



## Ontario Sailing Appeal # OS2012-14

### Shark 739 Request for redress

Shark 165 is appealing the decision of the protest committee at the Nepean Sailing Club/Britannia Yacht Club Interclub One Design Series on 25 September 2012 from a race on 30 August 2012. The hearing was conducted on 6 September 2012 and the written decision was delivered by e-mail to the parties on 29 September 2012.

**Rule 62.1(a) Redress**

**Rule 64.2 Decisions: Decisions on Redress**

*When the protest committee decides that boats are entitled to redress under rule 62, it shall make as fair an arrangement as possible for all boats affected, whether or not they asked for redress.*

Shark 739 requested redress claiming that the race was not fair because a drifting mark caused confusion and resulted in boats sailing two different courses. The protest committee subsequently requested redress on behalf of the other six Sharks that competed in the race.

#### **Summary of the facts found**

1. The race committee set a windward/leeward course which included an offset mark to be left to port after rounding the windward mark.
2. Before the boats approached the windward mark for the first time, it had drifted approximately 150–200 metres out of position.
3. Sharks 34, 165 and 1014 rounded the windward mark, but did not round the offset mark on any of the three laps of the course.
4. Sharks 739, 736, 251 and 461 left both the windward and offset marks to port on each of the three laps of the course.
5. By their own admissions, Sharks 34 and 165 saw the offset mark farther to windward during the race, but did not round it.
6. The windward mark further drifted approximately 150 metres by the third lap of the race.
6. The boats were scored in the order of finish which was: 34, 165, 1014, 739, 736, 251, 461.
7. The race committee was unaware of the drifting mark and did not replace it.

#### **Decision of the protest committee**

The protest committee concluded that there was an improper action or omission by the race committee, but could not agree on what redress, if any, should be given.

Two members of the committee decided that redress should be given, that abandoning the race was the fairest arrangement possible for all of the boats and prepared a written decision to this effect. The race committee was directed to abandon the race based on this “majority” decision. The other member disagreed with this decision and prepared a written “minority” opinion, deciding that it was not proven that the scores of the boats in the race or series had been made significantly worse, through no fault of their own, by the improper action or omission of the race committee and that redress should not be given.

Shark 165 appealed claiming that abandoning the race was not the fairest arrangement for all of the boats affected and that conclusion that the scores of Sharks 739, 736, 251 and 461 were made significantly worse was incorrect .

### **Decision of the appeals committee**

The protest committee's procedure to publish two conflicting decisions when it was not unanimous was incorrect. The correct procedure is to publish only one decision and then request confirmation or correction of that decision under rule 70.2.

There was an improper action or omission by the race committee when it did not detect and replace the drifting mark. The decision to be made is whether or not this improper action or omission caused any of the boats' scores in the race or series to be made significantly worse, through no fault of their own, and if so, to determine the fairest arrangement possible for all of the boats affected in giving redress.

The protest committee found as fact that four boats sailed the course signalled by the race committee and three boats did not. This fact supports a conclusion that the three boats broke rule 28.1. However, there were no valid protests alleging breaches of rule 28.1 so no boat can be disqualified for such a breach.

The four boats that rounded the offset mark sailed a significantly greater distance before finishing than the three boats that did not round the offset mark. The race scores of Sharks 739, 736, 251 and 461 were made significantly worse, through no fault of their own, when the boats that did not sail the course were scored in first, second and third places and are entitled to be given redress under rule 62.1(a).

The protest committee decided that abandoning the race was the fairest arrangement possible for all of the boats affected. However, the series scores of two boats that sailed the course correctly were made worse when the abandonment resulted in the use of only one discard instead of two because the number of races in the series was reduced. Similarly, the series scores of two boats that did not compete in the race were made better by the abandonment for the same reason. This is not a fair arrangement.

Adjusting the scoring is an arrangement permitted by rule 64.2 that the protest committee did not consider. Scoring the boats that did round the offset mark in places one to four, and those that did not in places five to seven, is the fairest arrangement possible. This arrangement results in the second discard being used to calculate the series scoring and does not change the series scores of any of the boats that did not compete in the race in question. Scoring the race in this manner does cause the series scores of places four to eight to change, but the only series scores that are worsened are those of two of the boats that did not round the offset mark.

Appeal upheld to extent that redress is given and the boats are to be scored as finishing in the following order: 739, 736, 252, 461, 34, 165, 1014.

9 November 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