

# OSA Appeal 2003-7

*Windsage vs. Te Esse*

**Rule 13, While Tacking**

**Rule 14, Avoiding Contact**

**Rule 62.1 (b) Redress**

**Rule 70.1, Right of Appeal and Requests for Interpretation**

## **Abstract:**

*After a boat passes head to wind, she shall keep clear of other boats. A boat shall avoid contact with another boat if reasonably possible. However, a right-of-way boat need not act to avoid contact until it is clear that the other boat is not keeping clear. A boat that is damaged by the actions of a boat that was breaking a rule of part 2 is entitled to redress only if the damage causes her finishing position in the race or series to be made significantly worse, through no fault of her own.*

## **Summary of the Facts:**

Te Esse approached the windward mark on starboard tack in 10 knots of breeze with a straight chop. At the two length zone Te Esse pinched up to shoot the mark, hit the mark, backwinded her jib, and passed head to wind. There was contact causing damage between Te Esse while tacking and Windsage to leeward on starboard tack at the windward mark. Windsage protested.

The Protest Committee concluded that Te Esse broke Rule 13 by failing to keep clear of Windsage while tacking, and disqualified her from the race. They concluded that Windsage, as a right-of-way boat failed to avoid contact causing damage with Te Esse and disqualified Windsage under Rule 14. The Protest Committee reopened the hearing nineteen days later on September 15 2003 at the request of Windsage, to hear evidence from a witness on a Mistral, but upheld their original decision. Windsage appealed arguing both that the protest committee's diagram of the incident was inaccurate as it could not account for the damage, and that the interpretation of Rule 14 was incorrect, as it was not reasonably possible for Windsage to avoid contact with Te Esse.

## **Decision:**

The protest committee properly disqualified TeEsse under Rule 13 as she did not keep clear of Windsage while tacking. Te Esse also broke Rule 14 by having contact with Windsage.

Windsage acquired right-of-way when TeEsse passed head-to-wind. Rule 14 makes special provisions in the case of a right-of-way boat. For her to be penalized, first there must be contact that caused damage. This is not in doubt. Second, the second sentence of Rule 14 allowed Windsage to sail her course in the expectation that Te Esse would keep clear as required, until such time as it became evident that Te Esse would not do so. She was not required to act to avoid contact until it was clear that Te Esse was not keeping clear, and she was not required to anticipate that Te Esse would not keep clear.

The protest committee found no evidence of collision avoiding actions by Windsong. However, the time between the moment it became evident that Te Esse would not keep clear and the time of the collision was so brief that it was impossible for Windsong to avoid contact. Case 87 refers. Therefore Windsage did not break rule 14.

Windsong sustained damage to her upper and lower port shrouds, her forward staunchion, the forward and aft staunchion mounts, and a rip in her genoa. While her damage was caused by a boat that was breaking Rule 13 within Part 2, Windsong presented no evidence that her finishing place in the race was made significantly worse by that damage, through no fault of her own. She is not entitled to redress under Rule 62.1 (b).

Protest Committee's decision to disqualify Te Esse under Rule 13 is upheld, and Rule 14 also applies. The appeal of the disqualification of Windsong is upheld and Windsong is to be reinstated in her finishing position in the race and her series score adjusted accordingly.

***OSA Appeals Committee, January 2004.***

Alex McAuley, IJ/IJ, Chair  
Dr. Lynne Beal, IJ/NU  
Dr. Andrew Wardle IJ/IJ  
Dr. Mel Preston SCJ  
Mr. Don MacIntyre, SCJ  
Mr. Andrew Alberti, CJ/SCU