

Report to ROC SC Chairs on a Regulation 32 Case

Jan Stage

August 29, 2018

On March 15, 2018, World Sailing (WS) received a report from Australian Sailing under Regulation 32 (Attachment 1) about members of an International Jury appointed by Australian Sailing (Attachment 2). The report alleged that the following International Judges (IJ) had performed below IJ level as members of an international jury:

- I. Ewan McEwan, GBR (chair)
- II. Philippe Mazard, FRA
- III. Boguslaw Moczorodyski, POL
- IV. Nev Willis, AUS

The report was assessed by Ana Sanchez (VP) and Jan Stage (ROC Chair) and categorized as Category B. Following that, the IJs were served with the following allegations:

- A. You accepted that a person who was neither appointed nor approved as a member of the international jury participated as a member of the jury in two hearings, and you did not report that to the organising authority.
- B. You sent a party to a hearing out of the jury room to negotiate the amount of redress he should be given with another competitor.

The four IJs were invited to give their responses to the two allegations by May 8, 2018. They were also asked whether they wanted an investigation.

World Sailing received responses from the first three within the deadline given. But there did not appear to be any response from Nev Willis. However, he did actually respond on May 28, 2018 but that was not discovered by the WS staff until August 28, 2018. That is the cause for the delay of this report.

None of the four have requested an investigation under Regulation 32. In accordance with WS Regulation 32.5 this means that the Chairmen of the Race Officials Committee and all its Sub-committees shall make a decision on a sanction in accordance with Regulation 32.9.

Below is a summary of the response made by each IJ and a recommendation on a sanction for each.

I. Ewan McEwan, GBR

Ewan McEwan (EM) has responded to the allegations (Attachment 3). His comments to **allegation A** can be summarized as follows:

- 1. Two members of the International Jury were absent from some hearings “the first due to illness and the second due to an emergency”.
- 2. “It is my understanding of the requirements of RRS Appendix N that the Organising Authority and the Chairman should do what they can to maintain the valid constitution of the International Jury in such circumstances.”

3. "The MNA approval was in itself invalid as it appointed 3 members from the same national authority"
4. One jury member absented himself when the two cases in questions were heard. This was new to EM but the OA would have known. A local NJ was available and joined the jury in the hearing of these two cases.
5. "At all times I thought I acted within the rules and in the best interests of the event and the competitors, and I am disappointed that the organisers now raise this issue as one of the allegations of inadequate conduct or competence under WS Regulation 32."
6. "At all times our panel met the requirements of RRS Appendix N and the right to appeal our decisions should be denied in accordance with the rules."

Nothing in the comments from EM explains why the absence of members of the jury was due to illness or emergency. In addition, RRS N1.5 was not applied, so item 1 is irrelevant. Item 2 is only correct to the extent that such efforts comply with the RRS. Item 3 is incorrect as RRS N1.4(a) allows the appointment of a full jury with more than two members from an MNA, provided that any panel of that jury is appointed in accordance with RRS N1.1, N1.2 and N1.3.

Item 4 is the crucial point. EM accepted that a new member joined the jury without attempting to get approval from the MNA or inform them afterwards. Item 5 is incorrect as RRS Appendix N only allows deviations in very specific circumstances and this does not provide discretion under factors such as "the best interest of the event and the competitors".

Item 6 is incorrect. RRS 91(b) and N1.1 state that an MNA may prescribe that its approval is needed for appointment of an International Jury. Australian Sailing has made the following prescription to RRS 91(b): "Australian Sailing prescribes that its approval is required for the appointment of international juries for races within its jurisdiction". The International Jury with the replaced member was not approved by Australian Sailing, and therefore it was not properly constituted.

EM's comments to **allegation B** can be summarized as follows:

7. "Negotiations between competitors and coaches are commonplace in our sport, and they often take place in the boat park."
8. "The International Jury had made a unanimous decision for hearing 18 that the request for redress, from our earlier decision on the hearing dealing with requests 12 and 13, is denied." and "The competitor refused to accept we had acted correctly".
9. "This challenge to our decision, after a long hearing session with repeated unsubstantiated challenges to our decisions, got the better of me and I made an off the cuff comment to the affect that if the competitor thought his opponent would accept a lesser redress he was welcome to try and persuade them."
10. "I regret making this comment and the resulting situation. I did not intend it, and I apologise for my behaviour and any consequential impact."
11. "In reality there was no 'negotiation' – the jury's decision had already been made"

While item 7 may be correct for other activities in a sailing event, it is definitely not an option in relation to hearings of protests and requests for redress. Therefore, this comment is irrelevant.

Item 8 conveys a lack of firm control of the hearing, and item 9 reflects a lack of self-control. EM is aware of this as he apologises in item 10. According to item 11, the inappropriate action of the jury chair did not influence the decision on the case.

Conclusion: EM did not ask for an investigation, thus this conclusion is based on the report and his own response. EM accepted that a person who was neither appointed nor approved as a member of the international jury participated as a member of the jury in two hearings, and he did not report that to the organising authority. EM's comments to the first allegation illustrate a lack of understanding of the rules that guide the composition and procedures of an International Jury. EM's description of the occurrences during the hearings demonstrates that he was unable to control himself when a competitor was present. Thus EM has performed below IJ standard. It should be noted that EM has honestly described his acts in the hearings and apologised for the errors made.

In 2009, EM was suspended as an international race official for 3 months. This was due to two instances of a failure to disclose a perceived conflict of interest. This has some relevance to the question of a sanction here as it concerns procedures and temperament as a race official. However, it must also be considered that it occurred 9 years ago and there have been no further incidents reported until this one. Therefore caution should be exercised before placing too much weight on the 2009 sanction.

