



AMERICA'S CUP 32

AMERICA'S CUP JURY JURY NOTICE JN076



Protest by Desafío Español v.
Mascalzone Latino – Capitalia Team
Compliance of Class Rule regarding topmast backstays

Jury Decision Case ACJ032

4th May 2007

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

Protest by Real Federación Española de Vela represented by Desafío Español 2007 ESP 97 (“Desafío Español”) v. Mascalzone Latino – Capitalia Team ITA 99 (“Mascalzone Latino”)

Date of Incident: 2nd May 2007, Louis Vuitton Cup Challenger Selection Series Round Robin 2, Flight 4, Match 1

Date of Hearing: Thursday 3rd May at 18h30 in Valencia

Desafío Español Protest

[1] Desafío Español delivered a protest by email to the Jury Secretary and to Alessandra Pandarese from Mascalzone Latino at 21h03 on 2nd May 2007.

[2] The protest by Desafío Español was as follows:

“ESP97 protest ITA 99

At 20.30 of today the team was checking the video of today’s regatta vs MZL when we realize that ITA 99 has put the back stay during the race ..During ante- start the back stay was in the mast and they use it later in the race. since we are short of time for further review we may withdraw if we are not right.”

[3] On 3rd May 2007 Desafío Español sent by email to the Jury Chairman (with a copy to the Jury Secretary and to Alessandra Pandarese) a further email giving clarification of the protest, as follows:

“Further to my yesterday e-mail with our protest I would like to clarify the following:

The rule infringed is the America’s Cup Class Rule Version 5.0;

“44 Compliance whilst Racing.

...

(f) backstays ,topmast and check stays shall remain permanently attached to their fixing points on the mast and the hull ,deck or cockpit and in the same load bearing position throughout the race...”

We have a video in which it can be seen ML changing the position of the backstay at the end of leg 3 the file is to big for sending it by e-mail.”

Jurisdiction

[4] The Jury Chairman brought the Parties’ attention to the fact that two of the five appointed Jury members (Henry Peter and Henry Menin) were 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 (Article 21.1(c) of the Protocol). Both Desafío Español and Mascalzone Latino accepted that the three members of the Jury present should hear the Protest.

Validity of Protest

Desafío Español Submissions and Evidence

[5] José María Alvarez and Jordi Lamarca represented Desafío Español. José María Alvarez submitted that the protest was delivered at 21h03 on 2nd May 2007 which was within the time limit for delivering protests of 21h07.

[6] At the same time as they filed the protest, Desafío Español informed Mascalzone Latino by emailing a copy of the protest to Alessandra Pandarese of Mascalzone Latino.

[7] Desafío Español did not display a red flag on ESP 97. They first became aware of the protest incident at approximately 20h30 on 2nd May 2007 when reviewing a video recording of the race.

[8] Santiago Lopez, the Desafío Español strategist, gave evidence that he was a crew member and that one of his jobs is to review the televised video recording of the day’s matches. Upon viewing the video of the match against Mascalzone Latino, he realised that during the pre-start, the topmast backstays were not located in the fly blocks, but was surprised to see that they were located there at the end of the race. In viewing the video, he was able to observe during the course of the race for approximately a ten second period the topmast backstays being removed and then passed to the fly blocks.

[9] Santiago Lopez stated that no member of the crew had seen the change during the race, nor that the topmast backstays’ positions had changed during the race. It was difficult to see such an incident during the course of the race and that they had not realised it had happened.

Mascalzone Latino Submissions and Evidence

[10] Cameron Dunn submitted that under the Racing Rules of Sailing (“RRS”) Rule 61.1(a) a boat intending to protest is required to inform the other boat at the first reasonable opportunity in these circumstances, and is also required to display a red flag. He also submitted that under RRS Rule C6.4(b) for a protest to be valid a boat must keep her red flag displayed until she has informed the Umpires of her protest after finishing. He also noted that the boats were at times two to three boat lengths apart during the course of the race.

[11] Cameron Dunn submitted that all the requirements for the protest to be valid had not been met and that the protest should not be heard as it was invalid.

