

## Australian Sailing Appeal Decision

### 2023-01 Moonen v Typhoon

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Appeal by Moonen Lodged on 24<sup>th</sup> January 2023

Arising from

An incident between Moonen and Typhoon during the 16ft skiff CC 9 race held at Manly SC on 25<sup>th</sup> March 2023.

#### The appeal panel:

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing:

John Standley (IJ) Chair

Damien Boldyrew (IJ)

Jonathon Rees (NJ)

Phil Mostyn (NJ)

Ed Vincent (NJ, NRO)

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#### The Protest:

**Procedural Matters** *Each boat lodged a protest. Both protests were heard together as they were about the same incident. Both protests were declared valid. The requirement for each boat to inform the other was waived in accordance with RRS 61.1(a)(4).*

#### Facts found:

1. *The incident occurred during the second upwind leg of Club Championship Race 9. Wind was 12-14kts. Sea state was slight. The windward mark was to be left to port.*
2. *Both boats were travelling at approximately 10-12kts*
3. *Typhoon was fetching the windward mark on starboard tack. Typhoon had been on starboard tack from well outside the zone.*
4. *Moonen was fetching the windward mark on port tack. Moonen had been on port tack from well outside the zone.*
5. *Typhoon and Moonen were on a converging course.*
6. *When Moonen was in the zone Moonen passed head to wind and completed her tack less than 1 boat length in front of Typhoon.*
7. *Typhoon attempted to avoid Moonen by luffing sharply.*
8. *A collision occurred between the pole of Typhoon and the starboard stern of Moonen resulting in a hole in Moonen's stern.*
9. *The time between Moonen's tack completing and the collision was 1-1.5 seconds.*
10. *Typhoon carried out a penalty turn and continued racing.*
11. *Moonen ceased racing and retired due to the damage*

#### And concluded:

*As the boats converged, Moonen, on port tack, was required to keep clear of Typhoon on starboard tack.*

*When Moonen completed her tack she became the right of way boat. Typhoon was required by RRS 12 to keep clear.*

*However, when acquiring right of way through her own actions, Moonen failed to initially give Typhoon room to keep clear, and broke RRS 15.*

*Moonen did not avoid contact when it was reasonably possible, and broke RRS 14.*

*It was not reasonably possible for Typhoon, the boat sailing within the room to which she was entitled, to avoid contact with Moonen when it was clear that Moonen was not giving room.*

*Typhoon did not break RRS 14.*

#### Decision:

*The Typhoon v Moonen protest is upheld. Since Moonen took an applicable penalty, she is not further penalised under RRS 64.2(b).*

*The Moonen v Typhoon protest is dismissed.*

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## The Appeal summary

Moonen Yachts may be summarised as follows into two sections.

1. The protest committee did not establish all the necessary facts or give appropriate weight to the video evidence presented at the hearing when determining the facts found.
2. The protest committee has not found sufficient facts to support the conclusion that Typhoon did not break RRS 14.

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## Appeal Panel discussion and conclusions

### Appeal ground 1.

The appeal panel was presented with a video of the incident and several stills from the video. At the request of the appeal panel the protest committee chair confirmed that the same video was presented as evidence at the hearing.

The appeal panel notes that, from the video evidence, there are some gaps in the facts found which may have led to different conclusion being drawn.

However, RRS 70.1(a) limits a party's right of appeal to the protest committee's decision and its procedures, but not its facts found.

On this ground the appeal is denied.

### Appeal ground 2.

The facts establish that Moonen tacked in front of Typhoon and, after completion of that tack, Typhoon attempted to avoid Moonen by luffing sharply. (Facts 6 and 7).

It is reasonable, from these facts, to draw the conclusion that Typhoon did not take any action to avoid contact until Moonen had completed her tack.

World Sailing Case 123 provides the following summary:

*When it would be clear to a competent, but not expert, sailor at the helm of a starboard-track boat that there is substantial risk of contact with a port-tack boat, the starboard-tack boat breaks rule 14 if contact occurs and there was still time for her to change course sufficiently to avoid the contact.*

Whilst this is not an identical case it establishes that a right-of-way boat is required to act when it becomes clear there is a substantial risk of contact.

Whilst Typhoon may have manoeuvred promptly after Moonen had completed her tack, the moment when Typhoon first needed 'to take action to avoid contact' under rule 14 was when it would become clear to a competent skipper that there may be contact. This may have been before Moonen completed her tack and while Typhoon held right of way under rule 13.

Insufficient facts have been found to support the conclusion of the protest committee that Typhoon did not break rule 14.

On this ground the appeal is upheld.

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## Appeal Panel Decision

The appeal is upheld.

The protest is to be reopened and the protest committee shall re-examine the evidence and determine when Typhoon should have become aware there may be contact and if the actions taken by Typhoon at that time were consistent with trying to avoid contact.

After establishing more facts they should reassess their conclusions and confirm or amend their decision.

As this may have been a significant error by the protest committee the appeal panel recommends that, in accordance with RRS66.3(b) there should be at least one new member on the committee.