

## **YACHTING NEW ZEALAND APPEAL 76**

### **PATERE vs HARD LABOUR**

*An appeal arising from a decision of a protest committee  
of the Royal New Zealand Yacht Squadron*

#### **The Incident**

On the 13<sup>th</sup> February, 2019, in Race 7 of the Royal New Zealand Yacht Squadron Wednesday Night Series, Patere, a Stewart 34, and Hard Labour, a Farr 1020, were sailing on a leg of the course from Northern Leading Buoy to Resolution Buoy. Both boats were close hauled on port tack with Hard Labour several boat lengths to leeward and several boat lengths ahead. Hard Labour tacked on to starboard and Patere bore away to avoid her, but a collision occurred with Patere striking Hard Labour's port side approximately at right-angles some 2.5 to 3.0 metres forward of her transom. Both boats retired from the race. Hard Labour protested Patere.

#### **The Hearings**

The protest was heard on the 21<sup>st</sup> February by an "international panel" in Auckland for another event. The protest was found invalid and it is noted on the protest form "Protestor made no effort to inform Protestee 61.1(4)."

On the night the protest was found invalid, Hard Labour requested a reopening. This was heard by a protest committee of three on the 16<sup>th</sup> March. Only the chairman from the original protest committee was available so the recommendation of RRS 66 could not be followed. It appears there was no "new" evidence that met any of the criteria in World Sailing Case 115 but the protest committee decided that the previous protest committee had made a significant error and reopened the hearing, as it was entitled to do, (RRS 60.3(a) & RRS 63.5).

The protest committee found there was serious damage to Hard Labour.

Patere was disqualified under RRS 10 and Hard Labour was exonerated for breaking RRS 14 (RRS 64.1(a)). Redress was initiated by the protest committee and Hard Labour was given redress for races 7, 8 & 9 in the Wednesday Night Series.

On the 27<sup>th</sup> March the protest committee chairman wrote to the parties stating he wished to reopen the hearing to review the redress given to Hard Labour because Hard Labour could conceivably win the series but only sail 50% of the races. Subsequently, in a sporting gesture, Hard Labour withdrew from all races she had not sailed.

Patere received the written decision on the 18<sup>th</sup> March and appealed. Her appeal was received by Yachting New Zealand on the 28<sup>th</sup> March.

#### **The Appeal**

The appellant gave multiple reasons for appealing. In summary, the most significant are:-

- Because there was serious damage, and therefore validity is not relevant, the original protest committee should have heard the protest and, also, a decision was not given to the parties in writing.

- A long time elapsed before the hearing was held, the appellant was incorrectly advised written evidence would be accepted and the hearing was held when critical witnesses could not attend.
- There was a conflict in the facts found.
- Some rules were not considered.
- The position of boats at the start of the leg and relative speeds were not properly considered.

## Discussion

It is not mandatory for a protest committee to hear an invalid protest when there has been serious damage. RRS 60.3(a) states "it may protest a boat". The appeals panel does not know what evidence was presented to the first protest committee hearing but serious damage is not mentioned in Hard Labour's protest, therefore RRS 63.5 may not be relevant. Both boats had retired from the race therefore RRS 14 was not an issue so a protest hearing had limited value. Attention is also drawn to the Yachting New Zealand prescription to RRS 67.

It can sometimes be difficult to find a date that suits the parties, witnesses and a protest committee. It is the parties' responsibility to ensure that critical witnesses are available. Usually a protest committee asks the parties if they are ready to proceed and, in this case, the chairman states that was done. Written evidence from a party's witness who cannot attend is never acceptable because of the lack of the opportunity to question the witness. Similarly, the appeals panel has ignored that written evidence. A written decision is not given to the parties as a matter of course. Usually it is on request, and often from the race office which has copying facilities.

The facts found by the protest committee must be accepted by the appeals panel. The written facts are clear and unambiguous but there is an obvious discrepancy between fact 3 and fact 9, the endorsed diagram. Fact 3 states Hard Labour was to leeward by at least 3 boat lengths and approximately 5 boat lengths ahead. The diagram, fact 9, shows Hard Labour less than 2 boat lengths to leeward and three boat lengths ahead.

There is no fact relating to the time, and relative position of the boats, when Hard Labour reached a close-hauled course on starboard and rule RRS 15 is not mentioned. Before going about Hard Labour was clear ahead of Patere and right-of-way boat. She retained right-of-way while luffing to head to wind but became give-way boat under RRS 13 when she passed through head to wind. Hard Labour regained right-of-way when she reached close-hauled on starboard but, at that time, was required by RRS 15 to give Patere room to keep clear.

There is much discussion in the submissions on the time taken for Patere to decide whether to tack or bear away and then, initiating the bear-away after becoming aware Hard Labour was going about and suggesting this delay may have contributed to the collision. However, if Patere started to react when she saw crew moving off the rail of Hard Labour and it took Hard Labour 5 to 6 seconds to reach close-hauled on starboard, Patere could have commenced to bear away while still right-of-way boat.

The protest committee found the Hard Labour completed a tack onto starboard but was slow to accelerate (fact 4). The endorsed diagram shows Hard Labour lost about a boat length in going about. There is no conclusion relating to the effect this had on Patere's obligation to keep clear (she was already committed to bearing away) or Hard Labour's obligation to give room. Would

Patere have successfully passed astern of Hard Labour if Hard Labour had gone about in a seamanlike manner?

The appellant discusses in some detail the positions of the boats at the start of the leg and the changes in the relative positions of the boats prior to the incident. Tracker information was supplied by the appellant. That information could be useful to the protest committee in determining the “facts found” but the appeals panel does not find facts and must accept the facts found by the protest committee. Therefore the appeals panel considers that only the relative positions of the boats when Hard Labour commenced to go about and the subsequent manoeuvres of both boats as found by the protest committee are relevant. Lastly, Patere considers the last second luff by Hard Labour could have caused the collision and this does not appear to have been considered by the protest committee.

### **Decision**

The protest panel is directed to reopen the hearing. The discrepancy between facts 3 and 9 should be resolved. The positions of the boats when Hard Labour reached close-hauled on starboard should be determined and therefore the room given to Patere to keep clear. Likewise the effect of Hard Labour’s loss of speed in the tack and slow acceleration after the tack was completed and the effect of Hard Labour’s last second luff should be considered. Neither boat should be disqualified because both retired from the race, RRS 64.1(b).

### **Appeals Panel**

Jim Park, NJ Chairman

Doug Elder, IJ

Ross May, IJ

John Rountree, IJ

Jamie Sutherland, IJ

*21/05/19*