

**YACHTING NEW ZEALAND APPEAL 83**  
**2 LOW 4 ZERO v LOWRY BAY YACHT CLUB**

**Introduction**

This appeal concerns a request for redress delivered 13 days after the protest time limit. No valid reason was given to extend the time limit for that duration.

The essential issue is whether the Club needed to form a protest committee to hear the request for redress.

**The Facts**

On 15 May 2022, the Appellant, 2 LOW 4 ZERO, competed in race 2, Lowry Bay Winter Series. She withdrew from the race, thinking she would not finish in the light air. The Race Committee shortened the course and subsequently finished other boats that were still racing.

The protest time limit was 90 minutes after the last boat in all divisions finished the last race of the day.

On 29 May 2022, the Appellant requested redress, claiming that the shortening of the course and the way the finish line was set were improper actions of the Race Committee. The Appellant wrote on the protest form, "*Extension of the time limit requested as not aware of R Committees decision until today*". The request for redress was delivered seven days after the last race of the Series.

The Club's Sailing Committee considered the request for redress. The Committee considered that an extension of time was not warranted because no exceptional circumstances prevented the Appellant from finding out the results earlier. Thus, the Committee declined, what it referred to as, the Appellant's application for a hearing. The Sailing Committee also considered the grounds for requesting redress and decided they had no merit.

The request for redress has not been considered by any protest committee. No hearing has taken place in which the Appellant has been represented.

The Appellant appeals under RRS 70.1(b) on the grounds that:

- (a) The request for redress was not determined by a protest committee;
- (b) The requirements of a redress hearing were not followed;
- (c) Members of the Sailing Committee had a conflict of interest; and
- (d) Redress should have been granted.

**Applicable Rules**

The answer to this appeal lies in the applicable rules.

Rule 5 of the Racing Rules of Sailing ("RRS") provides:

*The organizing authority, race committee, technical Committee, protest committee and other race officials shall be governed by the rules in the conduct and judging of the event.*

In other words, officials must comply with the rules just as sailors do. They must comply even if they disagree with the Rules or consider they are unreasonable or impractical. Officials only have discretion within the limits the Rules provide.

RRS 63.1 provides:

*... A decision on redress shall not be made without a hearing. The protest committee shall hear all protests and requests for redress that have been delivered to the race office unless it allows a protest or request to be withdrawn.*

Therefore, whenever a competitor requests redress, there must be a hearing (unless the request is withdrawn), and a protest committee must conduct the hearing.

RRS 62.2 provides:

*... If the request is based on an incident in the racing area, it shall be delivered to the race office within the protest time limit or two hours after the incident, whichever is later .... The protest committee shall extend the time if there is good reason to do so ...*

This means that if a request for redress is delivered after the time limit, it cannot be dismissed out of hand, no matter how late it is. The request must still be referred to a protest committee, and the protest committee needs to hold a hearing and consider whether there is a good reason to extend the time limit.

In the present case the Sailing Committee seems to have interpreted RRS 62.2 as providing a precondition for convening a protest committee. That is not what the Rule provides.

RRS 86.1 provides:

*A racing rule shall not be changed unless permitted in the rule itself or as follows:*

*.....*

*(b) The notice of race or sailing instructions may change a racing rule, but not rule 76.1 or 76.2, Appendix R, or a rule listed in rule 86.1(a).*

Therefore, a notice of race or sailing instructions can change RRS 62.2 and 63.1 to prevent requests for redress from being delivered well out of time.

In this case, the applicable notice of race and sailing instructions did not change RRS 62.2 or 63.1. The Sailing Committee had no authority to change or switch off those rules, no matter how late a request for redress was delivered.

## **Discussion**

It is therefore clear from the Rules that the request for redress must be considered by a protest committee, and a hearing must be held. That may be annoying, inconvenient and possibly costly, but the Club has no option.

The Appellant has not given a valid reason to extend the time limit by 13 days. However, without having an opportunity to give evidence or make arguments to a protest committee, the Appellant cannot be expected to justify an extension of the time limit. The Sailing Committee relied on the protest form, but that is not evidence and we cannot expect it to contain all the relevant information.

The Appellant argued that members of the Sailing Committee had a conflict of interest because the Committee oversees the conduct of the race. A person will not have a conflict of interest on a protest committee simply because they are a member of a club's sailing committee. At club level, protest committees often include members of sailing committees. If such a conflict of interest existed, then sailing committee members would also have a conflict of interest competing.

However, if a sailing committee member were actively involved in the race management on the day, if they were involved in the decisions or actions from which redress is sought, or if they were a competitor or closely connected to a competitor, they would likely have a conflict of interest. "Conflict of interest" is a defined term in the RRS.

One may then ask, couldn't the Sailing Committee, in this case, constitute a protest committee for the Appellant's request? Wouldn't that mean that the request was considered by a protest committee after all?

The Sailing Committee and a protest committee are distinct entities. An individual may be a member of both but appointment to one committee does not necessarily entail an appointment to the other. The Sailing Committee is constituted as part of the management structure of the Lowry Bay Yacht Club, and its decisions are made according to the rules of the Club. In contrast, a protest committee has different functions which are defined by the RRS. Those rules include the rules in RRS Pt 5 for the conduct of protest hearings, which were not applied in this case.

It will therefore be necessary to convene a protest committee to consider the request for redress. The protest committee will need to first consider whether the request is valid, as provided by RRS 62.2 & 63.5. If the Club would like assistance convening a protest committee, it can approach the Wellington Regional Protest Committee. Alternatively, Yachting New Zealand can appoint a protest committee on the Club's behalf if requested.

This appeal decision does not comment on the merits of the request for redress, as they will be considered afresh by the protest committee if the request is valid.

### **Decision on Appeal**

The appeal is upheld. An order is made under RRS 71.2 that a protest committee shall be appointed to hear the Appellant's request for redress.

### **Appeal Committee**

John Grace (chair)  
John Bullôt  
Doug Elder  
Mark Hatch  
Jamie Sutherland



J R Grace  
Chairman of Appeal Committee  
8 August 2022