

Australian Sailing Appeal Decision

2023-09 Flying 11's 1384 v 1391

Appeal by Flying 11 1384, lodged on 15/11/2023, after receiving the written decision on 12/11/2023.

The appeal arises from a failure by the Protest Committee to provide Appendix T arbitration prior to the hearing of the protest by 1391 on 12/11/2023.

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

Ed Vincent (NJ, NRO) Chair, Philippe Mazard (IJ), David Brookes (IRO, NJ), Darren Egar (NJ) and Wayne Thompson (NJ).

The protest:

Facts found:

1. 1391 and 1384 were reaching on port tack from the wing mark to the leeward mark.
2. 1384 became overlapped to windward from clear astern of 1391.
3. Distance apart was less than 1 boat length.
4. 1391 changed course to windward and hailed 1384 to keep clear.
5. 1384 did not respond to the hail from 1391.
6. There was contact between the spinnaker of 1384 and the rig of 1391.
7. 1384 continued sailing down the leg and took a penalty turn close to the leeward mark.

Conclusion and rules that apply:

- a) 1384 to windward on the same tack did not keep clear of 1391. 1384 broke rule 11.
- b) 1384 did not avoid contact with 1391 when it was reasonably possible to do so. 1384 broke rule 14.
- c) 1391 did not avoid contact with 1384 when it was reasonably possible to do so. 1391 broke rule 14.
- d) There was no damage or injury. 1391, a right of way boat, is exonerated for breaking rule 14 by rule 43.1(c).
- e) 1384 did not take a penalty turn promptly after the incident as required by rule 44.2, and therefore did not take an applicable penalty with respect to the incident.

The protest committee decided the following:

1384 is disqualified in Race 4.

The Appeal summary:

The grounds of appeal are that both the event Notice of Race and the Sailing Instructions stated that Appendix T shall apply. The protest committee did not convene an arbitration meeting, prior to the protest hearing. This precluding 1391 from having an arbitration meeting with the available outcomes available in T4.

Appeal Panel discussion and conclusions:

Appeal ground

Arbitration was required to be offered to both parties prior to a protest hearing:

1. the Notice of Race (cl 10) (*Appendix T shall apply*). and
2. the Sailing Instructions (cl 17) (*Appendix T shall apply. Attachment B shows Appendix T in full*).

The event's Sailing Instructions *Attachment B* showed *Appendix T* in full.

Overall conclusion:

The Protest Committee made a significant error in not conducting Appendix T arbitration as required by the Notice of Race and the Sailing Instructions and described in *Sailing Instruction Appendix T2* prior to the protest hearing.

However, this error is moot, as once a protest hearing has commenced, the option for a boat to accept a post-race penalty expires (*Appendix T1 (a)*).

Appeal Panel Decision

The decision of the protest committee to disqualify 1384 is upheld.