

## YACHTING NEW ZEALAND APPEAL 79

### **FIRST PRIORITY vs KICK**

*An appeal from a decision of the protest committee of  
the Gulf Harbour Yacht Club on 16 September 2019*

This appeal arises from a collision between a windward boat and leeward boat who were both luffing. The collision occurred during the pre-start of race 9 of the Gulf Harbour Yacht Club's winter series.

Both boats protested. The Protest Committee concluded that FIRST PRIORITY, to windward, did not keep clear of KICK, to leeward, and broke RRS 11. FIRST PRIORITY was disqualified.

The essential issues are whether KICK, the leeward boat, gave FIRST PRIORITY room to keep clear as required by RRS 16 and whether both boats complied with their obligations to avoid contact under RRS 14.

#### **Preliminary Points**

This appeal was lodged by FIRST PRIORITY. The ground of appeal was:

*'The decision of the Protest Committee is incorrect. They have applied an assumption (provided by the protestee) that is technically impossible for the boats to achieve given the prior facts found, verified by video. This resulted in the wrong rule and penalty applied'.*

Under RRS 70.1 the factual findings of a protest committee cannot be appealed. A protest committee has the advantage of having seen the parties and witnesses give evidence and it has the ability to ask questions. An appeal panel therefore needs to accept a protest committee's findings of fact, unless it decides the facts are inadequate (RRS R5). If the facts are inadequate an appeal committee shall require the protest committee to provide the facts required, and if necessary, reopen the hearing.

In this case the factual findings consisted of facts written on the back of a protest form and a diagram the protest committee endorsed. The Appeal Committee did not consider whether these were assumptions or whether they were incorrect. However, there were contradictions between the diagram and written facts. The factual findings were also inadequate to determine whether RRS 14 and 16 had been complied with. Therefore, the Protest Committee was asked to find further facts. They were given a list of questions.

The Protest Committee replied with a report of what the parties agreed upon. The Appeal Committee interprets the report as saying the facts agreed, as stated by the Protest Committee, have been adopted as factual findings. Fortunately, those findings give sufficient information to resolve the appeal.

#### **The facts**

Reading together the protest committee's written facts found, the endorsed diagram and the subsequent report, the following findings of facts are apparent:

FIRST PRIORITY, a Beneteau 35, and KICK, an Elliot 1050, were both on starboard tack during the pre-start. The wind was 15-20 knots with a moderate chop.

KICK was initially clear astern of FIRST PRIORITY, but became overlapped half a boat length to leeward. KICK's speed was 7 knots and FIRST PRIORITY's speed was 5 knots.

After sailing overlapped for 8 seconds, KICK hailed and luffed above close hauled. KICK's luff commenced 10 to 15 seconds before the time of contact. During that time, she would have travelled four to five boat lengths

After KICK started luffing, FIRST PRIORITY continued to sail straight, then she luffed suddenly. There was 2 to 3 seconds from the commencement of her luff to the time of contact. It is noted that these findings of the Protest Committee, about the boats' respective luffs, are consistent with the diagram that FIRST PRIORITY submitted with the appeal.

Contact occurred when FIRST PRIORITY's port quarter swung into KICK at the forward end of KICK's cockpit. Both boats remained below head to wind.

The contact caused damage. KICK had hull delamination, approximately 30cm round, on her starboard side near the forward end of her cockpit. FIRST PRIORITY had a bent pushpit on port side aft.

### Discussion

To determine how the Rules apply, we should take the following steps:

1. Firstly, see how the keep clear rules apply, specifically rule 11 (as the boats were to windward and leeward of each other).
2. Then, we look at the limitations to the keep clear rules. As KICK was luffing during the incident, we consider whether she gave FIRST PRIORITY room to keep clear under RRS 16. If FIRST PRIORITY had been compelled to break RRS 11 by KICK breaking RRS 16, then FIRST PRIORITY would be exonerated and KICK would be penalized.
3. In addition to boats' obligations to keep clear and give room, they have an obligation to avoid contact under RRS 14. Did FIRST PRIORITY and KICK comply with that?

It should be remembered that "keeping clear" is not the same as "avoiding contact".

#### 1. Application of Rule 11

FIRST PRIORITY's failure to keep clear, as required by RRS 11, is not at issue. However, the manner in which she failed to keep clear is relevant for a determining of how RRS 14 and 16 apply.

