



Ontario Sailing Appeal # OS2012-02

Wind Savvy v Windessence

Wind Savvy is appealing the 3 June 2012 decision of the protest committee at Mimico Cruising Club from a race on 23 May 2012.

Rule 60.3 Right to Protest, Right to Request Redress or Rule 69 Action

Rule 63.3 Hearings: Right to Be Present

Rule 63.5 Hearings: Validity of the Protest or Request for Redress

Rule 63.6 Hearings: Taking Evidence and Finding Facts

ISAF Case 49

A party to a protest hearing may question any person who gives evidence. When two protests arise from the same incident, or from very closely connected incidents, they should be heard together in the presence of representatives of all the boats involved.

Summary

An incident occurred which resulted in protests being delivered by Wind Savvy and RapsCALLION naming Windessence as the protestee. The sailing instructions are not specific about when protest hearings will be heard, rather it is stated: "After reviewing a protest, the protest committee chairman or his delegate will inform the protestor and protestee when and where the protest hearing will be held." The protest committee chairman and the parties tried to but were unable to agree on a time and place for the hearing. Two separate hearings were held on 3 June 2012. Windessence did not attend the hearings and the protest committee accepted written testimony from her.

The incident resulted in a collision between Wind Savvy and RapsCALLION. The written protests allege damage to Wind Savvy and RapsCALLION. The protest committee first heard RapsCALLION's protest. It found facts and concluded that Windessence had not broken any rules. It then decided that RapsCALLION's protest was not valid. In hearing Wind Savvy's protest, the protest committee found facts and concluded that Windessence had not broken any rules.

Wind Savvy appealed claiming she was unable to rebut any of Windessence's statements.

Decision of the appeals committee

Wind Savvy's right to question any person who gives evidence under rule 63.6 was denied when the protest committee accepted Windessence's written evidence. When sailing instructions do not specify when and where a protest hearing will be held, every effort must be made to ensure that all of the parties are represented in person at the hearing.

The two protests were from the same incident or at least, from very closely connected incidents. ISAF Case 49 is authoritative and states: "In cases of this kind, the two protests should be heard

together in the presence of the representatives of all the boats involved. This ensures that all of them hear all of the testimony given to the protest committee about the incident, as required by rule 63.3.” Because there were two separate hearings, the protest committee did not make any conclusions relating to the collision between Wind Savvy and Rapsallion. Certainly when there is contact between boats, a rule of Part 2 has been broken and rule 14 must also be considered.

After taking evidence about the incident and finding facts, the protest committee then concluded that Rapsallion’s protest was invalid. That is not the correct procedure according to rule 63.5, which requires the protest committee to decide whether all requirements for the *protest* or request for redress have been met at the beginning of the hearing and if a protest is not valid, the protest committee is then required to close the hearing. Whether or not Rapsallion’s protest was valid, there clearly was an incident involving the three boats and Wind Savvy’s protest alleged significant damage to Rapsallion and Wind Savvy. When it found Rapsallion’s protest invalid, the protest committee should have acted under rule 60.3(a)(1) and protested Rapsallion under rules 11 and 14, thus making her a party to the protest hearing.

Appeal upheld. Mimico Cruising Club is directed to hold a new hearing of the two protests. The appeals committee will appoint a protest committee chairman.

27 July 2012

OS Appeals Committee:

Ms. Kathy Dyer, IJ, Chairman

Mr. Alex McAuley, IJ

Mr. Robert Stewart, IJ

Ms. Wendy Loat, NJ

Ms. Katie Nicoll, NJ

Mr. Peter Wood, NJ