



AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN069a



Emirates Team New Zealand
Application concerning Clause 16.5 of the
Notice of Race

Jury Decision Case ACJ026

with typographical error corrected – para [15]

26th April 2007

To: Challengers and Defender, ACM, Chief Measurer, Regatta Director (“**Parties**”)

Applicant: Royal New Zealand Yacht Squadron represented by Emirates Team New Zealand (“ETNZ”)

An Application in respect of Clause 16.5 of the Notice of Race governing the races of the Louis Vuitton Cup

AND

An Application filed by ETNZ concerning the definition and use of weather boats

The Application

[1] On the 19th April 2007 an Application was filed by ETNZ with three questions in respect of the Notice of Race (“NoR”) Clause 16.5(a) for the Louis Vuitton Cup.

The Applicant’s Questions

[2] The three questions asked by the Applicant were:

“1. In NOR 16.5 (a) do the words “primary purpose” refer to;

- (a) at that time, or
- (b) a period of time or e.g. 1 hour, or
- (c) a purpose setup weather boat

2. Could a Teams non entered AC boat sailing alone, on a tow or stationary in or around the course area be considered a “weather boat”?

3. Could a Teams non entered AC yacht stationary with “battle flags” hoisted in the vicinity of where Mark 1 would likely be positioned be considered a “weather boat”?”

[3] On 20th April, the Jury issued Jury Notice JN067, which provided directions and a timetable. Jury Notice JN067 provided as follows:

“[1] ETNZ filed an Application on the 19th April 2007 in respect of the interpretation of the Notice of Race (“NoR”) clause 16.5(a) which reads provides:

“(a) Boats whose primary purpose is the collection of meteorological data are Weather Boats.”

Directions and Timetable

[2] Any Party wishing to Respond to this Application shall submit their Response by Sunday 22 April 2007 at 12h00.

[3] In submitting a Response, Parties may wish to consider whether the questions asked by ETNZ are hypothetical and if they consider that they are, whether they meet the exceptional circumstances provided for in clause 4.5 of the Jury’s Rules of Procedure.

[4] After any Responses have been received, ETNZ shall be entitled to submit a Reply to such Responses by Monday 23 April 2007 at 12h00.

[5] Other than as provided for in this timetable, unless the Jury directs otherwise no Party will have any other opportunity to Respond or Reply to this Application.”

Submissions in Response

[4] Submissions in Response were made by Desafio Española 2007, the Regatta Director, Team Alinghi SA and BMW ORACLE Racing.

[5] Such Responses addressed issues as to whether the questions asked were hypothetical or interpretative. Submissions were also made in respect of the interpretation of Article 13.13 of the Protocol, Clause 16.3 of the Terms of Challenge and Clause 16 of the NoR.

ETNZ Reply to Responses.

[6] On 23rd April ETNZ advised the Jury Chairman by telephone that ETNZ did not wish to reply to the various Responses.

Jury Decision on Jurisdiction and whether the Questions are Hypothetical

[7] Article 21.4 of the Protocol empowers the Jury to resolve all matters of interpretation of the Protocol, Terms of Challenge and applicable NoR.

[8] The Jury is satisfied that the first question asked in the Application as to what the words “primary purpose” in the NoR Clause 16.5(a) refer to is an interpretative question and can be properly answered by the Jury.

[9] Rule 4.5 of the Jury Rules of Procedure (“RoP”) provides that “the Jury will answer hypothetical questions only in exceptional circumstances ...”

[10] In Jury Decision ACJ001 the Jury considered in paragraphs [12] to [15] what constituted hypothetical questions.

[11] Questions 2 and 3 are hypothetical in that there is no evidence that these events have happened. In determining that Question 1 is an interpretive question that can be answered, the Jury recognises that Questions 2 and 3 are related to Question 1 and that

answering the two further questions may assist Competitors to understand the Jury's answer to Question 1. The Jury considers that answering Questions 2 and 3 is an exceptional circumstance and will meet the criteria of Rule 4.5 of the Jury's RoP.

Decision on the Three Questions

[12] NoR 16.5(a) provides that weather boats are "boats whose primary purpose is the collection of meteorological data...".

[13] A boat's design or stated purpose is not determinative of its primary purpose. The use of a boat to collect meteorological data, on more than a temporary basis, is determinative.

[14] If the collection of meteorological data is merely incidental to the boat's function, the collection of meteorological data is not the boat's primary purpose and it is therefore not a weather boat within the meaning of NoR Clause 16.5(a). A non-entered AC yacht under normal circumstances is a training boat and accordingly its primary purpose is not to collect meteorological data and is therefore not a weather boat. If it ceased to be used principally as a training boat and its primary purpose became the collection of meteorological data, it would become a weather boat. If a spectator boat has as its primary purpose to provide for spectators, it is not a weather boat.

[15] NoR Clause 16.5(b) provides that "weather boats shall not be longer than fourteen (14) metres." The Jury considers that if a boat is more than 14 metres long and its primary purpose is to collect meteorological data, it would be a weather boat within the meaning of NoR Clause 16.5(a) but would breach NoR Clause 16.5(b). The length of a boat is not a test as to what is a weather boat.

[16] In the event that a non-entered AC yacht ceases to be primarily used as a training Yacht and then subsequently meets the weather boat primary purpose criteria in terms of NoR Clause 16.5(a), it could then become a weather boat notwithstanding that an AC yacht is longer than 14 metres. In such circumstances it would then breach NoR Clause 16.5(b).

[17] If any boat is a weather boat in terms of NoR Clause 16.5(a) it will then be included as one of the six vessels supporting sailing operations in terms of Article 13.13 of the Protocol.

Answers to the Three Questions

[18] Question 1

"1. In NOR 16.5 (a) do the words "primary purpose" refer to;

- (a) at that time, or
- (b) a period of time or e.g. 1 hour, or
- (c) a purpose setup weather boat"

Answer to Question 1

See paragraphs [12] to [16] above.

[19] Question 2

“2. *Could a Teams non entered AC boat sailing alone, on a tow or stationary in or around the course area be considered a “weather boat”?*”

Answer to Question 2

No, provided the boat’s primary purpose is other than collecting meteorological data.

[20] Question 3

“3. *Could a Teams non entered AC yacht stationary with “battle flags” hoisted in the vicinity of where Mark 1 would likely be positioned be considered a “weather boat”?*”

Answer to Question 3

No, provided the boat’s primary purpose is other than collecting meteorological data.

Costs

[21] Pursuant to Article 21.3 of the Protocol and the Jury Guidelines for the Award of Costs, the Jury considers that the Decision is of universal application and no costs are awarded.

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

Bryan Willis

America’s Cup Jury:

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