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DECISION ON APPEAL, # 04-04  
*LAZY PETERSON vs TWEETY BIRD vs  
ALCHEMY*; Midwinter Race, November  
6, 2004; Host: Golden Gate Yacht Club

February 3, 2005

**SUMMARY OF SITUATION:**

Three boats were in the process of rounding a leeward mark: TWEETIE BIRD (a Catalina 34, Mk II), LAZY PETERSON (a Knarr), and ALCHEMY (a J105). The Cat34 had rounded the mark and was sailing close-hauled upwind. The Knarr rounded next and was also sailing close-hauled upwind. The J105 was still sailing downwind, approaching the mark to round. The three boats converged about 2-3 boat lengths to windward of the mark, and contact occurred between the Cat34 and the Knarr and between the J105 and the Knarr. Both the Knarr and the Cat34 hailed protest, displayed protest flags, and the Knarr subsequently filed a valid protest. In the protest hearing that followed the Cat34 was disqualified and the Knarr and J105 were exonerated.

**FACTS FOUND BY PROTEST COMMITTEE:**

1. The wind was from the west, variable from 0 to 10 knots; and there was a weak ebb current (toward the west). All boats were rounding the mark to starboard.
2. Cat34 rounded the mark first and sailed upwind on starboard tack. Knarr rounded behind Cat34 and sailed upwind on starboard tack about two boat lengths behind Cat34. J105 approached the mark on a downwind port tack from the south, on a course to pass to windward of Cat34 and Knarr. J105 also intended to round the mark to starboard.
3. After rounding the mark, Cat34 and Knarr were sailing upwind at about 3.5 to 4.0 knots. Knarr saw Cat34 tack onto port in front of Knarr. Knarr hailed "starboard," released her mainsheet, and fell off to pass behind Cat34, at which time Cat34 was approximately one boat length in front of Knarr.
4. When J105, still sailing downwind, saw Cat34 tack to port, J105 altered course to starboard to also pass behind Cat34, but from the opposite direction. Cat34 was now positioned directly between Knarr and J105, obstructing the view between the Knarr and J105.
5. Knarr then saw J105, close ahead, sailing a course for a bow-to-bow collision. At this time, Knarr was about ½ boat length from Cat34, reaching to pass behind Cat34.
6. Knarr attempted a crash tack to port to avoid a bow-to-bow collision with J105, but there was insufficient room for Knarr to tack and Knarr's bow contacted the starboard quarter of Cat34.
7. As J105 passed the stern of Cat34, contact occurred between Knarr and J105, after which Knarr again contacted starboard quarter of Cat34.
8. There was no serious damage to any vessel.

## **CONCLUSIONS AND DECISIONS OF THE PROTEST COMMITTEE:**

1. Cat34 tacked too close in front of Knarr, and Cat34 broke rule 16.1. Subsequently, when Cat34 was on port tack, she failed to keep clear of Knarr on starboard tack, and Cat34 broke rule 10.
2. Knarr and J105 are exonerated from rule infringements because they were a consequence of previous rule infringements made by Cat34 [as provided by RRS 64.1(b)].
3. Cat34 is disqualified, and Knarr and J105 are exonerated.

## **BASIS FOR APPEAL BY CATALINA 34:**

Cat34 is appealing the decision of the PC alleging (1) procedural errors made by the PC, (2) misapplication of rules, (3) misinterpretation of rules, and non-application of facts and rules, and (4) errors in applying Rule 68. More specifically, Cat34 contends the following:

1. PC broke rule 63.2 by permitting Knarr to submit testimony at the hearing that was inconsistent with written information on his original protest form.
2. PC mistakenly allowed boat models to be positioned during testimony by Knarr that was inconsistent with boat position diagrams on his original protest form.
3. PC ended the period of testimony before all issues had been addressed.
4. PC failed to consider possible violation of rules 10 and 14 by J105.
5. PC failed to consider possible violation of rules 16.2 and 14 by Knarr.
6. PC failed to consider that rule violations by Knarr and/or J105 were the causes for damage to Knarr.
7. PC failed to address damages, either to determine amount or assign responsibility.
8. PC incorrectly concluded that Cat34 broke racing rules.
9. PC should not have penalized Cat34.

## **DECISION ON APPEAL:**

With respect to “procedures,” the Appellant is reminded that a primary responsibility of the PC is to take evidence and find the facts (see RRS 63.6). There is a structured process which PC uses to perform these tasks during a hearing. This process provides each party an opportunity to present oral and written testimony, including illustrative diagrams, to describe what the party believes has happened. Each party is permitted to ask questions of the other parties to clarify testimony. During the hearing, there is often conflicting testimony and/or incomplete evidence about what happened. After testimony is taken, the PC will decide in private deliberations what they believe actually happened and the PC will compose “facts found.” The PC is under no obligation, at any time, to explain to the parties or obtain agreement of the parties as to relevant issues or to “facts found.” Based on the materials presented in this case, the Appeals Committee finds no evidence of procedural errors made by the PC in conducting the hearing.

Included in the “facts found,” the PC has determined a sequence of events that led to multiple instances of contact between the three boats. The PC states that the initial rule infringement occurred when Cat34 changed course from starboard tack to port tack close in front of Knarr. Knarr was then right-of-way boat on starboard tack, but had to try to duck the stern of Cat34 to avoid contact. Simultaneously, J/105 (give-way boat to windward) had to alter course to avoid Cat34, and tried to also pass astern of Cat34. Prior to the series of course changes, Cat34 was the right-of-way boat (RRS 12), and we agree that her action (tacking in front of Knarr) precipitated the subsequent series of incidents.

We feel compelled to note that it does not add to Appellant's credibility that (1) many of the "points" suggested by Appellant are clearly in conflict with the "facts found" by PC, and (2) the apparent author of many of Appellant's comments was not present at the protest hearing to make first-hand observations.

With respect to RRS 68 and its prescription, RRS 68 (b) means that a protest committee shall find facts and make decisions **only** for the purpose determining compliance with the rules (and thus scoring the race). It further clarifies that, "No protest committee or appeals committee shall adjudicate any claim for damages. Such a claim is subject to the jurisdiction of the courts." We believe that PC correctly handled the issues relating to RRS 68 Damages.

In summary, the AAC sustains the decision of PC that Cat 34 is DSQ for breaking RRS 10. As a consequence of Cat34's initial rule infringement, Knarr and J/105 are exonerated from the other potential rules violations (including RRS 10, 14, and 16.2) suggested by Cat34. RRS 64.1(b) is applicable.

THE ASSOCIATION APPEALS COMMITTEE OF THE YRA OF SAN FRANCISCO BAY.

Thomas V. Allen, Jr. Chairman

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