



Ontario Sailing Appeal #2007-03

Chicane v Rum Runner – 19 July 2007

Rum Runner is appealing a decision of the protest committee on 31 July 2007 from a race at National Yacht Club on 19 July 2007

Preamble to the Rules of Part 2

Rule 10 On Opposite Tacks

Rule 14 Avoiding Contact

Rule 16 Changing Course

Rule 22 Interfering with Another Boat

Rule 44 Penalties for Breaking Rules of Part 2

Rule 61 Protest Requirements

Rule 64.1(b) Penalties and Exoneration

Rule 70.1 Appeals; Confirmation or Correction of Decisions; Rule Interpretations

Rule F5 Inadequate Facts; Reopening

Summary of the facts:

(Including amended and additional facts, *in italics*, provided by the protest committee under rule F5)

1. Rum Runner and Chicane were reaching below the starting line on port tack, Rum Runner was ahead and to leeward of Chicane.
2. Chicane was in her starting sequence with two minutes to the start. Rum Runner was not in her starting sequence.
3. Rum Runner tacked onto starboard.
4. After Rum Runner's tack was completed, Rum Runner was bearing off when she hit Chicane's starboard side amidships with approximately one minute and forty seconds to Chicane's start.
5. *Chicane headed to windward in an attempt to avoid collision.*
6. There was damage to both boats.
Damage to Rum Runner: pulpit torn off deck and bent on starboard side, forestay bent on starboard side, damage on bow on starboard side above waterline.
Damage to Chicane: Hull exterior – gelcoat and fibreglass plus rubrail crushed on starboard side amidships above waterline. Hull interior – fibreglass, joinery and teak liner damaged.
7. There was no protest flag and no hail of protest made. *Chicane looked throughout the club house and on the dock for Rum Runner owner and/or crew. They had left the premises and found out about the protest the following day.* It was noted that the protest form was submitted and accepted by the race committee within the allowed

time.

8. *Both boats returned to the dock after the collision and did not compete in the race.*

Decision of the protest committee

Chicane attempted to inform Rum Runner of her intention to protest within the time limit. That protest was valid and heard under rule 63.5.

Under the preamble to Part 2, Rum Runner, not racing but intending to race, was subject to the rules of Part 2. After Rum Runner passed head to wind she was required to keep clear of Chicane until she was on a close hauled course under rule 13. Once she reached close hauled on starboard and regained right of way she was required to give Chicane room to keep clear under rule 15. Chicane on port altered course to avoid a collision but was unable to do so and did not break rule 10. Rum Runner continued to alter course and was required under rule 16 to give Chicane room to keep clear. Rum Runner broke rules 15, 16 and 14, since there was contact that caused damage. Rum Runner's actions before her preparatory signal interfered with Chicane, a boat who was racing under rule 22.1. Rum Runner is DSQ for interfering with a boat that was racing.

Rum Runner appealed claiming that the protest was not valid because there was no hail of protest and Chicane did not display a red flag at the first reasonable opportunity. Rum Runner claimed that since she was not in the Starting Area she was not subject to rule 22.1. Rum Runner is also disputing the protest committee's findings of fact.

Decision of the appeals committee

Appeal dismissed. The protest is valid and the facts found by the protest committee support the conclusion that Rum Runner broke rules 14, 16 and 22.1. Rum Runner is DSQ for breaking rule 22.1.

The protest committee correctly determined Chicane's protest to be valid. The protest committee erred when they recorded this as being heard under rule 63.5. The incident resulted in damage that was obvious to the boats involved and according to rule 61.1(a)(3) the requirements of rule 61.1(a) for a hail of "Protest" and the display of a red flag do not apply. Chicane attempted to inform Rum Runner of her intention to protest within the protest time limit fulfilling the requirement of rule 61.1(a)(3). The written protest complied with the requirements of rule 61.2 and was delivered and accepted within the time limit of rule 61.3.

According to rule 70.1 a party may appeal a protest committee decision but not the facts found and according to rule F5 the appeal committee shall accept the protest committee's finding of facts.

Rum Runner tacked to starboard just prior to the collision and held right of way over Chicane on port, under rule 10. At the time of the collision, Rum Runner was changing course and Chicane did not have room to keep clear, breaking rule 16.1.

The protest committee mistakenly concluded that Chicane did not break rule 10. The appeals committee corrects that error, finding that Chicane broke rule 10 by not keeping

clear of Rum Runner on starboard. However, Chicane was compelled to break rule 10 by Rum Runner's breach of rule 16.1, therefore Chicane is exonerated under rule 64.1(b).

Because the incident resulted in a collision, the protest committee was correct in applying rule 14. The conclusion that Rum Runner broke rule 14 "since there was contact that caused damage" is mistaken. Rum Runner did break rule 14 by not avoiding contact with Chicane when it was reasonably possible for her to do so. The consideration of damage is relevant only when deciding if a boat can be penalized for breaking rule 14.

The protest committee should have also determined if Chicane broke rule 14. The fact that Chicane "headed to windward in an attempt to avoid collision" is sufficient for the appeals committee to conclude that Chicane did not break rule 14. It was not reasonably possible for Chicane to avoid contact with Rum Runner and Chicane was a boat entitled to room under rule 16 and acted to avoid contact when it became clear that Rum Runner was not giving room.

At the time of the incident, Rum Runner was not yet racing because her preparatory signal had not been made. Chicane was racing because her preparatory signal had been made. Rum Runner, not racing, interfered with Chicane, a boat that was racing, breaking rule 22.1. Rule 22.1 does not refer to a starting area or require that the boats be in the starting area.

There was also a conclusion by the protest committee that Rum Runner broke rule 15. It is unclear to the appeals committee if Rum Runner initially gave Chicane room to keep clear when she acquired right of way under rule 10. However nothing is to be gained by seeking the facts necessary to make such a conclusion because Rum Runner remains in breach of rules 14, 16.1 and 22.1.

According to the preamble to the rules of Part 2, Rum Runner can only be penalized for breaking rule 22.1 and cannot be penalized for breaking rules 14 and 16 because she was not racing. Rule 64.1(a) requires the protest committee to disqualify a boat that is a party to a protest hearing when it decides she has broken a rule, unless some other penalty applies. The penalties of rule 44.1 are available only to a boat that may have broken a rule of Part 2 while racing, therefore Rum Runner's retirement prior to her preparatory signal in the race cannot be taken into consideration in determining if she took a penalty. Rule 64.1(c) requires the penalty for a boat that has broken a rule when not racing to be applied to the race sailed nearest in time to that of the incident. Rum Runner is to be scored DSQ for the race of 19 July 2007 as that is the race sailed nearest in time to that of the incident.

OS Appeals Committee:

Mr. Andrew Alberti, SNJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Alex McAuley, IJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