

REQUEST FOR REDRESS

“the Applicant”

“ACTIVE AGAIN”

Sail Number JPN4321

represented by Dr Frances Mulcahy

“the Respondent”

Royal Queensland Yacht Squadron (RQYS)

represented by Tom Duhig - HWL Ebsworth Lawyers

Preliminary Matters

Validity

The Applicant received written advice dated 8th July 2020 from HWL Ebsworth Lawyers setting out the reasons the Organising Authority was restricting the entry of Active Again for the Brisbane to Keppel Tropical Yacht Race 2020 so as to exclude Steven Kerin from being a member of the crew .

The Applicant lodged a request for redress which was received by HWL Legal on 13th July 2020, some 5 days after receiving notification of the exclusion of Steven Kerin from the crew relating to Active Again entry. The applicant advised the reason for the delay in lodgement was to allow him time to seek advice.

Standard entry to the Brisbane to Keppel Tropical Yacht Race 2020 closes on 17th July 2020 and late entries will be accepted after this date for an additional fee, and accordingly, a further entry could still be lodged now should this application be found to be invalid.

The Jury determined, taking all matters into consideration that there was good reason to extend the time limit under RRS 62.2

Facts Found

1. Active Again entered the Brisbane to Keppel Tropical Yacht Race 2020 via the event website
2. Active Again complies with the eligibility requirements for the event as set out in the Notice of Race
3. On 8th July, a letter from HWL Ebsworth Lawyers acting on behalf of RQYS was sent to Active Again representative, excluding any participation by Steven Kerin as crew of Active Again in the event and setting out a number of reasons and alleged related matters
4. The matters set out in the reasons for the exclusion of Steven Kerin from the crew of Active Again's entry have been the subject of a hearing(s) under the RQYS Constitution and a further Review Board hearing and Steven Kerin was expelled from membership of the club.

Discussion

Royal Queensland Yacht Squadron is the Organising Authority and Race Committee for the Brisbane to Keppel Tropical Yacht Race 2020.

The Applicant received written advice from HWL Ebsworth Lawyers setting out the reasons for the Organising Authority to exclude Steven Kerin from the crew of Active Again.

The Applicant's request alleged the exclusion of Steven Kerin from the Crew of Active Again was improper as the reasons stated were

- 1: Capricious
- 2: Arbitrary
- 3: Related to an event that occurred 3 years before
- 4: not otherwise in accordance with the RRS

The Applicant made detailed submissions in respect of each reason stated above.

The Applicant acknowledged that the conduct of Steven Kerin following the completion of the 2017 Brisbane to Keppel Race were appalling and led to injuries to other persons and a staff member of Keppel Bay Marina.

For the purposes of determining if the action of rejecting the entry was improper, the panel does not need to determine whether or not such reasons were factually or legally justified but rather whether the Organising Authority exercised their rights under rule 76.1 properly. In this case the panel considers the OA exercised their discretion based on previous conduct that they considered was not in accordance with accepted standards.

Rule 76.1 confers the right of the Organising Authority or Race Committee to reject or cancel the entry of a boat or exclude a competitor in such circumstances. Active Again was advised of the reason for excluding Steven Kerin from the crew for the race in writing.

Rule 76.1 does not state or imply any qualitative test for the acceptability of the reason. However the panel considers any such reason for exclusion must not be arbitrary or capricious.

US Sailing Appeals Case 53 states:

" A Race Committee has broad authority to make such judgements as it considers necessary to ensure a race or regatta is conducted so as to follow the intentions of the organising authority, as well as the rules governing the event."

Royal Yachting Association UK (RYA) Sailing Appeals Case RYA 2019/1 states:

ANSWER 2

e) Exclusions of boats or competitors on the grounds of past personal conduct are frequently contentious and often give rise to redress hearings and, sometimes, to appeals where some unpublished guidance has been given regarding what is improper

ANSWER 4

Redress hearings should be treated as normal based on rule 62.1(a). A number of unpublished appeal cases have dealt with such situations, resulting in the following outcomes and/or advice:

- i) The reason for rejection or exclusion should be reasonable and must not be arbitrary or capricious;
- ii) A reason for exclusion of 'concerns over conduct' was found to be improper, as it was too generic and not based on specific example(s) of personal conduct;
- iii) A reason for exclusion of conduct in a situation that arose after the rejection of the entry was found to be improper;

World Sailing Judges Manual K.29.9 Improper Action or Omission, gives some guidance on what constitutes improper.

"An improper action is doing something that is not permitted by the rules of the event (racing rules, notice of race or sailing instructions and any others). An omission is not doing something that the rules specify will be done. If a race committee or protest committee or the technical committee does or does not do something over which it has discretion or is not mandatory, it is neither an improper action, nor an omission for which redress can be given.

Race management policies, jury policies, and "Advice to Competitors" are not rules. If the race committee or protest committee did not act on those policies or advice, it would not be grounds for

redress. World Sailing Case 129 provides an example of a race committee action that was not good race management practice, but was not an improper action of the race committee.

Examples:

- If a race committee signals course 3 when only courses 1 and 2 are described in the sailing instructions, this would be an improper action as the course was not in the sailing instructions.
- If the race committee signalled course 2 and subsequently the first boat could not finish the course within the time limit and the course was not shortened, this would not be improper action or omission. This course is permitted by the sailing instructions and shortening the course is not mandatory; it was not an improper action or omission.

The Organising Authority have given reasons for the exclusion of Steven Kerin from the crew of Active Again, and the Panel does not consider the actions by the Organising Authority in for the exclusion of Steven Kerin from the crew of Active Again to be arbitrary or capricious.

Conclusion

The Jury is not satisfied that the for the exclusion of Steven Kerin from the crew of Active Again nor the reasons for exclusion were improper.

Rules Applicable

62.1(a), 62.2, 63.3(a), US Sailing Appeals Case 53, RYA Case 2019/1, Rule 76.1, World Sailing Judges Manual K29.9, 70.5(b) and Addendum A Part 2.

Decision

The application for redress is denied

National Jury

Nev Willis IJ QLD Chairman, Steven Hatch IJ IU NSW, Erica Kirby NJ IU NSW, Mark Dingley SJ QLD
23rd July 2020
Hearing Commenced 1800hrs
Hearing Closed 1900hrs Decision Reserved

Decision delivered 25th July 2020