

an addition to a rule or deletion of all or part of it is a ‘change’ to the rule.

- (3) The race committee is responsible for publishing written sailing instructions (see rule 90.2(a)). Rule J2.2(3) requires the race committee to include in the sailing instructions an instruction that specifically identifies the rule that is being changed and states the change. After reading that instruction, it should be possible for a reader to know precisely how the changed rule would read.

In addition, when a rule change is made under rule 86.2, a letter of approval must be obtained from ISAF, the authorization must be stated in the notice of race and the sailing instructions, and the letter must be posted on the official notice board. When a rule change is made under rule 86.3, the approval of the national authority may be required.

Question 2

Can a racing rule be changed for an event without following the procedure described in Answer 1?

Answer 2

No.

ISAF 2012

CASE 122

Rule 69.2(c), Allegations of Gross Misconduct: Action by a Protest Committee

An interpretation of the term ‘comfortable satisfaction’.

Assumed Facts for Question 1

Based on a report that the protest committee received, it believes that a competitor may have broken rule 69.1(a). It has called a hearing and taken the evidence of the party and witnesses.

Question 1

Rule 69.2(c) requires that, before the committee warns or penalizes the competitor, it shall be ‘established to the comfortable satisfaction of the protest committee, bearing in mind the seriousness of the alleged misconduct, that the competitor has broken rule 69.1(a)’.

What is the meaning of ‘comfortable satisfaction’ as used in rule 69.2(c)?

Answer 1

‘Comfortable satisfaction’ is one of three standards of proof commonly used in courts of law or arbitration hearings. The other two standards are ‘proof beyond a reasonable doubt’ and ‘balance of probabilities’. The ‘proof beyond a reasonable doubt’ standard is the strictest of the three standards. It is usually reserved for serious criminal cases. The ‘balance of probabilities’ standard (also sometimes referred to as the ‘preponderance of the evidence’ standard) is the least strict of the three, and it is widely used in civil legal proceedings.

Both the World Anti-Doping Agency and the Court of Arbitration for Sport use the ‘comfortable satisfaction’ standard. The World Anti-Doping Agency uses that standard in hearings to determine whether or not an athlete has violated the World Anti-Doping Code. Article 3.1 of the code states that, bearing in mind the seriousness of the allegation, it shall be established to the ‘comfortable satisfaction’ of the hearing panel that a violation occurred. Article 3.1 goes on to state, ‘This standard of proof in all cases is greater than a mere balance of probabilities but less than proof beyond a reasonable doubt.’

The racing rules do not state which standard of proof a protest committee should use in a hearing to decide a protest or a request for redress. However, in most such hearings, the protest committee uses the ‘balance of probabilities’ standard, which is whether it is more likely than not that an allegation or claim has been established.

Rule 69.2(c) specifically requires that in a rule 69 hearing the protest committee use the more strict ‘comfortable satisfaction’ standard. The rule further requires the seriousness of the alleged conduct to be considered as an important factor when the committee is addressing whether or not it is ‘comfortably satisfied’ that the alleged offence was committed. The ‘comfortable satisfaction’ standard is always more strict than the ‘balance of probabilities’ standard but is less strict than the standard of ‘beyond a reasonable doubt’. In between these two limits, the standard of proof is a sliding scale, based on the seriousness of the allegations before the committee.

It is also a fundamental principle in disciplinary proceedings that competitors must be regarded as innocent until any allegation is proven against them. Therefore part of the ‘comfortable satisfaction’ test is

whether or not the evidence presented to the committee is sufficient to mean the competitor is no longer presumed to be innocent.

The last sentence of the Terminology section of the Introduction implies that the words ‘comfortable’ and ‘satisfaction’ are used in rule 69.2(c) in ‘the sense ordinarily understood in . . . general use.’ Both ‘comfortable’ and ‘satisfaction’ are frequently used in everyday speech, and so most judges will be familiar with how they are generally used. Judges could also consider whether they feel ‘uncomfortable’ with any conclusion reached. If they are uncomfortable, then they are not ‘comfortably satisfied’.

Note that in a rule 69 hearing, the protest committee must answer ‘Yes’ to both of the following questions before it warns or penalizes a competitor or boat under rule 69.2(c)(1) or 69.2(c)(2):

- Is the committee comfortably satisfied that the facts found establish that the alleged conduct occurred?
- Is the committee comfortably satisfied that the conduct that occurred was gross misconduct?

As rule 69.1(a) states, an act of gross misconduct may be a gross breach of a rule, good manners or sportsmanship, or conduct that brings the sport into disrepute.

Question 2

Please provide a plausible example of a report of an incident alleging a gross breach of a rule and a report of a hearing under rule 69.2 in which the ‘comfortable satisfaction’ standard is used.

Answer 2

Boat A had been presented for pre-event measurement and a required corrector weight was properly attached under a floorboard that was held in place by several screws. During the event, A was spot checked by the equipment inspector, and the corrector weight was missing. The protest committee alleged that the crew of boat A had removed the corrector weight, and that that action was a gross breach of rule 78.1 and, therefore, a breach of rule 69.1(a). The committee called a hearing under rule 69.2. Boat A was represented at the hearing by P, who was the helmsman of A and the person in charge of A. P denied having any knowledge of the missing corrector weight. He explained that the boat was left unlocked and unattended every night. He alleged that somebody else had removed the corrector weight during the night. Boat A’s crew were called as witnesses. They also testified that they had no knowledge of the missing weight and

that they had seen no evidence that the floorboard had been removed and replaced.

Nearly all the evidence supported the allegation that a member of A's crew had removed the corrector weight. Because tools were needed to remove the weight, the committee concluded that the weight had been removed deliberately (not accidentally). Boat A gained an advantage by the weight's removal, and its removal was not likely to be discovered because the floorboard was screwed into place. The only contradictory evidence was that each member of the crew denied having removed the weight. The protest committee concluded that it was comfortably satisfied that a member of A's crew had removed the weight and that that action constituted a gross breach of rule 78.1 and, therefore, a breach of rule 69.1(a). Boat A was penalized under rule 69.2(c)(2) by being scored DGM for all races in the event.

Because nearly all the evidence supported the allegation, the committee would have reached the same conclusion had it used the 'balance of probabilities' standard of proof. However, if the committee had used the 'beyond a reasonable doubt' standard, it might well have reached a different conclusion. No member of A's crew ever admitted removing the weight, and it was, in principle, possible that someone else could have removed it because the boat was often left unattended and unlocked. Therefore, there was a possibility that the weight could have been removed without the knowledge of A's crew. Consequently, if the standard of proof had been 'beyond a reasonable doubt', the committee probably would not have concluded that a member of A's crew removed the weight.