



Ontario Sailing Appeal #2007-01

Arriba v Texas Belle – 25 June 2007

Texas Belle is appealing a decision of the protest committee on 9 July 2007 from a race at Port Credit Yacht Club on 25 June 2007.

Rule 13 While Tacking

Rule 14 Avoiding Contact

Rule 16 Changing Course

Rule 44.4 Limits on Penalties

Rule 61 Protest Requirements

Summary of the facts:

(Including additional facts, *in italics*, provided by the protest committee under rule F5)
Hope and Glory, Arriba and Texas Belle were overlapped on starboard tack approaching the windward mark. Hope and Glory was to windward of Arriba. Arriba was to windward of Texas Belle.

The three boats were outside of the two-length zone of the mark.

Texas Belle lost speed and went beyond head to wind. Her jib sheet was not released, causing the boat to further bear away on port tack.

Contact occurred amidships on the starboard side of Texas Belle and the port side of Arriba's bow. The boats remained in contact for a period of time.

Texas Belle turned downwind and assessed the damage to her life lines *and bent stanchion*, then did a two-turns penalty.

Decision of the protest committee:

Texas Belle broke rules 13 and 16.1. Texas Belle did a two-turns penalty as required by rule 44.1 and cannot be further penalized according to rule 44.4(b).

Texas Belle appealed claiming that the protest was not valid because there was no hail of "protest" at the time of the incident and citing irregularities in the procedures followed by the protest committee. The appellant also claimed she was compelled to break the rules by the actions of the other boat.

Decision of the appeals committee:

Appeal dismissed. Texas Belle broke rules 13, 14, and 16.1 and took the appropriate penalty. Arriba did not break any rules.

There was an incident between Texas Belle and Arriba that resulted in a bent stanchion and damage to the life lines on Texas Belle. As this damage was obvious to the boats involved, the display of a protest flag and the hail of "protest" are not required, according to rule 61.1(a)(3). By her own admission in her letter of appeal, Texas Belle was informed of Arriba's intention to protest ashore, fulfilling the requirement of rule 61.1(a)(3) to attempt to inform the other boat within the time limit of rule 61.3.

In her letter of appeal, the appellant describes some confusion in the time and place of the hearing, but the hearing was eventually heard with both parties present. The appellant was given a copy of the protest and reasonable time to prepare for the hearing as required by rule 63.2. The appellant also commented that there were two protest forms with two different dates. Only one protest form was required and the form that was delivered within the protest time limit is the only form that was considered by the protest committee.

The appellant also complains that she did not receive a copy of the protest committee's decision. It is unclear to the appeals committee if the appellant asked for a copy of the decision, either at the conclusion of the hearing or in writing within seven days of being informed of the decision. Any failure to deliver/receive this did not impact the appellant's ability to file the appeal or the appeal committee's ability to deal with it.

Initially Texas Belle was the right of way boat under rule 11, because she was overlapped on the same tack to leeward of Arriba. There are no facts to suggest that Texas Belle was unable to sail her course with no need to take avoiding action or that she was unable to change course in both directions without immediately making contact with Arriba, therefore Arriba did not break rule 11.

Texas Belle held right of way over Arriba under rule 11, when she was changing course up to head to wind, rule 16.1 required her to give room to Arriba to keep clear. During this time, Arriba did not have the space she needed to manoeuvre promptly and in a seamanlike way to keep clear of Texas Belle, therefore Texas Belle broke rule 16.1.

When Texas Belle went beyond head to wind, rule 13 required her to keep clear of other boats after she passed head to wind until she was on a close-hauled course. The protest committee did not find as fact that Texas Belle had borne away to a close hauled course prior to the collision. Therefore Texas Belle broke rule 13.

As there was a collision, the protest committee should have considered whether rule 14 was broken by either boat. The appeals committee is satisfied that the facts found by the protest committee support a conclusion that Texas Belle did not avoid contact with Arriba when it was reasonably possible to do so, therefore Texas Belle broke rule 14. The protest committee complied with the appeals committee's request under rule F5 to provide additional facts or other information to determine if it was reasonably possible for Arriba to have avoided the contact. The protest committee concluded that Arriba could not avoid the collision, therefore Arriba did not break rule 14.

The appeals committee also asked the protest committee under rule F5 to make a conclusion based on the severity of the damage to Texas Belle, whether her Two-Turns Penalty was the appropriate penalty. The protest committee concluded that the damage was not serious and Texas Belle correctly exonerated herself under rule 44.1, and cannot be further penalized according to rule 44.4(b).

OS Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Alex McAuley, IJ

Dr. Andrew Wardle, IJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