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DECISION on APPEAL: AAC16-08, Protest Committee decision IOD#78 and IOD#100 v IOD#82  
2016 Wednesday Evening Series, Race #12 or 13, August 24, 2016

August 31, 2017

Mr. Ron Young  
IOD#82

Mr. Paul Zupan  
IOD#100

Mr. Paul Manning  
IOD#78

Mr. Bill Bell  
Protest Committee Chair

### **SUMMARY OF SITUATION**

This appeal involves boats racing in the International One Design (IOD) class of the 2016 Wednesday Night Series (Series) run by St. Francis YC from April to September. In race 6, IOD#100 and IOD#78 filed protests in substance alleging IOD#82 was not eligible to race (Protests #3 & #4) and IOD#82 was disqualified from races 2, 6, 8, 9 and 10 for breaking RRS 3(a) and paragraph XI(E) (Reg. XI(E)) of the Regulations of the San Francisco IOD Fleet (Fleet-Regs). The protest committee requested confirmation or correction of its decision and IOD#82 also appealed the decision. While the request and appeal were pending, IOD#100 and IOD#78 filed similar protests for the race on Aug. 24th (Protests #5 & #6). None of the protests contained an allegation that IOD#82 was not in current compliance with any specific measurement or equipment rule.

This appeal relates to Protests #5 & #6. The protest committee (PC) for the Aug. 24th race heard Protests #5 and #6 together and sent out its written decision on Sept. 14 (but dated Sept. 12), finding that IOD#82 broke Reg. XI(E) and RRS 2, 3(a) and 3(b) in the Aug. 24th race and disqualifying her (not excludable). IOD#82 filed this appeal on Sept. 28, 2016, within 15 days after receiving the written decision.

On May 20, 2017, this committee (AAC) issued its decision on the appeal of the decision from race 6, upholding IOD#82's appeal and reinstating her in races 2, 8, 9 and 10 and returning Protests #3 & #4 for a reopening as to race 6 only. IOD#100 and IOD#78 appealed that decision to the US Sailing Appeals Committee (USAC) and the USAC issued its appeal decision (USAC Decision) on August 22, 2017, ruling that (A) RRS 3(a) is not a rule that can be broken by a boat, (B) Reg. XI(E) is invalid and therefore could not have been broken by IOD#82, (C) IOD#82 did nothing that could be a breach of RRS 2 and (D) IOD#82 is reinstated in all races in which the race 6 protest committee disqualified her.

**PC FACTS FOUND:**

1. The PC decided not to allow withdrawal of the protests as requested by Mr. Zupan and Mr. Manning, as 'fair sailing' and 'sportsmanship may be involved in both protests.
2. The Aug 24th race was protested, but there was some ambiguity as to what the race number actually was.
3. In a decision dated Aug 2, 2016 a protest committee found IOD 82 had broken RRS 3(a) and SF Fleet Regulation XI(E). IOD 82 was scored DSQ for all races raced.
4. No class measurement rules were broken or cited.
5. The PC of August 2, 2016 requested "confirmation or correction" from the Appeals Committee on August 3, 2016.
6. IOD 82 raced in the August 3rd race without complying with SF IOD Fleet Regulation XI(E) by not requesting approval for changes made, nor receiving approval from the SF IOD Fleet officers following the August 2, 2016 PC decision.
7. On August 17, 2016, Mr. Young appealed the protest committee decision of August 2, 2016, claiming the PC had erred in its decision.
8. IOD 82 raced in the August 24th race without complying with SF IOD Fleet Regulation XI(E) by not requesting approval for changes made, nor receiving approval from the SF IOD Fleet officers following the August 2, 2016 PC decision.
9. Ron Young sailing IOD 82 was well aware the protest committee decision had found him breaking rules earlier in the regatta series.
10. Ron Young sailing IOD 82 had made no changes to IOD 82 since the protest committee decision.

**PC CONCLUSIONS AND APPLICABLE RULES:**

IOD 82's appeal regarded violations of RRS 3(a) and SF IOD fleet Regulation XI(E). Because IOD 82 was not disqualified under a class rule, she was not entitled to continue racing under RRS 64.3(c).

