

YACHTING NEW ZEALAND APPEAL 74

THE RASCAL vs ROCKET SCIENCE

*An appeal from a decision of the protest committee of
the Tauranga Yacht & Motor Boat Club on 30 October 2017*

This appeal concerns the validity of a protest. Two issues were raised:

1. Did the protestor hail "protest" and display a red flag as required by the rules?
2. Did the protestor continue to display a red flag, until she was no longer racing, in the manner required by the rules?

The facts

The appeal arises from a protest in race 5 in the Wednesday Evening Summer Series at the Tauranga Yacht and Power Boat Club. The protestor, *Rocket Science*, is a 7.5 meter sports boat. The protestee, *The Rascal*, is an Archambault 40 keelboat. Both were racing in division 1.

A windward-leeward incident occurred while the boats were on a beam reach, approaching a mark. They were travelling 8 to 10 knots. The wind was 18 to 23 knots. There was no contact between the boats nor any injury or damage.

After the incident, the boats rounded the mark and then started sailing close hauled. When the boats had sailed approximately 200 meters after the incident *Rocket Science* waved a red flag at *The Rascal*. The flag was afterwards attached to a lifejacket worn by one of *Rocket Science*'s crew and remained there for the rest of the race.

In *Rocket Science*'s comments on the appeal her helmsman explained that "*Rocket science is a Sport boat with very minimal Crew, after rounding the mark we had 3 guys on Trapeze then only me on the helm and one guy on the main sheet, I on the helm had to take the mainsheet so we could get the protest flag out in 15-20 Knots this was not a easy job*".

The protest committee's decision

The protest committee decided the protest was valid because they considered that the word 'protest' had been hailed and that a protest flag had been flown at the first reasonable opportunity given the conditions and the crowded mark rounding. The protest committee did not make any finding about when a hail of 'protest' was made.

After deciding that the protest was valid, the protest committee heard the protest and disqualified *The Rascal* from Race 5.

The appeal

The Rascal appealed, claiming that the protest was invalid. She claims that *Rocket Science* never displayed a red flag and that the hail must have been made (if at all) after the boats had sailed 250 meters after the mark.

The applicable rules

The applicable rule is RRS 61.1(a).

61.1 Informing the Protestee

- (a) A boat intending to protest shall inform the other boat at the first reasonable opportunity. When her protest will concern an incident in the racing area that she was involved in or saw, she shall hail 'Protest' and conspicuously display a red flag at the first reasonable opportunity for each. She shall display the flag until she is no longer racing. However,
- (1) if the other boat is beyond hailing distance, the protesting boat need not hail but she shall inform the other boat at the first reasonable opportunity;
 - (2) if the hull length of the protesting boat is less than 6 metres, she need not display a red flag;

.....

Did the protestor hail "protest" and display a protest flag as required by the rules?

The Appeals Panel has to accept the facts found by the protest committee that a protest flag was waved 200 meters after the incident. That leaves the question whether the flag was displayed and a hail was made within the required time?

There are no findings about the time that elapsed between the incident and display of the flag. Neither is there any basis on which that time can be precisely inferred. Nevertheless, it is apparent that even if *Rocket Science* had managed to continue sailing at 10 knots, after becoming close hauled, the time taken to sail 200 meters, and to wave the flag, must have been greater than 38 seconds.

Under RRS 61.1, a protestor, in the circumstances of this protest, must hail "protest" and conspicuously display a red flag at the "first reasonable opportunity". No specific time limit is given. It is a matter of considering all the circumstances at the time of the incident, the hail and the display of the flag to decide when the "first reasonable opportunity" arose. The requirement is not the "first convenient opportunity" or when it is "reasonable" in itself or "comfortable".

The need to display a flag at the first reasonable opportunity implies that the flag ought to be kept in a place where it will be available as soon as it is needed. It is common for sports boats to have protest flags furled on a stay or on a trapeze wire so they can be conspicuously unfurled immediately.

In this case, the first reasonable opportunity to hail 'protest' would have been immediately after the incident. The only physical action required was to shout. A hail at that stage would have been made when the boats were likely to be in close proximity and there would be less scope for misunderstanding.

If the flag could not be displayed immediately, due to safety issues with other boats converging at the mark, then it would be permissible to display the flag a bit later. However, one would still expect the flag to be displayed in the time that a flag can be safely unfurled from a stay or trapeze wire.

It would only be in exceptional cases that a delay of more than 15 seconds would be permissible, such as if the protestor had broached or if a crew member had fallen overboard. After that time, it would normally be too late for a protestee to respond to a protest flag and take a two-turn penalty. Such a penalty must be taken as soon after the incident as possible in terms of RRS 44.2.

In this case, the display of the protest flag, later than 38 seconds after the incident, was too late. Because *Rocket Science* did not display a protest flag at the first reasonable opportunity her protest was invalid.

If the hail of "protest" was made at the same time that the flag was first displayed, then the hail would have been too late as well.

Did the protestor display the flag, until she was no longer racing, in the manner required by the rules?

Under RRS 61.1(a) a protestor is required to conspicuously display a protest flag and to continue displaying the flag until she is no longer racing.

Case 72 of the World Sailing casebook refers to the requirements of a protest flag. The case says that a protest flag is used as a signal to communicate the message, 'I intend to protest'. Only if an object communicates that message, with little or no possibility of causing confusion on the part of competing boats, will the object qualify as a protest flag.

It follows that for a flag to be displayed until the protestor is no longer racing, it must be displayed in such a way that it clearly communicates that same message with little or no possibility of causing confusion on the part of the competing boats.

After *Rocket Science* waved a red flag at *The Rascal*, the flag was attached to a crew member's lifejacket for the duration of the race. In keelboat and sports boat fleets such an object would not be reasonably distinguished from the crew member's clothing or personal equipment. At least not as to communicate the message, 'I intend to protest', with little or no possibility of causing confusion.

It follows that *Rocket Science* failed to display a protest flag until she was no longer racing, as required by the rules. For that additional reason, the protest was invalid.

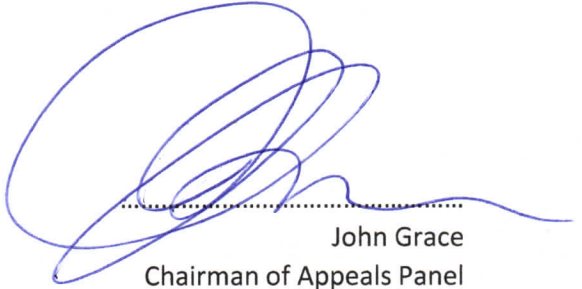
Decision

The appeal is upheld.

The protest committee's decision on validity is reversed. *Rocket Science's* protest against *The Rascal* in Race 5 of the Wednesday Evening Summer Series was invalid.

Appeals Panel

John Grace IJ (chair)
Mike Alison IJ
John Bullot IJ
Doug Elder IJ



John Grace
Chairman of Appeals Panel

26 November 2017