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UIM Appeal Board

Decision

Concerning the Appeal of
Mr. Marco Pennesi

- the Appellant -

against

the Race Jury decision dated 28. – 31. May 2008 which was following a
protest of

Mr. Sigfried Greve

- the Protestor -

and which was taken in a telephone conference to disqualify boat #60
GFN Gibellato, Driver Marco Pennesi and to issue a yellow card against
him,

The UIM Appeal Board took its decision in a final telephone conference
on 24. September 2008.

The Appeal Board:

Kimon Papchrisoptoulos, Chairman

Erwin Lang, Member

Peter Fencel, Member

Testimonies

Pierre Colpin Driver #57 Centaurian Yachts

Nico Huybens Driver #57 Centaurian Yachts

Jean-Marie van Lancker Officer Of the Day

On the basis of the documents received and of various telephone
conferences the UIM Appeal Board decided:

The appeal is partly upheld.

***The disqualification of boat #60 GFN Gibellato is
cancelled. #60 GFN Gibellato receives all points
according to her racing results achieved at the 2008
Grand Prix of the Sea in Marseille.***

***The yellow Card issued against boat #60 by the race
jury is upheld.***

***50% of the appeal fee is to be reimbursed to the
Appellant.***

Grounds

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In the start lap of the 2nd race of the Evolution Class of the Grand Prix of the Sea on 25th May 2008 boat #60 which was driven by the Appellant, boat #66 which was driven by the Protestor and boat #57 which was driven by the witnesses Mr. Piere Colpin and Mr. Nico Huybens approached buoy C on almost parallel courses. Buoy C indicated an approximately 100 degree right handed turn to a short leg of the course.

During the approach to buoy C the witnesses (#57) who were first ahead of boats #60 and #66 were overtaken first from the Appellant (#60) on the port side and subsequent from the Protestor(#66) on the starboard side. The throttleman of boat 57 reduced the speed more than initially planned in order cross the course of boat 66 behind her stern before turning buoy C because he felt that boat 66 was far too fast to make the turn and that otherwise the danger of a collision was too high.

Boat 66 approached the buoy and initiated the turning of buoy C on a course and radius that was comparable to those the boats that had already turned buoy C had described before and without taking any risk to interfere with boat #57's initial course and radius. It is not clear when an overlap between boat #60 and #66 was established. Anyhow boat #66 was never ahead of boat #60 during the approach.

Due to his speed the Protestor (boat #66) could not turn on a course and radius comparable to the lines that boats #57, #60 and the boats that had already turned buoy C had navigated. Instead boat #66 turned on a radius which was wider by far. Boat #66 thereby crossed the courses of boat # 57 all other aforementioned boats in an considerable angle. After all boats #60 and #66 navigated on a collision course while turning in order to round buoy C.

This resulted in a collision in between both boats. The starboard corner of the stern of boat 66 collided with the midship port side of boat 60.

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The Protestor protested against the Appellant in due time and form after the race on 25th of May. The appellant infringed the national and international navigation rules and 205.04 of the Pleasure Navigation rules said the protestor. He would have been first at the buoy and on the inside course. Therefore he would have had the right of way says the protestor.

Since the chairman of the jury had to leave the race site in order to catch a plane the jury did neither convene a hearing of the parties nor take its decision on the 25th of May but following various telephone conferences on 31st of May. The Jury disqualified the appellant (boat #66) from the 2nd heat, i.e. the race on 25th of Mai and issued a yellow card against boat #66.

The new results following this decision were posted in Malta on Friday 6th June 2008.

Mr. Giampalo Maschietto, the team manager of boat #66 notified the U.I.M. office on 09. June 2008 on behalf of the appellant of his intention to appeal. On 19. June the team manager entered the appeal documents on behalf of the appellant. The appeal documents were not signed as determined by rule 405.06. Despite of this fact the U.I.M. office confirmed by email at the same day (19th of June) the receipt of the appeal documents without pointing out the missing signature. At the same day the appeal fees were received.

Subsequent and following a notice issued by the appeal board the appellant entered a signed copy of the appeal documents on 19th September 2008.

The appeal board informed the protestor and the appellant about its preliminary views on the case and the parties gave their respective statements. Further discussion of the case in between the appeal board an the parties followed by telephone and email. The appellant agreed to forego an appeal meeting and the appeal board handled the case through email and telephone (rule 405.10 last paragraph). The appeal board heard Mr. Pierre Colpin, throttleman of boat #57 Mr. Nico Huybens Driver of boat #57 Yachts and Mr. Jean-Marie van Lancker as witnesses.