IOD 82 raced in the August 24th race with the knowledge she had been found by a protest committee to have broken rules in races: RRS 3(a) and SF IOD Fleet Regulation XI(E). Ron Young sailing IOD 82 was well aware he had been penalized by the protest committee as DSQ for all races raced. In a continuing violation of the same rules, IOD 82 again raced on August 24th knowing she had not corrected those rule breaches that caused her to be penalized and disqualified by the protest committee. Therefore, IOD 82 broke RRS 3(a). By not accepting disqualification under the rules IOD 82 also broke RRS 3(b). Racing with the knowledge that she was again breaking rules as found by a protest committee means IOD 82 clearly did not race in compliance with recognized principles of sportsmanship and fair play additionally breaking RRS 2.

Mr. Young is warned that any further violations of sportsmanship and fair play may result in a rule 69 hearing against him for gross misconduct.

**PC DECISION:**

IOD 82 penalized as follows: DNE for the August 24th race

**GROUNDS FOR THIS APPEAL:**

IOD#82 argues that (1) there were improper procedures in that for part of the hearing the representative of IOD#82 was excluded, (2) RRS 64.3(c) allowed IOD#82 to continue racing in the Series while the protest committee decision from race 6 was appealed, (3) the alleged violation of Reg. XI(E) took place over three years previously, too long ago for a disqualification from the Aug. 24th race, (4) the PC misinterpreted the applicable "class rules" and (5) the allegations in Protests #5 & #6 were the same as in

Protests #3 & #4 and so the later protests should also be governed by the AAC decision on the earlier protests.

**ASSOCIATION APPEALS COMMITTEE DECISION:**

The USAC Decision dealt with many issues relevant to this appeal and in particular its ruling that Reg. XI(E) was invalid and did not apply to the Series is binding on us. For all practical purposes, that decision resolves this appeal. A copy of the USAC Decision is attached.

The PC Decision found that IOD#82 broke Reg. XI(E), RRS 3(a), RRS 3(b) and RRS 2. We deal with each of those rules in turn:

**Reg. XI(E)** – The USAC Decision ruled that Reg. XI(E) was invalid on two grounds – first, the Fleet Regs were not included as an “other document that govern[ed] the event” in both the NOR and SIs for the Series and therefore could not apply and second, even if they had been included in both the NOR and SIs Reg. XI(E) would be an improper attempt to change the IOD “class rules” in contravention of RRS 87 and invalid on that ground alone. Since Reg. XI(E) was invalid, it was not a “rule” that applied to the event. IOD#82 could not have broken it and therefore could not be disqualified for “breaking” it.

**RRS 3(a) & 3(b)** – The USAC Decision ruled that RRS 3(a) is not a rule that can be broken by a boat. The same logic applies to RRS 3(b). Therefore, IOD#82 could not have broken either of those racing rules and could not be disqualified for breaking either rule.

**RRS 2** – The USAC Decision stated: “IOD #82 believed she was eligible to compete and was sailing within the rules. **That others disagreed is not a reason to find that she broke rule 2.**” [Emphasis added.] A boat can only be disqualified for breaking RRS 2 only when “it is clearly established that those principles [of sportsmanship and fair play] have been violated.” Here it was clear that IOD#82 had a reasonable belief that she was in compliance with applicable rules, a belief subsequently upheld by the USAC Decision. Even if IOD#82 had been found to have broken a rule, her reasonable belief that she was in compliance would mean that such a breach could not rise to the level of breaking RRS 2.

It may have been improper for the PC to conduct part of the hearing, dealing with whether to allow withdrawal of Protests #5 & #6, without allowing IOD#82 to be present but in light of our decision that IOD#82 is reinstated in her finishing position for the Aug. 24th race there was no material prejudice.

The appeal by IOD#82 is upheld and she is reinstated in her finishing position for the Aug. 24th race.

Best Regards,

The Appeals Committee of the Yacht Racing Association of San Francisco Bay  
Michael Gross, Chair (mike.gross@charter.net)

Cc:

Appeals Committee Members:

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Attachment USAC Decision:



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August 22, 2017

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Reference: File 17-04

Dear Mr. Manning and Mr. Zupan:

This is the US Sailing Appeals Committee's decision on your appeals of the Yacht Racing Association of San Francisco Bay (YRASFB) Appeals Committee's decision on the protests *One Hundred* (IOD #100) and *Xarifa* (IOD #78) vs. *Youngster* (IOD #82), arising from an incident in Race 6 of the Wednesday Evening Series on June 1, 2016, conducted by the St. Francis Yacht Club.