Decision on Validity of the Protest

Time Limit

[12] The time limit for delivering protests was 21h07. The protest was delivered at 21h03, which was within the time limit.

Red flag

[13] A protest may be valid when a boat has not displayed a red flag as soon as possible after the incident in circumstances where it is not reasonably possible to observe the incident whilst racing. In this case the Jury was satisfied that it was not reasonably possible for Desafío Español to have observed the incident during the race. Since Desafío Español did not become aware of the circumstances until after the race was completed, a red flag was not required in this case.

Informing the Protestee

[14] The Protestor first became aware of the alleged infringement following the viewing of the video recording at approximately 20h30 on the evening of the race. In these circumstances when this was so close to the protest time limit, it was appropriate for the protestor to inform the protestee by email at the same time as lodging it with the Jury.

Protest Valid

[15] The Jury determined that the requirements for the protest had been met (RRS Rule 63.5). The protest was therefore valid.

Evidence and Submissions on whether Mascalzone Latino Broke a Rule

Desafío Español

[16] José María Alvarez submitted that Mascalzone Latino was in breach of America's Cup Class Rule ("ACC Rule") 44.1(f) – Version 5.0, in that they had commenced their race with their topmast backstays attached to the base of the mast and towards the end of the third leg of the race, had removed them and attached them to the fly blocks. It was submitted that this penalised the performance of Desafío Español on the upwind legs of the course.

Submissions from Mascalzone Latino

[17] Cameron Dunn stated that he agreed that the topmast backstays had been moved to the fly blocks approximately two-thirds to three-quarters of the way up the third leg of the course and accepted that this was an infringement of ACC Rule 44.1(f).

Reference to the Measurement Committee

[18] The Jury referred the matter to Ken McAlpine, the Chairman of the Measurement Committee for the Measurement Committee to determine as to whether a breach of the ACC Rules had occurred.

[19] After an adjournment for 30 minutes, Ken McAlpine stated that he had consulted with three other members of the Measurement Committee and the majority view of the Measurement Committee was that ACC Rule 44.1(f) had been breached.

Decision on the Protest

[20] The Jury accepted the Measurement Committee's determination that Mascalzone Latino broke ACC Rule 44.1(f).

Submissions on Penalty

Desafío Español

[21] José María Alvarez submitted that its witnesses would show that there had been an improvement to the performance of Mascalzone Latino as a result of them breaking ACC Rule 44.1(f), and that it was material and it had affected the outcome of the race.

Scott Graham

[22] Scott Graham gave evidence that he was the principal designer for Desafío Español and had considerable America's Cup and other relevant experience. He produced a graph which showed the effect of not having a 10mm topmast backstay attached to the fly blocks. Vibration of the backstay would increase the difference in these results, as would an increase in diameter of the backstay. The graph provided an analysis of the metres gained per 2.6 nautical miles upwind at different wind speeds. He stated that in his opinion in a wind speed of between 15 and 16 knots the effect of the absence of a topmast backstay upwind would be at least one boat length and as much as two boat lengths on such an upwind leg. This was supported by the graph. He considered that this represented a significant performance advantage. He could not say that Desafío Español would have won the race if the breach had not occurred.

Mascalzone Latino

[23] Silvio Arrivabene gave evidence on behalf of Mascalzone Latino. He submitted that the effect of having a topmast backstay during 4.1 nautical miles of upwind beating would be 1.23 seconds of disadvantage. When travelling downwind the small drag it would produce would be a small advantage.

Cameron Dunn

[24] Cameron Dunn submitted that the breach that had occurred was not intentional and was a mistake. The mistake had come about in circumstances where America's Cup Class Public Interpretation No. 7 had been issued by the ACC Technical Director on 7th June 2005. Shortly afterwards, on 14th June 2005, Rule Amendment No. 1 was issued,

which Mascalzone Latino had missed. They had sailed for the last two years relying on Public Interpretation No. 7.

