



Ontario Sailing Appeal # OS2010-06

Albacore 8030 v Albacore 7944

7944 is appealing the decision of the protest committee on 10 August 2010 from race 2 of the Mooredale Regatta, sailed on 7 August 2010 at the Mooredale Sailing Club.

Rule 14, Avoiding Contact

Rule 15, Acquiring Right of Way

Rule 16.1, Changing Course

Rule 44.1(b), Penalties at the Time of an Incident; Taking a Penalty

Rule 63.4, Interested Party

Rule 64.1(b), Decisions; Penalties and Exoneration

A boat that retires from a race has taken a penalty for the purposes of rule 44.1(b) and may not be further penalized.

Summary of the facts

1. The wind was 10–13 knots and there was big chop and swells.
2. 7944 on port tack, bore away to take the stern of 8019 on starboard tack.
3. 7944 then completed a tack to starboard behind 8019, approximately 3–5 feet in front of 8030 on starboard tack.
4. 8030 headed up to avoid 7944, but contact occurred between the rear starboard quarter of 7944 and the front port quarter of 8030.
5. 7944 became head to wind and there was a second contact between the rear starboard quarter of 7944 and the bow of 8030.
6. There was damage to both boats.
7. 7944 retired from the race and both boats protested.

Decision of the protest committee

The protest committee concluded that 7944 broke rule 15 because there was not sufficient room for 8030 to keep clear after 7944 tacked and that 7944 broke rule 16.1 because she did not give 8030 room to keep clear when she began heading towards the wind. It also concluded that 8030 acted in an attempt to avoid the first contact and that it was not reasonably possible for 8030 to avoid the second contact with 7944, therefore 8030 is not penalized under rule 14. The protest committee disqualified 7944 for breaking rules 15 and 16.1.

7944 appealed claiming that the protest committee erred in applying rules 14, 15 and 16.1. She also alleges that the protest was not valid because 8030 did not hail “protest” and that a member of the protest committee was an interested party.

Decision of the appeals committee

Appeal upheld, but only to the extent that 7944 is to be scored DNF for race 2.

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

The facts found support the protest committee's conclusion that 7944 broke rules 15 and 16.1. The protest committee's conclusion that 8030 is not penalized under rule 14 is corrected as follows: 8030 did not break rule 14 because she acted to avoid contact with 7944 when it became clear that 7944 was not initially giving 8030 room to keep clear after acquiring right of way. 8030 did not break rule 14 with respect to the second collision because it was not reasonably possible for 8030 to avoid contact with 7944 when 7944 abruptly changed course.

7944 does not question the validity of her own protest, so any claim that the other protest was not valid is irrelevant.

Rule 63.4 requires a party to a hearing that believes a member of the protest committee is an interested party to object as soon as possible. There is no requirement in the rule for the protest committee to ask the parties if they object. It was obvious to 7944's representative that the members of the protest committee could have been considered to be interested parties because each member also competed in the event. Given that the above facts were found at the re-opening of the hearing of 7 August, and the members of the protest committee remained the same, 7944's objection on 30 August was not made as soon as possible.

7944 retired from the race, thereby taking a penalty for the purposes of rule 44.1(b) and cannot be further penalized according to rule 64.1(b).

22 September 2010

OS Appeals Committee:

Ms. Kathy Dyer, IJ, Chairman

Ms. Wendy Loat, RJ

Mr. Alex McAuley, IJ

Ms. Janet McDougall, NJ

Mr. Robert Stewart, NJ

Mr. Peter Wood, NJ