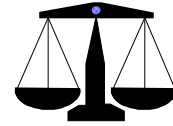




AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN027 Jury Decision ACJ012



28th August 2005
3 pages

To: Challengers and Defender
Copies: ACM, Chief Measurer, Jury, Umpires, Media Centre

JURY HEARING ACJ012 27th August 2005 18h00 local in Malmö, Sweden

PROTEST: Race Committee vs. K-Challenge (FRA 60)

Date of Incident: 25th August 2005
Flight 1 Match 3 K-Challenge defeated +39 Challenge by 38 seconds
Flight 2 Match 2 Victory Challenge defeated K-Challenge

The Measurement Committee reported to the Race Committee on Friday 26th August 2005 at approximately 19h30, it had decided that in Flights 1 and 2 of the Malmö - Skåne Louis Vuitton Act 6 sailed on Thursday 25th August 2005, K-Challenge was not in compliance with ACC Rule 34.1¹.

The Race Committee shortly thereafter lodged a Protest against K-Challenge in accordance with the Racing Rules of Sailing (RRS) rule 78.3² alleging that K-Challenge had sailed in Flights 1 and 2 of Act 6 with 11 battens in her mainsail, in contravention of ACC Rule 34.1 which allows a maximum of 10 battens.

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 was an urgent need to resolve the issue and that resolution could not be reasonably delayed without disrupting the Event (Protocol, Article 21.1(c)³).

Both the Race Committee and K-Challenge agreed that the four members of the Jury present should hear the Request for Redress.

Validity

The Protest was received by the Jury at 19h38 on Friday 26th August 2005. The Chairman of the Measurement Committee reported to the Race Committee at approximately 19h30 on Friday 26th

¹ ACC Rule 34.1: 'The maximum number of battens are as follows: ... Mainsail 10'

² RRS 78.3: 'When a measurer for an event decides that a boat ... does not comply with the class rules, he shall report the matter in writing to the race committee, which shall protest the boat.'

³ Protocol, Article 21.1(c): 'Size of the 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 before all five members of the Jury will be available, and resolution reasonably 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 ...'

August that K-Challenge did not comply with the class rules during racing on Thursday 25th August. The Protest was lodged within the time limit.

Decision

The Jury decided the Protest was valid.

Evidence and Submissions on whether the Protest should be heard

The Chairman of the Measurement Committee, Mr Ken McAlpine, gave evidence that he inspected K-Challenge at approximately 09h00 on Friday 26th August 2005 following the receipt of information from an unnamed person who had raised the possibility that K-Challenge may have had more than the permitted number of battens in her mainsail.

On inspection of the sail in K-Challenge's compound, he had observed that K-Challenge's mainsail contained 11.

George Clyde, representing K-Challenge, accepted that K-Challenge had sailed in both races on Thursday 25th August with 11 battens in her mainsail and that this was in breach of ACC Rule 34.1. He submitted that notwithstanding that K-Challenge had breached ACC Rule 34.1, the Jury should decline to hear the Protest lodged by the Race Committee as this effectively constituted a "back door" method whereby a Competitor could have a Protest heard well after the Protest time had expired. He submitted that by accepting such Protest it would effectively mean that there would be no limit to the length of time in which such protests could be lodged. Furthermore, the Competitor could avoid disclosing its identity as occurred in this case.

He further submitted that K-Challenge had suffered a commercial prejudice by the delay, in that press releases had been issued to sponsors and others on the outcome of the two races.

Mr McAlpine gave evidence that it was particularly difficult to see battens inside these sails unless the sun was behind them, and that the breach could be confirmed only by a close up physical inspection of the mainsail.

Decision

The Jury ruled that the hearing should proceed, noting that the protest was properly lodged and the Competitor admitted a breach of the Rules.

Evidence and Submissions on the appropriate Penalty

George Clyde submitted that the breach of the Rule had no significant effect on the outcome of the match.

Matthew Steele, sail-maker of K-Challenge, gave evidence that two additional batten pockets were added to the sail approximately one month ago, to increase the life of the sail by reducing delamination and leach flutter, and that in his opinion the effect on performance of the boat would be immeasurable. The inclusion of the extra batten was an oversight.

Thierry Peponnet, the helmsman of K-Challenge gave evidence that they had a good start in Flight 1 race 3 against +39 and led for the entire race by a significant margin.

Ken McAlpine supported the evidence as to the purpose for such a batten. He gave evidence that in the conditions on that day, the extra batten would not have had a measurable effect on the performance of the boat and would not have affected the result.

Paul Henderson, representing +39, submitted that K-Challenge had sailed a good race and did not wish to make any submissions on penalty.

Conclusion

The Jury is satisfied that K-Challenge was in breach of ACC Rule 34.1 throughout both races sailed on Thursday 25th August.

The Jury is satisfied that the breach was inadvertent and that there was no intention by K-Challenge to break a rule. The Jury is further satisfied that the breach of the rule had no significant effect on the outcome of the matches.

In the case of a fleet race, RRS 64.1(a)⁴ provides that in respect of penalties, when it is decided that a boat has broken a rule, the Jury has no discretion other than to disqualify the boat.

In the case of a match race, RRS C6.6⁵ applies and provides that if the Jury decides that a breach of a rule has had no significant effect on the outcome of the match, it may

- (1) impose a penalty of one point or part of one point;
- (2) order a resale; or
- (3) make another arrangement it decides is equitable, which may be to impose no penalty.

The Jury considers it is appropriate in the circumstances to impose a fine of €5,000 on K-Challenge in accordance with Protocol Article 21.4(c)(ii)⁶. The Jury notes that such a penalty may not be considered appropriate for the Americas Cup Regattas during 2006 and 2007.

DECISION

K-Challenge (FRA-60) is fined €5,000, such fine to be paid within 28 days to the Event Authority.



Bryan Willis

America's Cup Jury:

Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (Chairman)

⁴ RRS 64.1(a): 'Penalties and Exoneration: (a) When the protest committee decides that a boat that is a party to a protest hearing has broken a rule, it shall disqualify her unless some other penalty applies ...'

⁵ RRS C6.6: 'Protest Committee Decisions ... (b) If the protest committee decides that a breach of a rule has had no significant effect on the outcome of the match, it may (1) impose a penalty of one point or part of one point; (2) order a resale; or (3) make another arrangement it decides is equitable, which may be to impose no penalty.'

⁶ Protocol, Article 21.4(c)(ii): 'Jurisdiction: The Jury shall act both as a jury under the applicable rules of sailing ... and shall be empowered as follows: ... (c) to impose any penalty on a Competitor the Jury believes to be just and equitable, having regard to the nature and manner and effect of the breach, including but not limited to any one or more of the following: (i) censure; (ii) fine; ...'