



Ontario Sailing Appeal # OS2011-01

Accelar v Windblown

Accelar is appealing the decision of the protest committee on 21 June 2011 from a race on 7 June 2011 at the Royal Canadian Yacht Club.

Rule 10, On Opposite Tacks

Rule 11, On the Same Tack, Overlapped

Rule 14, Avoiding Contact

Rule 19.2(b), Giving Room at an Obstruction

Rule 70.1, Appeals and Requests to a National Authority

Rule 71.2, National Authority Decisions

Rule 71.3, National Authority Decisions

A party to a hearing may appeal a protest committee's decision or its procedures but not the facts found.

Summary of the facts found

1. The wind was light – less than 5 knots and the speed of the boats was approximately 1 knot (1.5 to 2 feet per second).
2. The points of contact: beam to beam between Accelar and Wimsey; the transom of Windblown and Accelar's side, 3 to 5 feet aft of the bow.
3. The wind was building from astern. Accelar was clear astern and overtaking with more speed.
4. An overlap was established before contact.
5. Given the relative speed differential between Accelar and Windblown, the committee concludes that the overlap was established within 10 seconds of contact.
6. Rule 19.2(c) does not apply – no continuing obstruction.
7. A witness testified that she was clear astern and to windward of Accelar and Windblown and was traveling at three times the speed of Accelar and Windblown.
8. The witness also testified that she observed Accelar heading up to cover her and then bearing away.

The protest committee also prepared a diagram of the incident.

Decision of the protest committee

The protest committee applied rule 19.2(b) and concluded that Windblown was unable to give Accelar room from the time the overlap began and disqualified Accelar.

Accelar requested a reopening of the hearing, which was denied by the protest committee, on the grounds that the request was out of time and no new evidence had become available.

Accelar appealed claiming the facts found are incorrect, that the protest committee did not apply rule 14 to Windblown and that the driver of Windblown admitted that he made no effort to avoid a collision.

Decision of the appeals committee

Appeal dismissed.

According to rule 70.1, a party may not appeal the facts found. The facts found and diagram prepared by the protest committee support its conclusion that Windblown was unable to give Accelar room to pass between Windblown and the obstruction, Wimsey, from the time the overlap began.

The appellant claims Windblown did not act to avoid contact, however the appeals committee is satisfied that the protest committee's conclusion that she was unable to give room is equivalent to it not being reasonably possible for her to avoid contact, therefore Windblown did not break rule 14. The protest committee did not find any facts about Wimsey's ability to avoid contact with Accelar, however, even if it concluded that Wimsey broke rule 14, she cannot be penalized for such a breach because she was not a party to the protest.

Regarding the request to reopen the hearing, the appellant claims the request was out of time due to an incorrect e-mail address. The lateness of the request was only one reason the protest committee cited for denying the request. The appeals committee is satisfied that no significant new evidence had become available and the protest committee properly denied the request.

While the protest committee did not apply rules 10, 11 and 14 to the incident, its facts support the following conclusions made by the appeals committee: Accelar broke rule 10 by not keeping clear of starboard boat, Wimsey; Accelar broke rule 11 by not keeping clear of leeward boat, Windblown; and Accelar broke rule 14 because it was reasonably possible for her to avoid contact with both Wimsey and Windblown by not taking room to which she was not entitled. According to rule 71.3, the appeals committee shall penalize a boat that was a party to the protest when it decides she broke a rule whether or not that boat or that rule was mentioned in the protest committee's decision.

The protest committee's decision is therefore corrected to disqualify Accelar for breaking rules 10, 11 and 14, not rule 19.2(b).

29 July 2011

OS Appeals Committee:

Ms. Kathy Dyer, IJ, Chairman

Mr. Alex McAuley, IJ

Mr. Robert Stewart, IJ

Ms. Wendy Loat, NJ

Ms. Janet McDougall, NJ

Mr. Peter Wood, NJ