

**BEFORE THE INDEPENDENT PANEL**

**IN THE MATTER OF:**

**KIRK BROWN**

*Appellant*

**V**

**RACE OFFICIALS COMMITTEE**

*Respondent*



**DECISION**

1. The Appellant has asked that first his 2017 appeal, and then his 2018 appeal, are addressed. The Panel notes the Respondent's unreserved apology for its incorrect processing of the Appellant's 2017 appeal, and the Panel agrees it is right for it to consider both appeals now as requested by the Appellant.
2. Many facts and issues are common between the two appeals. The Panel has therefore considered the two appeals at the same time, but as requested by the Appellant has analysed the facts and made a separate decision for each appeal.
3. The Panel notes that the issues for consideration in both appeals are:
  - i. whether or not the list of events the Appellant submitted with his application met the requirements set out in World Sailing's Race Official Roles, Qualifications and Competencies document (RORQC) for re-appointment as an International Judge, and therefore complied with regulation 31.7(a); and
  - ii. if they did not, whether the Race Officials Committee should have re-appointed the Appellant subject to certain conditions.
4. The Appellant applied under "System 2" defined in RORQC section 4.2, which specifies that for re-appointment as an International Judge:

*"The candidate [shall have] served as a member of a protest committee for at least six principal events, the majority of which shall be fleet racing events. At no less than three of these six events the candidate shall have been a member of an International Jury. At*

*least two of these six events shall have been outside the candidate's Group (Groups A-H) or Member National Authority (Groups I-Q)."*

As the Appellant is from Group P, the requirement is for at least two of the six events to be outside his Member National Authority ("MNA"), US Sailing.

5. The Appellant has queried the interpretation of this paragraph. The Panel concludes that "the majority" means "at least four of six identified"; if this were not the interpretation, then listing additional non-fleet racing principal events could jeopardise an application. Therefore "of these six events" continues to refer to the same six identified events. The Panel understands the paragraph to require a set of six principal events of which at least four are fleet racing events, at least three have an International Jury, and at least two are outside the candidate's MNA.
6. The Panel therefore agrees with the Appellant's interpretation "Requirement 2(a)" as expressed in his 2017 appeal.
7. In respect of what ranks as a principal event, RORQC Appendix A Principal Events for International Judges Table 1 lists, under the "Principal event" sub-heading, the following events included in the Appellant's applications:
  - a. fleet racing events:
    - i. world and continental championships of international classes;
    - ii. national championships with 50+ entries and 3+ days duration;
    - iii. umpired fleet racing events, all races umpired, 3+ days duration.
  - b. match racing events: match racing events:
    - i. Grade 1 and 2 events.
8. RORQC Appendix A states that Table 1 also shows *"events that are considered as L2 and L3 that may be combined to be a principal event"*. It states that *"An applicant for re-appointment may include as a principal event, one composed of two L2 events, one L2 and two L3 events or three L3 events. Only one such substitution is permitted per application."*

Appendix A Table 1 classifies Grade 3 match racing events as either L2 or L3 (depending on level of competition), and regional fleet racing events with more than 100 boats as L3.

## **2017 Appeal**

9. The Appellant listed 15 events in his 2017 application. Only two were listed as outside the USA: the NOSA Newport to Ensenada race in Mexico, and the Grade 3 Nespresso Match Racing event in New Zealand.
10. The Race Officials Committee (ROC) did not re-appoint the Appellant in November 2017 for two reasons:

- i. only one, not two principal events outside the Appellant's MNA;
- ii. the Nespresso Match Racing event in New Zealand is Grade 3 so is not a principal event.

11. RORQC Appendix A Table 1 states that a Grade 3 match racing event is an L2 or an L3 event, not a principal event. The application therefore did not have two principal events outside the Appellant's MNA, and therefore failed to meet the requirement of regulation 31.7(a).

12. The Appellant also suggests that the ROC could have re-appointed him subject to certain conditions. The Panel notes that regulation 31.12.2 does permit the ROC to re-appoint an applicant who has met all requirements except for an examination, subject to the examination being passed by 1 May of the following year. However the Appellant's application for re-appointment did not require an examination. The ROC is only able to re-appoint an applicant who does not meet all requirements when this is due to medical or other special circumstances (regulation 31.15). In this case no such circumstances have been suggested by the Appellant; the distance of travel for a USA race official to non-USA events is not a "special circumstance".

13. There is also no evidence presented to the Panel that the incorrect Sailor ID on the letter of non-appointment in November 2017 indicates incorrect analysis of the Appellant's application, or is anything other than an administrative error.

14. The ROC applied the regulations correctly when it did not re-appoint the Appellant in 2017, and the Appellant's 2017 appeal is dismissed.

## **2018 Appeal**

15. The Appellant listed 12 events in his 2018 application, of which the following three were stated to be outside his MNA:

- i. 2018 Bayview One-Design regatta in Canada;
- ii. 2017 NOSA Newport to Ensenada race in Mexico; and
- iii. 2016 Nespresso Match Racing event in New Zealand

16. The ROC did not re-appoint the Appellant in 2018 because the application, submitted as a re-appointment under regulation 31.16, did not include at least two principal events outside his MNA.

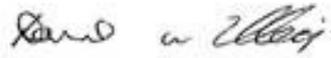
17. The 2018 Bayview One-Design regatta was organised by and from Bayview Yacht Club of Detroit, Michigan in USA. It therefore does not rank as an event outside the Appellant's MNA. It is not material that the boundary between USA and Canada lies within the lake and river on which it was sailed.

18. As stated in paragraph 10 above, the Grade 3 2016 Nespresso Match Racing event in New Zealand is not a principal event.

19. The ROC therefore applied the regulations correctly when it decided that the application did not include two principal events outside the Appellant's MNA, and therefore failed to meet the requirement of regulation 31.7(a).

20. Paragraph 12 above also applies to this application. There were no special circumstances to justify re-appointing the Appellant despite not all requirements for re-appointment being met.

21. The Appellant's 2018 appeal is therefore dismissed.



**David Tillett (Chairman)**



**Josje Hofland**



**Chris Atkins**

**Independent Panel**

**22 March 2019**