

## YACHTING NEW ZEALAND APPEAL 77

### *SAVANTÉ vs MOJO*

*An appeal from a decision of the protest committee of  
the Royal New Zealand Yacht Squadron on 24 June 2019*

This appeal arises from an incident near an object known as the *Green Sandspit marker stake (SW of Torpedo Wharf)*. The stake is both a “mark” and an “obstruction” in terms of the Rules. The issue on appeal is whether RRS 18 or RRS 19 applied to the boats as they approached that object.

#### **The Facts**

In race 3 of the RNZYS Winter Series, Mojo and Savanté were sailing downwind, approaching the *Green Sandspit marker stake*. The marker stake was required to be passed on the inside of the channel, under the sailing instructions.

The sailing instructions (by a reference to the RNZYS website) also designate the *Green Sandspit marker stake* as an obstruction. Other designated obstructions are “all moored vessels and moorings in or adjacent to the Small Craft mooring area shown on NZ Navigational Chart NZ 5322”. While the moored vessels and moorings are designated obstructions, the “mooring area” itself is not.

At the 3 boat-length zone of the *Green Sandspit marker stake*, Mojo was clear ahead of Savanté.

After entering the zone, Savanté became overlapped to windward and inside Mojo. Shortly afterwards, Savantés’ boom made contact with Mojo’s running backstay. No damage was caused.

Mojo then bore away to allow Savanté to pass between her and the marker stake.

#### **The Protest Committee’s Decision**

The Protest Committee decided that Rule 18 (*Mark Room*) applied. The stake comes within the definition of “mark” under the Rules, as it is an object the sailing instructions require a boat to leave on a specified side.

As Mojo was clear ahead when she reached the 3 boat-length zone, Savanté was obliged to give her mark room under RRS 18.2(b). The Protest Committee decided Savanté failed to give that mark room to Mojo. Consequently, Savanté was disqualified for breaking RRS 18.2(b).

#### **The Appeal**

Savanté appealed, claiming that the Protest Committee ought to have applied RRS 19 (*Room to Pass an Obstruction*) rather than RRS 18 (*Mark Room*). Savanté argues that on New Zealand Navigational chart 5322 and on the water, the stake and “the mooring area” make a lengthy continuing obstruction. RRS 19.1 provides that at a continuing obstruction, rule 19 always applies and rule 18 does not.

If RRS 19 was applied, the rights and obligations of the boats would have depended on their positions while they are “at an obstruction” rather than their positions at a 3 boat-length zone from a mark. Savanté argues that under RRS 19, Mojo was obliged to give her “safe room at the mark”.

## Discussion

The issue is whether RRS 18 or 19 applies. That, in turn, depends on whether the boats were at a continuing obstruction. If they were not at a continuing obstruction, RRS 18 would apply while either boat was in the zone of the marker stake. That is because the stake was a mark the boats were required to leave on the same side, in terms of RRS 18.1 and 19.1.

The phrase “continuing obstruction” is not defined in the Rulebook, but the nautical or general meaning of the words imply that it must be something which obstructs a boat’s course in a continuing manner. That is reinforced by RRS 19.2(c), as otherwise that paragraph would make little sense. Therefore, an object that the boats pass momentarily will not be a continuing obstruction, even if it is part of a larger structure.

The *Green Sandspit marker stake (SW of Torpedo Wharf)* is not by itself a continuing obstruction. It could be passed momentarily.

There were no facts found, nor any suggestion by the parties, that there were moored boats, moorings or any other physical object in the immediate vicinity of the incident, which together or individually could not have constituted a continuing obstruction.

Savanté argues that the “mooring area”, shown in the navigational chart, was a continuing obstruction, but the mooring area was not an obstruction in the first place. It is not designated as such in the sailing instructions. It is not an object the boats needed to change course substantially in order to pass. There was no reason why the boats could not sail within the mooring area and Savanté’s own diagram suggests that she actually did so before the incident. Therefore, it is not an obstruction, in terms of the Rules.

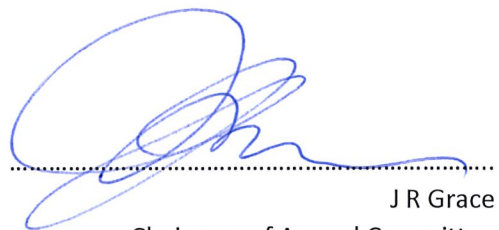
As the boats were not at a continuing obstruction, the protest committee were correct to apply RRS 18 and find that the boats’ obligations were governed specifically by RRS 18.2(b) at the time of the incident. It was unnecessary for the protest panel to consider further breaches of the rules by Savanté, but on the facts found, it is apparent that she also broke RRS 11 and 18.2(c)(ii).

## Decision on Appeal

The appeal is dismissed.

## Appeal Committee

John Grace (chair)  
Wayne Boberg  
John Bullôt  
Jack Lloyd  
Dave McIntyre



J R Grace  
Chairman of Appeal Committee  
25 September 2019