

### **Racing Rules of Sailing**

#### **New Case (B) – 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 an alleged breach of rule 69.1(a). Boat A had been presented for pre-event measurement. During the inspection process, an equipment inspector found lead under the fixed floorboards in or alongside the hull stringers. This area would not normally be inspected because the floorboards were not readily removable. The lead was in a position prohibited by the class rules.

There was no rule that required a boat presented for the pre-event measurement to be in compliance with the class rules. According to the equipment inspector, it was common practice that boats were presented underweight and told how much weight to add to bring them up to minimum. In this case, the boat weighed exactly the minimum allowed by the class rules with the lead in place. If the lead had not been there, the boat had been underweight, and the class rules would have required corrector weights to be placed in a less advantageous position.

P denied having any knowledge of the lead. He explained that the boat had been left unattended at the venue for some time before the event.

#### **Decision**

The protest committee decided that P had placed the lead deliberately. It was concluded that these actions were a gross breach of good manners and sportsmanship. The decision was that P was scored DGM for all races.

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## 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 alleged misconduct was serious. Nearly all the evidence supports the decision of the protest committee. The lead was placed deliberately, it was in a more advantageous place than required by the class rules, and it was placed in a position where it was unlikely to be discovered. The only contradicting evidence was that P denied to have placed the lead where it was found. 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 nearly all the evidence supports the allegation. However, compared to the beyond reasonable doubt standard of proof, the decision of the protest committee would be questionable. P never admitted any of the allegations and it could not be established that nobody else could have placed the lead where it was found. Thus there was a possibility that the lead could have been added without the knowledge of P. Consequently, if the standard of proof had been beyond reasonable doubt, the decision of the protest committee would be questionable.

## Current Position

None.

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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 equipment inspection case.
  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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