



Ontario Sailing Appeal #OS2018-01

Blue Zulu vs Thumper

Thumper is appealing the decision of the protest committee at the Britannia Yacht Club on 6 September 2018 for a race held on 30 August 2018.

Rule 11 On the same tack, overlapped

Rule 15 Acquiring right of way

Rule R5 Procedures for appeals and requests; Inadequate facts

When overlapped on the same tack, a windward boat shall keep clear of a leeward boat.

Facts found and decision of the protest committee

1. Thumper knew they had not started
2. Thumper interfered with a boat that had started
3. There was contact between Thumper and Blue Zulu
4. Blue Zulu made no attempt to avoid contact with Thumper

The protest committee concluded that Thumper broke rule 22.1 and Blue Zulu broke rule 14(a) but was exonerated by rule 14(b). The protest committee disqualified Thumper.

Thumper appealed claiming that the application of rule 22.1 was incorrect and that Blue Zulu did not give her room to keep clear.

Decision of the appeals committee

The appeals committee noted that Thumper's appeal was submitted by her owner's representative who was not aboard the boat at the time of the incident. Blue Zulu's protest alleged a breach of a rule of Part 2 and as required by rule 63.3(a) (Right to be present), Thumper was represented at the hearing by her helmsman, who was aboard at the time of the incident. There is no rule that prevents a party from having a different representative deliver an appeal or that requires such a representative to have been on board at the time of the incident.

The appeals committee finds that facts 1, 2 and 4 above are conclusions not based on any facts and are therefore inadequate. Under rule R5 the protest committee provided other information allowing the appeals committee to derive these additional facts:

1. Thumper passed head to wind and came to a course below close hauled on starboard clear ahead of Blue Zulu who was close hauled on starboard
2. At that time Thumper was 1–2 boatlengths to windward of Blue Zulu
3. Thumper's boat speed was 2 knots and Blue Zulu's was 4 knots
4. Blue Zulu became overlapped to leeward of Thumper
5. The boats continued on converging courses and neither boat changed course

6. There was contact amidships 4–5 seconds after the overlap began
7. There was no damage or injury
8. Neither boat did penalty turns

Whether or not Thumper was on the course side of the starting line at the starting signal is not relevant. Rule 22.1 (starting errors) did not apply because Thumper was sailing towards the first mark, not towards the pre-start side of the starting line or an extension at the time of the incident. Similarly, rule 24 (interfering with another boat) did not apply because both boats were racing at the time of the incident according to the definition, racing.

When Blue Zulu acquired right of way under rule 11, the boats were on converging courses. Blue Zulu did not break rule 15 because Thumper had room to keep clear initially when the overlap began, but did not change course at all to begin keeping clear after the overlap began.

Thumper was overlapped to windward and did not keep clear of Blue Zulu, breaking rule 11. Blue Zulu broke rule 14 (avoiding contact) by not avoiding contact with Thumper when it was reasonably possible to do so, but is exonerated by rule 14(b) because there was no damage or injury.

The appeal is upheld but only to the extent that Thumper broke rule 11 and not rule 22.1. Thumper's score shall remain DSQ.

OS Appeals Committee:

Ms. Wendy Loat, NJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Robert Stewart, IJ

Ms. Katie Nicoll, NJ

30 October 2018