[25] Cameron Dunn submitted that they largely agreed with the upwind VMG prediction graph that was produced by Scott Graham. In respect of vibration, he submitted that he did not consider this to be a factor as the backstays of their boat do not vibrate. At the start of the race, Mascalzone Latino had a 3 boat length advantage over Desafío Español. At approximately two-thirds of the way up the second beat, crew members aboard Mascalzone Latino started to bring the topmast backstays towards the stern of the boat and approximately three-quarters of the way up the beat they attached them to the fly blocks. Cameron Dunn gave evidence that the reason for the change was a safety factor that they normally applied at that wind speed to protect the topmast.

[26] Cameron Dunn also submitted that the appropriate penalty should be a monetary or loss of sails penalty with a loss of points or disqualification being extremely harsh and disproportionate to the rule which had been broken.

Other Competitors' Submissions

[27] Representatives of all other Competitors present at the hearing were invited to make submissions on penalty. None chose to do so.

Summary from Desafío Español

[28] José María Álvarez submitted that the evidence presented by Desafío Español showed that the breach of ACC Rule 44.1(f) did have a significant effect on the outcome of the race, that Mascalzone Latino had not proved the breach was irrelevant and that the appropriate penalty was disqualification of Mascalzone Latino.

Jury Findings of Fact and Conclusion

[29] The breach of ACC Rule 44.1(f) by Mascalzone Latino was inadvertent.

[30] The breach occurred when Mascalzone Latino was near the end of leg 3 of a 4 leg race and the advantage (if any) occurred only after that moment.

[31] When a team attaches the topmast backstays to the fly blocks for a complete race, they will suffer the disadvantage of drag on all windward legs. Mascalzone Latino did attach the backstays to the fly blocks before the last run, for reasons of safety. Had they wished to protect the topmast on the last run and comply with the relevant class rule, then they would have had to attach the backstays to the fly blocks before the start of the race and suffer drag on two complete windward legs. By not attaching them until near the end of the second windward leg they gained a benefit.

[32] Mascalzone Latino attached the topmast backstay to protect the topmast on the final downwind leg. It is not possible to determine whether the topmast would have failed in wind speeds of 12 to 15 knots.

[33] The Jury is satisfied that the breach had no significant effect on the outcome of the match (Notice of Race ("NoR") Clause 14.2).

Decision on Penalty

[34] A rule infringement would normally result in disqualification. However, NoR Clause 14.2 allows the Jury to impose a penalty other than disqualification where a breach of a rule has had no significant effect on the outcome of a race. In terms of Article 21.4(c) of the Protocol and NoR Clause 14.2 the Jury considered the most equitable arrangement was to:

- (a) annul Mascalzone Latino's 2 point score from the match and re-sail it; and
- (b) impose a fine of €10,000 (ten thousand Euros) to be paid by Mascalzone Latino within 28 days of the date of this decision to the Event Authority.

[35] If Mascalzone Latino had been disqualified and no points had been awarded to Desafío Español, this would have denied the opportunity for both boats to have received any points from the race. To simply remove two points from Mascalzone Latino so that neither Team scored points would benefit other Competitors which would be an inequitable outcome in this case. Two points could have been awarded to Desafío Español but this was also not considered an equitable arrangement since they did not win the match and the Jury had decided that a breach of the rule had no significant effect on the outcome of the race. The decision to order a re-sail reflects the Jury's consideration of all these factors and the desirability of resolving the matter 'on the water'.

Match Re-sail Arrangements

[36] At the conclusion of the oral hearing, the Jury Chairman advised that the Jury would discuss the re-sail arrangements with the Regatta Director and include them with this written decision.

[37] The re-sail arrangements are that the re-sail is scheduled to be sailed on the first day that only one flight is otherwise scheduled in Louis Vuitton Challenger Selection Series Round Robin 2, except that if this occurs after all other flights have been concluded and the result of the re-sail would have no effect on either yacht to become a semi-finalist, then in that event it will not be sailed and Mascalzone Latino and Desafío Español will each be awarded one point.

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

America's Cup Jury:
Graham McKenzie, David Tillet, Bryan Willis (Chairman)