Appeals Committee member Doug Sloan recused himself from consideration of this appeal and did not participate in the deliberations or decisions of the committee.

We note that this incident and the resulting protests occurred in 2016, and were therefore governed by the 2013–2016 *Racing Rules of Sailing* (RRS). Therefore, all RRS references are to the 2013–2016 rules, unless indicated otherwise. We also note that the IOD Class Rules in effect at the time of the protests was dated January 1, 2015.

There were many grounds raised in this appeal. We have broken them out and numbered them in an attempt to make the decision easier to follow.

1) **What is the status of The Regulations Governing the IOD Class San Francisco Fleet (we will refer to that document as the "Fleet Regs")?**

One question in this appeal is: are the Fleet Regs "class rules" as that term is used in the RRS definition Rule (d) and elsewhere in the RRS? We interpret the term "class rules" to have the same meaning as is stated in *The Equipment Rules of Sailing* (ERS), which defines "class rules" as "the rules that specify the **boat** and its use, **certification** and administration" (see ERS C2.1). ERS C2.4 states that the "class rules authority" is: "The body that provides final approval of the **class rules**, **class rule** changes and **class rule** interpretations." And ERS C1.1 states that the "class authority" is: "The body that governs the class as specified in the **class rules**."



The IOD World Class Association (IODWCA) has published a document titled, “International One Design Class Rules.” IOD Class Rule A.1.3 states, “Except where used in headings, when a term is printed in **“bold”** the definition in the ERS applies...” IOD Class Rule A.3.1 states, “The international authority of the class is the IODWCA which shall preside over all matters concerning these **class rules.**”

The IODWCA Constitution, Article CIII states, “This Constitution, and the By-Laws, Specifications, Rules and Championship Regulations adopted pursuant to the Constitution, are binding upon all members of the WCA and all Fleets registered by the WCA.” We interpret the term “Rules” in Article CIII to include “Class Rules,” and we interpret the IOD Class Rules document to be the “class rules” for the IOD Class.

In US Sailing Question 87 the point is made that “class rules,” as that term is used in rule 86.1(c) and elsewhere in the racing rules, refers to rules of a class association. And a class association is an association of people who, among other things, control the rules that state the physical specifications for boats of that class.”

The San Francisco Bay Fleet of the International One Design Class is a “fleet” within the IOD World Class Association (see Constitution CIV, 4.2). The fleet is not a “class association.” Fleets do not have control or authority over the class rules. Therefore the rules and regulations of that fleet are not “class rules.” They are fleet rules and regulations.

Having said that, we note that some IOD Class Rules dictate which equipment boats in a fleet must use, and some give permission to, or require, fleets to make some rules. Examples include IOD Class Rule A.16.1 which requires the San Francisco fleet boats to use the “Classic Rig.” Also, IOD Class rules B.1.2 and B.4.1 permit local fleet equipment rules governing, respectively, compasses and a sail purchase plan. As these rules stem from the Class Rules, they are “class rules” and are always in effect for boats racing in that fleet, whether or not the fleet regulations apply.

## 2) **Did the Regulations Governing the IOD Class San Francisco Fleet (“Fleet Regs”) apply in the 2016 Folkboat Wednesday Evening Series?**

In order for the Fleet Regs to be a “rule” that applies, they would need to fall under definition Rule (g), “any other documents that govern the event.”

Rule J1.1(3) requires (note the term “shall”) that the NoR include a list of any other documents that will govern the event. And J2.1(2) says the same thing about the sailing instructions. Case 98 supports that by saying “Any other documents that will govern the event must be listed in the notice of race and the sailing instructions (see rules J1.1(3) and J2.1(2)).”

The NoR for the Wednesday Evening Series (in which the protests were lodged) did not list the “Regulations Governing the IOD San Francisco Fleet” under “Rules.” However the SI’s did.

Given that the notice of race and the sailing instructions list the rules that apply to a race or series, an appeals committee must read those documents to determine what rules are in effect. That is why those documents are required to be supplied with an appeal (see rule R2.2(d)).

