

## **APPEAL 2/2015**

SAIL EXTREME A-OPTIMIST, KERTEMINDE SEJLKLUB, 22-24 JUNE, 2015

### **Summary:**

Shortly after the start of Race 6, there was an incident between DEN 8271 and GER 13522. DEN 8271 protested, claiming that GER 13522 had broken RRS 10. The protest time ended at 16.12 and DEN 8271 delivered the protest form at 16.18.

### **Actions and decision by the protest committee:**

The protest committee decided to extend the protest time, but did not record the reason for this on the protest form.

Facts found by the protest committee:

“Approximately 1½ minute after the start DEN 8271 sailing starboard tack on a close-hauled course.

GER 13522 sailing port tack on collision course. DEN 8271 yells “styrbord” (starboard).

GER 13522 tacks to starboard in front of DEN 8271 and finishes the tack on close-hauled.

DEN 8271 tacks to port to avoid collision with GER 13522.”

The protest committee concluded, “By forcing DEN 8271 to tack to avoid collision, GER 13522 has failed to give DEN 8271 room to keep clear as required in RRS 15” and disqualified GER 13522 from the race.

### **Comments from the appellant:**

GER 13522 appeals the disqualification. She claims to be disadvantaged by the fact that the protest was written in Danish (on the Danish translation of the ISAF protest form). She also claims that there were misunderstandings during the hearing which was conducted with a translator. With specific regard to the incident and facts found, the appellant claims she has not been informed of the protest at the incident, and that the jury should acknowledge a burden of proof on the protestor when applying RRS 15.

### **Comments from the protest committee:**

With respect to the extension of the protest time, the protest committee explains that the protestor was questioned about the reasons for the delay and that the explanation by the protestor was found to constitute good reason for an extension of the protest time.

The protest committee motivates its decision to use a translator and gives some details about the use of the translator and the discussion during and after the hearing.

As to whether the protestee was informed on the water, the protest committee explains that it had no reason to doubt the hails by DEN 8271. With regard to the rules applied, the protest committee is of the opinion that GER 13522 completed her tack so close to DEN 8271 that DEN 8271 was forced to tack to avoid a collision. The protest committee therefore finds that RRS 15 was broken.

**Comments by the DSA Appeals and Rules Committee (ARC):**

Concerning the extension of the protest time, the ARC is satisfied that the protest committee examined the circumstances of the delay before deciding to extend the protest time in accordance with RRS 61.3.

In the matter of using an interpreter, the ARC is satisfied that the protest committee made its best effort to solve the language problems in the hearing.

With respect to facts found and the rule applied, the ARC has several points to make. The facts found are insufficient for concluding that RRS 15 (or any rule, for that matter) has been broken. The protestor's diagram endorsed by the protest committee does not add any information. It is regrettable that the protest committee has not supplemented the facts found with its own diagram.

The protest committee has correctly stated that the incident is initially governed by RRS 10, then RRS 13 and finally RRS 15. However, to determine whether RRS 15 has been broken, several additional facts are required. When GER 13522 completes her tack, DEN 8271 becomes the give-way boat and must act promptly to keep clear. If she is unable to do so in a seamanlike way, she has not been given sufficient room and RRS 15 has been broken. In order to decide if DEN 8271 could keep clear by acting promptly in a seamanlike way, it is necessary to know the distance and relative positions between the boats when the tack by GER 13522 was completed. In addition to this, the sailing conditions (wind, waves, etc.) and the type of boat and its maneuverability must be taken into account.

The facts found include the statement that the boats would have collided if DEN 8271 had not tacked. This is not a fact but a conclusion. This conclusion is not substantiated by the facts stated by the protest committee. Therefore, the ARC must disregard this conclusion.

In the processing of the appeal, the ARC has asked the chairman of the protest committee if there were any notes, diagrams or other information produced at the time of the hearing which could provide additional facts. Unfortunately the ARC received no response to this request.

The ARC must therefore decide the appeal based on the facts stated by the protest committee. As explained above, the facts describe the incident but indicate no breach of any rule.

**Decision:**

The facts found by the protest committee do not provide sufficient grounds for deciding that any rule was broken in the incident. It is unlikely that a new hearing will result in reliable new information. Therefore, the appeal is upheld. The decision of the protest committee is overturned, and GER 13522 is to be reinstated into her finishing position in Race 6.

DANISH SAILING ASSOCIATION, APPEALS AND RULES COMMITTEE

21<sup>st</sup> August 2015

Jan Stage	Jacob Andersen
Andreas Kuchler	Paw Hagen
Torben Precht-Jensen	Henrik Dorph-Jensen
Hans-Kurt Andersen	Bjørn Anker-Møller