

Portsea Cup Protest 1

Protest by C22 against C126

C22 represented by James Gibson

C126 represented by Graham Burton

Witnesses: Matthew Jones, Faye Burton

10:10 6 January 2019

Procedural matters

1. The protest committee was introduced and there were no objections the grounds of conflict of interest.
2. Ben Fels declared a minor conflict of interest as an employee of the SSCBC which the protest committee had decided was insignificant, and the parties were informed that he would chair the hearing but would excuse himself from making the decision.
3. C22 asked if the General Committee was aware of this. It was explained that the sailing matters were delegated to the Club Captain who works through sailing committee to appoint officials.
4. The question was repeated and it was explained that this was not a procedure under the club rules regarding discipline. It was also stated that this was not a rule 69 hearing.
5. The jury had considered a report and the possibility of a rule 69 hearing and decided that the matter should be heard consistently with 11.4 of [World Sailing Guidance on Misconduct](#).

Facts Found

1. The protest was lodged 6 minutes after the 1-hour protest time limit. The race finished off Portsea Pier and the Protest Committee found there was good reason to extend the protest time limit.
2. "Protest" was hailed and a red flag was displayed conspicuously at the first reasonable opportunity for each.
3. Arbitration was attempted, but was unsuccessful. C22 apologised to C126 for their conduct and requested to withdraw the protest. Later that evening C22 contacted C126 and repeatedly apologised and again requested that the protest be withdrawn.
4. The protest committee did not permit the protest to be withdrawn.
5. At the commencement of the hearing repeatedly throughout the hearing C22 apologised to C126.

The incident

6. C22 and C126 were sailing downwind on Port Gybe approaching mark three to be left to port.
7. There were other boats ahead of C22 and C126
8. At the zone C126 was to windward of C22 and inside overlapped.
9. At the mark C22 luffed and made contact with C126
10. C126 did not have room to luff and avoid contact.
11. C22 had damage, but has not been appropriately inspected to determine if the damage is serious damage.
12. C22 swore abusively and repeatedly swore at C126 including the 'F' word.
13. After this incident C22 continued to swear at C126 further along the beat.

14. At the conclusion of hearing evidence, C126 accepted C22's apology.

Conclusions

1. C22, outside overlapped at the zone, failed to give C126 mark-room and broke RRS 18.2(b).
2. C126 broke RRS 11 while she was sailing within the mark-room to which she was entitled. Therefore, she is exonerated under RRS 21.
3. It was not reasonably possible for C126, a boat entitled to mark-room, to avoid contact with C22 when it was clear that C22 was not giving mark-room. C126 did not break RRS 14.
4. C22 did not avoid contact and broke RRS 14.
5. C22s swearing and abusive language broke RRS 2, Fair Sailing.
6. By knowingly breaking a rule and not taking the appropriate penalty, which was to retire, C22 failed to compete in compliance with the principles of sportsmanship and fair play, and broke RRS 2.

Decision

C22 is disqualified and is to be scored DNE, Disqualification that is not excludable.

Parties Informed of decision: 6 January 2019 10:44

Protest Committee

Ben Fels IJ/IU, John Philpott SJ, James Mighell QC, Brind Zichy -Woinarski QC