



**YACHT RACING ASSOCIATION
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DECISION ON APPEAL, #10-04
KNARR, #130 vs KNARR # 116
SF NOOD Regatta, Knarr Class, Race #2
Host: St. Francis YC, June 26, 2010

August 4, 2010

SUMMARY OF SITUATION:

Knarr #116 and Knarr #130 were sailing upwind along the City Front, on port tack, overlapped, with #116 to leeward and slightly ahead. Lateral separation was about one boat length. Knarr #115 appeared unexpectedly on starboard tack and #116 luffed to avoid #115. #130 luffed and tacked to avoid #116, after which #130's mast fell in the water. #130 filed a valid protest and a request for redress. The PC conducted a hearing that night, concluded that no rules were broken and dismissed the protest. The following morning, #130 submitted a request to re-open, but at a hearing later in the day the request was denied. #130 submitted an appeal which was received by US SAILING within the 15-day time limit.

FACTS FOUND BY THE PROTEST COMMITTEE, HEARING ON JUNE 26:

The wind was 12 – 15 kts. #130 hailed Protest at the time of the incident.
#116 & #130 were on port tack one boat length apart. #130 to windward, #116 slightly ahead.
#116 luffed to avoid starboard #115. #130 luffed immediately to avoid #116.
#116 luffed head-to-wind & #130 tacked away. #130's mast fell and ended up on the port side of the boat.
#116 completed a 720. No one witnessed contact between boats.
#130 flew a protest flag after cleaning up the rig.

CONCLUSIONS OF THE PROTEST COMMITTEE, HEARING ON JUNE 26:

#130 was required to keep clear of #116 under rule 11 and did so. #116 gave #130 room to keep clear under rule 16.1. No rules were broken.

BASIS FOR APPEAL BY #130:

#130 believes the PC used poor judgment in denying this request to re-open. In the discussions about re-opening, #130 identified two new witnesses who saw the incident, of which at least one should have qualified to provide "significant new evidence" per PC's definition. One new witness was a "third-party" with no affiliation with any member of the local Knarr fleet. This witness was watching with friends from a spectator boat and allegedly observed the two masts locked together prior to the collapse of #130's mast. Both new witnesses were identified by name on the request form.

This race itself was "significant" in that it was a qualifying race for entry into an international competition to follow, as well as a qualifier for the 2010 season championship for the local Knarr fleet.

#130 believes the PC acted too hastily in evaluating this situation. Among the PC's oversights was the notation on the original protest form to accept the diagram of #130, which included the words "rigs locked" at position 3. A second oversight: Two new witnesses were identified by name in the "re-open" request, but the PC wrote "none" in the space for "names of witnesses."

Considering the circumstances of two port-tack boats maneuvering in close quarters to avoid a third right-of-way boat and the subsequent dismasting of one of the boats, re-opening a hearing to find more convincing evidence would appear to be a primary purpose for Rule 66 and an appropriate course of action for the PC.

COMMENTS SUBMITTED BY PROTEST COMMITTEE VIA EMAIL DURING 15-DAY PERIOD:

At first hearing, an outside witness testified that #130 was seen tacking away from #116 without contact. At first hearing, #116 stated that they did a two-turns penalty for "insurance", not as the result of a collision. During discussions about re-opening, #130 stated they were unable to provide photographic evidence of contact between the boats. During discussions about re-opening, PC concluded that a witness on a remote spectator boat was unlikely to provide credible testimony. During discussions about re-opening, PC concluded that new evidence was unlikely to cause them to change their original decision so they decided NOT to re-open.

COMMENTS SUBMITTED BY #116 VIA EMAIL DURING 15-DAY PERIOD:

Knarr #116 has been informed that investigators from Traveler's insurance have determined that Knarr #116 collided with Knar #130 in race #2 on June 26, 2010. Accordingly, Knarr #116 is withdrawing from that race.

DECISION OF APPEALS COMMITTEE (AAC):

RRS 66 gives the PC the option to re-re-open a hearing when significant new evidence becomes available within a reasonable time. In this case, the #130 became aware of new witnesses within a few hours of the hearing and filed a request to re-open the following morning. AAC believes this request was filed within a reasonable time.

A key issue in the original hearing was that none of the witnesses had actually seen contact between the two boats. The new witnesses were presumably prepared to testify that they had seen contact between the two masts, which if found credible, would likely have had a significant effect on the decision.

Photographic evidence is not a requirement to validate what a witness may have seen. Also, the fact that spectator boats were not supposed to be in the racing area does not necessarily invalidate possible testimony from this source.

Considering the importance of contact between the masts in this situation, AAC rules that the PC erred in not fully considering potentially significant new evidence.

The AAC directs the PC to re-open the hearing to consider the new evidence and to take any other actions that may be appropriate. AAC notes that considering the recent report by #116 and her decision to retire from the race, #130 may wish to withdraw her protest, her request for redress, and her request to re-open. Per RRS 63.1, the decision to accept such a request by #130 would be that of the PC.

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

Thomas V. Allen, Jr., Chairman (email: tomallen2@comcast.net)

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