

## Australian Sailing Appeal Decision

### 2022-06 RQYS Whitebirds (AKA White Birds) vs Kerumba & Fine Cotton

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Appeal By: Whitebirds

Arising from: Royal Queensland Yacht Squadron, WAGS Events 2021-2022 Race 28, 06-04-2022

Protests by;

05 - Fine Cotton vs White Birds & Kerumba

04 – Kerumba vs Fine Cotton

03 – Kerumba vs Whitebirds

held at 1000 on 10-04-2022

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

Steven Hatch IJ

Damien Boldyrew IJ

David Graney NJ

Tim Went NJ

Rob Ware NJ

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#### **The Protest / Request for Redress.**

Royal Queensland Yacht Squadron, WAGS Events 2021-2022 Race 28, 10-04-2022

Protests by;

05 - Fine Cotton vs Whitebirds & Kerumba

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held at 1000 on 10 04 2022

#### Abbreviations

WB - Whitebirds

FC - Fine Cotton

K - Kerumba

HBB - Hope Banks Beacon

#### Validity

FC's protests against K and WB were submitted within the required time limit. FC hailed protest to both K and WB at the time of the incident. FC raised a red flag as soon as possible after the incident and clearing HBB and following attending to the crews' safety and injury. (RRS 61)

K's protests against WB and FC were submitted within the required time limit. K hailed protest to WB but did not display a red flag. K subsequently submitted protest forms against both WB and FC on further consideration of the incident. Due to damage sustained on the vessel (multiple broken stanchions along the starboard side) the safety of the crew was compromised. The protest was deemed valid under RRS 61.1(a) (4)

As all three protests submitted related to a single incident, the jury decided to hear them together as per RRS63.2.

The protest committee found the following facts:

Wind strength : 12 - 15kn gusting 18kn from E-SE

Sea state : mild chop

Outgoing tide

1. Whitebirds (WB) approaching Hope Bank Beacon (HBB) on starboard
2. Kerumba (K) and Fine Cotton (FC) approaching HBB on port on a course to pass the beacon to starboard.
3. WB on starboard passed ahead of FC and K on port
4. WB tacked onto port approximately 30-40m from HBB, 10-15 m to windward of K, and FC a further 8-15m to leeward of K.
5. After WB completed its tack, K was overlapped in close proximity with and to leeward of WB and both WB and K were overlapped outside and to windward of FC
6. K bore away to avoid contact with WB who was on a converging course
7. The courses of WB, K and FC converged
8. There was contact between FC, K and WB resulting in significant damage on K and FC and an injury on FC.
9. During the time of contact FC, K and WB were within the exclusion zone with WB and
10. K within 20m and FC within 15m from the HBB
11. K hailed protest with respect to WB
12. FC hailed protest with respect to K and WB
12. Subsequent to clearing HBB, K undertook a penalty turn

And went on to conclude

- WB as windward boat failed to keep clear of K and broke RRS 11.
- FC was inside overlapped on both WB and K and was entitled to room to round the mark (RRS 18.2a).
- WB did not avoid contact with K and broke RRS14.
- It was not reasonably possible for FC to avoid contact with K when it was clear that WB was not giving mark room and thus FC did not break RRS14.
- It was not reasonably possible for K to avoid contact with WB or FC when it was clear that WB was not giving mark room and thus K did not break RRS 14.
- WB, K and FC all entered the exclusion zone surrounding HBB and broke SI 1.6. K and FC are exonerated under RRS43.1(a)
- As there was contact between all three boats and neither WB, K or FC retired, they broke SI 1.7.

And decided the following

Fine Cotton, Whitebirds & Kerumba are disqualified from race.

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**The Appeal Summary.**

Whitebirds' appeal grounds have been separated into a number of separate Grounds listed below:

## **Ground 1 - Log of Events, Witness Statements, Supporting Diagrams**

The appellant supplied an extensive Log of Events, a number of witness statements and supporting diagrams with which we assume they set out to show a different set of facts to those found by the Protest Committee in support of his case.

## **Ground 2 - Exclusion of Witness present at the Hearing**

The appellant appeals based on the claim that the PC excluded six witnesses Whitebirds had available at the hearing and this denied them the opportunity to present all the facts.

## **Ground 3 - Rescheduling of the hearing from Friday afternoon until Sunday morning.**

The implied implication was that it made their case more difficult to present. It was not stated how this might have made it difficult to present their case.

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## **Appeal Panel decision**

The appeal is dismissed as being without merit.

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## **Appeal Panel Comments:**

The Appeals Panel reasons are as follows;

## **Ground 1 - Log of Events, Witness Statements, Supporting Diagrams**

The appellant cannot appeal the facts found, argue the facts or provide any form of differing events or new evidence that might try and change the facts found, irrespective of whether they agree with the facts found by the Protest Committee or not and this cannot form a valid ground for appeal and these additional items were not considered as per RRS 70.1 (a).

## **Ground 2 - Exclusion of Witness present at the Hearing**

Based on the information provided by the protest committee and the other parties to the hearing was that the PC Chair asked Whitebirds if the additional witnesses would contribute anything extra and the appellant decided to call one additional witness and the did not call any more. Therefore no witnesses were excluded and there was no improper action on the part of the protest committee.

## **Ground 3 - Rescheduling of the hearing from Friday afternoon until Sunday morning.**

It is common for protest hearings to be postponed for any number of reason and this only gave the parties more time to prepare. There was no improper action on the part of the protest committee.

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