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DECISION ON APPEAL, Appeal # 07-02
IC-164 (La Paloma) vs. SFYC Race Committee
Fall One Design Invitational Regatta
Host: San Francisco YC; Date: 10/7/07

January 31, 2008

SUMMARY OF SITUATION

On October 7, an incident took place at the Finish Line of Race #4 of a five-race series. IC-100 and IC-103 were sailing side by side on starboard tack as they crossed the Finish Line, with IC-100 to leeward of IC-103. Contact occurred. IC-100 hailed protest and subsequently filed a protest against IC-103. IC-164 was sailing nearby, observed the incident between IC-100 and IC-103, hailed protest and subsequently also filed a protest against IC-103.

The Notice of Race and the Sailing Instructions stated that Arbitration would be in effect for protests involving rules of RRS Part 2, and later an arbitration hearing took place to resolve the dispute between IC-100 and IC-103. IC-103 accepted a 30% penalty (two points), as provided in the Sailing Instructions. A few days later, IC-164 was advised that the situation had been resolved and that there would be no further hearings related to this incident. After IC-164 complained, the RC decided that another arbitration hearing would be convened, but IC-164 insisted there be a full protest hearing and so requested in writing on October 15.

On October 22, the Race Committee wrote the owner of IC-164 a letter in which it stated there would not be a protest hearing relative to the protest of IC-164, that the Sailing Instructions do not provide the protestor the option to insist on a protest committee hearing (per Arbitration, SI 15), and further that a hearing would be pointless because IC-103 can not be penalized further with respect to this incident (per RRS 44.4b).

IC-164 has filed this appeal alleging the San Francisco YC Race Committee miss-handled IC-164's protest against IC-103, and has unfairly and inappropriately applied an alternative penalty which will deprive IC-164 the opportunity of participating in the upcoming 2008 IC World Championship Regatta. .

FACTS FOUND BY SFYC (the OA, represented by the PRO)

1. Two protests were submitted regarding this incident: One (#1) by IC-100 which was involved in the incident and a second (#2) by IC-164 which witnessed the same incident.
2. An arbitration hearing was conducted for protest #1, at which the Arbitrator offered a 30% penalty to IC-103 per SI 15.2(b). The penalty was accepted by IC-103, which was scored accordingly and the matter was closed.
3. No injury or serious damage was involved in the incident, and since the finish order of the boats was not affected by the incident, IC-103 did not gain a significant advantage in the race or series by her breach.
4. Subsequently, SFYC offered to hold a second arbitration hearing to include IC-164, but IC-164 refused to testify at the proposed arbitration hearing and insisted that a protest hearing be conducted relative to the incident.
5. On October 15, SFYC responded in writing to IC-164 explaining its position.

SFYC: CONCLUSIONS, DECISION, AND RULES THAT APPLY

1. SFYC refused to convene a formal protest hearing, citing several reasons, including that SI 15.2(b) denies that right to IC-164 in this instance.
2. SFYC cites RRS 44.1 as relevant, specifically the second sentence, "Her penalty shall be a Two-Turns Penalty unless the sailing instructions specify the use of the Scoring Penalty **or some other penalty**".
3. SFYC notes that a protest committee hearing in this matter would be pointless as a protest committee would be constrained by RRS 44.4(b), and that IC-103 could not be further penalized with respect to this incident.

BASIS FOR APPEAL BY IC-164:

1. The Sailing Instructions for this regatta do not conform to the Racing Rules of Sailing (RRS). They include provisions that deny due process to a protestor and produce an unfair result that must be overturned.
2. RRS 60.1 permits IC-164 the right to protest, which in this case has been denied.
3. The protest of IC-164 met the requirements of RRS 61 and must be heard at a protest hearing.
4. The Sailing Instructions are defective in that they attempted to change Rule 44 and Rule 70 without referencing them, as required by RRS 86.1(b), thus the proposed changes that incorporated arbitration provisions must be voided.
5. The US SAILING judges manual clearly explains how the arbitration provisions must be applied, including the requirement that all parties must agree to arbitration, and that if one party does not agree, arbitration cannot proceed. Furthermore, either party has the right to refuse arbitration and demand a formal protest hearing. The SFYC Race Committee did not conform to these requirements.
6. IC-164 contends that the two protests related to the same incident should be heard in a single hearing to assure fairness, consistency, and preserve the rights of both parties. IC-164 cites Appeal 42 and Case 80 to support this viewpoint.

DECISION OF ASSOCIATION APPEALS COMMITTEE:

The central issue of this appeal is whether the arbitration process as implemented in the Sailing Instructions (SIs) has resulted in IC-164 being denied their right to have their protest against IC-103 heard and decided upon by a protest committee.