There are two limbs to the definition of keeping clear. The definition reads:

*"A boat keeps clear of a right-of-way boat*

- (a) If the right-of-way boat can sail her course with no need to take avoiding action and,*
- (b) when the boats are overlapped, if the right of way boat can also change course in both directions without immediately making contact".*

When FIRST PRIORITY's port quarter swung into KICK, the first limb of the definition was not met.

However, even before then, the second limb of the definition was not meet either. It is apparent that the boats had become so close together that KICK could not turn further without making immediate contact. Even before the swing of her stern, FIRST PRIORITY was not keeping clear.



## 2. Did KICK give FIRST PRIORITY room to keep clear?

Rule 16.1 provides: *"When a right-of-way boat changes course, she shall give the other boat room to keep clear"*. During the incident, KICK was luffing. She therefore needed to give FIRST PRIORITY "room" to comply with both the limbs of the definition of "keep clear".

Room is defined as *"The space a boat needs in the existing conditions, including space to comply with her obligations under the rules of Part 2 and rule 31, while manoeuvring promptly in a seamanlike way"*.

The facts found in this case are that KICK hailed and luffed over a period of 10 to 15 seconds before the collision. During that time she would have travelled four to five boat lengths (as FIRST PRIORITY's diagram shows).

In the conditions, that was sufficient space to allow FIRST PRIORITY to luff and keep clear, had she acted promptly. However, rather than acting promptly, FIRST PRIORITY continued to sail straight in a converging course, and only luffed 2 to 3 seconds prior to the collision. Even at that late stage, FIRST PRIORITY was able to turn inside KICK's arc. Had FIRST PRIORITY luffed earlier the boats could have remained sufficiently far apart to comply with both limbs of the definition of "keep clear".

It follows that FIRST PRIORITY was given room to keep clear, and KICK complied with her obligations under RRS 16. FIRST PRIORITY is not entitled to be exonerated from breaking RRS 11.

## 3. Did KICK and FIRST PRIORITY comply with RRS 14?

RRS 14 requires boats to avoid contact with each other if reasonable possible.

Rule 14 reads:

*A boat shall avoid contact with another boat if reasonably possible. However, a right-of-way boat or one entitled to room or mark-room*

- (a) Need not act to avoid contact until it is clear that the other boat is not keeping clear ...*
- (b) Shall be exonerated if she breaks this rule and the contact does not cause damage or injury.*

As has already been mentioned, it was reasonably possible for FIRST PRIORITY to have avoided contact by luffing promptly, once KICK began to luff. After luffing, it was still reasonably possible for FIRST PRIORITY to avoid contact, had she not over-rotated. FIRST PRIORITY therefore broke RRS 14.

KICK was the right of way boat, so under RRS 14(a), she did not need to act to avoid contact until it was evident that FIRST PRIORITY was not keeping clear. The rule refers to the present tense so KICK's obligation applies only once the failure to keep clear is taking place.

If we consider the second limb of the definition of "keep clear" - it was evident that FIRST PRIORITY was not keeping clear when it was no longer possible for KICK to "change course in both directions without immediately making contact". This occurred when the boats were sailing next to each other after they luffed. At that time, there was nothing KICK could have done to prevent contact with FIRST PRIORITY's port quarter from swinging into her.

Considering the first limb of the definition of "keep clear", we ask when was it evident that KICK could no longer sail her course without the need to take avoiding action? World Sailing Case 123 describes that as being when it would be clear to a competent, but not expert, sailor at the helm of the right-of-way boat that there is a substantial risk of contact.

As KICK luffed, FIRST PRIORITY was capable of luffing to windward, inside her arc. As FIRST PRIORITY did that, KICK was entitled to expect that FIRST PRIORITY would not come into contact with her. The collision was the result of FIRST PRIORITY over rotating. The Protest Committee's findings do not give any basis for concluding that the over rotation could have been anticipated. Once FIRST PRIORITY's port quarter swung into KICK, there was nothing KICK could have done.

It follows, then, that KICK did not break Rule 14.

### **Conclusion**

Based on the Protest Committee's findings of fact, FIRST PRIORITY broke both RRS 11 and RRS 14. She was rightly disqualified.

KICK did not break any rule.

### **Decision on Appeal**

The Protest Committee's decision is upheld.

### **Appeal Committee**

John Grace (chair)  
Alisdair Daines  
Russell Green  
Jim Park  
Jamie Sutherland



J R Grace  
Chairman of Appeal Committee  
28 May 2020