



Ontario Sailing Appeal # OS2010-11

Albacore 8019 v Albacore 6857

Albacore 6857 is appealing the decisions of the protest committee on 26 September 2010 from a race on 6 September at the Toronto Island Sailing Club.

Rule 63.2, Time and Place of the Hearing; Time for Parties to Prepare

Rule 63.3(b), Right to Be Present

Rule 63.6, Taking Evidence and Finding Facts

Rule 70.1, Appeals and Requests to a National Authority

Rule 71.2, National Authority Decisions

ISAF Case 1, A boat that breaks a rule while racing but continues to race may protest over a later incident

When the sailing instructions are deficient and are not followed, extraordinary care must be taken to protect the right of the parties to be present at the hearing by ensuring that the parties are informed of the time and place of the hearing with a reasonable amount of notice.

Summary of the protest committee's procedures and decisions

1. There were two separate incidents between 8019 and 6857 during race 2 of the Fall Series for Albacores organized that day by the Toronto Island Sailing Club (TISC). 8019 and 6857 both delivered written protests identifying the two incidents.
2. The hearings did not take place after the race contrary to Sailing Instruction 9.
3. The TISC Racing Director informed 6857 by e-mail that the hearings would take place on 12 September after racing. She thought the location would be the St. James Town Sailing Club (SJTSC).
4. 6857 went to SJTSC after racing on 12 September but there was no hearing that day.
5. Believing that the hearings might take place on 26 September, 6857 e-mailed the TISC Racing Director on 23 September, asking for the details of the time and place of the hearings. 6857 also informed the Racing Director that she was competing in a regatta at another club that day and asked that the hearing be scheduled such that she could attend. 6857 also provided a cellular number that could be used to communicate the information.
6. 6857 did not receive a reply to her e-mail enquiry until 26 September when a) a voice message was left at the cellular number at 1032 and b) the TISC Race Chair called the cellular at 1635 and informed 6857 that the hearings would be at 1700 at TISC on that day.
7. 6857 asked that the hearings be delayed to allow sufficient time to travel from the Outer Harbour Centreboard Club to TISC. This request was denied by the TISC Race Chair.
8. The protest committee heard protest 1 in 6857's absence, concluded that 6857 broke a rule and disqualified her.
9. The protest committee dismissed protest 2 because 6857 had already been disqualified from the race.

6857 appealed claiming that she was prevented from attending the hearings because she did not receive adequate notice of the time and place of the hearings.

Decision of the appeals committee

The hearings were not conducted after the race as required by the sailing instructions. The sailing instructions are also deficient because no procedure is described therein to inform competitors of the time and place of hearings.

The protest committee did not find any facts relating to the notice given to the parties of the time and place of the hearings and it did not cite rule 63.3(b) in its decision. In its comments on the appeal, the protest committee did not dispute 6857's account of the notification given to 6857.

When the sailing instructions are deficient and are not followed, extraordinary care must be taken to protect the right of the parties to be present at the hearing by ensuring that the parties are informed of the time and place of the hearing with a reasonable amount of notice. 6857 became aware of the time and place of the hearings on the day of the hearings when it was too late for her to travel to the location in time which is not reasonable.

6857's absence at the hearings was not as a result of a lack of interest in the outcome of the hearings. By conducting the hearings when it was impossible for 6857 to attend, 6857 was prevented from presenting evidence and questioning any person who gave evidence at the hearings. A reasonable effort should be made to take the evidence of the parties, their witnesses and any other evidence necessary to find the facts of an incident.

The appeals committee also finds that protest committee failed to find facts and base its decision on them for protest 1. It recorded the accounts of the two parties as written on the protest forms, which are in conflict, as facts found. It then incorrectly concluded that 8019's willingness to attend the hearing was sufficient to decide that 6857 broke a rule.

In addition, the protest committee erred when it dismissed protest 2 because 6857 had already been disqualified from the race. ISAF Case 1 states: a boat that breaks a rule while racing but continues to race may protest over a later incident, even though after the race she is disqualified for her breach.

Appeal upheld. Toronto Island Sailing Club is directed to conduct new hearings of protest 1 and protest 2, at a time and place agreeable to both parties with a new protest committee, appointed by the appeals committee.

30 November 2010

OS Appeals Committee:

Ms. Kathy Dyer, IJ, Chairman

Ms. Wendy Loat, RJ

Mr. Alex McAuley, IJ

Ms. Janet McDougall, NJ

Mr. Robert Stewart, IJ

Mr. Peter Wood, NJ