

Australian Sailing Appeal Decision

2019-03 G-whizz v Takana.

G-whizz has appealed the protest committee decision from a protest hearing where G-whizz and Takana protested each other in a race, on 13 February 2019, organised by the Greenwich Flying Squadron.

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing: Damien Boldyrew (IJ), Ben Fels (IJ, IU), Murray Jones (IJ), Richard Slater (IJ, IU)

1. Why the appellant believes the protest committee's decision or its procedures were incorrect.

- 1.1. Timing of the hearing did not give me the opportunity to obtain the presence of important witnesses.
 - 1.2. The protest committee had an improper procedure, in obtaining facts after the hearing.
 - 1.3. That the protest committee did not find as a fact that G Whizz was on starboard.
 - 1.4. That a number of witness statements had been ignored.
 - 1.5. The decision to disqualify G-whizz due to a breach of rule 14 is incorrect.
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2. Protest Committee facts and diagram (if applicable)

The format of the hearing decision mixed the facts and conclusions. The appeal committee has therefore separated the facts out as follows.

1. Collision at 1809 hrs. Close to and just before the start line of Blue Division on 13 Feb 2019.
2. Wind light up to 5 knots and variable.
3. Takana on starboard luffed close to the clearance mark at the northern end of starting line, then changed course to port, then luffed and tacked to port (but did not complete her tack).
4. At the time of Takana's changes of course, G-whizz was reaching parallel to the line on starboard tack.
5. When G-whizz saw Takana on port tack, she hailed she "would go behind" her and altered to port.
6. Takana then indicated she had no steerage.
7. The wind shifted during this incident.
8. Contact occurred between the bow of G-whizz, and the starboard side of Takana, 2 meters from the stern of Takana.
9. No boats were heeling during this incident.

Conclusions

1. G-whizz did not compensate for the change in wind direction by trimming the sails and as a result had contact with Takana.
2. Had G-whizz adjusted her sails and altered course she would have cleared Takana and avoided the resulting collision.

Protest Committee Decision

- 2.1. Takana put herself in a difficult position by luffing close to the clearance mark and consequently stalling thus creating an obstruction while tacking. By taking this action she breached Rule 13 of the Yachting Rules and after withdrawing from the race does not incur any penalty but is considered disqualified.
 - 2.2. G-whizz elected to pass behind Takana but failed to clear Takana and so breached Rule 14 of the Yachting Rules. G-whizz is disqualified from this race.
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3. Appeal Panel Considerations

- 3.1. G-whizz would only break rule 14 if it was reasonably possible for her to avoid Takana once it was clear that Takana was not keeping clear.
 - 3.2. The facts found had Takana making multiple changes of course. Therefore it would only become clear that Takana was not keeping clear around the time that she signalled she had no steerage.
 - 3.3. G-whizz had already committed turning to port to avoid Takana. This seems a reasonable approach by G-whizz as had Takana been able to complete her tack, the stern of Takana would have been further away from G-whizz and Takana itself should be travelling in a direction away from the new course chosen by G-whizz.
 - 3.4. Light and variable wind (speed and direction) and the boats not heeling indicate that the rudder, rather than the mainsail would be the primary determinant of how the boat turns.
 - 3.5. A windshift that occurred during this incident puts more onus on a conclusion that it was not reasonably possible for G-whizz to avoid this collision.
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4. Appeal Panel Conclusion

- 4.1. At the point that it was clear to G-whizz that Takana was not keeping clear, it was not reasonably possible for G-whizz to take further action to avoid the collision.
 - 4.2. Therefore the protest committee's decision to disqualify G-whizz is incorrect.
 - 4.3. Other appeal grounds are therefore moot.
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5. Appeal Panel Decision

- 5.1. Appeal upheld and G-whizz's finishing position is to be reinstated.