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REVISED DECISION ON APPEAL

Appeal #2014-01
ROLLY, STILLWATER, STORM, MERITAGE v
Monterey Peninsula Yacht Club RC
Race #4 Summer One Design Series
13 July 2014

31 December 2014

SUMMARY OF SITUATION:

On 13 July 2014, the second windward mark of the Summer One Design Series Race #4 was a navigational aid maintained by the USCG. As the boats approached the mark, the mark was observed on the deck of a USCG Buoy Tender rather than in the water.

After the race, *STILLWATER* filed for redress claiming that the mark was not on station. The PC, in accordance with the US Sailing prescription to RRS 63.2, notified the boats in the race regarding the redress hearing. *STORM, ROLLY*, and *MERITAGE* made requests to participate in the hearings. The PC concluded that the mark was missing or out of position and, based on SI 9.5, abandoned the race for the Shields fleet.

ROLLY appealed.

On 24 October 2014, the Association Appeals Committee of the Yacht Racing Association of San Francisco Bay issued a decision on the appeal. The decision confirmed that as a participant in the hearing *ROLLY* was entitled to appeal the PC's decision. The AAC upheld the appeal concluding that the PC erred in concluding that "Mile Marker" was missing and invoking SI 9.5. The AAC directed the PC to re-open the hearing and reconsider whether the requirements for redress were still met.

On 15 December 2014, the PC issued a new decision. The AAC reviewed the new decision in light of the AAC's 24 October 2014 directives as a part of the original appeal.

16 JULY 2014 PC DECISION

FACTS FOUND BY THE PROTEST COMMITTEE:

1. The Race Committee was not present at the hearing; the hearing continued under RRS 63.3(b).
2. In race 4 of the Summer OD series "Mile Marker" was the second windward mark of a 4 leg course.
3. "Mile Marker" is a government navigational aid maintained by the Coast Guard.
4. As the lead boats in the Shields class were sailing on the second windward leg, "Mile Marker" was not in the water, rather it was observed on the deck of a Coast Guard buoy tender in the vicinity.
5. The RC did not replace "Mile Marker" or substitute it in any way.
6. The RC scored *ROLLY* first in the race, *STILLWATER* second.

PC's CONCLUSIONS AND RULES THAT APPLY:

1. As "Mile Marker" was missing or out of position, the RC was required by RRS 34 to replace it or substitute it, if possible, or to abandon the race under SI 9.5. The RC did none of these things which constitute an omission on the part of the RC under RRS 62.1(a).
2. *STILLWATER*'s score for the series may have been made worse, through no fault of her own, by the omission of the RC (RRS 62.1) and she is entitled to redress.
3. Recognizing the clear language of SI 9.5, the race is abandoned under RRS 64.2.
4. The PC recommends, with RRS 36 in mind, the RC consider re-sailing the race on a scheduled race day.

PC's DECISION:

Redress is given as follows: Abandon Shields class race 4; PC recommends RC consider re-sailing.

BASIS FOR APPEAL:

ROLLY appealed based on the following:

- The mark was not missing or out of position, it was simply out of the water on the buoy tender.
- The PC misapplied SI 9.5. SI 9.5 only applies to a mark that is "missing", the mark was visible to all competitors and in its normal geographic position.
- As a participant *ROLLY* was a party to the hearing.

24 OCTOBER 2014 DECISION OF APPEALS COMMITTEE:

The appeal is upheld.

The AAC has concluded that by requesting to participate and then participating in the hearing *ROLLY*, *STORM*, & *MERITAGE* ranked as parties to the hearing and were entitled to appeal the PC decision.

The PC erred in concluding that the mark was "missing" in the context of RRS 34 and that the RC made an "improper action" by failing to apply SI 9.5 and thus the conditions for granting redress were satisfied. The AAC makes a note that SI 9.5 only applies to situations when the mark is missing and not out of position.

The PC is directed to reopen the hearing to reconsider whether the requirements for redress are still met given that the mark was not "missing" as used in RRS 34. If the requirements for redress are still satisfied, the PC shall attempt to make as fair an arrangement as possible considering all boats as required by RRS 64.2. If the PC is unable to reach a decision based on the currently available facts, they shall gather facts as required by RRS 63.6 subject to the requirements of RRS 63.2 and RRS 63.3.

