

Case: 01-2024

Appeal by Onyx SUI 028, Urs Rothacher

against

a decision and the procedures of the protest committee of the Yacht-Weekend Bächau, 25 August 2024

A. Validity

- (1) The appeal is valid.

B. Statement of the Facts

- (1) SUI 001 protested SUI 028 for an alleged breach of rule 18 in race 3 involving both boats at the leeward mark before the final leg to the finish.
- (2) During the hearing, three witnesses were called by the parties to give evidence.
- (3) Before the witnesses gave evidence, the protest committee asked the parties to leave the hearing.
- (4) While the witnesses gave evidence, all witnesses and the protest committee were present.
- (5) After the witnesses had given evidence, the parties were brought back into the hearing and were allowed to question the witnesses, with both the witnesses and the protest committee remaining present.
- (6) The protest committee disqualified SUI 028 under rule 18.2.
- (7) SUI 028 appealed the decision.
- (8) SUI 028 appealed also the procedures of the protest committee alleging procedural errors, specifically that she was denied the right to be present while the witnesses gave evidence as required by rule 63.3(a), and the right to question the witnesses as required by the rule 63.6(c) rule.

C. Conclusions and Considerations

- (1) By denying the parties the right to be present while the witnesses gave evidence, as required by the first sentence of rule 63.3(a), the protest committee committed a procedural error.
- (2) By failing to exclude witnesses from the hearing except when giving evidence, as required by the last sentence of rule 63.3(a), the protest committee committed a procedural error.
- (3) By asking the parties to leave the hearing while the witnesses gave evidence, the protest committee deprived the parties of the opportunity to question any person who gives evidence, as required by rule 63.6(c). Giving the parties the opportunity to question witnesses after they had given evidence does not satisfy the requirements under rule 63.6(c). Therefore, the protest committee committed a procedural error.
- (4) These procedural errors hindered the parties from fully supporting their allegations or defences based on the witnesses' evidence and substantially affected the fairness of the hearing.
- (5) The Swiss Sailing Appeals Committee did not assess the protest committee's conclusions and decision on the incident at the leeward mark, as the decision on this appeal is based solely on the conclusions and

considerations related to the procedural errors stated in C(1), (2), (3), and (4).

D. Decision

- (1) The decision of the protest committee is reversed.
- (2) A new hearing shall be held within 45 days after the chair of the Swiss Sailing Appeals Committee has informed the organizing authority, the parties, and the chair of the original protest committee about the composition of the new committee, as provided in D(3).
- (3) A new protest committee shall be appointed, with its members appointed by the chair of the Swiss Sailing Appeals Committee.
- (4) SUI 028 shall be reinstated in race 3. However, following the new hearing, the new protest committee may decide to penalize SUI 028, which would override the reinstatement.

E. Procedural Matters

- (1) The panel of the Swiss Sailing Appeals Committee was composed of:
 - (a) Adrian Bauder, IJ, chair
 - (b) Patrick Diday, NJ
 - (c) Kathrin Gloystein, NJ
 - (d) Michal Kwiatek, NJ
 - (e) Stefan Pulfer, NJ
 - (f) Samuel Ramp, NJ
- (2) Copies of the decision are sent to:
 - (a) Urs Rothacher, SUI 028
 - (b) Peter Stöckli, SUI 001
 - (c) Erich Marty, chair of the original protest committee and member of the new protest committee
 - (d) Fredi Stucki, race officer, organizing authority
 - (e) Holger Herburger, IJ, chair of the new protest committee
 - (f) Mufti Kling, IJ, member of the new protest committee
 - (g) Swiss Sailing, members of the Appeals Committee
 - (h) Swiss Sailing, Marc Knöpfel, CEO
- (3) Place and date of the decision: Zug, 27 November 2024

Hünenberg, 13 December 2024



Adrian Bauder
Chair Swiss Sailing Appeals Committee