

Australian Sailing Appeal Decision

2023-06 4 Shaw v Race Committee SYC

Appeal by 4 Shaw, lodged on 16th August 2023, after receiving the written decision on 9th August 2023.

Arising from a Decision of Request for Redress hearing held 08 August 2023 relating to the abandonment of Southport Yacht Club Winter Series race 10 conducted 05 July 2023.

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing: Ian Humphries (NJ, NRO) Chair, Jeremy Atkinson (IRO, NJ), Damien Boldyrew (IJ, IU), Ben Fels (IJ, IU), and Rowena Cremer (CJ)

The Protest:

The protest committee found the following facts:

1. 4 Shaw crossed the finish within time limit (50 min before)
2. RO was aware
3. RO considered effect of fleet scores and chose to Abandon Race

The protest committee concluded:

1. 32.1(d)

The protest committee decided the following:

1. Redress not given

The Appeal summary

The grounds of appeal are that the protest committee made the following errors:

1. They failed to recognise that rule 32.1(b) applied “because there was insufficient wind” and they erred in accepting that rule 32.1(d) was applicable and authorised abandonment.
2. If rule 32.1(d) did apply they erred in failing to find facts as to whether the race was unfair or not.
3. They erred in determining that the RO needed only to state he had “considered the consequences for all boats in the race or series” but the PC refused to consider what those considerations were of whether they were valid and fair.
4. The RC has power to abandon a race in certain circumstances provided for in RRS 32.1. However the decision to abandon was made by [NAME WITHELD] alone. It is not clear how the RC delegated this authority and how much authority was delegated. Whatever the answer to that question, SI 1.9 requires “Compliance with SYC’s current season sailing policy”. That sailing policy at 2.1 requires before a race is abandoned that “any decision to race, postpone or abandon racing will be made by the sailing office in consultation with the vice commodore of sail and the relevant SYC sailing committee divisional representative”. The evidence was that no consultation took place. I claim this is an improper action as the rules were not met.

Comments and Clarifications

The appeal panel considered the facts found to be inadequate, and as provided for in RRS Appendix R5, required the Protest Committee to provide additional facts or other information concerning the decision to abandon. The protest committee responded:

The PC did not consider this beyond the confirmation from the RO (? given the sailing policy) however [the RO] elaborated and indicated that as RO he had felt it unfair to finish a race where he felt only a single (almost the fastest handicapped yacht in the fleet) would be able to do so within the time limit. This obviously gives the rest of the fleet a 20+ score to carry / discard.

[The RO] did confirm that he was unable to raise any other members of the race committee via phone in order to consult on the decision to abandon (form a Quorum). We did not consider a breach of Sailing Handbook as referred to in the SI's, this was an oversight.

Appeal Panel discussion and conclusions:

Appeal ground 1

They failed to recognise that rule 32.1(b) applied “because there was insufficient wind” and they erred in accepting that rule 32.1(d) was applicable and authorised abandonment.

RRS 32.1 allows the race committee to shorten a course or abandon a race because of various reasons set out in parts (a) – (d) of that rule. Part (b) states one of those reasons to be: “because of insufficient wind making it unlikely that any boat will *finish* within the race time limit.”

4 Shaw finished the race. As such, RRS 32.1(b) can not apply.

On this ground the appeal is denied.

Appeal ground 2

If rule 32.1(d) did apply they erred in failing to find facts as to whether the race was unfair or not.

The facts found did not identify the reason for abandonment. However, from the information provided to the appeal panel by the protest committee, derived from evidence provided at the hearing, the reason for abandonment was that the RO deemed it unfair to finish a race where they felt only a single (almost the fastest handicapped yacht in the fleet) would be able to do so within the time limit.

Whilst the facts found were initially inadequate in this regard, the evidence on this point was obtained and considered by the protest committee.

On this ground the appeal is denied.

Appeal ground 3

They erred in determining that the RC needed only to state he had “considered the consequences for all boats in the race or series” but the PC refused to consider what those considerations were of whether they were valid and fair.

From the information provided to the appeal panel by the protest committee, the protest committee took the evidence concerning the reason for abandonment as required by RRS 63.6. There is no

evidence that the protest committee did not take that evidence and then give the weight it considers appropriate as required by RRS 63.6(d).

On this ground the appeal is denied.

Appeal ground 4

The RC has power to abandon a race in certain circumstances provided for in RRS 32.1. However the decision to abandon was made by [NAME WITHELD] alone. It is not clear to me how the RC delegated this authority and how much authority was delegated. Whatever the answer to that question, SI 1.9 requires "Compliance with SYC's current season sailing policy". That sailing policy at 2.1 requires before a race is abandoned that "any decision to race, postpone or abandon racing will be made by the sailing office in consultation with the vice commodore of sail and the relevant SYC sailing committee divisional representative". The evidence was that no consultation took place. I claim this is an improper action as the rules were not met.

In their response to this appeal panel, the protest committee acknowledges that they did not consider SI 1.9. This may have been a significant error.

On this ground the appeal is upheld.

Appeal Panel Decision

The request for redress is to be re-opened to consider the issue of SI 1.9. The protest committee shall, if practicable, have at least one new member. It is the strong recommendation of the appeal panel that the new member be a judge with national or international accreditation.