

Australian Sailing Appeal Decision

2020-MHYC – Jet v Calypso, Sail Pac, Phoenix.

Appeal By: J24 2638 – Jet represented by Simon Grain.

Arising from: Race 6 - 3 January 2020 – 2020 J24 Australian Championship - Middle Harbour Yacht Club

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing:

- Jonathon Rees (NJ) Chair
- John Standley (IJ)
- Damien Boldyrew (IJ)
- Christina Heydon (NJ)
- Luke Tupper (NJ)

The Protest / Request for Redress.

On 3 January 2020 the 2020 J24 Australian Championships protest committee protested 4792 Jet under RRS 60.3(a)(2) when it learnt during the hearing of a valid protest that Jet, who was not a party to the hearing, was involved in the incident and may have broken RRS 11 and 14. The protest committee had closed the original hearing into the incident.

Jet was informed of the protest on the evening of 3 January 2020 and a new hearing scheduled for 10:00 am on 4 January 2020 for the following protests:

- Protest 2: 2638 Calypso v 4792 Phoenix;
- Protest 3: 2638 Calypso v 5085 Sailpac;
- Protest 4: 5085 Sailpac v 2638 Calypso;
- Protest 5: 4791 Phoenix v 2638 Calypso; and
- Protest 6: Protest Committee v 4792 Jet;

which all related to the same set of incidents.

The parties to the hearing were informed of the protest committee's decision at the conclusion of the hearing on 4 January 2020.

Australian Sailing received Jet's appeal on 17 January 2020 and sent copies of the appeal to the protest committee and other parties on the same date. Comments were received from:

- The protest committee on 19 January 2020.
- Sailpac on 22 January 2020
- Calypso on 1 February 2020

Jet included a statement from Jab, her witness at the hearing, with her appeal.

The protest committee found the following facts:

1. Race 6 was started in approximately 15 knots and choppy waters.
2. All boats on starboard approaching the start, Calypso to leeward of Jab, Jab to leeward of Jet, which was to leeward of Sailpac, which was to leeward of Phoenix.
3. Jab luffed Jet, forcing her to sail head to wind.
4. Jab then bore away, gained speed and started the race.

5. Jet bore away to accelerate and hit Calypso on the starboard quarter, rotating Calypso onto port tack into the path of Sailpac.
6. Jet then bore away and passed behind Calypso.
7. Sailpac on starboard luffed in an attempt to avoid Calypso on port but contact occurred between the bow of Sailpac and the forward quarter of Calypso.
8. Sailpac then rode up between the staunchions of Calypso
9. Phoenix luffed to keep clear Sailpac.
10. Sailpac and Calypso, engaged together, moved into the path of Phoenix.
11. Phoenix on starboard could not avoid Calypso on port and contact occurred between the bow of Phoenix and the starboard forward section of Calypso.
12. Phoenix was holed in the bow, below the waterline, and sank without finishing the race.
13. Sailpac received physical damage to her stem fitting, topsides and toerail and continued in the race, placing last.
14. Calypso received serious damage to her starboard toe rail, topsides and staunchions and did not finish the race.
15. No boats took penalty turns.
16. The protest committee's diagram is attached.