We further note that rule 63.7 regarding conflicts between rules in the NoR and SI’s does not apply because there is no rule in the NoR regarding the application of the Fleet Regs. Therefore there are no rules in the two documents that conflict regarding the Fleet Regs.

Because the Fleet Regs were not listed in the NoR as a document that governed the series, as required by rule J1.1(3), the Fleet Regs did not apply to the races in the Wednesday Evening Series.

**3) Can a boat “break” rule 3(a) of the 2013-2016 RRS?**

No. Rule 3(a) does not require a boat to do something. It is a statement telling the boat what it agrees to; i.e., it is agreeing to be governed by *The Racing Rules of Sailing* as opposed to some other body of rules such as some government right-of-way rules. If a boat does not comply with a rule in the RRS, it can be protested using the systems in Part 5 of the RRS.

IOD #82 was disqualified for breaking Fleet Regulation XI(E) and racing rule 3(a). As stated above, the Fleet Regulations did not apply in this series, and a boat cannot break rule 3(a).

Accordingly, IOD #82’s appeal is upheld, and she is reinstated in all races she was disqualified from by the protest committee.

In the interest of completeness, we make these additional points:

**4) Can a protest committee disqualify a boat from a race in which she was not protested?**

Not under the 2013–2016 RRS. We note that under the 2017–2020 RRS a boat can be disqualified in earlier races for a breach of a class rule under rule 64.3(c) without additional protests. However, under the 2013-2016 rules, this option was not available to the protest committee.

In order for a protest to be valid, it must identify the incident, including where and when it occurred (see rules 61.2 and 63.5). In their protests against IOD #82, IOD #78 and IOD #100 listed race 6. There was no specific allegation in the protests by IOD #78 and IOD #100 that IOD #82 had broken a rule in earlier races, and if there had been, the protest of that incident, filed on June 1, 2016, would have been well after the time limit had expired. Furthermore, there could be no allegations of a rules breach in future races, as those races had not been sailed yet. Therefore, the only valid protest before the protest committee was for race 6. The protest committee erred when it disqualified IOD #82 from races 2, 8, 9 and 10 of the series.

**5) IOD #100’s protest form listed, as rules broken, rules 75 and 78, as well as the Fleet Regs.**

IOD #82’s entry was accepted by the organizing authority, which is tacit acceptance that the boat was in compliance with rule 75.

Rule 78 addresses class rules. There was no allegation of a specific class rules breach on the protest form. Making reference to a protest committee decision that is three years old, with no specific allegations, does not meet the requirements in rule 61.2(b). Furthermore, the decision of a protest committee is not binding on a different protest committee.

**6) IOD #78’s protest form listed, as a rule broken, rule 2.**

We find no facts that support a conclusion that it is clearly established that the principles in rule 2 have been violated. IOD #82 believed she was eligible to compete and was sailing within the rules. That others disagreed is not a reason to find that she broke rule 2.

## 7) Are the Fleet Regs that pertain to the boat valid?

As stated above, IOD Class Rule A.3.1 states, “The international authority of the class is the IODWCA which shall preside over all matters concerning these **class rules**.” And the IODWCA Constitution, Article CIII states, “This Constitution, and the By-Laws, Specifications, Rules and Championship Regulations adopted pursuant to the Constitution, **are binding upon all members of the WCA and all Fleets registered by the WCA** (our emphasis added).” We interpret the term “Rules” in Article CIII to include the “Class Rules.”

The San Francisco Bay Fleet of the International One Design Class is a fleet registered by the WCA, and is therefore bound to follow and comply with the IODWCA Constitution, and the By-Laws, Specifications, Rules and Championship Regulations adopted pursuant to the IODWCA Constitution, including changes to those rules that may from time to time occur. Therefore the statement in Article II of the Regulations Governing the International One Design Class San Francisco Bay Fleet, “Where there is a conflict between Class Constitution and Bylaws and the Fleet Regulations, the Fleet Regulations will take precedence” is not consistent with the IODWCA Constitution, Article CIII, and is therefore not valid.

