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Yachting New South Wales
6A Figtree Drive
Sydney Olympic Park
HOMEBUSH NSW 2127

Yachting Australia Inc.
ABN:34 573 037 987

Level 1
22 Atchison Street
St Leonards NSW 2065

Locked Bag 806
Mills Point NSW 2061
Australia

T 612 8424 7400
F 612 9906 2366

office@yachting.org.au
www.yachting.org.au

**APPLICATION FOR REVIEW OF THE APPEAL DECISION OF YACHTING NEW
SOUTH WALES DATED 2 SEPTEMBER 2007
Rule 69 hearing: *HARBINGER 11* REQUEST FOR REDRESS**

I refer to an application by the race committee of Lake Macquarie Yacht Club to review the decision of the Appeal Committee of Yachting New South Wales (No 17/07 dated 4 September 2007) in the matter of the request for redress submitted by *Harbinger 11* concerning the results of a race conducted on 22 July 2007.

YA Addendum B rule AB4(b) states that an application for review will be refused unless based on a claim that "the misinterpretation has resulted in significant unfairness to the applicant". It could be held that the race committee of LMYC (the applicant) has suffered no "unfairness", however due to a clear need for clarification and finalisation the Yachting Australia Appeal/Review Panel has considered the application.

Overview of the Appeal

The appellant contended the protest committee's decision to refuse her redress was based on a misinterpretation of the definition of *finish* in the Racing Rules of Sailing, submitting that *Harbinger 11* was the only boat to finish in accordance with the definition and so should be scored points for first place. The Appeal Committee of YNSW upheld the appeal, and further directed that all boats which did not finish in accordance with the definition were to be scored DNF.

Overview of the Application for Review

The application for review claimed that the Appeal Committee

- (1) failed to address all the argument put forward in the appeal,
- (2) made reference to "the sailing instruction that purported to change the definition of finish" when no sailing instruction had made any change,
- (3) used an incorrect interpretation of finish and one which was not available to competitors, and
- (4) acted beyond its authority in scoring all other boats DNF as (i) *Harbinger 11* had not contended that other boats should be scored DNF and (ii) other boats had not been given an opportunity for a hearing.

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Review of the Application

- (1) A protest committee is required only to find the relevant facts, reach a conclusion as to the rules applicable and make a decision. Similarly, an appeal committee is required to correct any incorrect interpretation or procedure. There is no requirement for either committee to provide written answers to all arguments or questions advanced by the parties, and absence of an answer to a particular matter is no indication that the matter was not given full consideration.

- (2) The sailing instructions did not change the definition of *finish* so this reference by the Appeal Committee was inappropriate but has no bearing on its decision.

The sailing instructions identified a mark as a rounding mark, which was applicable to boats sailing the full course. When a course is shortened one or a number of marks may lose their original designations or purposes without any need for further mention. This was the situation with the mark in question.

- (3) When a course is to be shortened at a mark, it must be shortened at a mark which has been identified in the sailing instructions as a rounding mark; for good reason because other marks may be far removed from the track which boats could be expected to take.

When a course is shortened at a rounding mark, that mark ceases its original designation as a rounding mark because it is now a finishing line mark. Finishing line marks must each be left on a specified side and are not required to be 'rounded'. The definition of *finish* establishes on which side finishing line marks shall be left. It is not possible to finish in accordance with the definition by completing a "hook finish" because that would result in both finishing line marks being left on the incorrect side.

Critical to the definition of *finish* is the term 'the last mark'. 'Last' can mean 'preceding' or 'previous' or 'most recent'. If a mark is previous to the finishing line it is then not physically possible for it to be a mark of the finishing line.

'Last' can also mean 'final', so could the definition of *finish* be referring to one of the final marks of the course (i.e. the finishing line marks)? This cannot be as it would be impracticable to interpret the definition as requiring boats to cross the finishing line from the direction of one of its own finishing line marks.

On the matter of rules availability: ISAF publishes Cases which it states are "authoritative interpretations and explanations of the rules", and Cases were identified by the appellant which clearly interpret and explain the definition. Racing Rules and Cases are always accessible by competitors and officials.

- (4) It does not appear that any boats which sailed a 'hook finish' were protested within the protest time limits for failing to sail the course correctly. That being the case, none of those boats is a "party to a protest hearing" so it would be inappropriate for the Appeal Committee to penalise them under rule 71.3, however deciding that boats should be scored as required by rule A5 is a scoring correction - not a penalty.

The application for review stated that *Harbinger 11* had not sought DNF scores for other boats. This appears to be substantiated as (i) *Harbinger 11* did not protest other boats, (ii) it was essential for words similar to "such boats should not be recorded as finishers" to be entered on the redress form because the rules required a written description of the claimed "improper action or omission of the race committee", (iii) the appeal appeared to seek only "points for 1st place".

In upholding the appeal rule 64.2 required the Appeal Committee to make "as fair an arrangement as possible for all boats affected" and the Appeal Committee decided the most fair arrangement would be for all boats which did not finish correctly to be scored DNF. "As fair an arrangement as possible" may be a subjective decision, but as it was not improper for the Appeal Committee to reach this decision, this review sees no reason that it should be varied.

On the matter of the hearing: Rule A5 requires that boats which have not finished correctly be scored DNF without a hearing. Should a boat contend there has been an improper action by a race committee in giving her that score then the procedures for attaining a hearing are available through rule 62.1(a).

Summary

The decision of the Appeal Committee to uphold the appeal is confirmed, however

- (a) the APPEAL DECISION is amended by deletion of the second sentence, and
- (b) The third sentence is amended to read "The decision of the protest committee is changed such that redress is granted by directing the race committee to score all boats DNF in accordance with rule A5."

Yours sincerely,



Bob Chapman
Sports Services Co-ordinator