

Case 38 – Gross Misconduct

Key words

Re-hearing; Natural Justice; Independent Appeals Process; Sabotage; Fair Sport – justice and fairness

Summary

A rehearing was agreed by the parties of a matter originally heard by a Disciplinary Board of the Royal Yachting Association (RYA), in which two members of a racing team had their licences withdrawn and were disqualified from holding a licence for a period of five years for gross misconduct caused by a serious breach of sportsmanship in sabotaging a competing boat. A rehearing was agreed by the parties in accordance with the Arbitration Rules of Sport Resolutions, after an Appeal Board of the RYA identified several flaws in the procedures of the Disciplinary Board and ruled that it did not have jurisdiction to entertain the appeal as its powers were confined to considering questions of the interpretation of rules. The arbitrator who presided over the rehearing ruled that the team members were jointly responsible for the sabotage and confirmed the disqualification of their licences for a period of five years.

Background Facts

The RYA alleged that two members of a racing team (Member E and Member F) had committed acts of gross misconduct by acting together to sabotage a rival boat in revenge for an incident in a previous race. This involved Member E, the boat driver, pumping 70 litres of water into the tank of the rival boat in the middle of the night; an incident that was captured on CCTV.

Reasoning and Decision of the Tribunal

Member E admitted his part in the sabotage after he was made aware that the incident had been captured on CCTV. He argued, however, that he had acted alone and on the spur of the moment, whilst under the influence of alcohol. Member F, who was the boat owner and navigator, argued that he had played no part in the sabotage and was unaware of what had happened until after the conclusion of the race the following day, when he had learned of the rival boat's failure to cross the start line. He also argued that the RYA rules did not allow for sanctions to be applied to a team because of the actions of one member of that team. Both team members further sought to argue that the rehearing should not proceed because the proceedings of the Disciplinary Board were in breach of the rules of natural justice (such as evidence being heard by the Disciplinary Board without the person to whom the evidence relates being present and having the opportunity to comment on the evidence) and therefore void in law; that the effect of the ruling by the Appeal Board was to set aside the decision of the Disciplinary Board; and that the RYA had no power to reconvene a Disciplinary Board because the time for so doing under the rules had expired.

The arbitrator made a preliminary ruling that he did have the power to conduct a rehearing. He reasoned that the parties had given him jurisdiction to decide all disputes relating to the matter. Furthermore, there was nothing in the language of the RYA rules to suggest that the draftsman had intended to make it impossible to commence disciplinary proceedings where suggested time limits had passed. The RYA conceded there should be a rehearing and Member E and Member F contended that the decision of the Disciplinary Board should not stand.

The arbitrator ruled that the RYA rules did not provide powers to withdraw the licences of individual competitors because of the actions of a team member. This ruling did not prove to be relevant however, because the arbitrator found that the sabotage was the result of a careful plan in which both team members had played a part and that they had been in communication via text message and telephone call immediately before, during and after the incident. He ruled that whilst the act of sabotage itself was carried out by Member E, Member F was party to the plan in inciting Member E to act as he did. The arbitrator reasoned from the available evidence that Member E would not have acted alone on his own initiative.

Learning points

- NGB disciplinary panels should ensure that they comply with the rules of natural justice. In particular, they should avoid holding an oral hearing, without giving the individual(s) facing charges the opportunity to be present and to challenge the evidence against them.
- NGBs should ensure that they have in place an independent appeals process which allows disciplinary matters to be re-heard by an independent appeals tribunal. Furthermore, a lack of any provision in the NGB rules providing for disputes to be resolved by arbitration leaves the NGB open to claims in the court system and the possibility of significant damages.

