Racing Rules of Sailing

New Case

A submission from the Royal Yachting Association

Proposal

Rule 66, Reopening a Hearing
Appendix M4, Recommendations for Protest Committees

A protest committee should reopen a hearing, whether or not requested to do so, if it may have made a significant error, or if there is new evidence that was not available at the original hearing. However, it need not do so if there is no prospect of a changed decision, or when a changed decision would not affect the major places when final event results are urgently needed.

A party asking for a reopening must offer a good reason, and the protest committee need not hear from any other party before deciding whether or not to reopen. However, when it decides to reopen, its decision to do so may be open to appeal by another party if an objection to the reopening is made at the start of the reopened hearing.

Evidence that was clearly relevant to the original hearing and that was, or should have been, available at that hearing is not new evidence. However, evidence related to issues not arising until during the original hearing, or evidence or a witness that the protest committee knows had been unsuccessfully sought for the original hearing may be ‘new’.

When a hearing is reopened, all parties are entitled to present new evidence relating to the issue which was the basis for the reopening.

QUESTION 1
Rule 66 begins: 'The protest committee may reopen a hearing...'. Does the use of the word 'may' mean that a protest committee is entitled not to reopen in the circumstances stated in the rule?

ANSWER 1
Normally, as suggested in Recommendation M4 of Appendix M, a protest committee should reopen when it decides that it may have made a significant error, or when significant new evidence becomes available within reasonable time. However, it need not reopen if its error, if corrected, would not result in a changed decision, or if there are genuine time pressures to finalise the results for an event, and a change of decision would either not change the event results, or would have an effect only on minor placings.

QUESTION 2
Is it necessary for there to be a request to reopen before the protest committee can consider reopening?

ANSWER 2.
No. The rule does not require this. The protest committee may become aware of the need to consider reopening even if a party has not asked for it.
QUESTION 3
In asking for a reopening, does a party to the hearing have to give a reason?

ANSWER 3
Yes. The party must identify a possible mistake, or describe the source and nature of the new evidence, and the protest committee may then question the requester in the absence of any other party to decide whether it may have been a mistake, or whether the evidence, if presented, will be 'new' as described in Answer 5.

QUESTION 4
If the protest committee decides to reopen to hear further evidence, and a party to the original hearing believes that it should not do so, does a party have to raise an objection to the reopening at the start of the reopened hearing?

ANSWER 4
Yes, if it is wished to reserve the right to appeal against the fact of the reopening as well as against any subsequent change in the decision. It is possible that when evidence that is not 'new' as described in A5 is heard, an appeal against the improper reopening may be upheld, regardless of the merits of the further evidence, but only when the party objected to the hearing of the further evidence at the beginning of the reopened hearing. The protest committee must consider an objection to its reopening before deciding whether to proceed with the reopened hearing. If the protest committee is an international jury, no appeal is possible.

QUESTION 5
When a party asks for a reopening asserting that significant new evidence is available, how is the protest committee to decide whether it is 'new'? What degree of diligence is required of a party in seeking witnesses for the original protest hearing?

ANSWER 5
If it was reasonable for the evidence (or its provider) to have been discovered and brought to the original hearing, it is not 'new'. However, if it relates to issues not raised on the original protest form and becoming material only during the hearing, it may be 'new'.

QUESTION 6
When at the original protest hearing a party states that a witness is being sought but cannot be produced in time for the hearing, how should the protest committee proceed? Does the answer depend on the nature of the event?

ANSWER 6
If the protest committee is satisfied that the statement is genuine, that no opportunity to find the witness was missed, and when a reopening based on this evidence is then asked for, it should reopen if the evidence might change the decision. The nature of the event is not directly relevant.

QUESTION 7
When a hearing is reopened because one party is able to offer significant new evidence, is it open to other parties to call new witnesses or offer other evidence not heard at the original hearing? Is it relevant that the other parties' 'new' evidence may have been available at the time of the original hearing but not offered at the time?
ANSWER 7
Other parties are entitled to present new evidence relating to the issue which was the basis for the reopening. This may include witnesses not originally called.

Current Position
None.

Reason
There is no current guidance to protest committees on reopening a hearing. This case fills a need.