

## **Racing Rules of Sailing**

### **New Case – Rule 69.2(c)**

A submission from the Chairman of the Racing Rules Committee

#### **Purpose or Objective**

To clarify an important new racing rule.

#### **Proposal**

### **CASE YYY**

#### **Rule 69.2(c), Allegations of Gross Misconduct: Action by a Protest Committee**

*An interpretation of the term ‘comfortable satisfaction’.*

#### **Assumed Facts**

Based on a report that the protest committee received, it believes that a competitor may have broken rule 69.1(a). It has called a hearing and taken the evidence of the parties and witnesses.

#### **Question 1**

Rule 69.2(c) requires that, before the committee warns or penalizes the competitor, it shall be ‘established to the comfortable satisfaction of the protest committee, bearing in mind the seriousness of the alleged misconduct, that the competitor has broken rule 69.1(a).’

What is the meaning of ‘comfortable satisfaction’ as used in rule 69.2(c)?

#### **Answer 1**

‘Comfortable satisfaction’ is one of three standards of proof commonly used in courts of law or arbitration hearings. The other two standards are ‘balance of probabilities’ and ‘proof beyond a reasonable doubt.’ For example, the World Anti-Doping Agency in its World Anti-Doping Code uses the comfortable satisfaction standard in hearings to determine whether or not an athlete has violated the World Anti-Doping Code. Article 3.1 of the code states that, bearing in mind the seriousness of the allegation, it shall be established to the comfortable satisfaction of the hearing panel that a violation occurred. Article 3.1 goes on to state, ‘This standard of proof in all cases is greater than a mere balance of probabilities but less than proof beyond a reasonable doubt.’

The ‘proof beyond a reasonable doubt’ standard is the strictest of these three standards. It is usually reserved for serious criminal cases. The standard ‘balance of probabilities’ (also sometimes referred to as ‘preponderance of the evidence’) is the least strict of the three, and it is widely used in civil legal proceedings.

The racing rules do not state which standard of proof a protest committee should use in a hearing to decide a protest or a request for redress. However, in most such hearings, the protest committee uses the ‘balance of probabilities’ standard, which is whether it is more likely than not that a specific fact has been established.

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Rule 69.2(c) specifically requires that in a rule 69 hearing the protest committee use the more strict 'comfortable satisfaction' standard and, furthermore, that the more serious the allegation, the stricter the committee's standard should be. That standard is always greater than the 'balance of probabilities' standard but is less than the standard of 'beyond a reasonable doubt'. In between these two limits, the standard of proof is a sliding scale, based on the seriousness of the allegations before the committee.

It is also a fundamental principle in disciplinary proceedings that competitors must be regarded as innocent until any allegation is proven against them. Therefore part of the comfortable satisfaction test is whether or not the evidence presented to the committee is sufficient to mean the competitor is no longer presumed to be innocent.

The last sentence of the Terminology section of the Introduction implies that words 'comfortable' and 'satisfaction' are used in rule 69.2(c) in 'the sense ordinarily understood in . . . general use.' Both 'comfortable' and 'satisfaction' are frequently used in everyday speech, and so most judges will be familiar with how they are generally used. Judges could also consider whether they feel 'uncomfortable' with any conclusion reached. If they are uncomfortable, then they are not comfortably satisfied.

It should be noted that in a rule 69 hearing, the protest committee must answer 'Yes' to both of the following questions before it warns or penalizes a competitor or boat under rules 69.2(c)(1) or 69.2(c)(2):

- Is the committee comfortably satisfied that the facts found establish that the alleged conduct occurred?
- Is the committee comfortably satisfied that the conduct that occurred was gross misconduct?

As rule 69.1(a) states, an act of gross misconduct may be a gross breach of a rule, good manners or sportsmanship, or conduct that brings the sport into disrepute.

#### Current Position

None. The proposed case is a new case.

#### Reason

Rule 69, a particularly important racing rule, has been substantially revised for the 2013-2016 edition of the racing rules. Rule 69.2(c) uses a term, 'comfortable satisfaction', that will be unfamiliar to many readers of the racing rules, including most competitors and judges. A discussion of its meaning will be helpful and should lead to more consistent decisions being made in rule 69 hearings.

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