



Ontario Sailing Appeal # OS2013-04

Counter Intelligence v Between the Sheets

Between the Sheets is appealing the decision of the protest committee at the Oakville Yacht Squadron on 11 August 2013 from a race on the same day.

Rule 11 On the same tack, overlapped

Rule 14 Avoiding contact

Rule 63.2 Time and place of the hearing; Time for parties to prepare

Rule 63.4 Interested party

Rule 70.1 Appeals and equests to a national authority

ISAF Case 19

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

Summary of the facts (including additional facts (in italics) provided under rule R5)
Counter Intelligence (CI) hailed Between the Sheets (BTS) up. BTS bore off. CI made contact with BTS's transom motor mount. CI had an overlap to leeward of BTS. CI never changed course. BTS claimed she never looked back. *There was no damage to BTS's motor mount and a scratch in the gel coat on CI's starboard bow.*

The protest committee concluded that BTS failed to establish the presence of a leeward boat when she bore off. BTS to windward did not keep clear of a leeward boat, and is DSQ for breaking rule 11.

BTS appealed claiming that the protest committee's procedures were incorrect, it incorrectly applied the rules and it failed to give her evidence proper consideration.

Decision of the appeals committee

Appeal denied. The facts found support the protest committee's conclusion that BTS to windward, did not keep clear of CI overlapped to leeward, breaking rule 11.

Although there was contact between the boats, the protest committee did not come to any conclusions that either boat broke rule 14. BTS certainly broke rule 14 when she bore off towards CI, failing to avoid contact when it was reasonably possible to do so. CI was the right of way boat and can only be penalized for a breach of rule 14 if damage or injury resulted from the contact. The protest committee did find there was a scratch on CI. ISAF Case 19 provides an interpretation of the term "damage" and states that it is not possible to define "damage" comprehensively. The case offers one current dictionary definition: harm... impairing the value or usefulness of something. The appeals committee finds that a scratch in the gel coat is not

significant enough to be considered as damage. Therefore there is nothing to be gained by coming to a conclusion about CI and rule 14 because there was no damage or injury and any breach of rule 14 by her as a right-of-way boat would be exonerated by rule 14(b).

The appellant claims that she was not provided with a copy of the protest form submitted by CI and that the details of it were not read at the hearing, which deprived her of the ability to refute any information contained therein. Rule 63.2 does not require a copy of the protest be given to the parties. It only requires that the protest information be made available to them. In its comments on the appeal, the protest committee stated that the protest forms from both boats were on the table and at no time did the appellant ask to see CI's form. CI and BTS protested one other in the same incident, therefore the appellant had knowledge of the incident. The description of an incident from a written protest is that party's version of the events, which is not evidence. The appellant does not claim that she was prevented in any way from presenting evidence or questioning the evidence given by the other party or any witness.

The appellant claims that she was not given the opportunity to object to any of the protest committee members. In its comments on the appeal, the protest committee stated that the appellant was asked if she objected to any members of the protest committee and she stated that she did not. In any event, rule 63.4 does not require the protest committee to offer the opportunity to object, rather it requires a party to the hearing who believes a member of the protest committee is an interested party to object as soon as possible, which BTS did not do. In her appeal, there is no allegation that any member of the protest committee is an interested party.

The appellant's argument that when there is doubt of an overlap, it must be considered that an overlap did not exist, is a misunderstanding of the rules. Rule 18.2(d) only applies at the zone of a mark, when rule 18 applies.

The remainder of the appeal disputes the facts found, which is not permitted under rule 70.1. The appellant contends that the boats were not overlapped and the contact was between CI and the windward side of BTS's transom, which is contrary to the facts found by the protest committee.

24 September 2013

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