15 DECEMBER 2014 PC DECISION

FACTS FOUND BY THE PROTEST COMMITTEE:

1. The Race Committee was not present at the hearing; the hearing was continued under RRS 63.3(b).
2. In race 4 of the Summer OD series "Mile Marker" was the second windward mark of a 4 leg course.
3. "Mile Marker" is a government navigational aid maintained by the Coast Guard. Other marks were temporary inflatables.
4. The race area was seaward of the demarcation line.
5. As the lead boat, *ROLLY*, in the Shields class was sailing on the second windward leg to "Mile Marker" which was not in the water. It was observed, by her, on the deck of a Coast Guard Buoy Tender in the vicinity.
6. As *STILLWATER* approached the vicinity of the CG vessel, she could not see the mark in the water.
7. As *MERITAGE* approached the vicinity of the CG vessel, she did not see the mark at all.
8. As *STORM* approached the vicinity of the CG vessel, she could not see the mark.
9. The mark was not visible to all boats.
10. The CG vessel had been servicing the mark for at least 12 minutes before *ROLLY* arrived near the vessel.
11. *ROLLY* sailed around the CG vessel at a nearest distance of less than 2.5 boat lengths.
12. *MERITAGE* sailed around the CG vessel at a nearest distance of 2.5 boat lengths.
13. *STILLWATER* sailed around the CG vessel at a nearest distance of 8-10 boat lengths.
14. *STORM* sailed around the CG vessel at a nearest distance of more than 10 boat lengths.
15. In addition to the signal boat, the RC had a mark boat, Flag M and a sound device on the race course.
16. The RC did not replace "Mile Marker" or substitute it in any way.

PC's CONCLUSIONS AND RULES THAT APPLY:

1. "Mile Marker" was out of position.
2. "Mile Marker" was missing.
3. The RC had the equipment and time to substitute the mark boat for "Mile Marker" to comply with RRS 34(b) and did not do so. This constitutes an omission under RRS 62.1(a).
4. The CG vessel which the boats racing sailed around was a vessel not racing. RRS preamble to Part 2 required each of the boats racing to comply with IRPCAS with regard to meeting the CG vessel.
5. The CG vessel was a vessel restricted in her ability for maneuver under IRPCAS Rule 3(g)(i).
6. Each sailboat racing was required to keep out of the way of the CG vessel under IRPCAS Rule 18(b)(2).
7. As a vessel directed to keep out of the way, each sailboat racing was required to keep well clear of the CG vessel under IRPCAS Rule 16.
8. *STILLWATER* sailed, well clear of the CG vessel, in an arc 8-10 boat lengths from the CG vessel which resulted in the overall distance for her course sailed to be approximately 20-30 boat lengths longer than the boats that sailed close aboard the CG vessel.
9. Had the RC complied with RRS 34(b) it would have been possible for *STILWATER* to sail a shorter course.
10. Had *STILLWATER* sailed a shorter course it was possible she would have been scored in first place instead of second place.
11. *STILLWATER* has met the requirements of RRS 62.1 in that it was possible that her course was made worse through no fault of her own by the omission of the RC and she is entitled to redress.
12. The PC considered the options under RRS 64.2 including guidance in RRS Appendix A10 to make as fair an arrangement for all boats as possible.
13. At least two boats sailed courses significantly longer than at least two of the other boats; this compromised the fairness of the results.
14. Abandoning the race and re-sailing it is the best available option.
15. As "Mile Marker" was missing and the RC was required by RRS 34 to replace it or substitute it or to abandon the race under SI 9.5. The RC did none of these things which constitute an omission on the part of the RC under RRS 62.1(a).
16. *STILLWATER's* score for the series may have been made worse, through no fault of her own, by this omission of the RC (RRS 62.1) and she is entitled to redress.
17. Recognizing the clear language of SI 9.5, the race is also abandoned under that rule.
18. The PC recommends, with RRS 36 in mind, the RC consider re-sailing the race on a scheduled race day.

PC's DECISION:

Redress is given as follows: Abandon Shields class race 4; PC recommends RC consider re-sailing.

DECISION OF APPEALS COMMITTEE:

The appeal is upheld and the decision of the PC is reversed. The boats are to be scored in their original finishing order.

The AAC has determined that the PC failed to follow the AAC's 24 October 2014 directives by including conclusions related to the mark being missing and invoking SI 9.5 (see Conclusions #2, #15, and #17). As a result, the AAC has reviewed the 15 December 2014 decision as a part of the original appeal. The AAC notes that the PC did not assemble the parties while reaching their 15 December 2014 decision.

