



Ontario Sailing Appeal # OS2012-08

Debu vs Heart Breaker

Heart Breaker is appealing the decision of the Protest Committee at Bronte Harbour Yacht Club on June 20, 2012

Rule 10	On Opposite tacks
Rule 14	Avoiding Contact
Rule 44.1(b)	Taking a Penalty
Rule 61.1(a)(3)	Informing the Protestee
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

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

Summary

In an evening Race June 7, 2012 a collision causing damage occurred between Debu, sailing close hauled on starboard tack, and Heart Breaker sailing on a broad reach on port tack. Debu hailed protest and hoisted its protest flag approximately two minutes later. Heart Breaker did a 720 degree penalty turn and subsequently retired from the race. The protest hearing was held on Wednesday June 20, 2012. Heart Breaker did not send a representative to the hearing. The protest committee determined that Heart Breaker broke rules 10 and 14 but no penalty was imposed because she retired under Rule 44.1(b)

Heart Breaker appealed the decision of the protest committee on the grounds that the protest committee made an error in hearing the protest and misinterpreted Rule 14. Avoiding Collisions.

Decision of the Appeals Committee

Appeal Denied.

Heart Breaker, in her appeal, claims the protest committee made an error in accepting the protest of Debu since Debu did not fly her protest flag until 2 minutes after the incident which was not the first reasonable

opportunity. Rule 61.1(a) (3) states where an incident results in damage that is obvious to the boats involved and one of them intends to protest, the requirement of the rule does not apply to her. In this case a fact found was that damage sustained to Debu included a winch pedestal knocked off, separation of the deck from the hull and damage to the jib track. A second fact found was that the combined speeds of both boats, at the time of the incident, was approximately 13 knots. In these circumstances Rule 61.1(a)(3) applied.

Heart Breaker's owner also stated in his appeal that he wasn't available for the scheduled time of the protest hearing and was unable to find a representative to attend on behalf of the boat. The incident occurred on June 7th and Debu informed Heart Breaker that she was intending to protest. As damage occurred it would be reasonable to assume that a hearing would be held sometime in the future. On June 16th Heart Breaker was informed that the hearing would take place on Wednesday June 20th (as published in the Sailing Instructions of BHYC). No representative of Heart Breaker attended the hearing and as sufficient notice had been given to her to attend, the protest committee correctly conducted the hearing under Rule 63.3(b)

Heart Breaker in her appeal states that a witness listed on the protest form was not on one of the boats shown in the diagram submitted by the protestor. The protest committee in its comments on the appeal indicates that no witnesses were called by the protestor. The fact that a person was named as a witness on the form was irrelevant. The naming of witnesses is not a required under rule 61.2 Protest Contents. Witnesses may come forward after a protest form is submitted and provide useful evidence to allow the protest committee to determine the facts of an incident. Rule 63.6 allows the parties to call witnesses and to question any person giving evidence. A witness may not be excluded because he may have been involved in another protest with one of the parties to a hearing.

Heart Breaker states in her appeal that she was unable to avoid contact with Debu because other boats ahead of her blocked her view of Debu, who was sailing close hauled on the starboard lay line approaching the windward mark. Heart Breaker had a number of reasonably possible options which would have avoided contact. She could have initially sailed lower on a port run to avoid starboard tack boats sailing on their lay line or she could have rounded the mark and continued on the starboard tack away from the starboard layline and then gybed onto port at a later time. She could have maintained a better watch forward, asking for room, if necessary, from any boats overlapped to leeward. She failed to do any of these.

OS Appeals Committee,

Peter Wood, NJ, Chairman

Wendy Loat, NJ

Alex McAuley, IJ

Katie Nicoll, NJ

Robert Stewart, IJ