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CASE 50

Definitions, Keep Clear
Rule 10, On Opposite Tacks
Rule 14, Avoiding Contact

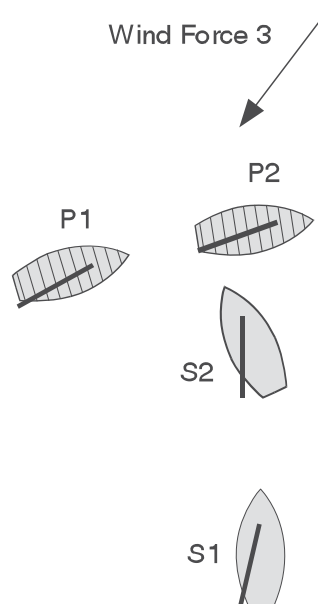
When a protest committee finds that in a port-starboard incident S did not change course and that there was not a genuine and reasonable apprehension of collision on the

part of S, it should dismiss her protest. When the committee finds that S did change course and that there was reasonable doubt that P could have crossed ahead of S if S had not changed course, then P should be disqualified.

Facts

On a windward leg, P met S and sailed a course to cross ahead of S. S bore away, displayed a protest flag, and hailed P her intent to protest. Both boats were identical 27-foot (8 m) keel boats, and the wind strength was Force 3.

S protested under rule 10, stating that she had to bear away to avoid colliding with P. The protest committee dismissed the protest by S, stating that ‘The need to change course could not be substantiated by the conflicting testimony of the two helmsmen.’ S appealed.



Decision

Rule 10 protests involving no contact are very common, and protest committees tend to handle them in very different ways. Some place an onus on the port-tack boat to prove conclusively that she would have cleared the starboard-tack boat, even when the latter’s evidence is barely worthy of credence. No such onus appears in rule 10. Other protest committees are reluctant to allow any rule 10 protest in the absence of contact, unless the starboard-tack boat proves conclusively that contact would have occurred had she not changed course. Both approaches are incorrect.

S's diagram, later endorsed by the protest committee, shows that S bore away to avoid contact. P's diagram, which was not endorsed by the protest committee, showed a near miss if S did not bear away. P did not deny or confirm that S bore away but said that, if she did, it was unnecessary.

A starboard-tack boat in such circumstances need not hold her course so as to prove, by hitting the port-tack boat, that a collision was inevitable. Moreover, if she does so she will break rule 14. At a protest hearing, S must establish either that contact would have occurred if she had held her course, or that there was enough doubt that P could safely cross ahead to create a reasonable apprehension of contact on S's part and that it was unlikely that S would have 'no need to take avoiding action' (see the definition Keep Clear).

In her own defence, P must present adequate evidence to establish either that S did not change course or that P would have safely crossed ahead of S and that S had no need to take avoiding action. When, after considering all the evidence, a protest committee finds that S did not change course or that there was not a genuine and reasonable apprehension of collision on her part, it should dismiss her protest. When, however, it is satisfied that S did change course, that there was reasonable doubt that P could have crossed ahead, and that S was justified in taking avoiding action by bearing away, then P should be disqualified.

On the facts, as shown in the diagram and the report of the protest committee, the ability of P to cross ahead of S was doubtful at best. S's appeal is upheld, and P is disqualified.