

APPEAL HKSF 2009/02

ETCHELLS HKG 1344 (APPELLANT)

ETCHELLS HKG 1235 (APPELLEE)

FINAL DECISION

All parties to an Appeal should note that the national authority's Racing Rules & Appeals Committee (RR&AC) is bound to accept the protest committee's finding of facts unless these are considered inadequate (Appendix F5). In the context of the facts, the RR&AC may only, on appeal, examine the protest committee's decision or procedures.

1. Historical Summary of Hearings:

- 1.1 In the original hearing in February 2009, the RHKYC protest committee concluded that HKG 1235 had broken Rule 10 – On Opposite Tacks, and that HKG 1344 had broken Rule 14 (b) – Avoiding Contact. The committee disqualified both boats.
- 1.2 In view of her disqualification, and her view that the damage to HKG 1235 “was negligible”, HKG 1344 appealed this original decision, citing that the protest committee had not paid due regard to ISAF Case 19 (Definition of ‘Damage’).
- 1.3 Initially, the Appeal Committee was bound to consider the appellant’s arguments relating to the ‘damage’ to HKG 1235 but, in the Committee’s view of the bigger picture, the protest committee’s facts found were not wholly adequate. As a result, a series of questions were addressed to the parties for answers, to further aid consideration of the appeal.
- 1.4 As a result of the parties’ responses, the Appeal Committee required the protest committee to re-open the hearing with a view to eliciting information on four specific questions posed by the Appeal Committee.
- 1.5 From the re-opened hearing in June 2009, the protest committee concluded that its original decision should stand as damage had occurred during the collision.

2. Appeal Committee Considerations:

- 2.1 In respect of HKG 1344’s specific appeal, it was noted that the protest committee had not inspected the actual boat damage but simply accepted the HKG 1344 representative’s agreement (during the first hearing) that damage probably costing about HK\$300-500 had been done. Although this cost information was changed to HK\$890 in due course once the RHKYC bill had been submitted, the protest committee disqualification decision was based on the damage at the earlier quoted value.
- 2.2 Since both the above quoted costs of repair to the hull are considered irrelevant to the ‘current market value’ of the boat and the fact that HKG1235 could continue to sail without her performance being in any way affected, the contact damage arising from this incident is not considered to constitute “damage” referred to in Rule 14, and defined by ISAF Case 19.

- 2.3 However, the Appeal Committee had a bigger concern about possibly more serious grounds for disqualification, namely, the implication in the protest form of the alleged statement "*...See I told you I could hit you...*" after the contact between the boats, that it had been a deliberate and, possibly, willful act on the part of HKG 1344. Notwithstanding this being pursued, the protest committee could not find this as a fact in either of the two hearings.
- 2.4 The protest committee's decision to disqualify HKG 1344 had been made solely on the basis of its interpretation of Rule 14(b) regarding "*...contact resulting in **damage** or **injury...***" but, seemingly, without taking account of the proviso in the first line of the rule, namely, "*A boat shall avoid contact with another boat if reasonably possible.*"
- 2.5 It is clear that the contact incident would not have occurred if HKG 1235, as give-way boat, had fulfilled her obligation to keep clear of the right-of-way boat either just before or immediately after realizing that she could not cross her.
- 2.6 HKG 1235's action of '*straightening out downwind*' at the last moment was not an adequate act of avoidance particularly as this caused HKG 1344 to sail by the lee to avoid contact. The agreed fact that there had been a hail of "*we are clear ahead*" from HKG 1235 moments before, led or prompted HKG 1344 into changing her course to pass behind the port gybe boat as an alternative to running by the lee to avoid her. This resulted in contact.
- 2.7 In the responses referred to in paragraph 1.4 above, the protest committee did suggest that Rule 16 would also apply to the incident in regards to HKG1344's change of course and her failure to give "*..the other boat room to keep clear..*" but this fails to take account of the reality that HKG 1235 had changed course (by straightening out) forcing the right-of-way boat to take action to keep clear.

3. Decision:

- 3.1 The give-way boat, HKG 1235, did not take proper action early enough to keep clear of the right-of-way boat, HKG1344, resulting in the latter having to take avoiding action at the very last moment as required under Rule 14. She did attempt to comply with Rule 14 but made contact with the give-way boat, which required minor gel-coat/fibreglass repairs to the hull at a later date. The contact did not affect the ability of HKG 1235 to keep racing and did not affect her racing performance.
- 3.2 HKG 1344 did not break Rule 14 and her disqualification by the protest committee under this rule is nullified and HKG 1344 is reinstated to her finish position.

The protest committee's subsequent reference to Rule 16 is not a valid interpretation of the rule in this instance and is discounted.