

Australian Sailing Appeal Decision

2023-02 EFYC Phoenix vs Turkish Delight

Appeal by Phoenix lodged on 6 March 2023

Arising from an incident that occurred near the starting line prior to the starting signal. The protest was heard by a protest committee from East Fremantle Yacht Club and the written decision was published on 28 February 2023.

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing:
David Brookes (IRO, ITD, NJ) Chair, Paul Pascoe (IJ, NRO), Richard Slater (IU, IJ)
Damien Boldyrew (IJ, IU), Malcolm Eaton (NJ)

The Protest

The protest committee found the following facts:

- Boats overlapped on starboard tack.
- A collision occurred causing damage to both boats.
- Strong winds -20 knots & moderate sea.

In its comments on the appeal, the Chairman of the Protest Committee provided the following additional facts and conclusions that were sent to all parties.

- Phoenix [L] is 37 feet and Turkish Delight [W] 25 feet with a deep fin keel and bulb ballast giving minimal leeway.
- The incident occurred on the pre start side of the start line prior to the starting signal.
- Conditions at the time were wind speed of 20 knots with higher gusts, moderate wind waves and no swell.
- W was sailing with 3 reefs in the mainsail with a small number 3 jib.
- L was a ROW boat changing course at speed and the PC considered this to be not seamanlike in the existing conditions.
- L could have avoided contact but did not do so by coming up fast so close to W that W had no room to keep clear.
- The collision occurred due to the actions of L by continuing to change course from the time the overlap began until the time of contact.
- Rule 15 did apply from the time the overlap began until a time before contact.
- Evidence given in the hearing suggests a time of around 5 seconds as the time between when the overlap began until the time of contact.
- The PC acknowledged that W breaks Rule 11.
- L could not be exonerated for breaking Rule 14 as both boats were damaged in the collision.

Following a request from the appeal panel chairman, the protest committee provided the following facts.

- Phoenix is a Farr 37 and Turkish Delight a Farr 25.
- The incident occurred in the starting area prior to the starting signal.
- Wind speed at the time was 20 knots.
- Phoenix established an overlap to leeward of Turkish Delight from a beam reach on starboard tack at a speed of 5 – 7 knots.
- Phoenix altered course after the overlap began.
- At the time that the overlap began Turkish Delight was sailing as high as possible on starboard tack at a speed of 1 – 2 knots.
- Turkish Delight did not alter course after the overlap began.
- A collision occurred between Phoenix and Turkish Delight.

- Both boats were damaged in the collision Turkish Delight sustained a broken stanchion in line with the mast and Phoenix a scratch to the aft starboard side.
- Neither boat retired or took an on water penalty.

The protest committee went on to conclude:

Turkish Delight EF 5 Breaks rule 11 and 15 is exonerated by rule 43.1. Phoenix EF 109 breaks rule 16.1, 14 and 15.

The protest committee decided the following:

Phoenix EF 109 is disqualified from race EFYC Division 1 raced on 19/02/23.

The Appeal summary

The grounds of the appeal from Phoenix are as follows:

1. The windward boat (Turkish Delight) acknowledged my hail but failed to respond in time.
2. A windward boat must keep clear when an overlap has occurred.
3. I responded on Phoenix by bearing away to avoid collision and as I was doing this the windward boat (Turkish Delight) sheeted their sails resulting in sideways movement into the rear side of my boat.

Appeal Panel discussion and conclusions

Ground 1: The windward boat (Turkish Delight) acknowledged my hail but failed to respond in time.

This is a claim that the PC failed to apply the rules based on an acknowledgement of a hail of '...up, up, up...' and that Turkish Delight failed to respond.

The PC found as facts that contact occurred approximately five seconds after the overlap was established.

This is consistent with the facts found regarding the differences in boat speeds and the facts regarding where the damage was on each boat.

The PC also found facts that after becoming overlapped, Phoenix luffed (changed course), therefore putting Phoenix closer to Turkish Delight.

A hail of '...up, up, up...' or the verbal acknowledgement of this hail has no standing in the rules.

The PC was correct to conclude that Turkish Delight did not have room to keep clear as a result of the change of course by Phoenix in luffing (rule 16.1).

Ground 1 is dismissed.

Ground 2: A windward boat must keep clear when an overlap has occurred.

This is a true statement regarding the rules, however, the rules also require that when Phoenix created the overlap, it shall initially give Turkish Delight room to keep clear (rule 15) and when Phoenix changes course it shall give Turkish Delight room to keep clear (rule 16). Turkish Delight failed to keep clear as the windward boat, rule 43.1 exonerates Turkish Delight.

From the facts found, the PC made appropriate conclusions and interpreted the rules correctly.

Ground 2 is dismissed.

Ground 3: I responded on Phoenix by bearing away to avoid collision and as I was doing this the windward boat (Turkish Delight) sheeted their sails resulting in sideways movement into the rear side of my boat.

The PC did not find as a fact that Phoenix bore away to avoid a collision. This ground is an appeal against the facts found. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found.

Ground 3 is dismissed.

Appeal Panel decision

Appeal dismissed.