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The appeal board answers the question for the admissibility of the appeal in the affirmative. By entering the signed copy after the 19th of June the Appellant did not infringe rule 405.05 of the Pleasure Navigation rules. According to this rule all appeal documents had to be entered by the 19th of June (10 days after the receipt of the notice of intention to appeal). In the specific case the lack of form of the appeal documents that was constituted by the missing signature could be remedied by signing a copy of the same documents that had been entered in due time and presenting these documents after the expiry of the deadline. The appeal board leaves it open, if a missing signature can be remedied in that way in general. But in the specific case it would be unfair to deny the remedy because the U.I.M. office confirmed the receipt of the appeal documents on the day of receipt and indicated thereby to the appellant, that he would have fulfilled all formalities instead of informing the appellant of the missing signature and asking him to present signed appeal documents in order to fulfil the formalities. Furthermore the appellant had already paid the appeal fees and the case of a missing signature cannot be compared with the case of non- or a late payment of the appeal fees. The latter failure would lead to the inadmissibility of the appeal..

The disqualification of boat #60 could not be upheld.

The jury decision was not void. Various infringements of the protest procedure can be found that might give reason to consider the nullity of it. The most serious infringement was taking the decision without a prior hearing of the parties (rule 404-01 + 404.03) and without giving the appellant the possibility to defend himself. But since the jury decision was signed by the Jury Members and communicated to the parties and to the public at the next race in Malta it fulfilled all formal criteria of a valid jury decision.

Thus the decision is rather to be considered valid but taken in an illegitimate way. Of course this does not automatically mean that the appeal must be upheld. The appeal board much more has to take its own decision (rule 405.09) and will thereby remedy the infringements of the procedure committed by the Jury.

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The applicable rules are rule 205.04 of the Pleasure Navigation rules and the International Regulations for Preventing Collisions at Sea (COLREGS).

The appeal board cannot follow the opinion of the race Jury that reasoned its decision as follows:

“The French authorities have reserved the race course area only for the race. This area was prohibited for other navigation. Therefore the general navigation rules do not apply.

U.I.M. rule 205.04 is not applicable.

Applicable rule: when passing a turn buoy and an overlap has been established, both boats must maintain a safe distance from each other and from the turn buoy.

Overlapping while overtaking does not give priority to the boat overtaking on the inside.

When trying to overtake on the inside the driver must anticipate the possible direction of the boat he/ she is trying to overtake and must take all necessary measures to avoid a collision.”

Apart from the fact that after the reasoning it still remained unclear, which alternative of the “applicable rule” was infringed according to the race juries opinion, this applicable rule cannot be found in the Pleasure navigation rulebook and it is not mentioned in the Standard Race Instructions.

The wording of rule 205.04 which reads “being the competition organised in free waters, open to public navigation all competitors shall always conform with the COLREGS” does not mean, that vice versa the COLREGS are not applicable, when the competition is organized in an area that is not open to public navigation because the rules do not foresee alternative navigation rules and the rules surely do not intend a competition without navigation rules. If no other rules are provided (e.g. in the Racing Instructions) the COLREGS must apply.

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The appellant did not commit an infringement of the navigation rules that would justify his disqualification.

The appellants boat #60 definitely did not (try to) overtake boat 66 and in consideration of all other facts of the case only in this case a disqualification would have been justified. Against the respective statement of the protestor it is proven by the footage of the Virtual Spectator and much more by the testimonies of Mr. Pierre Colpin and Nico Huybens that vice versa the protestors boat #66 rather tried to overtake the appellants boat #60.

Both witnesses had testified that they were overtaken first by boat #60 and subsequent by boat no. 66 and that 60 was clearly in the lead of boat 66 when boat 57 was overtaken. Furthermore both confirmed that at that boat #66 was too fast to turn the buoy an a radius that would comply with their and boat 66 anticipated radius and the radius of the other boats that had already turned that buoy.

Watching the Virtual Spectator footage the appeal board gained the impression that both boats approached the buoy on almost parallel courses and that boat 60 was always in the lead but that an overlap (without reference to a specific definition of the term “overlap”) in between the boats was established at that time.

It is therefore sure that boat 60 did not overtake boat 66.

