

## Australian Sailing Appeal Decision

**2022-08 RBYC Firefox SM385 v Sun Kiss B911**

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Appeal by Sun Kiss B911. Lodged on 29 December 2022 after receiving the written decision on 15 December 2022.

Arising from decision of protest hearing held 29 November 2022 relating to an incident in the racing area involving Firefox SM385 and Sun Kiss B911, during race 2 of The Range Series 2022-23 incorporating the Victorian Rating Championships, conducted 26 November 2022.

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

Steven Hatch (IJ, IU, NRO) Chair	Damien Boldyrew (IJ, IU)	Mark Gallagher (NJ),
Wayne Thompson (NJ, NU)	Ed Vincent (NJ, NRO)	

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### The Protest

The protest committee found the following facts:

1. SM385 and SM288 approaching the start line with SM385 to windward of SM288 with approximate 4-5 metres between the two boats
2. B911 approached from clear astern of SM385 and a slightly lower angle, travelling faster than SM385 and SM288
3. When SM385 and SM288 were abreast of the barging mark off the rear of the start boat, B911 established an overlap between the two boats
4. There was approximately 3 meters gap to the Race Committee Vessel
5. B911 and SM288 made contact, B911 altered course to windward and the bow of B911 made contact on the pushpit of SM385
6. The wind was approximately 24 kts
7. There were choppy wave actions
8. No boats took a penalty
9. Two crew members on SM288 suffered minor injuries
10. There was no damage to SM288 or B911 and the pushpit on SM385 is bent

The protest committee provided two sets of conclusions:

Conclusions:

1. In acquiring right of way, B911 was required to give SM385 room to keep clear which she did (rule 15)
2. In making contact with SM288, B911 failed to keep clear as the windward boat (rule 11)
3. In subsequently altering course to windward and making contact with SM385 she failed to initially give SM385 room to keep clear (rule 16)
4. It was not reasonably possible for SM385 or SM288 to avoid contact.
5. The damage was not considered serious

Alt Conclusions:

1. B911 to windward failed to keep clear of SM288 to leeward, and broke RRS 11.
2. B911 did not avoid contact when it was reasonably possible, and broke RRS 14.
3. It was not reasonably possible for SM288 the right-of-way boat to avoid contact with B911 when it was clear that B911 was not keeping clear. SM288 did not break RRS 14.
4. When acquiring right of way through her own actions, B911 failed to initially give SM385 room to keep clear, and broke RRS 15.
5. When changing course, SM911 the right-of-way boat failed to give SM385 room to keep clear, and broke RRS 16.1.

6. It was not reasonably possible for SM385 the boat sailing within the room to which she was entitled to avoid contact with B911 when it was clear that B911 was not giving room. SM385 did not break RRS 14.
7. B911 did not avoid contact when it was reasonably possible, and broke RRS 14.
8. Rules that Apply: 11, 14, 15, 16.1 – definition room

The protest committee decided the following:

1. B911 is to be scored DSQ in Race 2

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## **The Appeal summary**

The appeal panel reviewed the submission by Sun Kiss B911 which included diagrams, and discerned the grounds of her appeal to be that the protest committee:

1. failed to give sufficient weight to evidence given by one of her witnesses;
2. failed to take into account various factors relating to the differing performance characteristics of the boats;
3. erred in suggesting SM385 kept clear of B911 under Rule 15 as SM385 moved down on B911 at the start line, having been called up, and was further in error in applying Rules 15 and 16 against B911 as SM385 had sufficient time and room to keep clear even if right of way was established closer to the line (which is disputed);;
4. was in error to suggest it was not reasonably possible for SM288 and SM385 to avoid contact;
5. erred in suggesting B911 could have avoided contact with SM288 as, in an effort to avoid contact with SM385, moved closer to SM288 whereupon a wave pushed SM288 into B911;
6. erred in applying Rule 16.1 against B911 as it was not reasonably possible for B911 to give Sm385 room to keep clear as B911 was required to keep clear of SM288;
7. erred in not applying Rule 14 against SM385 as she clearly should have kept clear of B911 being aware the gap closing between them and SM288; and
8. erred when suggesting it was reasonably possible for B911 to avoid contact when there was no path available to her when Sm385 moved down, closing the gap with SM288.

