

Peter Hemery
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Yachting NSW
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7 January 2010

Dear Peter,

**APPLICATION FOR REVIEW OF A REQUEST DECISION GIVEN BY YACHTING
NEW SOUTH WALES DATED 2 NOVEMBER 2009
Redress hearing: *Toybox***

I refer to the application to review the decision of the Appeals Committee of Yachting New South Wales (Case No 08/09 dated 2 November 2009), this decision having been given in response to a request from the protest committee of Middle Harbour Yacht Club for confirmation or correction of a decision made by that protest committee in a hearing to consider a request for redress from *Toybox*.

The Yachting Australia Appeal Review Panel has considered the application.

Summary of the Circumstances

Shortly after the warning signal the race committee signalled a postponement, thereafter the starting signals were resumed and the race was started 5 minutes after its scheduled time. Being confused by the signals, *Toybox* crossed the starting line 5 minutes prior to her starting signal. No recall signal was made as the race committee was not aware until later in the race that *Toybox* was on the course side of the line. After approximately one hour *Toybox* was advised by the race committee by radio that she had not started correctly and *Toybox* then withdrew.

Toybox requested redress based on the claim that the signals were unclear or incorrect. The protest committee granted redress on the grounds that it should have signalled a recall for *Toybox*.

The protest committee requested the appeals committee of Yachting New South Wales (YNSW) to confirm or correct the redress decision.

Overview of the Appeal Committee Decision

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YNSW found that the starting signals were not incorrect so in that regard there had been no improper action or omission of the race committee.

YNSW also found that considering *Toybox* was no longer visible in the vicinity of the starting line or indicating an intention to start, a recall signal was not appropriate. So *Toybox*' failing to be aware that she was on the course side of the line at the starting signal should not be found to be the result of an improper action or omission of the race committee.

YNSW also found that because the race committee had not made a recall signal, the race committee was in error in recording *Toybox*' score as OCS. YNSW directed the score be recorded as DNS, however this recording did not make *Toybox*' score significantly worse.

YNSW found further that redress could not be granted. *Toybox* being scored DNS could not be considered "through no fault of her own", and *Toybox* had contributed significantly to that score through failing to understand the signals and deciding to cease racing.

Overview of the Application for Review

The applicant requested a review claiming:

1. YNSW failed to comply with rule F3.
2. YNSW misinterpreted rule 62.1 when it found *Toybox* had made her score worse partly through her own fault by deciding to cease racing
3. YNSW failed to consider rule 27.3. The sounds accompanying the postponement signal were inadequate, making this an improper action or omission of the race committee which contributed to making *Toybox*' score worse through no fault of her own.
4. YNSW misinterpreted rules 29.1 and 62.1(a) in finding the absence of a recall signal was not an improper action or omission of the race committee.

Review of the Appeal Committee Decision

1. If YNSW failed to send to *Toybox* a copy of the protest committee's request to confirm or correct, which would have given *Toybox* the opportunity to make comments on the request, then YNSW made a misinterpretation of rule F3. However the applicant has made no contention that this misinterpretation has resulted in significant unfairness to the applicant (rule AB4(b)).
2. *Toybox* did not cease racing until she had been advised by the race committee that she had not started correctly. There is no difference in the points scored by a boat which has not started correctly and a boat which does not finish, so by retiring from the race *Toybox* did not make her score any worse. Accordingly,

YNSW was incorrect in finding that the decision to cease racing contributed significantly to *Toybox*' finishing position being made worse. However, for the reasons stated above, this incorrect finding by YNSW has not resulted in significant unfairness to the applicant.

3. The adequacy of the sounds which accompanied the postponement signals was not covered by the 'facts found' and not included in the request to confirm or correct, and as it is not mentioned in the YNSW decision it is not known whether it was considered by YNSW. However, had the applicant been given the opportunity to make comment on the request (see point 1 above) then YNSW may have made specific mention in its decision. For this reason the matter is now addressed in this review.

The applicant has contended that *Toybox*' failure to hear the sounds was through no fault of her own because the sounds were inadequate in the extreme conditions of wind, waves and sail noise. This claim is not supported. The difficulty in hearing sounds in such circumstances is a common feature of racing which must be accepted by the participants, and a sound is made within the meaning of rule 27.3 when it is made in a manner customarily used for signaling purposes and in which the sound reasonably could be expected to be heard by the competitors. That the sound is dissipated in extreme conditions does not alter the fact that it is 'made'. It is also noted that in her protest *Toybox* stated she did hear the horn sound when the AP was being removed.

4. YNSW's findings that the absence of a recall signal "was not an omission of the race committee" are not correct, for that signal is a mandatory action required under rule 29.1. The question is whether such an omission should result in the granting of redress.

In answering that question common sense should prevail, for should a race committee omit to issue a recall when it is obvious that a boat is far removed and with little or no likelihood of starting correctly, then that race committee omission should not be considered to have worsened that boat's score. Further to being of no benefit to the boat which was OCS, such signals may have unintended consequences by misleading the boats which have started correctly.

Case 79 is not considered relevant as that applies "when a boat has no reason to know that she crossed the starting line early".

Scoring Abbreviation

YNSW states erroneously that having not made recall signals it was an improper action of the protest committee to have used the scoring abbreviation "OCS". Rule A11 states that the abbreviation "OCS" is to be used to identify a boat which did not start; being "on the course side of the starting line at her starting signal and failed to start". This describes the *Toybox* circumstance, which is not changed whether or not

the race committee had made a recall signal. The YNSW decision is amended accordingly.

Conclusion

Toybox' score in the race was made significantly worse, but not "through no fault of her own".

Notwithstanding the support of the applicant's claims 1 and 2, plus the matters requiring correction (see Review Decision 4 and Scoring Abbreviation), the Yachting Australia Appeals Review Panel confirms the correctness of the decision of YNSW that redress is denied to *Toybox*.

A copy of this decision should be sent by Yachting NSW to the parties involved, namely MHYC for its Protest Committee and Ian Box owner of *Toybox*.

Yours sincerely



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