And went on to conclude

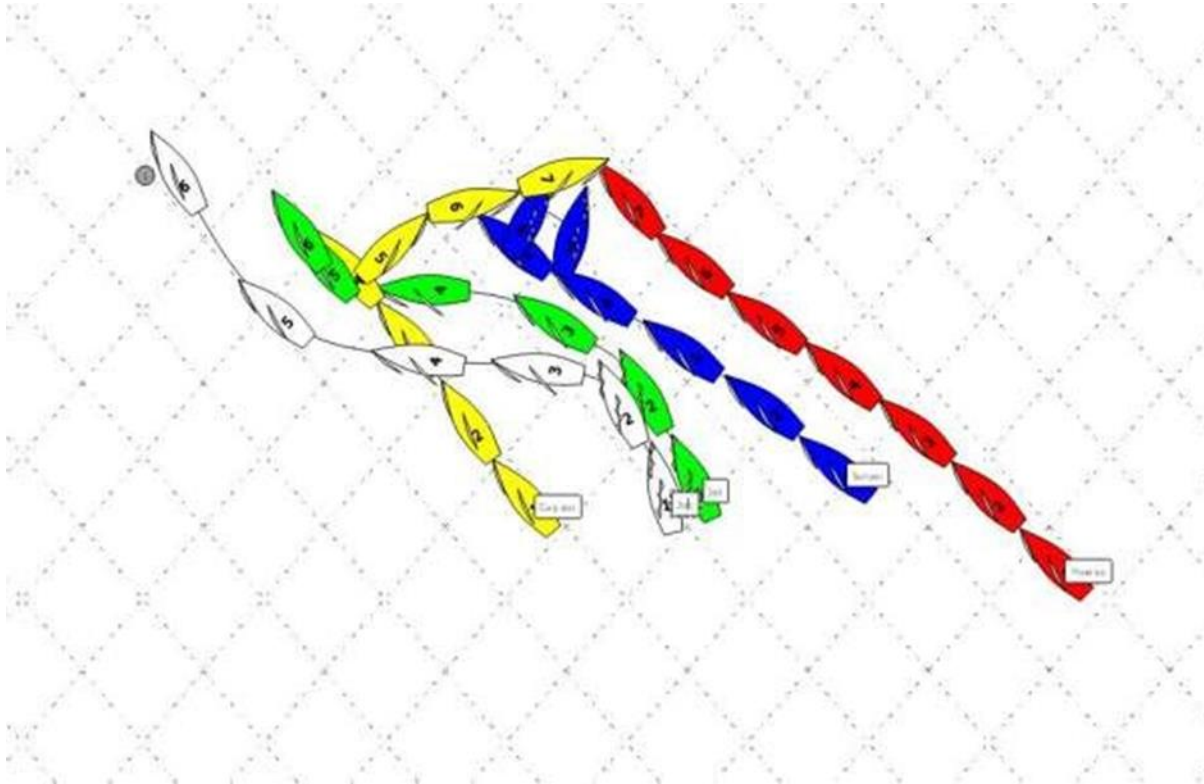
- A. Jet to windward did not keep clear of Calypso to leeward on the same tack, breaking rule 11.
- B. Jet did not avoid contact with Calypso when it was reasonably possible to do so breaking rule 14.
- C. Calypso on port boat did not keep clear of Sailpac on starboard breaking rule 10.
- D. Calypso as port boat did not keep clear of Phoenix on starboard breaking rule 10.
- E. It was not reasonably possible for Calypso to avoid contact with Jet, Sailpac or Phoenix. Calypso did not break rule 14.
- F. It was not reasonably possible for Sailpac to avoid contact with Calypso. Sailpac did not break rule 14.
- G. It was not reasonably possible for Phoenix to avoid contact with Calypso. Phoenix did not break rule 14.
- H. Calypso was compelled by Jet breaking rule 11, to break rule 10 and is exonerated with respect to both Sailpac and Phoenix in accordance with rule 64.1(a).
- I. Calypso's score in race 6 was made significantly worse through no fault of her own by Jet breaking rule 11 and she is entitled to redress in accordance with rule 62.1(c).
- J. Sailpac's score in race 6 was made significantly worse through no fault of her own by Calypso breaking rule 10. and she is entitled to redress in accordance with rule 62.1(c)
- K. Phoenix's score in race 6 was made significantly worse through no fault of her own by Calypso breaking rule 10 and she is entitled to redress in accordance with rule 62.1(c).

And decided the following

Jet is disqualified in Race 6.

Calypso, Sailpac, and Phoenix are to be given redress, being scored points equal to the average, to the nearest tenth of a point (0.05 to be rounded upward), of their points in races 1 to 5, excluding, for each boat, the worst of those scores.

Protest Committee diagram



The Appeal Summary.

The appellant claims that the protest committee made a serious error in its findings. In the appeal document the appellant

1. Suggests that the protest hearing should be reopened,
2. Indicates he did not prepare properly for the hearing, and
3. Contests the decision and presents a different set of facts

Appeal Panel discussion and conclusions

Ground 1 - Suggests that the protest hearing should be reopened

The appellant requests that the protest be reopened based on the evidence presented in this appeal.

RRS 66 allows for a party to a hearing to request a reopening no later than 24 hours after being informed of the decision. The appellant did not make such a request within 24 hours of the decision and consequently is not able to request a reopening.

RRS 66 also provides for a protest committee to reopen a hearing if significant new evidence becomes available within a reasonable time. The statements provided by the appellant do not meet this test as they are made by the appellant and a witness from the hearing. There is therefore no obligation for the protest committee to reopen the hearing.

This panel may order that a hearing be reopened (RRS 71.3) only when it decides the protest committee's finding of facts are inadequate.

The panel has decided the facts found by the protest committee are adequate and support the protest committee's conclusions and decision. The panel concluded that there is no need to reopen the hearing and require the protest committee to report any new finding of facts.

On this ground the appeal is dismissed.

Ground 2 - Indicates he did not prepare properly for the hearing,

RRS 63.2 provides that all parties be allowed reasonable time to prepare for the hearing.

The appellant was informed of the protest and provided with a copy of the protest shortly after 19:47 on 3 January 2020. The appellant was a witness to the first hearing. When the hearing commenced at 10:00 am on 4 January 2020 the appellant confirmed that he had adequate time to prepare.

The panel concluded that the appellant was allowed reasonable time to prepare for the hearing as required by RRS 63.2 and that on this ground the appeal is dismissed.

Ground 3 - Contests the decision and presents a different set of facts

This ground seeks to change the facts found by the protest committee.

RRS 70.1 (a) provides that a party may not appeal the facts found by a protest committee. RRS R5 makes clear that the appeal panel must accept the protest committee's finding of facts except when the panel decides that they are inadequate. The panel concluded that the facts as found by the protest committee are adequate to support the protest committee's conclusions and decision.

On this ground the appeal is dismissed.

Appeal Panel decision

The appeal is dismissed.

The decision of the protest committee to disqualify Jet is upheld.
