

# Australian Sailing Appeal Decision

2019-09 MHYC Rumba vs Race Committee

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<b>APPEAL TO</b>	Australian Sailing
<b>APPEAL BY</b>	<i>Rumba</i>
<b>THE PROTEST</b>	Request for redress by <i>Rumba</i> regarding actions or omissions by the Race Committee
<b>PROTEST DECISION</b>	Redress was denied.

## APPEAL SUMMARY

Ground 1 – The Protest Committee failed to allow the parties to hear the evidence of the Race Officer who was called as a witness.

Ground 2 – The Protest Committee relied on evidence of a member of the Protest Committee without the parties being able to question that witness.

Grounds 3, 4, 5 and 6 – The Protest Committee failed to find facts relating to the substance of the protest.

Ground 7 – The Protest Committee failed to recognise the conflict of interest of a member of the Protest Committee.

Ground 8 – The Protest Committee failed to provide the fairest result under RRS 63.7 or to make as fair an arrangement as possible under RRS 64.2

## APPEAL DECISION

The appeal is upheld.

A new hearing is to be held before a Protest Committee whose chairman shall be appointed by Australian Sailing.

It is recommended that the chairman of the original Protest Committee be invited to observe the new hearing.

## APPEAL REASONING

### Ground 1

RRS 63.3 (a) provides that a party to a hearing has the right to be present throughout the hearing of all the evidence. RRS 63.6 provides that a party present at the hearing may question any person who gives evidence. The appellant's assertion that they were not allowed to be present when the RO gave his evidence was not contested by the PC in their rejoinder. On this ground, the appeal is upheld.

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### Ground 2

In addition to the comments on Ground 1, RRS 63.6 also requires that, when a member of the protest committee saw the incident, they shall state that fact and give their evidence while the parties are present and be subject to questioning from the parties present. In their rejoinder, the protest committee confirmed that a member of the protest committee confirmed facts in the absence of the parties and was not subject to questioning by the parties. On this ground, the appeal is upheld.

### Grounds 3, 4, 5 and 6

There are no facts documented with the original written decision. The grounds for appeal include references to an absence of facts which *Rumba* contend should have been found, and at least one fact having been found by the Protest Committee which is challenged by *Rumba*. The Protest Committee provided facts in response to the appeal. Whilst the Appeal Panel cannot be certain what facts were communicated by the Protest Committee when making its decision as required by RRS 65.1, under RRS 70.1(a) a party to a hearing may appeal a protest committee's decision or its procedures, but not the facts found. On these grounds the appeal is denied.

### Ground 7

Being a competitor sailing in a different class in a race which started at the same time does not constitute a conflict of interest in accordance with the RRS definition.

On this ground the appeal is denied.

### Ground 8

RRS 63.7 requires the Protest Committee, when there is a conflict between rules, to apply the rule that will provide the fairest result for all boats affected. RRS 64.2 requires that, when a boat is entitled to redress, they shall make as fair an arrangement as possible for all boats affected.

The appeal panel has insufficient information to determine any conflict between rules and on this ground the appeal is denied.

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