

## **APPEAL No 2016/3**

Rule 3 (c)  
Rule 11  
Rule 13  
Rule 14  
Rule 18.2 (a) & (b)  
Rule 63.3 (b)  
Rule 66

### **SUMMARY OF THE FACTS**

Race: ABC Waglan Series 2016  
Race 6 December II<sup>th</sup> 2016.

During a starboard rounding of a windward mark, there was a collision between Surfdude and Arcturus during which damage was sustained by Surfdude. Both boats protested each other.

Following correspondence between the Organising Authority (OA) and the Parties to schedule a mutually agreeable date for a hearing to take place, the Parties were informed that a hearing would go ahead on December 14<sup>th</sup>. This was despite Surfdude informing the OA in writing that neither he nor his representative would be available. The OA proceeded with the hearing as scheduled, with representation from Arcturus but not Surfdude.

Following advice from the RR&AC, Surfdude provided the Protest Committee (PC) with further information as to why there was no representative at the hearing. The Protest Committee (PC) considered this information, but finding no new explanation as to why no representative from Surfdude was able to attend the original hearing, decided not to reopen under RRS63.3 (b).

In the hearing itself, the PC found that Arcturus was on the port tack layline for the mark and that Surfdude crossed ahead on starboard before tacking well above the layline. During the hearing, it was not clearly established whether the boats were overlapped as they reached the mark zone.

Arcturus continued on the layline to the mark without altering course. Surfdude freed off to round the mark, but failed to give Arcturus, who was inside boat, room at the mark. A collision ensued.

It was suggested that neither boat kept a proper lookout, although in the case of Arcturus this was not established as a clear fact. Nor was it established whether there was anything preventing Arcturus from avoiding a collision.

The PC applied RRS 11, 18.2 (a) and 14, and disqualified Surfdude from the race.

Surfdude received a copy of this decision on December 15<sup>th</sup> and submitted an Appeal to HKSF on December 22<sup>nd</sup>.

## DECISION

While the ABC Standard Sailing Instructions state that protest hearings “will normally be held at a time and date agreed between the Parties and the PC Chairman”, based on the wording used, this is not mandatory.

The PC had the right to proceed with the hearing in accordance with RRS63.3(b), despite one party not being in attendance.

Based on the Facts Found, the RR&AC is satisfied Surfdude broke either RRS18.2(a) or RRS18.2(b). RRS 13 is not applicable as Arcturus was not tacking at the time of the incident. However, the facts in relation to Arcturus failing to keep a proper look out need further investigation with both parties present.

## GROUNDINGS FOR DECISION

The RR&AC therefore requires that the protest hearing be reopened by the Organising Authority (OA) under a new PC, which shall be appointed by the RR&AC.

## FOOTNOTE

The RR&AC finds it undesirable that incidents involving collision are heard without all parties being present. PC conveners are encouraged to do whatever they can to make it possible for all parties to attend hearings, even if this means delaying the hearing.

Additionally, the RR&AC notes that the Appellant, Surfdude, engaged a solicitor to handle the case from the day on which the hearing was scheduled, and is highly concerned of the precedent this might set. Under RRS 3 (c), each competitor/boat owner agrees not to resort to any court of law or tribunal. There is no place in what is principally an amateur sport, for professional lawyers to be engaged on behalf of competitors to assist in Protests and Appeals.

***HKSF RR&AC  
May 2017***