Recommendation: EM's performance at the event was inadequate both as an IJ and as a chair of the hearings in question. The following sanction is imposed on EM:

1. EM cannot act as a member of any international jury for three months, effective from the date he is informed of the sanction (except as part of the mentoring program set out below).
2. EM cannot act as a chair of any international jury or as a chair of a panel of an international jury until receiving permission from World Sailing (except as part of the mentoring program set out in the following). ROC will appoint a mentor for EM to help him improve his knowledge of the rules and procedures for international juries. The mentor will be requested to interact with EM on these issues and be present for at least 10 hearings where EM is chairing a panel. WS will not issue the permission mentioned above, until the mentor is satisfied that EM is performing on an acceptable level as chair of a hearing panel.

II. Philippe Mazard, FRA

Philippe Mazard (PM) has responded to the allegations (Attachment 4). His comments to **allegation A** can be summarized as follows:

12. "This list [the list of judges approved by the MNA] could not be a panel under N 1.3."
13. During the event, one AUS judge retired from the panel during the hearings.
14. At the end of the event, we had a request to include Mark Dingle, AUS NJ, in the jury. He wanted to be an IJ and have more experience. There was no objection from anybody.
15. During the hearings 12 and 13 Mark Dingle was included in the panel.

Item 12 replicates the mistake commented on for item 3 above. Item 13, again like item 1 above, gives no explanation why the AUS judge retired from the jury.

Item 14 provides a different explanation than the one provided by EM in item 1 above. Here it seems to be a matter of gaining experience for an NJ. While this is an admirable intention, RRS Appendix N does not provide any special provisions for this. Item 15 clearly states that a non-approved judge was acting as a member of the International Jury.

PM's comments to **allegation B** can be summarized as follows:

16. "During the hearing, Sam's coach asked to be an observer. The jury accepted. During the hearing, there was discussion between members of the jury and Sam about his request. I suddenly saw the coach go out and he seems to have gone to see Tom. The members of the jury never debated this decision."

Item 16 stresses that the inappropriate procedure applied by EM did not influence the decision on the case.

Conclusion: PM did not ask for an investigation, thus this conclusion is based on the report and his own response. PM accepted that a person who was neither appointed nor approved as a member of the international jury participated as a member of the jury in two hearings, and he did not report that to the organising authority. He did not send the competitor out to negotiate the redress.

Recommendation: PM's performance as an IJ at the event was inadequate. It is recommended that PM be given a warning for failing to follow the rules for composition of an international jury.

III. Boguslaw Moczorodynski, POL

Boguslaw Moczorodynski (BM) has responded to the allegations (Attachment 5). His comments to **allegation A** can be summarized as follows:

17. "One of a member of the International Jury for this event was a National Judge Mark Gallagher ... Mark is also a Commodore of the Club organizing this championship and obviously the chief of Organizing Committee for this event. 14 of January at the end of the day Mark came with the message that one of our Australian jury members, for business reasons, will not be able to work with us on the next day and the club has found a replacement for that day - Mark Dingley, NJ from AUS."
18. "Actually we did not consider whether Mark Dingley has been approved by AUS Sailing. The reason was that this replacement was decided by the Club which was an Organizing Authority for this event, therefore our understanding was the this change for that day was approved by OA. "

Item 17 seems to confirm that the absence of one of the approved jury members was neither illness nor emergency. It clarifies that the decision to include the new person was made by the OA and not the MNA. Item 18 states clearly the error made by the remaining jury members as they did not question whether the replacement made by the OA was correct according to the RRS.

BM's comments to **allegation B** can be summarized as follows:

19. "The case No18 was a request made by a sailor Sam Kind to reopen the hearing."
20. "We didn't find any error made by the jury, we did not find any new evidences on which we could reopen the hearing."
21. "Knowing the outcome of our decision, after a long deliberation we allowed him to bring his new witness and listen to him."
22. "We did not send Sam King to the boat park to negotiate the amount of redress, we only allowed him to bring his witness who was not available for him at the time of the hearing."

Item 19 clarifies what the case was about. According to item 20, there was no new evidence, while item 22 states that the witness was not available at the time of the hearing. This discrepancy makes it impossible to assess if the decision to reopen was reasonable. The most important statement is item 22, which says that the competitor was not sent to the boat park to negotiate the redress.

Conclusion: BM accepted that a person who was neither appointed nor approved as a member of the international jury participated as a member of the jury in two hearings, and he did not report that to the organising authority. He did not send the competitor out to negotiate the redress.

Recommendation: BM did not ask for an investigation, thus this conclusion is based on the report and his own response. BM's performance as an IJ at the event was inadequate. It is recommended that BM be given a warning for failing to follow the rules for composition of an international jury.

IV. Nev Willis, AUS

Nev Willis (NW) responded to the allegations (Attachment 6).

NW has confirmed that he has no comments to **allegation A** and **allegation B**. He does not provide any reasons or explanations for the actions of the international jury.

Conclusion: NW accepted that a person who was neither appointed nor approved as a member of the international jury participated as a member of the jury in two hearings, and he did not report that to the organising authority. He has not confirmed whether he was involved in sending the competitor out to negotiate the redress.

Recommendation: NW did not ask for an investigation, thus this conclusion is based on the report and his own limited response. NW's performance as an IJ at the event was inadequate. It is recommended that NW be given a warning for failing to follow the rules for composition of an international jury.

Attachment 1

Attachment 2

Attachment 3

Attachment 4

Attachment 5

Attachment 6