

ISAF Racing Rules Question and Answer Service



Q&A 2009-011

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Question:

When a protest committee in a fleet race, after hearing the parties and considering all evidence, comes to a judgement

- that the statements of the parties have the same credibility, and
- that the evidence presented by the parties and the evidence considered necessary by the protest committee (pro and contra) also have also the same credibility,

shall the protest committee then write this down as a fact (rule 63.6) and reject the protest?

Answer:

Rule 63.6 requires a protest committee to take evidence, to find facts and to base its decision on the facts found. Rule M3.3 expands on this and instructs protest committees to resolve doubts one way or the other, if necessary by calling the parties back for further questions.

Resolving doubts may not be easy but experienced judges should be able to ask relevant questions and gradually build up a picture or diagram of times, distances and courses that are the essential facts on which a decision can then be taken.

With the exception of rule 69 hearings, a protest committee has only to find that, on the balance of probabilities, one boat is more likely to have broken a rule than the other. When relevant, the following guidance is available to protest committees:

- (1) Rule 18.2(d) in the RRS gives guidance when the protest committee has reasonable doubt that a boat obtained or broke an overlap in time.
- (2) The umpiring principle of the last point of certainty is also to some extent valid in protest hearings.
- (3) In Case 50, a boat required to keep clear fails to do so if the right-of-way boat takes avoiding action because of a genuine and reasonable apprehension of a collision

The questioner's assertion that "if a protest committee writes down as a fact that after investigation of all reasonably available facts there is not enough evidence for the claim of the protestor" is misplaced. This is not a fact but a conclusion. Protest committees must be careful to distinguish between facts and conclusions, which are based on facts found.

All published answers are based upon the 2009-2012 Racing Rules of Sailing