If both boats where on almost parallel courses it must be considered if boat 60 which was port side of boat 66 infringed rule 15 of the COLREGS because boat 66 was on her starboard side. Applying this rule in that way would mean that in right hand turns the boat on the outside would have to give the right of way to the boat on the inside (even if the inside boat does not turn and not follow the general course of the race at all) whereas in left handed turns the boats on the inside would have to give way to the boats on the outside even if the outside boats would leave no space to the buoy or third boats for the boats inside of them. Such an application of the rules with different results for right- or left handed turns would be dangerous and in contradiction the spirit of powerboat racing. Furthermore it would be in contradiction to the manner of turning buoys as it was commonly practiced in P1 throughout the existence of this series. According to the testimony of Mr- Jean-Marie van Lancker who is an

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experienced U.I.M. commissioner and OOD in P1 it was always the practice that the boat which is first at the buoy prevails and if two boats arrive at the same time they have to leave enough space for each other in order to round the buoy. Finally the application of rule 15 would mean that the boat which has the way of right must not alter course or speed until the other boat has finalized its manoeuvre (rule no. 17). This would again be in contradiction to the needs of the race which is simply to round the buoy and it would create dangerous situations.

Thus the situation of rounding a buoy during a race cannot be solved by applying rules 15 and of the COLREGS. This situation is rather a special situation that is not foreseen in the COLREGS. It is a situation on which rule no. 2 2nd paragraph of the COLREGS fits best.

According to this rule and in order to avoid a collision the vehicles must navigate in any reasonable way and even against the rules (i.e. rule 15) if this is necessary due to special circumstances in order to avoid a danger. The rounding of a buoy during a race is such a special situation. When rounding a buoy, a clear right of way can only exist for the boat in the lead against an overtaking boat (which is still clearly astern when the rounding of the buoy begins). In all other cases of crossing coursed during the rounding of the buoy all boats have to navigate carefully and in a way avoiding a collision, even if this would mean to back off throttle. This is –with certain modifications by the respective rules- usual racing practice throughout all kind of motorized racing. Furthermore rounding a buoy by the inside boat and on a course or radius that is completely different to the general course of the race and crosses the curse of all other boats must be identified as dangerous.

The collision was after all rather caused by the protestors boat 66 then by the appellants boat 60. The disqualification therefore had to be cancelled.

On the other hand the yellow card was justified, because with sufficient care by appellant the collision would have been prevented as well. Even though doubt remained if boat #66 was overtaking #60 or if both boats where on parallel courses an overtaking could not be assumed in favour of #66. Given that 66 was overtaken by #60, 66 would have had the way of right according to rule 13 of the

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COLREGS. In this case the yellow card would not be justified. But this is another example for the fact that rounding a buoy during a race is a special situation that cannot be judged by rules 13, 15 and 17 of the COLREGS solely.

Given that rule 13 of the COLREGS would apply boat #60 (the protestor) clearly had to give boat #66 (the appellant) the right of way. I was proven by the Virtual Spectator footage and by the testimonies that while heading to buoy C boat 60 was astern of boat 66 until to the certain point when an overlap was established. According to rule 13 d of the COLREGS an overtaking boat does not lose the quality of taking over due to the change of the bearing to the other boat. This change is a normal effect of overtaking. In other words: When a full overlap is established the overtaking boat which is on the starboard side of the slower boat must not claim the right of way according to rule 15 because now the boats are on almost parallel courses. The COLREGS of course still would oblige boat 66 not to alter course and speed (rule 17) what boat 66 did in order to round the buoy. This obligation again can lead to dangerous situations. It is against the spirit of racing to oblige a competitor not to alter the course when passing a buoy. For the sake of safety and in order to practice racing it is mandatory that all boats round the buoys and follow more or less the general course. Here it is getting clear again that rules 13, 15 and 17 are not suitable to judge situations in connection with the rounding of a buoy. The rounding of a buoy is a special situation according to rule 2nd paragraph of the COLREGS that needs special measures. These measures are that the boats mutually have to leave enough space for each other in order to avoid a collision. Even if the driving of the protestor was much more dangerous than the driving of the appellant the appellant still had the possibility to avoid the collision. Therefore the issuing of one yellow card was justified.

The protestor could not be penalized at least because the deadlines for penalizing (rule 406.02) are expired.

Signatures of the appeal board members.

Chairman Kimon Papachristopoulos

Members :
Erwin Lang
Peter Fencel