Furthermore, the statement in the IODWCA By-Law II, Article 2.2, “Fleets shall establish their own rules governing local racing...” does not mean that a fleet can change the Class Rules. The Class Rules themselves state who has the authority and control over the class rules, and how amendments can be made. Again, IOD Class Rule A.3.1 states, “The international authority of the class is the IODWCA which shall preside over all matters concerning these **class rules**.”

The IOD Class Rules have a dedicated rule addressing local fleet rules (Class Rule A.16 LOCAL FLEET RULES). Class Rule A.16.1 clearly states, “Individual fleets must request permission from the IODWCA for any changes to the Class Rules. The IODWCA may grant fleet-specific amendments to these rules for local or historical conditions that warrant exception in accordance with the procedures in Section A.6,” which involves a recommendation from the IODWCA Technical Committee and approval from the IODWCA Executive Committee. This is referenced in IODWCA By-Law II, Article 2.2 under (h) where it states that a fleet must include rules for the “Procedure for enacting any Fleet Specific Amendments to the Class Equipment Rules (must be pre-approved by a majority vote of the IODWCA Executive Committee).”

We note that in ERS C6.1, “boat” is defined as the “equipment” used by the crew (see quote below). So when the IODWCA By-Law II, Article 2.2 refers to “Class Equipment Rules,” it is referring to the rules that pertain to the “boat,” i.e. the class rules.

### ERS C.6.1 Boat

“The equipment used by the **crew** to take part in a race. It includes: **hull(s)**, structure(s) connecting **hulls, hull appendage(s), ballast, rig, sail(s)**, fittings, boat **corrector weights** and all other items of equipment used...”

We also note that in the Introduction to *The Racing Rules of Sailing 2013–2016*, which is considered a “rule” (see the definition Rule (a)), under “Terminology, it states, “A ‘change’ to a *rule* includes an addition to it or deletion of all or part of it.” This rule has been moved into rule 85.1 in the 2017-2020 RRS. Therefore any fleet rule that adds a restriction to a class rule is a “change” to that class rule; and if that change is not permitted in the class rules, or has

not been approved by the IODWCA under IOD Class Rule A.6, then that fleet rule is not valid and is unenforceable.

The IODWCA Constitution IV, Article 4.1 states, “International One Design (IOD): A yacht which conforms to the requirements defined in this Constitution, By-Laws, and Rules.”

And IODWCA By-Law 1, Article 1.1 states, “A yacht shall be eligible for inclusion in the International One-Design Class if the hull was built by any authorized WCA builder (past or present) and the hull, rigging, sails and equipment conform to the plans and specifications outlined herein.”

In the Introduction to the IOD Class Rules is this statement, “These are open class rules where if it does not specifically say that you shall not – then you may.” There is no further requirement in this rule or any other IOD class rule that before a boat makes a change, it must inform the fleet and get the fleet’s approval to make that change. Therefore, any Fleet Reg that requires a boat to present any variations to the boat to the Fleet Officers for approval (such as Fleet Reg Article XI(E)) is an additional restriction on the class rule that says the class rules are “open class rules,” and is therefore a change to that class rule. And if that change has not been approved by the IODWCA under IOD Class Rule A.6, then that fleet rule is not valid and is unenforceable.

Furthermore, attempting to have those Fleet Regs apply by stating they will apply in the notice of race or sailing instructions is changing a class rule, which, unless permitted or approved as stated above, is not permitted under rule 87.

Circling back to IODWCA By-Law II, Article 2.2, this by-law gives the local fleets authority and control over how it organizes itself and conducts the racing in its area, including how it scores its series and determines qualifiers for the IOD Worlds, etc. It does not give local fleets authority and control over the Class Rules, which are the rules that control whether a boat is an IOD or not. Those rules are under the authority and control of the IODWCA, which will entertain requests for amendments to those rules that might apply to specific fleets within the WCA (see IOD Class Rule A.16.1).

## 8) Who is responsible for deciding whether a boat is in compliance with the IOD Class Rules?

IOD Class Rule A.3 is titled, “AUTHORITIES”.

A.3.1 states, “The international authority of the class is the IODWCA which shall preside over all matters concerning these **class rules**.” A.3.2 states, “The **certification authority** is the IODWCA Executive Committee.” A.3.3 states, “Notwithstanding anything contained herein, the **certification authority** has the authority to withdraw a **certificate**.”

