

Racing Rules of Sailing

New Case (A) – Rule 69, 69.2(c)

A submission from the Danish Sailing Federation

Purpose or Objective

To explain the standard of proof that has been introduced in rule 69 in the rulebook for 2013-2016.

Proposal

CASE XXX

Rule 69, Allegations of Gross Misconduct

Rule 69.2(c), Standard of Proof

When deciding if rule 69.1(a) has been broken, a protest committee shall apply the standard of proof that to its comfortable satisfaction, bearing in mind the seriousness of the alleged misconduct, the rule was broken. This standard of proof is more demanding in terms of evidence than a simple balance of probabilities, but less demanding than beyond reasonable doubt.

Summary of the Evidence

The protest committee called P, the helmsman of boat A, to a hearing for a breach of rule 69.1(a) that was alleged to have happened during a Part 2 incident at a leeward mark. P was not a native English speaker. In his evidence, P made two key statements. First, he said that during the incident, he never spoke English; he only spoke to his crew in his native language. Second, he said that he never touched the other boat. A protest committee member asked if it was correct that he did not touch the other boat even though there was contact between them, which P confirmed. One of the witnesses stated that P changed his description of the incident from the original hearing of the Part 2 incident to this hearing, and that was confirmed by protest committee members who were in the original hearing.

Three witnesses were called. The first witness was the helmsman X of boat B that was involved in the original incident. He stated that P had grabbed his boat to push it back and propel his own boat forward, shouted very abusive words to X and his crew in English, and hit the crew on the hand. The second witness was the helmsman Y of boat C that was rounding the mark just behind A and B. He confirmed that there had been shouting between boats A and B in front of him and that there was a shout of very foul language in English. He also stated that he could not see the competitors on boats A and B because they were behind the sails. The third witness was the crew Z of boat C. He confirmed Y's description, quoted the foul language used, and asserted that it was said by a non-native English speaker. All three witnesses confirmed that A, B and C were the only boats close to the mark at the time of the incident.

Decision

The protest committee found as facts that P had grabbed the rail of X's boat to push her back and propel his own boat forward, used foul language towards X and his crew, and made physical contact by hitting X's crew. The protest committee concluded that these actions were a gross breach of good manners and sportsmanship. The decision was that X was scored DGM for all races and was not allowed to sail the remaining races in the regatta.

Standards of Proof

When a protest committee decides a protest, it weighs the evidence that supports upholding the protest against the conflicting evidence that supports dismissing it. This process is based on a standard of proof that defines how to decide if there is enough evidence to uphold the claim or allegation being made. There are three standards of proof.

The first standard of proof is 'balance of probabilities', also known as 'preponderance of the evidence'. With this standard of proof, the protest committee must assess the evidence on the basis of whether a particular fact is more likely to have happened than not. There can be some evidence that supports the allegation and other evidence that is conflicting. The decision is based on the majority of the evidence.

The second standard of proof is used in criminal law and referred to as 'beyond reasonable doubt'. With this standard of proof, it must be decided if there is any significant evidence that makes it doubtful whether a particular fact happened. If there is such reasonable doubt, the case must be dismissed.

The third standard of proof is referred to as 'comfortable satisfaction, bearing in mind the seriousness of the alleged misconduct'. It is used in rule 69 as well as in doping cases and by the Court of Arbitration for Sport (CAS). This standard of proof is greater in terms of satisfaction of the evidence than the mere balance of probabilities, but less demanding than the beyond reasonable doubt standard; and if the alleged misconduct is very serious, stronger evidence is required than if the allegation is less severe.

Comments to the Decision

In this case, the majority of the evidence supports the allegation. Witness X described the incident similarly to the allegation. Witness Y confirmed the words spoken. Witness Z added that the words were spoken by a non-native English speaker. P's own description of the incident was very different, and he made two claims that clearly conflicted with the statements of the three witnesses. First, he said he never spoke English in the incident, but that is difficult to believe since no other boat besides B and C were close to the incident and there were no other non-native English speakers, so nobody else could have said it. Second, he claimed that he never touched the other boat, which is highly unlikely in a close leeward mark rounding where there is contact between boats. In addition, he changed his description of the incident from the original hearing to this one.

The alleged misconduct is serious. All the evidence supports the allegation, except P's own statements. P appeared inconsistent and less credible, and part of his description is very unlikely to be correct. Therefore, the protest committee could conclude that they were comfortably satisfied that P had broken rule 69.1(a), despite there being reasonable doubts.

Comparison with the Other Standards of Proof

Compared to the balance of probabilities standard, the committee's decision would also be correct since most of the evidence supports the allegation, and the only conflicting evidence is made by a party who is inconsistent and less credible. Yet compared to the beyond reasonable doubt standard of proof, the decision of the protest committee would be questionable since P never admitted any of the allegations, none of the two independent witnesses actually saw him speak the foul language, and there was no other evidence available. This might have raised a reasonable doubt in the minds of the protest committee.

Current Position

None.

Reasons

1. In November 2011, when Racing Rules Committee decided to recommend approval of the submission that proposed the changes to rule 69 that are implemented in the next rulebook, it was requested to produce cases that explained the new explicit standard of proof, comfortable satisfaction. The purpose was to clarify to protest committees how the new standard of proof should be understood and applied.
 2. This case explains comfortable satisfaction as the standard of proof based on a specific example. The example is an incident between some competitors in a race.
 3. There is a related case that explains the standard of proof in general terms. If that is accepted, the section in this case with the title "Standards of Proof" can be deleted and replaced with a reference to that general case.
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