

## YNZ Appeal 72

### PHLYER v PASSION

This is an appeal against a decision of a protest committee of the Royal New Zealand Yacht Squadron. The protest was brought by PHLYER, the appellant in this appeal, against PASSION. It arose from an incident on 1 December 2014 in Race 6 of the Stewart 34 Championship Series.

The essential issue in this appeal is the interpretation of the word “designed” in RRS 49.1, which reads: *Competitors shall use no device designed to position their bodies outboard, other than hiking straps and stiffeners worn under the thighs.*

#### The Incident

PHLYER and PASSION were sailing downwind towards the finish. The protest committee found that:

- *A crew member of Passion, by holding onto the shroud, extended his or her body outboard of the hull to support the headsail at the clew;*
- *Lifelines were not required by the rules.*

PHLYER protested alleging that the actions of PASSION’S crew broke RRS 49.1.

The protest was dismissed because the protest committee concluded that the shroud was not a ‘device designed to position bodies outboard’ in terms of RRS 49.1. The protest committee referred to ISAF Case 4 and ISAF Q & A L004-2014.016.

PHLYER appealed on the ground that the protest committee had misinterpreted RRS 49.1. PHLYER argued that Rule 49.1 had been broken because:

- (a) RRS 49 is headed ‘Crew Positions: Lifelines’;
- (b) RRS 49.1 refers to the use of a device and ‘device’ is defined in the Oxford English Dictionary as: A thing made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment. A cap shroud is a mechanical thing made to hold up the mast.

#### Discussion

RRS 49.1 contains a number of ingredients that must be established before a competitor can be said to have broken that rule. One of those ingredients is that the competitor must use a “device”. Another ingredient is that the device used must be “*designed to position [competitors’] bodies outboard*”.

It follows that if a competitor positions their body outboard, but that second ingredient has not established, then RRS 49.1 has not been broken. The crew member of PASSION held onto the shroud. There is no doubt that a shroud is a device. However, it cannot be said, by any nautical or general meaning, that a shroud is designed to position a competitor’s body outboard. As stated by Phlyer, and accepted by the Appeal Panel, the shroud is designed to hold up the mast.

PHLYER refers to the title of RRS 49; ‘Crew Position: Lifelines’. That phrase does not support any contention that the shroud was designed to position crew members outboard in terms of RRS 49.1. Even if the phrase was relevant, arguments based on the titles of rules have little weight because under the Racing Rules of Sailing, the title of a rule is not part of a rule (refer definition – Rule (a)).

PHLYER focuses on the use to which the shroud has been put. There may be an implied argument that the verb “designed” in RRS 49.1 can refer to the purpose that a piece of equipment is planned to be used for, rather than simply the reason for which it was put on the boat. One may legitimately refer to a ‘designed purpose’ for using things or a ‘designed outcome’. In this case the crew’s sole reason for holding on to the shroud was to position his body outboard. That was not merely an incidental consequence of the normal use of that piece of equipment. It could be argued that the shroud was applied for that particular purpose “by design”.

However, the word “designed” in RRS 49.1 refers to more than simply the intention in which equipment is used. Under an ordinary reading of the Rule the phrase *‘designed to position their bodies outboard’* follows and describes the device rather than being a description of an action. It describes what devices may be used and what devices may not be used.

### **Conclusion**

A shroud is designed to hold up the mast. It was no more designed to position a competitor’s body outboard than a mainsheet tail or a jib sheet tail. It follows that RRS 49.1 has not been broken.

RRS 49.2 does not apply as Passion did not have lifelines which were not required by either the applicable class rules or the sailing instructions.

### **Decision**

PHLYER’s appeal is dismissed.

### **Appeal Panel**

Shane Borrell IJ (chair)

John Grace IJ

Russell Green IJ

Hamish Hey NJ

Richard Slater IJ (AUS)