The AAC confirms their 24 October 2014 decision:

1. The participants in the hearing are parties to the hearing and entitled to appeal, and
2. The mark was not 'missing' in the context of RRS 34.

The PC made the following errors in reaching their 15 December 2014 decision:

- ❖ The PC found facts and drew conclusions that were not possible without the RC in attendance at the 16 July 2014 hearing and no parties present at the re-opened hearing (deliberation only).
 - The RC did not attend the 16 July 2014 hearing (see Fact #1) therefore it is impossible for the PC to have determined any facts (Fact #15) or drawn any conclusions (Conclusion #3, #11, #15, and #16) related to the ability of the RC to have replaced or substituted for the mark as described in RRS 34.
 - There are conflicts between Fact #4 of the original 16 July 2014 decision and Facts #6 through #9 of the 15 December 2014 decision. Without hearing new testimony from the parties, it is not possible to develop new facts that are in conflict with the original facts. Understanding that comments on the appeal made by the parties cannot be considered as fact, the AAC observes that the comments received are consistent with Fact #4 of the original decision and not the facts found in the new decision.
- ❖ The PC failed to establish that the requirements of RRS 62.1 were met.
 - That the boat's score in a race or series was made significantly worse

The PC found as fact that *ROLLY* was leading the race as the boats approached "Mile Marker". In the 16 July 2014 hearing the PC found as fact (Fact #6) that *ROLLY* finished in first place and *STILLWATER* finished in second. Therefore *STILLWATER*'s position relative to *ROLLY* did not change as a direct or indirect result of the condition of the mark RC not substituting or replacing "Mile Marker". Also, the PC did not find that the result for any other boat in the race was made worse.
 - That this was through no fault of her own

STILLWATER chose the course that she sailed around the CG tender and the course sailed by the other boats in the race was available to her. If *STILLWATER* sailed a longer course in any part because of a belief that she was required to, either by the IRPCAS or other government regulations, then the result of sailing that extra distance cannot be considered 'through no fault of her own'. If *STILLWATER* believed that the other boats in the race sailed through a restricted zone in sailing a shorter course then she should have protested as this is an issue for a protest not a request for redress. This makes Conclusions #4, #5, #6, #7, and #8 irrelevant.
 - That the RC committed an error or omission

RRS 34 requires the RC to do something "if possible". The PC must first establish that it was *possible* for the RC to have performed either RRS 34(a) (replace) or RRS 34(b) (substitute) before concluding that the RC actually committed an omission that would entitle a competitor to redress under RRS 62.1(a). This invalidates Conclusions #3, #11, #15, and #16.

The ability of the RC to meet their obligations under RRS 34 is not limited solely to the availability of equipment and personnel capable of performing the task. It also includes the timing (when the RC learned of the problem, etc.), the current wind and sea conditions, the location of the RC relative to the mark, and any other relevant factors.
- ❖ The PC misinterpreted RRS 62.1.

The phrase "may be, ..., made significantly worse" in RRS 62.1 refers to issues that may occur in the future should corrective action not be taken by the PC prior to the incident. As the hearing in this case was an examination of an incident in the past, the requirement is that her score *has been* made worse, not that there is a possibility that it *may have been* made worse.

The possibility that *STILLWATER* may have had a better score is not equivalent to meeting the requirement that her score has been made worse. Conclusions #9 and #10 do not support Conclusions #11 and #16 that the conditions for redress have been met.
- ❖ Issue of fairness

Conclusion #9, that had the RC substituted or replaced the mark that *STILLWATER* could have sailed a shorter course, is true for all the boats in the race. The effect of the CG tender on the distances sailed was the same for each boat. As the effect on all boats was equivalent, Conclusion #13 is not valid. For something to have an effect on the fairness of the race, by definition, it must

apply unequally to the boats in the race. In this case no boat gained an advantage relative to the other boats in the race by the location of the mark or the presence of the CG tender.

THE APPEALS COMMITTEE OF THE YACHT RACING ASSOCIATION OF SAN FRANCISCO BAY.

A handwritten signature in black ink that reads "John Christman". The signature is stylized with a large, sweeping initial "J" and "C".

John Christman, Chairman
(email: john@christman.org)

copy: Pakhtun Shah, *ROLLY*, via email (ucipas@aol.com)
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