest committee asked few questions and likely did not have a complete understanding of the incident.
3. Following the hearing, two versions of the Decision were posted, a first version and then a second "corrected" version. Appellant believes the Decision was made with inaccurate information, hastily determined, and/or not clearly written.
4. The Appellant recognized that Facts Found are not appealable, but nevertheless points out that Boat 101 altered course (tacked) from a starboard tack to port tack.
5. The Appellant disagreed that 28484 became overlapped to leeward of 101 before 101 completed her tack.
6. The Appellant believes that 101 did not alter course to leeward towards the mark.
7. The Appellant clarified that 101 suffered a cracked rail, not toe rail.
8. The Appellant disagrees with the conclusion that 101 failed to keep clear of 28484 and broke rule 11. Appellant believes that during the brief seconds between the time that 28484 created the leeward overlap and the collision, the separation between the stern of 101 and the boat of 28484 was less than two feet, making it impossible for 101 to turn up and avoid 28484. Appellant believes that 28484 had the stern of 101 locked, unable to swing and turn, and that 101 was not given room and time to maneuver.
9. Appellant believes that rule 18.2 has been misapplied since 28484 established the leeward inside overlap long after boat boats were inside the zone, and not until 101 was rounding the mark which rendered 101 unable to keep clear.
10. Appellant believes that it was not possible for 101 to give mark room given the brief time of the overlap and collision, and that the location of impact on the starboard quarter of 101 confirms this.

11. Appellant believes that it was never reasonably possible for 101 to avoid contact.
12. Appellant believes that it was possible for 28484 to avoid contact simply by heading down.

ASSOCIATION APPEALS COMMITTEE DECISION:**The appeal is denied.**

The Appeals Committee finds that the conclusions and decision of the Protest Committee are supported by the facts ultimately supplied. While the Appeals Committee solicited additional facts including a diagram of the incident, it concluded that none of those facts contradicted the Facts Found in the Protest Committee's original decision. Rather, they were clarifications and elaborations that in no way conflicted with the original document.

Addressing the appellant's specific points:

- The parties had sufficient opportunity during the hearing to express their inability to hear and understand the hearing dialog, and did not raise objections at the time. The Protest Committee had no reason to assume otherwise.
- The Protest Committee is only required to ask the questions they feel are necessary to understand the situation to their satisfaction. The parties had ample opportunity to present their case during the testimony phase of the hearing.
- The Protest Committee's publication of a second decision was merely a clarification of the original decision.
- The Appeals Committee is bound by rules 70.1(a) and R5.4(a) to accept the facts found by the Protest Committee unless it finds the facts inadequate. That said Fact 4 was in error in stating that 28484 tacked to starboard. This is deemed to be clerical error and not an indication of a lack of understanding of the situation. Describing the damage to 101 as a cracked rail, not toe rail, is a matter of semantics and the difference is not considered significant.
- The Appeals Committee has decided that the conclusions and decision reached by the Protest Committee are supported by the facts found.
- The Protest Committee properly applied the rules in their analysis of the situation, specifically rules 11, 14, and 18 were properly applied based on the facts found.

Regarding rule 18, while the boats were on opposite tacks rule 18 did not apply based on the exception in 18.1(a) (positions 1 & 2 in the diagram). Once 101 passed through head to wind (position 2.5), the boats were on the same tack, in the zone, and none of the exceptions in rule 18.1 were satisfied so the remainder of rule 18 could apply. Because the boats were neither overlapped nor clear ahead/astern when the first of them reached the zone rule 18.2(b) did not apply and could not 'turn on'. Rules 18.2(c), (d), and (e) could not apply during the rounding as these relate to rule 18.2(b). From the moment that 101 passed through head to wind until 28484 became overlapped to leeward, the boats were not overlapped and neither boat was entitled to mark room as the condition in rule 18.2(a) was not met, but rule 13 did apply and 101 was required to keep clear. At the moment 28484 became overlapped to leeward of 101 (position 4), 101 was still required to keep clear momentarily by rule 13 and thereafter by rule 11. 28484 was not limited by rule 15 as the right of way did not change when the overlap occurred. Additionally, rule 18.1(a) now applied as the boats were overlapped and required 101 to give 28484 mark room unless rule 18.2(f) applied.

However, rule 18.2(f) did not apply as the Protest Committee concluded that 101 was able to give 28484 mark room starting at the instant that the overlap was established. This conclusion is supported with the diagram provided by the Protest Committee.

The Appeals Committee of the Yacht Racing Association of San Francisco Bay

s/John Siegel
John Siegel, Acting Chair

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