## **Comments and Clarifications:**

In addition to the appeal submission by Sun Kiss B911, the appeal panel received written submissions from the protest committee, Firefox SM385, and Intrusion SM288. The submissions in part include evidence that was purported to have been presented during the hearing. This evidence may only have been part of the evidence the protest committee obtained during the hearing.

RRS 70.1(a) states that a party to the hearing can not appeal the facts found by the protest committee. The appeal panel is therefore required to only rely on the facts that are found by the protest committee, unless the appeal panel believes these facts are inadequate.

## **Appeal Panel discussion and conclusions:**

### **Appeal ground 1.**

The protest committee took the evidence of the parties present at the hearing and their witnesses as required by RRS 63.3(a). Having taken the evidence of the parties, RRS 63.6(d) requires the protest committee to give the weight it considers appropriate to the evidence presented, which the protest committee did.

On this ground the appeal is denied.

## **Appeal ground 2.**

Throughout the appeal submission, alternative facts and reasoning are presented. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found. The protest committee took the evidence of the parties present at the hearing and their witnesses as required by RRS 63.3(a). Having taken the evidence of the parties, the protest committee gave the weight it considered appropriate to the evidence presented and found facts as required by RRS 63.6(d).

On this ground the appeal is denied.

## **Appeal ground 3.**

Appeal ground 3 presents alternative facts that were not found by the protest committee. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found.

In relation to the application of RRS 15, the appeal panel notes a discrepancy between Conclusion 1 and Alt Conclusion 4.

Conclusion 1 indicates B911 gave SM385 room when she acquired right of way. Alt Conclusion 4 indicates that she did not. Given the space between the boats when right of way was established (refer fact 1 and 3), the appeal panel considers that Conclusion 1 is correct, and Alt Conclusion 4 is in error. This is of no consequence to the ultimate decision made by the protest committee as Fact 5 establishes that B911 altered course to windward and made contact with SM385, and the protest committee in Conclusion 3 and Alt Conclusion 5 correctly applied RRS 16.1.

On this ground the appeal is denied.

## **Appeal ground 4.**

A right of way boat (as SM288 was to B911 under RRS 11) and a boat sailing within the room to which she is entitled (as SM385 was under RRS 16.1), need not act to avoid contact until it is clear that the other boat is not keeping clear or giving room. In the circumstances, the appeal panel agrees with the conclusion that it was not reasonably possible for SM288 and SM385 to avoid contact when it was clear B911 was not fulfilling her obligations to SM288 under RRS 11, and SM385 under RRS 16.1.

On this ground the appeal is denied.

## **Appeal ground 5.**

Appeal ground 5 presents alternative facts that were not found by the protest committee. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found. Based on the facts found, Conclusion 4 and Alt Conclusion 5 are reasonable and RRS 14 has been rightly applied.

On this ground the appeal is denied.

## **Appeal ground 6.**

Fact 5 establishes that B911 altered course to windward. At that time, she was overlapped to leeward of SM385, who had been keeping clear. When B911 altered course as the right of way boat, RRS 16.1 required her to give SM385 room to keep clear. The application of RRS 16.1 is correct.

On this ground the appeal is denied.

## **Appeal ground 7.**

Appeal ground 7 presents an alternative fact that was not found by the protest committee. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found. Based on the facts found, the Conclusion 4 and Alt Conclusion 6 are reasonable and RRS 14 has been rightly applied.

On this ground the appeal is denied.

## **Appeal ground 8.**

Appeal ground 8 presents an alternative fact that was not found by the protest committee. Under RRS 70.1(a) a party may appeal a protest committee's decision or its procedures but not the facts found. Based on the facts found, Alt Conclusion 7 is reasonable and RRS 14 has been rightly applied.

On this ground the appeal is denied.

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## **Appeal Panel Decision**

Sun Kiss B911 appeal is denied.