We agree that IC-164 had a right to protest, per RRS 60.1 and have that protest heard by a protest committee, per RRS 63.1. However, SI 14.2 clearly requires that an arbitration hearing be held prior to a protest hearing and that the arbitration hearing use the procedures in SI 15. The requirement to attend (SI 14.2) and testify (SI 15.1) at an arbitration hearing does not, in and of itself, deny either party the right to have a protest heard by a protest committee nor does this requirement modify any rules in the RRS. It is also clear that, based on statements by the appellant and PRO, there has been no decision made by the arbitrator as IC-164 refused to testify in the arbitration hearing as required by SI 15.1. Under the process described in SI 15, until a decision has been made by the arbitrator it is not possible for the arbitration process to have denied either party of their right to a protest hearing and that arguments to the contrary are premature.

Therefore it is the decision of the Association Appeals Committee that SFYC make arrangements for an arbitration hearing to be held regarding the protest between IC-164 and IC-103 and that IC-164 and IC-103 shall meet the requirements of SI 15 such that the arbitrator may make a decision. This arbitration hearing shall occur at the earliest mutually acceptable place and date, but not later than 45 days from the date of this decision.

Additionally, we find that it is possible to narrowly interpret SI 15.2(b) such that, if the arbitrator decides that a boat probably broke a rule, offers the offending boat the alternative arbitration penalty, and the offending boat accepts that penalty, that the non-offending boat would not be able to request a protest hearing be heard by the protest committee. Therefore, to eliminate this as a possible outcome of the arbitration hearing, we instruct the

arbitrator to interpret SI 15.2(b) such that either boat may, after the arbitrator has announced the decision, request that the protest be heard by a protest committee.

As it is likely that an agreement will not be reached in arbitration, the Association Appeals Committee recommends that SFYC have a protest committee ready to hear the protest between IC-164 and IC-103 immediately following the arbitration hearing.

With respect to RRS 44 or RRS 70 having been changed by the SIs, we find that neither of these rules is changed.

RRS 44 does not apply to this case as RRS 44 relates to penalties taken at the time of the incident. Nor in this case does RRS 44.4(b) protect IC-103 from potentially being penalized further in a protest hearing as the words 'takes a penalty' in RRS 44.4(b) clearly refer to penalties accepted under RRS 44 (two turns, scoring, etc.) and not penalties accepted at the time of arbitration.

RRS 70 is not changed by the SIs. Notwithstanding the possibility of narrowly interpreting SI 15.2(b), the right to appeal granted under RRS 70.1 is waived by the parties, not denied, when arbitration results in a solution that is acceptable to and accepted by both parties. The waiver of the right to appeal (as well as requesting that the hearing be reopened or redress requested) is a condition of accepting the arbitrator's decision under SI 15.2(b) and thus is entered into freely by all parties. If any of the parties desire to retain the right of appeal then they may reject the arbitration agreement.

With respect to combining multiple hearings for the same incident, we agree that it is often advisable to conduct a single arbitration or protest hearing when multiple protests arise from the same incident, but it is not necessarily a requirement (see Case 49). Neither Appeal 42 nor Case 80 seems relevant. In this instance, it appears that SFYC decided that one arbitration hearing could efficiently resolve what appeared to be a straight forward rule infringement, and there is no evidence that the arbitration hearing involving IC-100 and IC-103 was handled improperly.

Additionally, it is noted that a separate arbitration between IC-100 and IC-103 for the same incident resulted in an agreement that IC-103 would accept the alternative penalty described in SI 15.2(b). IC-100 has accepted this resolution and a penalty has already been imposed.

It is the opinion of the Association Appeals Committee that, with regard to IC-103, the already agreed upon arbitration penalty meets the definition of 'some other penalty applies' in RRS 64.1(a). Therefore if, as a result of a protest hearing between IC-164 and IC-103, should IC-103 be found to have broken a rule that the protest committee may decide that the already imposed arbitration penalty rather than a DSQ be appropriate.

It is also the opinion of the Association Appeals Committee that it is not a necessity that the SIs refer to RRS 64.1(a) as having been changed to specifically state that the arbitration penalty may be the penalty imposed by the protest committee when arbitration results in an agreed penalty. This is based on the recognition that all arbitrations result in a penalty being imposed by the protest committee which is different than a DSQ, that the means of computing the penalty is clearly stated in the SIs, and that the penalty is clearly understood as 'some other penalty' by the competitors when an arbitration agreement is reached.

The Association Appeals Committee has requested confirmation or correction of this decision by the US SAILING Appeals Committee, per Appendix F1.2.

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

Thomas V. Allen, Jr. Chairman

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