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DECISION ON APPEAL, Appeal # 06-04
WALLOPING SWEDE vs. *JAM SESSION*
Winter One Design Regatta, J105 Class
Host: RegattaPRO; Race Date: 11/11/06

February 14, 2007

SUMMARY OF SITUATION:

At 15 seconds prior to the start signal, several J/105s were approaching the starting line, side by side, on starboard tack. *JAM SESSION* (*JS*) was the leeward boat in the group, with *BRICK HOUSE* (*BH*) to windward by about one-half boat length, and other boats further to windward of *BH*. *WALLOPING SWEDE* (*WS*), also on starboard tack, was traveling faster and approached from behind *JS* and *BH*. *WS* attempted to pass between *JS* and *BH*, but contact occurred between *WS* and *JS*, and then between *WS* and *BH*. *WS* hailed protest and subsequently submitted a valid protest against *JS*. At a hearing on December 7, *WS* was disqualified. At the hearing, *WS* was represented by Tom Allard (tactician), and Theresa Brandner (owner and helmsperson) appeared as a witness. Ms. Brandner has submitted this appeal.

FACTS FOUND BY PC:

1. Wind velocity was 10-12 knots.
2. Prior to the start, *JS*, *WS* and *BH* approached the line on starboard tack. At 15 seconds to start, *JS* and *BH* were facing the line with one-half boat length separation.
3. *WS* was reaching in from astern, at about 6 knots, to pass between *JS* and *BH*. *BH* was luffing head to wind to leeward of *ALCHEMY*, observing *JS* to leeward. *JS* was traveling at about 4.5 knots, close-hauled.
4. *WS* established a windward overlap on *JS*, and made contact on stern and then forward six or eight feet, causing damage.
5. With *WS* overtaking *JS* at a greater speed and close astern, *JS* did not have opportunity to alter course in either direction to avoid contact.

CONCLUSIONS OF PC:

1. *BH*, as head to wind and next to *ALCHEMY*, was in no position to move out of way of *WS*.
2. *WS* closed on *JS* at about 1.5 knots and made contact with the starboard side of *JS* causing damage, and touched the port side of *BH* but caused no damage.
3. Hitting both boats demonstrated there was insufficient room to go between them.

DECISION AND RULES:

1. *WS* is DSQ for failure to keep clear of leeward boat under RRS 11, and under RRS 14 for contact that caused damage.
2. *JS* did not have an opportunity to avoid the collision from *WS* who was required to keep clear. *HS (BH?)*, nearly stalled and head to wind, could not move out of the way due to the other boats and is not penalized.

BASIS FOR APPEAL BY WALLOPING SWEDE:

1. The PC failed to provide sufficient details, clarifications, explanations or interpretations of protest hearing testimony to justify their decisions. More specifically, *WS* questions which evidence and which testimony justified the PC's "facts" and ultimately their decisions (rulings).
2. *WS* provides photographic evidence and rationale that allegedly refutes the facts and conclusions of the PC.
3. *WS* provides additional commentary and rationale from her owner-helmsperson that refutes the PC's conclusions and/or decisions.
4. *WS* contends that all persons that testified on behalf of *JS* admit to not actually seeing the incident.
5. All of the above are alleged to support the viewpoint that *WS* did not cause contact resulting in damage.

DECISION:

The facts found by a protest committee are not subject to appeal. New evidence may cause a protest to be reconsidered, and inconsistencies in the facts found may be sufficient to cause a hearing to be reopened. However the facts found are generally considered to be final, and there is no requirement for a protest committee to publish the details of the process by which it arrives at these facts. We find that the Protest Committee's written decision satisfies the minimum requirements of RRS 65.1 by providing "...the facts found, the applicable *rules*, the decision, the reasons for it and any penalties imposed."

We further find that the new photographic evidence is not sufficient to justify a reopened hearing or a new hearing. In this case it is unclear how the new photographic evidence showing an undamaged bow would have any effect on the facts found. Indeed, the absence of visible bow damage to *WS* appears to be in reasonably close agreement with the Protest Committee's diagram and facts.

Revision of the facts found based on new testimony from one of the parties to the protest can only occur if a hearing is reopened. Barring the claim of a procedural or process error, and in the absence of significant new evidence, there is no grounds to accept additional narrative commentary from any of the parties.

The appeal is denied.

THE APPEALS COMMITTEE OF THE YACHT RACING ASSOCIATION OF SAN FRANCISCO BAY

Thomas V. Allen, Jr. Chairman

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