



Ontario Sailing Appeal # OS2009-08

Just Right vs Seattle Slewp

Just Right is appealing the decision of the protest committee on 28 August 2009 from race 1, PHRF Fleet C of the CORK Offshore Regatta.

Rule 10, On Opposite Tacks

Rule 14, Avoiding Contact

Rule 70.1, Appeals and Requests to a National Authority

A right of way boat that does not avoid contact with another boat when it is reasonably possible to do so shall be penalized when the contact causes damage. All boats, whether or not holding right of way, should keep a lookout at all times.

Summary of the facts

1. Just Right and Seattle Slewp were close-hauled on starboard and port respectively since before the start.
2. One minute after the gun Seattle Slewp's crew advised "you can do it" then "go down," then "go down hard."
3. Seattle Slewp's skipper was unaware of the proximity of Just Right. Just Right's foredeck hand returned from the bow and did not have a clear lookout. Just Right was not aware of the proximity of Seattle Slewp.
4. Both boats heard someone hail "look out." Two seconds later there was a collision with serious damage. There was no injury to persons.
5. Both boats retired per rule 44.1

The protest committee concluded that neither boat maintained an adequate lookout and found that Seattle Slewp broke rules 10 and 14 and that Just Right broke rule 14 and scored each boat DSQ. Later the protest committee realized it made a significant error and reopened the hearing under rule 66. In the reopened hearing, the protest committee determined that because both boats had retired after the collision, both had taken the penalty required by rule 44.1(b). Rule 64.1(b) prohibits penalizing the boats further, and the protest committee reversed the disqualifications and scored the boats DNF.

Just Right appealed on the basis that the protest committee incorrectly applied rule 14, that the protest committee ruled Just Right was obliged to maintain a lookout which she failed to do and that Just Right could not have taken avoiding actions under the conditions.

Decision of the appeals committee

Appeal denied. The appellant is appealing facts found by the protest committee which is not permitted under rule 70.1.

Seattle Slewp on port tack was required to keep clear of Just Right on starboard tack and failed to do so thus breaking rule 10. Contact occurred between the bow of Seattle Slewp and the port side of Just Right causing serious damage. Facts found by the protest committee were that the skipper of Seattle Slewp was unaware of the proximity of Just Right and the skipper of Just Right was unaware of the proximity of Seattle Slewp. Both boats broke rule 14. By failing to maintain a lookout Just Right was unable to make any attempt to avoid contact when it became apparent that Seattle Slewp was failing to keep clear.

In submitting her grounds for appeal the appellant included an enhanced diagram showing a number of boats in the vicinity of the collision. This diagram was not considered by the appeals committee because it was not a diagram prepared or endorsed by the protest committee in accordance with Appendix F2.2(b).

Just Right also questioned the fact found by the protest committee that she was unaware of Seattle Slewp and that her crew was not looking for boats on port tack to leeward. It also questioned whether the facts found by the protest committee supported the conclusion that neither boat maintained an adequate lookout. However a fact found was that neither boat was aware of the proximity of the other which thus supports the conclusion reached by the protest committee.

A number of ISAF Cases confirm that keeping a lookout is an important requirement of avoiding collisions and the failure to do so is not an acceptable rule 14 defense by a right-of-way boat. For example ISAF Case 26 states in part “An important purpose of the rules of Part 2 is to avoid contact between boats. All boats, whether or not holding right of way, should keep a lookout at all times.” As well ISAF Case 107 says “Rule 14 begins ‘A boat shall avoid contact with another boat if reasonably possible.’ This requirement means a boat must do everything that can reasonably be expected of her in the prevailing conditions to avoid contact. This includes keeping a good lookout, particularly in a crowded starting line situation.”

23 December 2009

OS Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Alex McAuley, IJ

Ms. Janet McDougall, SNJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