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DECISION ON APPEAL, Appeal # 05-09  
*OUI B 5 vs EL OCASO*  
PICYA Regatta (Big Lipton), July 17, 2005  
Host: Golden Gate YC

March 29, 2006

#### **SUMMARY OF SITUATION:**

*OUI B 5 (OB5)* and *EL OCASO (EO)*, both J/120 class boats, were involved in a right-of-way incident during the third race of the Big Lipton regatta on July 17, 2005. At the time of the incident, both boats displayed protest flags, which were noted by the RC. After the race, both boats returned to the harbor, where the owners discussed the incident and sought out race officials at the nearby host club. Among other items, the owners discussed the timing requirements for both protest filing and protest hearing with the PRO. There were some misunderstandings.

*OB5* thought that the protest filing period had been extended by the PRO. *OB5* successfully filed a protest, by fax, with a representative of the Organizing Authority, within the extended time limit; but *EO* did not file her protest because she thought that *OB5* had decided not to file. In a hearing on 7-21-05, a PC declared the protest by *OB5* to be invalid because it was filed late, and *OB5* appealed this decision.

The Association Appeals Committee (AAC) accepted *OB5*'s appeal and attempted to notify all parties, but due to an inaccurate address for *EO*, *EO* representatives did not receive the AAC's initial distribution of materials (dated 8-27-05). After expiration of the 15-day response period, no comments had been received from the participants. Based on the unchallenged statements submitted by the appellant, on 9-25-05 the AAC remanded the protest to the PC to be heard on the merits of the incident. At a subsequent hearing on 12-1-05, the PC disqualified *EO* for breaking RRS 10. *EO* has now submitted an appeal alleging errors in the original decision of the AAC and unfair actions relevant to the most recent decisions of the PC. The AAC accepted the new appeal as complying with RRS F.

#### **FACTS FOUND BY PC (on 12-1-05):**

1. Both boats finished the race protesting each other.
2. During a subsequent conversation with the RC, the boats were told to "work it out" and that the filing period was extended.
3. *OB5* filed a protest, but *EO* did not file a protest because she assumed that *OB5* would not file.
4. *EO*'s protest would have been for an extended sprit on *OB5*.
5. Testimony was presented to the effect that *OB5*'s sprit was not fully retracted, but it was not established when or how much as it was not part of this protest.

6. Larry Mayne (representing the Organizing Authority) testified from notes he had made concerning three statements made by the *EO* skipper relating to the “crossing” and a subsequent proposed agreement between the two boats to drop their respective protests. The testimony by Mayne was not considered by the PC in making its decision. Referring to his notes, Mayne alleged that the following statements were made by the owner of *EO*:

- a. “Re port starboard cross, no way was *OB5* going to hit my boat”
- b. “If they were closer the extended sprit of *OB5* may have made contact”
- c. “We protested *OB5* and understood that if he put his flag away, they would put theirs away (this statement was made after they talked to the PRO)”

#### **CONCLUSIONS OF PC, RULES THAT APPLY, AND DECISION:**

PC concluded that *OB5* was reasonable in a belief of imminent danger of collision, and *OB5* did a “crash tack” to avoid collision. *EO* broke Rule 10 and was disqualified.

#### **BASIS FOR APPEAL BY *EL OCASO (EO)*:**

1. The original protest was correctly ruled invalid by the PC on July 21, and this decision by the PC was subsequently, but incorrectly, overruled by the AAC because the PRO did not have the right to modify the SI’s or the RRS when he extended the time limit for filing the protest.
2. The claim by *OB5* that she was unable to submit her protest within the time limit, because there were no RC personnel available to accept it, is not factually correct (In an email dated October 6, RC personnel declared they were available at the host club for at least 90 minutes after the filing period ended).
3. The AAC accepted as fact several written statements contained in the appeal from *OB5*, although this information was not made available to *EO* until after the AAC decision was published on September 25, 2005. Consequently, *EO* did not have an opportunity to challenge several erroneous claims by *OB5*, namely:
  - a. Contrary to the claim in the *OB5* appeal document, RC personnel were available at the host club to receive protests throughout the filing period.
  - b. Contrary to the claim in the *OB5* appeal document, the *OB5* skipper left the club premises before the filing period ended, and no one from *OB5* was seen attempting to file a protest during the filing period.
  - c. Contrary to the claim in the *OB5* appeal document, “all the affected parties” did not agree to an extension of the filing period (in particular, *EO* did not agree).
  - d. Contrary to the *OB5* claim, although *EO* was told by the PRO that they had 24 hours to file, *EO* did not agree to this extension.
4. Through no fault of *EO*, several communications from the AAC were delayed or not received until after response deadlines, namely:
  - a. AAC communications went to the *EO* skipper’s old address (not the correct one which was provided on the entry form) and were not received by *EO*.
  - b. The *EO* tactician (who represented *EO* at protest hearings) did not receive communications from AAC although his contact information was contained on the entry form.
  - c. All *EO* responses to the AAC were made timely, but were rejected as late by the AAC.
  - d. The original appellant (*OB5*) failed to provide adequate contact information for all parties, as required by F2.2.
5. The Protest Filing Time Limit was improperly extended.
  - a. Per SI section 1, applicable rules for this event were RRS 2005-2008.
  - b. Per SI section 14.0, valid protests meeting RRS 61 will be heard, and no changes to the time limit were made.
  - c. Per SI section 5.0, changes to the SI will be posted by 0930 on the day they will take effect, but no change to the filing period was posted.

