

APPEAL – Flash Gordon v Royal Akarana Yacht Club Protest Committee

The Issue

On Sunday, 1st July, 2012, there was an incident between Flash Gordon and Nijinsky when sailing in Race 6 of the Royal Akarana Yacht Club's Young 88 Two Handed Championship.

At the start of the race Nijinsky was almost stationary just behind the start line. Flash Gordon approached Nijinsky from clear astern and contact occurred between Flash Gordon's bow and Nijinsky's stern. Nijinsky protested. Some six weeks after the event the protest was heard.

The protest committee found the following facts:

1. The hail was made and the flag displayed after a short delay, but in any case rule 61.1(a)(3) applies.
2. At the start of race 6, Flash Gordon approached Nijinsky from astern, and her bow made contact with the stern of Nijinsky.
3. Damage occurred.

The protest committee disqualified Flash Gordon for infringing rule 12.

Flash Gordon appealed on the grounds that:-

1. On the protest form the skipper of Nijinsky claimed that Flash Gordon "hit her in stern port quarter at the 1st stanchion of Flash Gordon." He then changed the point of contact at the protest hearing 6 weeks later, to Flash Gordon's bow "hit her clear astern".
2. That Flash Gordon established a leeward overlap on Nijinsky from clear astern and Nijinsky drifted sideways onto Flash Gordon.
3. That photographs taken after the incident show there was no damage to Nijinsky's stern and there were no markings or damage. The appellant also claims that Nijinsky's hull and decks separated a year ago and a small rub caused the hull and decks to separate.
4. That the protest committee gave little cognizance to the evidence of an independent witness.

Discussion

The appeals panel assumes that throughout the incident both boats were on starboard tack.

Most witnesses to an incident see different parts of an incident and have different perspectives. Honest testimony from witnesses may vary widely. The skipper of Nijinsky may have thought contact occurred as he originally stated in the protest while a member of his crew, who claimed to have fended Flash Gordon off, considered contact was between bow and stern. The protest committee chairman explains that, at the time of the incident, Nijinsky's helmsman "had dashed forward to fend his boat off the boat immediately to windward into which it had been propelled." The appeals panel is satisfied that, even if the exact point of contact was in error, the protest satisfied the requirements of RRS 61.2(b).

The protest committee heard all the evidence, considered the location of the witnesses, their viewing perspectives and what they had seen, and decided on the facts. The appeals panel must accept the facts found unless it decides the hearing should be reopened or a new hearing held. In this instance, from the information provided, the appeals panel can see no reason to doubt the facts found by the protest committee.

There is an implication in the Appellant's supporting documents that Flash Gordon would not have been at fault if the protest committee had found that contact occurred as originally described in the protest. The appeals panel considers that in those circumstances, Flash Gordon would have infringed RRS 15 rather than RRS12.

With regard to the damage, the protest committee heard the evidence of all the parties and decided that damage occurred. The protest committee was shown photographs of cracks in the deck on the aft port side close to the transom and no evidence of previous damage in this area was presented at the protest hearing. The appeals panel accepts that damage occurred.

The facts found by the protest committee support the committee's decision to disqualify Flash Gordon for infringing rule 12.

Two other issues, although not noted as grounds for appeal, deserve comment.

1. The protest committee records that the protest was lodged within the time limit. Sailing Instruction 12.2 specified the time limit as 90 minutes after the last boat has finished the last race of the day. The protest form does not record the date and time the protest was received by the race office, only a note "by VHF 1/7/12". Clearly a radio call does not meet the requirements of RRS 61.2 – "a protest shall be in writing". Also, in the protestee's submission, there is an allegation that the protest procedures did not comply with Sailing Instruction 12.3, regarding posting notices no later than 30 minutes after the protest time limit to inform competitors of hearings in which they are parties or named as witnesses. Apparently these issues were discussed at the hearing and appear to have been resolved by the Protest Committee, but not recorded in the decision. The Royal Akarana Yacht Club should ensure that the time protests are received is always noted on the form and that it follows the requirements of the rules and Sailing Instructions in all respects.
- 2.. The Appellant chose to include in his documentation a private email including an allegation of "blatant lying" by the protestor. The protest committee chairman has commented as follows: "The Panel does not believe this to be the case. Rather that each party gave evidence based on what was believed to be true". The allegation in the email is highly defamatory of the protestor and the appeals panel considers that it was totally inappropriate to include this comment in the appeal documentation.

Decision

Appeal dismissed. Further, the appeals panel considers that the appellant should formally withdraw the allegation of "blatant lying" and apologise in writing to the protestor with a copy of that apology sent to the appeals panel

Appeals Panel

Jim Park, IJ Chairman
Russell Green, IJ
Steve Macris, NJ
Hal Wagstaff, IJ.
Bevan Woolley, IJ

Appjwp69
4/10/12