



OS Appeal #OS2006-07

Fortitude v Southerly Buster – September 6, 2006

Southerly Buster is appealing a decision of the protest committee on August 21, 2006 from a race of the Ashbridge's Bay Yacht Club Series "C" on August 8, 2006.

Rule 11 On the Same Tack, Overlapped

Rule 14 Avoiding Contact

Rule 44.1 Taking a Penalty

Rule 61.1(a) Informing the Protestee

Rule 63.5 Validity of the Protest or Request for Redress

Basic Principle – Sportsmanship and the Rules

ISAF Case 72 "In the context of rule 61.1(a), a flag is used as a signal to communicate the message 'I intend to protest.'"

CYA Appeal 63 "For boats greater in length than 6 metres, a protest flag must be perceived to be a red flag and must be displayed at the first reasonable opportunity."

A protest flag does not have to be attached to a shroud or rigging to meet the requirement of being conspicuously displayed.

Summary of the facts:

Southerly Buster and Fortitude approached the starting line close-hauled on starboard tack with Southerly Buster to windward. Fortitude hailed Southerly Buster to head up and stated there would be no room for Southerly Buster to pass between the signal boat and Fortitude. Southerly Buster headed up in response to the hail. Fortitude maintained her course and hailed a second time for Southerly Buster to head up. Fortitude hailed "protest" and bore away to avoid contact with Southerly Buster. Southerly Buster heard the hail of protest. A flag was displayed immediately on Fortitude by the helmsman in a standing position, from his hand with his arm extended over his head. The flag was handed to a crew and attached to the starboard shroud 45–60 seconds after the incident.

Decision of the protest committee:

The flag meets the definition and cases, therefore the protest is valid. Southerly Buster did not keep clear of Fortitude and is disqualified for breaking rule 11. Fortitude avoided contact with Southerly Buster as required by rule 14.

Southerly Buster appealed claiming the protest was not valid because the object used as a flag was not a proper flag and was not displayed at the first reasonable opportunity thus denying Southerly Buster the opportunity to take a penalty.

Decision of the appeals committee:

Appeal dismissed. The conclusion of the protest committee that the protest is valid and Southerly Buster is disqualified for breaking rule 11 is confirmed.

The appeals committee examined the object displayed by Fortitude. It is quite thin plastic (about the thickness of a regular green garbage bag) and is red in colour. It appears to once have been rectangular, measuring approximately 8 by 14 inches, although it was torn when it was removed from the boat after racing.

Southerly Buster relies on the definition of “protest flag” (a piece of red material, varying in shape but including rectangular, triangular and swallow-tailed shapes, of a size that is clearly visible, attached at one edge to a staff, spar or rigging) referred to in CYA Appeal 63 to contend that the red plastic could not be construed as a flag until it was attached to the shroud. Appeal 63 is not on point because the object that was found to not be a flag was a red hat placed in the rigging. ISAF Case 72 states in part “In the context of rule 61.1(a), a flag is used as a signal to communicate the message ‘I intend to protest.’” and “A flag must be seen primarily to be a flag.” In this case, the flag is a piece of red plastic, rectangular in shape and measuring approximately 8 by 14 inches that could not be confused with some other object such as a hat, t-shirt or sail bag. This describes a flag, whether displayed from the hand held overhead or from the shroud. An object that is a flag when attached to a staff, spar or rigging is also a flag when it is not attached.

At the time of the incident, a hail of “protest” was made and heard by Southerly Buster, and a red flag was displayed on Fortitude from the hand of the helmsman standing with his arm extended over his head. The red flag was conspicuously displayed and communicated the message “I intend to protest.” It was transferred to the shroud where it remained until Fortitude was no longer racing. Fortitude informed Southerly Buster at her first reasonable opportunity as required by rule 61.1(a).

Southerly Buster is not appealing the conclusion of the protest committee that Southerly Buster broke rule 11. The Basic Principle – Sportsmanship and the Rules states in part “A fundamental principle of sportsmanship is that when competitors break a rule they will promptly take a penalty...” Rule 44.1 states in part “A boat that may have broken a rule of Part 2 while racing may take a penalty at the time of the incident.” Southerly Buster broke a rule of Part 2 and was not prevented from exonerating herself.

OS Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Mr. Alex McAuley, IJ

Ms. Kathy Dyer, SNJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