Therefore, the IODWCA, and specifically the IODWCA Technical Committee (see IODWCA Constitution CVI, Article 6.1) has the responsibility to decide whether an IOD is in compliance or conformity with the IOD Class Rules. The IODWCA President appoints Class Measurers who can carry out the duty of ensuring boats are in compliance with the class rules. Under the 2017–2020 RRS, if a Class Measurer is appointed as a member of the Technical Committee by the OA or race committee, he or she is required to protest a boat that does not comply with the class rules (see rule 60.4(a)(2)). And in any event, a competitor can protest a boat under rule 78.1 for failing to comply with the class rules (see rules 60.1(a) and 61.1).



And if a protest committee is hearing a protest concerning the class rules and is in doubt about the meaning of a class rule, it shall refer its questions, together with the relevant facts, to an authority responsible for interpreting the rule. And in making its decision, the committee shall be bound by the reply of the authority (see rule 64.3(b)). The “authority” in this case is the IODWCA Technical Committee.

**9) Who is responsible for deciding whether a boat or member is in compliance with the Fleet Regs?**

The Fleet is responsible for deciding whether a boat or member is in compliance with any Fleet Regs that are valid and enforceable. Fleet Reg Article XI(A) states, “The Fleet Committee shall pass upon the compliance of each yacht and its equipment, including sails, with these Regulations.” And Fleet Reg Article XI(E) states, “...if modifications to a boat have taken place that were not specifically allowed by the rules, or were not previously approved by the Fleet Officers, then said modifications shall be presumptively grounds for protest. The protest committee, in deciding the issue shall be governed by the letter and the spirit of the provision of Article XI of the San Francisco Regulations.”

We have already stated that the requirement to get approval from the Fleet Officers to make a change to the boat that otherwise conforms to the class rules is not valid and therefore unenforceable. We interpret Article XI to mean that if the Fleet Regs apply to a race or series, and if there is a protest alleging that a boat is not in compliance with the valid Fleet Regs, then the protest committee is governed by the letter and spirit of the provision of Article XI, which states in Article A that the Fleet Committee shall pass upon the compliance of a boat with the Fleet Regs. Therefore, the protest committee must refer the matter back to the Fleet, and be bound by the Fleet’s determination. That leaves the authority and control of the Fleet Regs with the fleet where it properly belongs. Protest committees are not usually qualified to rule on fleet rules and regulations.

We note that Article VII(L) does not require boats to check with the Fleet regarding changes, as “should” is not mandatory.

And we note that Article XI(D) gives the Fleet authority over *The Racing Rules of Sailing*, which it does not have; therefore that portion of Article XI(D) is not valid. Protest and appeals committees have authority over applying and interpreting the racing rules under *The Racing Rules of Sailing*. Following on, Article XI(C) implies that the Fleet Committee can disqualify a boat from a race. That is also invalid. Only the protest committee can disqualify a boat from a race, and only when acting on a valid protest under RRS Part 5 (see specifically rules 63.1, 64.1 and A5). A fleet can suspend membership or take other action within its jurisdiction.

**10) If a Fleet or Class is deemed to be not in good standing with its parent association, what is the status of that organization’s rules?**

When a fleet or class is deemed to be not in good standing with its parent organization, that fleet or class is still in existence and its rules still apply.

We are aware that the IOD Class Rules have been revised, and the most recent edition is dated January 1, 2017. None of the changes change our decision, and many of the changes further support our decision.

Some Appeals Committee decisions are published in the US Sailing *Appeals Book* because of their educational value. They may be simplified or otherwise modified, and the version to be published is sent to the parties and committee chairmen involved.

Very truly yours,

US Sailing Appeals Committee



Joy Shipman, Secretary

cc: Mr. Ron Young, *Youngster*  
Mr. Michael Gross, Chairman, YRASFB Appeals Committee  
Mr. Doug Sloan, Chairman, Protest Committee  
Mr. Peter Rugg, President, IOD WCA  
Mr. Charlie Van Voorhis, Chairman, IOD WCA Technical Committee  
Mr. Grant Baldwin, Chairman, Protest Committee for the Oct. 30, 2013, decision  
Mr. Matthew Hill, US Sailing Race Administration Director  
US Sailing Appeals Committee