

### Racing Rules of Sailing

New Case: Rule 2, Fair Sailing, Rule 69, Misconduct and Gross Misconduct

A submission from the Chairmen of Constitution Committee, Race Officials Committee and Racing Rules Committee

#### Purpose or Objective

To clarify when a case should be considered under rule 2 (Fair Sailing) or rule 69 (Misconduct) and what constitutes misconduct.

#### Proposal 1

Insert a new Case as follows:

CASE XXX

#### **Definitions, Misconduct**

##### **Rule 2, Fair Sailing and Rule 69, Misconduct.**

*Generally, an action by a competitor that directly affects the fairness of the competition or failing to take an appropriate penalty when the competitor is aware of breaking a **rule**, should be considered under rule 2, Fair Sailing. Any other misconduct should be considered under rule 69.*

#### Situation

There has been an action by a person that might be considered to be bad sportsmanship or misconduct.

#### Question 1

What actions might constitute misconduct?

#### Answer 1

Rule 69 covers all misconduct, and may range from a very minor misdemeanour to a very significant act of bad sportsmanship or bringing the sport into disrepute.

In amplification of rule 69.1(a), the following actions should be considered as examples of misconduct, but they are not exclusive examples and not a definitive list:

1. Engaging in any unlawful activity (e.g. theft, assault, criminal damage)
  2. Engaging in any activity which may bring the sport into disrepute
  3. Bullying, discriminatory behaviour and intimidation
  4. Physical or threatened violence
  5. Acting recklessly or in manner that does, or is likely to, cause damage or injury
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6. Disobeying the reasonable instructions of event officials
7. Intentionally breaking a rule or inciting others to break a rule
8. Interference with another competitor's equipment
9. Repeated breaches of a rule
10. Failing to act to prevent your boat or team breaking a rule when you are aware of that breach
11. Not telling the truth or the whole truth in a hearing.
12. Other forms of cheating such as falsifying personal, class or measurement documents, entering a boat known not to measure, missing out a mark to gain places etc.
13. Foul or abusive language that causes or may cause offence
14. Making abusive or disrespectful comments concerning race officials or their decisions (including via electronic means such as social media).

### Question 2

When should a protest committee proceed under rule 2 and when should they proceed under rule 69.

### Answer 2

A boat or race committee may protest a boat for a breach of rule 2 and the protest committee are required to hear and decide the protest. To uphold a protest for an alleged breach of rule 2, the protest committee are required to clearly establish that a boat has not competed in compliance with the recognised principles of sportsmanship and fair play. It follows that the action must directly affect the competition for a breach of rule 2 to be established.

A protest committee may protest a boat for a breach of rule 2, but they may decide that action under rule 69 is more appropriate or in some circumstances action under both. Generally, an allegation of an action that directly affects the competition should be subject to protest under rule 2.

An action that is considered to be misconduct that does not directly affect the competition should be subject to action under rule 69.

A protest and the subsequent hearing under any rule, including rule 2, may reveal conduct that the protest committee consider to be misconduct. In that case it may be appropriate for the protest committee to take separate action under rule 69.

### Question 3

A boat is sailing upwind on port tack and attempts to cross ahead of a boat on starboard tack. The port tack boat misjudges the cross and fails to keep clear. Has she intentionally broken a rule?

### Answer 3

No. Misjudgements such as this are common around the racecourse and are not unfair sailing or misconduct. In order for this to be unfair sailing or misconduct, there must be evidence that the boat knew or should have known she would not make the cross and attempted to do so anyway.

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However, when the port tack boat realises that she has failed to keep clear, she has knowingly broken a rule and must take the appropriate penalty. Otherwise she has broken the recognised principles of sportsmanship and fair play.

#### Question 4

When does misconduct become gross misconduct?

#### Answer 4

The definition of gross misconduct is set out in World Sailing Regulation 35, Disciplinary Code. Rule 69 does not refer to gross misconduct, only misconduct. The question of which term applies is only relevant to MNAs and World Sailing when considering reports and deciding the appropriate action.

#### Reasons

1. The introduction of a new rule 69 Misconduct, compared to the previous Gross Misconduct requires some explanation.
2. This Case will establish a more common approach to deciding what constitutes misconduct.
3. It is quite common that some confusion exists as to when to use rule 2 and when to use rule 69. This case removes some confusion.
4. This case will help the consistent application of these rules worldwide.
5. While guidance on the application of rule 69 will be provided, a Case provides a more formal and binding interpretation.

#### Question

Is S eligible for redress under rule 62.1(b), if she lodges a valid request for redress?

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