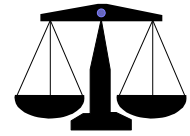




## AMERICA'S CUP 32 JURY and UMPIRE OFFICE



### JURY NOTICE 02

11<sup>th</sup> September 2004

3 pages

To: Challengers and Defender

Copies: ACM, Chief Measurer, Jury, Umpires, Media Centre

JURY HEARING 02 10<sup>th</sup> September 19h00 CNTL Marseille

PROTEST K Challenge v Le Defi

Date of incident: 10<sup>th</sup> September Flight 3 Match 2

The protest has three parts:

1. K Challenge claims that the umpires made an error by signalling a 'green & white flag' in response to a 'Y flag protest' from K Challenge following an incident in the pre-start in the match K Challenge v Le Defi.
2. K Challenge protests Le Defi claiming Le Defi broke Racing Rule 14 (amended by Notice of Race (NoR) 2.4 (d)) by 'causing significant damage', which Le Defi could have reasonably avoided.
3. K Challenge asks for the cost of repairs to be paid by Le Defi

### JURISDICTION

The Jury Chairman brought the parties' attention to the fact that one of the five appointed Jury members was not available, and that the remaining members of the Jury believed that there is an urgent need to resolve the issue and that resolution cannot reasonably be delayed without disrupting the Event<sup>1</sup>.

Both parties agreed that the four members present should hear all matters concerned with this protest.

### VALIDITY

(a) The Protest was received at 16h57 on 10<sup>th</sup> September 2004. The time limit for lodging protests was 17h25.

Decision: The protest was lodged within the time limit.

---

<sup>1</sup> Protocol, Article 21.1(c), text amended 23<sup>rd</sup> July, 2004 (Protocol Amendment no 7): 'Size of Jury. The quorum for meetings of the Jury shall be all five members. However if some members are unavailable for any reason, the quorum may be reduced provided that (i) the remaining members of the Jury believe there is an urgent need to resolve an issue ... and resolution ... cannot be delayed without disrupting the event; (ii) the jurisdiction of the remaining Jury is limited to only those urgent matters requiring resolution to avoid disrupting the event, ...'.

(b) A protest flag was displayed on K Challenge as soon as possible after K Challenge discovered that her hull was damaged.

Decision: When the Jury is satisfied that a competitor could not reasonably have known about damage which would give rise to a protest under rule 14, the 'as soon as possible' requirement in Racing Rules of Sailing (RRS) C6.1(b)<sup>2</sup> runs from the time of the discovery of the damage. The Jury is therefore satisfied that the protest flag was displayed in compliance with the rule.

The Jury is satisfied that the protest is valid.

FINDINGS to the three parts of the protest

1. The decision of the umpires to display a 'green and white flag' (indicating 'no penalty') is not open to redress or appeal (RRS C9.1<sup>3</sup>).

**Decision:** This part of the protest is therefore dismissed.

2. Evidence was heard from K Challenge's helmsman Thierry Peponnet and bowman Gilles André, Le Defi's helmsman Philippe Presti, and one of the umpires umpiring the match, Marianne Middelthon, on the issue as to whether Le Defi broke rule 14<sup>4</sup>.

Chief Measurer Ken McAlpine gave evidence on the question of the nature and extent of the damage, which included photographs showing damage to K Challenge approximately 2 metres from the bow on the starboard side. Although there was no evidence of structural damage, the skin had delaminated requiring an overnight repair, the cost of which is estimated to be €1000. There was no evidence of damage to Le Defi.

Marianne Middelthon gave evidence that the umpires were unaware of the contact, but that had they been aware, they would have given a penalty to K Challenge for breaking racing rule 15<sup>5</sup>. Furthermore, the wing boat was in the correct position and identified the moment when the boats became overlapped. Very soon afterwards Le Defi fulfilled her obligation to keep clear. Contact occurred because K Challenge broke racing rule 15.

**Decision:** The Jury finds that K Challenge, with superior speed, established an overlap from clear astern of Le Defi, within approximately four metres of each other. Le Defi immediately began to luff to keep clear at a rate consistent with her obligation to keep clear. There was contact between the stern of Le Defi and the starboard bow of K Challenge, though this was not apparent to the crew or umpires at the time. The Jury is satisfied that Le Defi's failure to keep clear as required by rule 11<sup>6</sup> was caused by K Challenge's failure to give the room required to be given under RRS 15. Le Defi is

---

<sup>2</sup> RRS C6.1(b) 'A boat may protest another boat ... under any rule [other than other than a rule of part 2 except rule 14] ... by clearly displaying a red flag as soon as possible after the incident.'

<sup>3</sup> RRS C9.1: 'There shall be no request for redress or an appeal from a decision [made by the umpires] ...'

<sup>4</sup> RRS 14 amended by Notice of Race Part C 2.4 (d) (i): 'A boat shall avoid contact with another boat if reasonably possible. However, a right-of-way boat or one entitled to room (a) need not act to avoid contact until it is clear that the other boat is not keeping clear or giving room, and (b) shall not be penalized under this rule unless there is contact that causes serious damage.'

<sup>5</sup> RRS 15: 'When a boat acquires right of way, she shall initially give the other boat room to keep clear...'

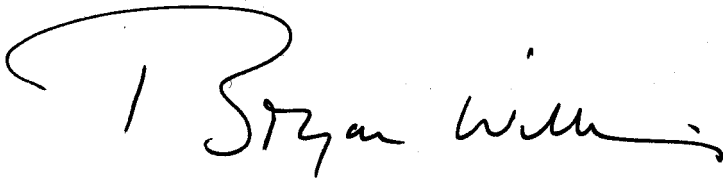
<sup>6</sup> RRS 11: 'When boats are on the same tack and overlapped, a windward boat shall keep clear of a leeward boat.'

therefore exonerated under RRS 64.1(b)<sup>7</sup>. The Jury is satisfied that she did everything reasonable to try to avoid contact as required by RRS 14. The protest is therefore dismissed.

3. Notice of Race Part C 2.4(d)(ii)(d)<sup>8</sup> requires the Jury held under RRS 14 to apportion the percentage responsibility for damage.

**Decision:** The Jury apportions responsibility as follows:

K Challenge 100%  
Le Defi 0%

A handwritten signature in black ink that reads "Bryan Willis". The signature is written in a cursive style with a large, sweeping initial 'B'.

Bryan Willis

Americas Cup Jury: Gabrielle Kaufmann-Kohler (absent), Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (chairman)

---

<sup>7</sup> RRS 64.1(b): 'When as a consequence of breaking a rule a boat has compelled another boat to break a rule, ... she shall be exonerated.'

<sup>8</sup> NoR Part C 2.4(d)(ii)(d): 'At any hearing held under RRS 14, as amended, the Jury shall consult the Measurement Committee in determining whether or not any damage was serious. The Jury shall apportion the percentage responsibility for damage, serious or otherwise, to the yachts involved in the incident. This alters RRS 60.3, RRS C6.6(c), and RRS C8.4.'