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K. Papachristopoulos

Germany/Greece

**APPEAL BOARD DECISION**

**UIM Appeal Board**

**Decision**

Concerning the Appeal of  
Driver Marco Pennesi, Team Metamarine

- Appellant –

against

the Race Jury decision at the U.I.M. P1 Grand Prix of Malta 4-6<sup>th</sup> May 2007  
to disqualify boat no 64 "Fainplast"

On the basis of the documents and of the UIM Appeal Board  
telephone conferences from 3<sup>rd</sup> August and from 6<sup>th</sup> August 2007  
which was attended by:

the body,  
Kimon Papachristopoulos, Chairman,  
Peter FencI, Member,  
Erwin Lang, Member,  
but not attended by the Appellant,  
Mr. Marco Pennesi who was invited but absent,

the UIM Appeal Board decided:

***The appeal is not upheld.***

***The Appellant bears the costs of the appeal procedure***

**Grounds**

On 5<sup>th</sup> May 2007 during the first round of the U.I.M. P1 Grand Prix of  
Malta Boat No. 64 "Fainplast" driven by the Appellant was ahead of

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boat 88 "OSG" both running approximately the same heading towards the coast. Boats 81 and 55 at her side were following with some distance. The boats had already passed buoy "X". The helicopter crew filmed for the production of the race story and at that moment they were focused on the race between boat 64 and 88. Then boat 88 turned starboard to collect buoy "Y" and passed it on the right side. Boat 64 instead kept its course and missed buoy "Y" i.e. they passed it on the wrong side.

A buoy officer – as foreseen in rule 300.04 of the U.I.M. Pleasure Navigation Rules - was not positioned nearby buoy "Y". Therefore the missing of buoy "Y" was at first undetected by the race officials and at 18.45 hrs the first results were posted.

At the same time (5<sup>th</sup> May 2007, 8.45 hrs) Mr. Giancarlo Cangiano, boat no. 88 "OSG" lodged a protest against the Appellant who was disqualified after a hearing by the race jury. The jury decision was notified to the Appellant on 6<sup>th</sup> of May 21.10 hrs.

The Appellant applies for the revocation of the disqualification.

The Appellant denies to have missed buoy "Y". He claims that the witnesses did not have the chance to see "Fainplast" passing buoy "Y". As witnesses crew members from boat 88, boat 81 and the crew from the helicopter were present at the jury meeting. The Appellant claims that due to the distance between boat 64 and boats 88 and 81 and due to the height of the waves the crew members of the latter boats (88 and 81) could not see on which side boat 64 passed buoy "Y". Furthermore the helicopter crew member Simon Weary testified – says the Appellant - that only boats no. 88 and no 55 were in his visibility and therefore he only supposed the mistake of "Fainplast" but he would not have seen anything illegal.

The Appellant has the opinion that due to the absence of a buoy officer which obviously constitutes an infringement of rule 300.04 of the U.I.M. Pleasure Navigation Rules it would be against the rules to disqualify him for missing buoy "Y". Rule 300.04 would also intend to protect the drivers from unjustified disqualification on the basis of possible false testimonies.

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Furthermore he has the Opinion that the protest was lodged too late as well as the notification of the Appellant from the disqualification on 6<sup>th</sup> of May 21.10 hrs was against the rules. There was a podium after the race and the protest was lodged later than one hour after the race and after the podium. Rules 301.01-13b and 301.13c are infringed says the Appellant.

The jury was formed illegitimately as there were 2 Italian judges (infringement of Rule 402.01-2). Mr. Gaspare Monti, who was reported as Belgian in fact was an Italian, says the Appellant.

Finally the testimonies of the “Wettpunkt.com” crew members should not have been taken into account by the jury according to rule 403.01. By underwriting their testimonies the joined the claim against the Appellant and this would be forbidden by rule 403.01.

It was agreed with the Appellant, represented by his Team Manager, to forego an Appeal Board meeting and to base the decision the detailed minutes of the testimonies.

The appeal was not to be upheld:

The facts of the case and especially the fact of “Fainplast missing buoy “Y” are proven by the testimonies of Miles Jennings, crew member of “Wettpunkt.com”, Brynn Williams and Simon Weary both crew members of the helicopter.

The Appeal board did not lose sight of the fact, that the crew members of “OSG” and “Wettpunkt.com” had an own interest in the outcome of the protest procedure as both teams competing against “Fainplast” in the same class. On the other hand this does not automatically mean that competitors can not testify against each others.

With Mr. Jennings and Mr. Williams from the helicopter crew however there were two neutral witnesses and the Appeal Board sees no reason to doubt in their testimonies. They had the best opportunity to watch the Appellants boat passing by buoy “Y”. According to Mr. Weary the helicopter crew was focused on the race between boat 64 and boat 88. So they followed these boats. The fact that the helicopter followed boat 88 when they turned right to collect buoy “Y” does not mean necessarily that the crew could therefore not see boat 64, the Appellants boat. Accordingly both crew members of the helicopter confirmed that they had seen boat 64 passing by buoy “Y” from the

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wrong side. Mr. Williams explained in this regard, that the helicopter was in the middle of both boats. Even filming boat no 88 does not mean that the cameraman could not watch one boat after the other as the crew members testified.

Therefore the Appeal Board as well assumes, that Mr. Jennings could in spite of the distance and the height of the waves see boat 64 passing buoy "Y" at the wrong side as he clearly testified.

The right penalty for missing a buoy is disqualification.

The absence of a buoy officer, which is of course an infringement of the rules by the organizer, does not exclude the possibility to penalize the missing of a buoy. If a penalty could not be given in such a case this would mean that the competitors would no longer have to abide by the buoys. This would be an inadmissible point of view.

Rule 403.04 foresees a protest period of one hour. This protest period starts with the posting of the first results. According the documents these results were posted at 18.45 as the signed notice of the OOD shows. At the same time and therefore in due time Mr. Cangiano lodged his protest.

The rules do not link any respites with the podium or the notification of the jury decision. Furthermore and safe of the question if rule 301.13c. is due to the contradiction to rule 403.04 legally ineffective, Rules 301.xx are only applicable to Regularity Competitions and not to P1 events. Therefore it is without importance how much time after the podium or after the race a protest was lodged or a team was notified from a jury decision. The only relevant term is the one hour term after the posting of the first results.

Furthermore the rules contain no regulations concerning the podium. The podium is a ceremony for the public without any further relevance. Public and media are pleased by quick results. Therefore the organizer arranges a podium shortly after the race. The official results are those signed by the OOD and posted at the race office once, the results are clear. This may happen even a long time after the podium.

The Appeal Board can leave it open, if the composition of the jury was illegitimate as in such cases a decision which is legitimate for the rest must not be revoked only due to the illegitimacy of the jury. As the Appeal Board takes its own decision based on all available

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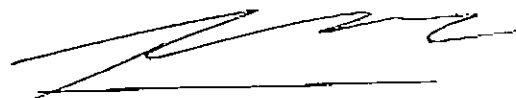
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information, any illegitimacy of the jury composition will be remedied through the new decision of a legitimate Appeal Board.

Finally the fact that the witnesses signed their testimonies obviously does not constitute a joint protest as the Appellant states.

Signatures of the appeal board members.

Peter Fencel



Erwin Lang

31. 8. 07 