



Ontario Sailing Appeal #OS2018-02

Apache v Straight Arrow

Straight Arrow is appealing the 4 October 2018 decision of the protest committee at the Cobourg Yacht Club from an incident in a race on 12 September 2018. The appeal was delegated by Sail Canada to the appeals committee of Ontario Sailing for a decision.

Rule 10 On Opposite Tacks

Rule 63.3(a) Hearings and Decisions; Right to be Present

Rule 63.6 Hearings and Decisions; Taking Evidence and Finding Facts

Rule 65.1 Hearings and Decisions; Informing the Parties and Others

A protest committee shall take the evidence of the parties present at the hearing and of their witnesses. Failure to do so casts doubt on the fairness of its decision.

Facts found by the protest committee

Straight Arrow was sailing on port when they forced Apache, who was sailing on starboard, to alter course to avoid a collision. Apache did fly a red flag, they notified the race committee in a timely fashion, and did hail the protested boat. Straight Arrow acknowledged Apache's hail by verbally abusing the crew of Apache and sailed on without ever completing any penalty turns.

Decision of the protest committee

Straight Arrow broke rule 10 and is disqualified.

Straight Arrow appealed claiming the hearing was abruptly terminated by the protest committee without hearing all of her evidence and before she could give a closing statement. She also claims the protest committee did not follow rule 65 because she was informed of the decision by the fleet captain, not the protest committee. She also requested a copy of the decision in writing but only received a copy of Apache's protest form without the decision.

Decision of the appeals committee

The appeals committee asked the protest committee for its decision in writing and it provided the facts and decision above, a diagram of the incident prepared by the protest committee, and a description of how it conducted the hearing.

After reviewing the documentation, the appeals committee finds that some of the procedures of the protest committee were improper. Specifically:

- a) one or more members of the protest committee left the hearing room before the appellant had finished presenting her evidence, contrary to rule 63.6, due to the belligerence, and offensive and abusive behaviour of the appellant;

- b) the protest committee itself did not promptly inform the appellant of its decision after making it, contrary to rule 65.1, because it wished to avoid any further hostilities;
- c) the protest committee may have allowed two representatives for a party to the protest and/or a witness to be present during the hearing of evidence other than that of the witness, contrary to rule 63.3(a);
- d) the facts found by the protest committee contain conclusions, that are not supported by facts, which can be appealed according to rule 70.1(a) (appeals and requests to a national authority).

The protest committee's failure to follow rule 65.1 would not, by itself, be reason to uphold Straight Arrow's appeal because the protest committee directed the fleet captain to deliver its decision, and she was nevertheless promptly informed. Even though the written facts contain some conclusions not supported by those written facts, the diagram prepared by the protest committee depicts an incident that supports its conclusion that Straight Arrow broke rule 10. However, the other deficiencies in the protest committee's procedures cannot be overlooked, even though some may have been precipitated by the actions of the appellant.

Therefore, Straight Arrow's appeal is upheld. Cobourg Yacht Club is ordered to conduct a new hearing of Apache's protest with a different protest committee, according to rule 71.2 (national authority decisions). The new committee shall be appointed by the appeals committee and will consist of at least two certified Sail Canada judges.

OS Appeals Committee:

Ms. Wendy Loat, NJ, Chair

Ms. Kathy Dyer, IJ

Mr. Robert Stewart, IJ

Ms. Katie Nicoll, NJ

Mr. Peter Wood, NJ

1 November 2018