6. Right to be present, RRS 63.3, was not observed.
  - a. The *EO* skipper announced well in advance of the proposed hearing date (12-1-05) that he could not attend on that date. Consequently, significant testimony could not be properly presented by *EO*.
  - b. The hearing date was not confirmed until late afternoon on 12-1-05, and only the *EO* tactician could attend. *EO* witnesses could not be assembled at the last minute.
  - c. Due to the last-minute confirmation of the date, the *EO* tactician was unable to prepare properly. In contrast, *OB5* was represented by the skipper, tactician, and multiple witnesses.
7. *EO* was prejudiced by the fact she did not know she was being protested until after the filing period had expired, and consequently *EO* was not able to submit her protest. The fact that *OB5* was sailing upwind with her sprit pole extended contributed to the port/starboard situation. Since *EO* personnel were at the GGYC during the filing period, they knew that *OB5* had not filed a timely protest, so *EO* did not feel the need to file her protest.

## **DECISION:**

Appellant suggests several irregularities as a basis for his appeal. The AAC comments as follows:

1. **Was it OK for the PRO to extend the protest time limit?** RRS 61.3 permits the PC to extend the time limit if there is good reason to do so. While the PRO does not technically have this authority, he assumed it on behalf of the OA in the absence of a PC. The OA representative (Larry Mayne) was present and supported this decision. Both skippers were told of the decision and did not object at the time it was made. *OB5* accepted the decision and acted in good faith by filing during the extended time period. We believe it is disingenuous for *EO* to argue this technicality after the fact, while admitting they understood the decision at the time it was announced. The AAC rules that the filing period was extended in accordance with the RRS.
2. **Is it relevant that *OB5* was unsuccessful in finding an RC person and delivering its protest within the original filing period considering that the filing period had been extended?** The fact that *OB5* did not find an RC person after returning to the Club to deliver her protest is not relevant, nor is it relevant that *EO* did not see any *OB5* person return to the Club after their initial discussions. *OB5* filed its protest in accordance with the extended filing period.
3. **Should not the original decision of the AAC to have this protest reheard by the PC be reversed?** The AAC acknowledges that *EO* did not have an opportunity to refute or comment on statements in the original appeal of *OB5* because of the initial failed written communications between AAC and *EO*. However, the AAC is now reaffirming this decision based on the updated information submitted by the parties and the race officials following successful communications between the parties (see rationale for decision in #1 above).
4. **Did *EO* have sufficient time to prepare for the hearing and assemble sufficient witnesses?** We believe *EO* had ample time to prepare for the hearing on December 1 (four months!), and that *EO* was represented at the hearing by a competent member of her crew, namely her tactician. Relevant comments on the selection of this date are contained in the PC's letter dated December 4, 2005. The fact that *EO*'s skipper was unable to participate in the hearing as a witness did not materially prejudice the outcome.
5. **Was *EO* prejudiced because she was not notified prior to the expiration of the (extended) filing period that *OB5* had filed a protest for a Part II infringement?** The fact that *EO* knew that *OB5* had hailed, displayed a flag, and presented the issues after the race constituted sufficient notice for *OB5* to comply with RRS 61.1(a). The alleged "side agreement" between the two parties to notify each other prior to filing is not relevant.
6. **Was *EO*'s complaint about a partially extended sprit on *OB5* a justifiable defense for "tacking too close?"** *EO*'s primary objection to the PC's decision that *EO* broke RRS 10 is based on her disagreement over the facts found by the PC. The facts found by the PC are not subject to appeal (RRS 70.1). The position of the sprit on *OB5* did not appear to be a significant factor with respect to the port-starboard incident. Furthermore, it appears there are no J/120 class rules restricting the positioning of the sprit at any time. In spite of numerous disagreements about what was said by whom, there was no testimony or

evidence presented to suggest that the sprit was deliberately miss-used by *OB5* or that *OB5* failed to comply with “recognized principles of sportsmanship and fair play” (RRS 2).

The Appeal of *EO* dated December 11, 2005 is denied.

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

Thomas V. Allen, Jr. Chairman

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