

YACHTING NEW ZEALAND APPEAL 85

ZEPHYR 702 v RACE COMMITTEE

An appeal from a redress decision relating to race 2 of the 2004 Zephyr National Championships

Introduction

This appeal arises after incorrect information was given to a competitor by a race official. The black flag procedure applied. A race official told Zephyr 702 she was over the starting line. Rather than starting the race with the rest of the fleet, Zephyr 702 sailed to the committee boat for clarification. She was told she was not BFD. She then sailed the race and requested redress. Redress was not given.

The essential issue is whether the delay to Zephyr 702's start was "through no fault of her own" in terms of RRS 62.1.

Preliminary Issue – Is this a valid appeal?

A preliminary question is whether the appeal was made out of time?

The redress hearing occurred on 3 February 2024. Immediately after the hearing, Zephyr 702 orally requested a written copy of the redress decision. Four days later, she made a written request. Further requests were made over the following two months. A copy of the written decision was finally delivered to her on 9 April 2024. She lodged her appeal on 12 April 2024.

A party to a protest or redress hearing does not need a copy of the protest committee's written decision to appeal. Time limits still apply. Yachting New Zealand Prescription 70.2 provides that when a written decision has not been provided within 15 days of a written request (under RRS 65.2), an appeal must be lodged within 21 days after the request. The appeal panel may extend that time limit if it is fair to do so.

The appeal panel has considered all the correspondence and the requests by Zephyr 702. In this case, they decided it was fair to extend the time limit. This is a valid appeal.

The Facts

Race 2 of the 2024 Zephyr National Championships was started under RRS 30.4, using a black flag.

When Zephyr 702 was next to the pin-end boat, a race committee member shouted, "702 you're over". The redress decision does not say when that occurred, but it must have happened shortly before the starting signal.

Rather than starting immediately after the starting signal, Zephyr 702 sailed to the committee boat to check whether she was scored BFD. She was told she was not. It was a clear start and no boats were scored BFD for that race.

Zephyr 702 then sailed the race. She started three minutes behind the other boats and was scored 43rd. Her average score for the regatta, excluding race 2, was 12th

The Redress Decision

The protest committee did not grant redress because they concluded that the worsening of Zephyr 702's score was her own fault. Their sole conclusion was -

"There was no general recall and 702's number was not displayed therefore it was 702 decision not to start on time with the fleet. RRS 62.1."

Zephyr 702 appeals that conclusion.

Discussion

Generally, a race official sighting a starting line is in a better position to tell if boats are over the line than the boats' crew. Consequently, boats are entitled to rely on race officials' communications about whether they are over the line unless a boat knows that the communication is wrong. If a race officer signals an individual recall, boats are entitled to assume that at least one of them was OCS.

In this case, the words, "702 you're over" communicated four things to Zephyr 702.

1. You are over the starting line;
2. You have broken RRS 30.4 and are therefore disqualified;
3. I am in a position to determine that;
4. An expectation that this information will be acted upon.

The third and fourth were necessary implications because why else would those words be shouted? At that time, Zephyr had no reason to believe that the communications were wrong.

Those communications were an improper action of the race committee, in terms of RRS 62.1, because they were untrue.

Relying on the communications made Zephyr 702's score significantly worse. She lost three minutes at a critical part of the race and finished 43rd. That was well behind the position she could have expected to finish if that time was not wasted.

The essential question in this appeal is whether the worsening of Zephyr 702's score was "through no fault of her own" in terms of RRS 62.1. Was she at fault for not disregarding those communications? Should she have just started with the rest of the fleet because she had nothing to lose if she was disqualified?

Under RRS 62.1(a), Zephyr 702 cannot be considered to be at fault for relying on an official communication she was entitled to rely on, which had been shouted with the intention that it be acted upon.

Furthermore, if Zephyr 702 knew she had broken RRS 30.4, but sailed the race regardless, she would have broken the Basic Principles: Sportsmanship and the Rules and RRS 2 if she interfered with other boats (Case 65). Had she raced, interfering with other boats would have been inevitable.

The race official's statement, "702 you're over", was shouted to give Zephyr 702 reliable knowledge that she broke RRS 30.4. Until she had a reason to believe the statement was wrong, Zephyr 702 was not only entitled to rely on the official's advice. She was obliged to.

The protest committee's conclusion mentions general recalls and the display of sail numbers. They were referring to two sentences in RRS 30.4. Those sentences provide that if a boat is BFD and there is a general recall, the race committee shall display the boat's number before the next warning signal. If that boat then sails the race, her disqualification shall not be excluded from her series score.

The rule referred to by the protest committee gives one occasion when a boat may receive a non-excludable penalty. It applies only after a general recall. That rule does not mean that when there is no general recall, boats should ignore official communications that they broke RRS 30.4. That rule does not mean that when there is no general recall, boats that break RRS 30.4 should nevertheless sail the race.

Zephyr 702 would have been entitled to redress had she simply retired from the race and had a rest. However, she took the further step of checking with the race committee. After learning she was not disqualified, she attempted to mitigate her loss by sailing the race. Zephyr 702 was not at fault in any way.

Consequently, all the requirements for redress under RRS 62.1(a) are made out. There was an improper action of the race committee that made Zephyr 702's score significantly worse through no fault of her own. She is entitled to redress.

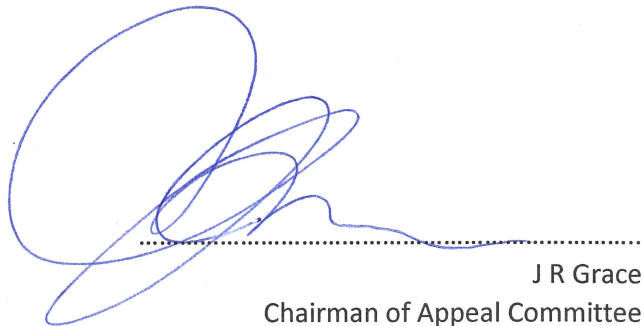
Under RRS 64.3, when deciding what redress to give, one needs to make as fair an arrangement as possible for all the boats affected. In this case, that will be to score Zephyr 702 according to what she most likely would have received had the improper action not occurred. The most reliable way of estimating that is to score the race according to the average score she received over all the other races in the regatta, with the scores of the other boats unchanged.

Decision on Appeal

The appeal is upheld. In race 2, Zephyr 702 shall be scored points equal to her average score in all other races, pursuant to RRS A9(a).

Appeal Committee

John Grace (chair)
Alisdair Daines
Doug Elder
John Parrish
Jamie Sutherland



J R Grace
Chairman of Appeal Committee
5 June 2024