

APPEAL NO 1/2010

Rule 60, Right to Protest; Right to Request Redress or Rule 69 Action

Rule 60.2(a)

Rule 60.3(a)(2)

Rule 60.3(b)

Rule 64.1, Penalties and Exoneration

Rule 64.2, Decisions on Redress

A protest hearing should result in dismissal or upholding of the protest. If the protest is upheld, a party to the hearing should be penalized or exonerated. A redress hearing may have a different result.

Summary of the Facts

Race: Aberdeen Boat Club Waglan Series, Race 9

Course: Course 6 = Start – A – C – A – Finish at C;

Mark A, laid as windward mark; Mark C, laid as leeward mark (L notice)

The start line between the committee boat and an ODM was laid midway between Mark A and Mark C. Marks A and C were spherical yellow buoys with black bands bearing the letters "ABC" in white. The start ODM was an orange columnar buoy. The race officer signaled for course 6, port rounding.

An L notice to the sailing instructions set out the courses and course numbers that would apply for Waglan Race 9 and Race 10, including the statement, "Mark C may be the ODM at the starting line."

The leading boat rounded the ODM to port and sailed upwind towards Mark A. The rest of the fleet followed. Observing the action of the leading boat, the race officer tried but failed to communicate with her, using a VHF radio device. No boat rounded Mark C that was laid to leeward of the start line.

Two boats lodged separate protest forms against a number of other boats, citing rule 28.1. The two protests were heard simultaneously. A lodged a protest against A1, A2, A3, B, and A4. B lodged a protest against B1 and B2. The race committee did not lodge a protest. The protest committee ruled that as no boat sailed the course in accordance with rule 28.1, the race was thrown out and there would be no result. Both protests were dismissed. The protest committee did not call a hearing to consider redress. B1 appealed.

Decision

Appeal upheld. In a protest hearing, rule 64.1 should be applied by the protest committee in reaching a decision. In a redress hearing, rule 64.2 applies.

Rule 64.1 sets out possible decisions that can be made by the protest committee on hearing a protest. Throwing out a race is not an option under Rule 64.1. In this case, the options available to the protest committee were, disqualification of a party for a broken rule (rule 64.1(a)), or exoneration of a boat if she was compelled by another boat to break a rule (rule 64.1(c)). The protest committee did not disqualify or exonerate any boat. Even though the protest committee concluded that all parties to the two protests, protestors and protestees alike, broke rule 28.1, none of the parties were disqualified for breach of the rule.

If a race committee believes from its observations that a boat has not sailed the course correctly, it may protest the boat for that breach (rule 60.2(a)). No such protest was lodged against any boat.

A protest committee is permitted under rule 60.3(a)(2) to protest a boat if during the hearing of a valid protest it learns that the boat, although not a party to the hearing, was involved in the incident and may have broken a rule. It is not clear from the facts found if there was a boat in the race that was not a party to the hearing, but in the appeal paper, there was reference to 10 boats. The two protests heard concern eight boats, which implies that there may have been two boats who were not parties to the hearing. If there were boats that were not made a party to the hearing, the protest committee is entitled to protest them.

A protest committee is also permitted under rule 60.3(b) to call a hearing to consider redress.

A well-established principle of protest committee procedure is to limit the scope of the hearing to the protest being heard. The scope of this particular hearing was limited to rule 28.1, rule 60.1(a) and rule 64.1. If a protest committee wants to make a decision on redress under rule 64.2, there must be a redress hearing.

The hearing should be reopened under rule 66 to allow the protest committee to make a decision in accordance with rule 64.1, or decide if action may be taken under rule 60.3(a)(2) or rule 60.3(b). If necessary, the protest committee may take additional evidence in order to reach its decisions. The protest committee is reminded to have regard to rule 64.2, including rule A10, in considering redress.