

## HOW ARBITRATION WORKS

This is a brief summary of the Yachting NZ approved system. For the full document read Regulations of YNZ Rule 4.5.5.

Arbitration is designed to speed up and sort out relatively straightforward disputes between two boats without having to go to a full protest hearing. It is not to be used for complex situations or incidents involving more than two boats or for deciding redress. Only a rule alleged to be broken in Part 2 or rule 31.1 can be dealt with by arbitration. The process should take about 15 minutes.

One of the advantages of arbitration is that if the decision goes against one or both boats, the penalty can never be as bad as disqualification, which could well be the penalty from a Protest committee decision. The Arbitration penalty is a scoring penalty calculated as equal to 40% of the number of entries in her fleet, or 50% of the difference between her finishing position and the number of entries in her fleet, whichever is less. The new finishing place allotted to the penalised boat/s does not alter the positions of the rest of the fleet, so there may be 2 boats with the same finish placing's.

A person well versed in the rules will be appointed as Arbitrator, that person cannot be on the Protest committee should the case go on to a full protest hearing. There are two reasons for this. First, the Arbitration judge will always be seen by the competitors to have already made up his mind. Second, the Arbitrator will invariably have evidence obtained during Arbitration that will not be available in the protest hearing.

If Arbitration is being offered in any regattas, this should be included in the Notice of Race. The correct wording is in the YNZ document.

The Sailing Instructions should also have a clause included but with different wording which is available on the YNZ document. If the CMYC decides to adopt Arbitration then this clause should be included in its Club Sailing Instructions.

This then is how it works:

- 1 The protestor must first lodge the written protest in accordance with the requirements of rule 61.
- 2 The Arbitrator will decide the place of the hearing and such advice may be given verbally.
- 3 One representative of each boat (who must be the sailor when the incident occurred) may appear before the Arbitrator. No witnesses are allowed.
- 4 The Arbitrator will ask each party if they agree to Arbitration. The Arbitration will only proceed if both parties agree.
- 5 The Arbitrator will check the protest for validity, and that only a rule in Part 2 or rule 31.1 that is allegedly broken. If the Arbitrator decides the protest does not comply with the protest validity requirements of rule 61, the protestor will be invited to withdraw the protest. If the protestor refuses it will be submitted for a protest hearing.

6 If the protest is valid the Arbitrator will have each party describe the incident limiting each party to approximately two minutes but allowing questioning. Sketches and models may be used. The Arbitrator will then express one of the following opinions but will not discuss any rules involved or why he reached his decision because this information could be used if a full protest hearing ensues:

- a) **No rule was broken.** The protestor can then elect to withdraw the protest and if so, will sign to this effect on the protest form. The protest is then withdrawn and shall not be re-opened or appealed. If the protestor does not withdraw the protest it will be submitted for a protest hearing.
- b) **A rule was broken by one or both boats.** The representative of the offending boat can elect either to accept a scoring penalty or proceed with a protest hearing. If the penalty is accepted, and the protestor also withdraws the protest by signing to this effect on the protest form, the matter is closed and cannot be submitted to a hearing, re-opened, appealed or submitted for redress.
- c) **The protest should go to a protest hearing.**

7 When the protestee has agreed to accept a scoring penalty during Arbitration, but the protestor has not accepted an invitation to withdraw the protest, then if the boat that was prepared to accept the penalty is found to have broken a rule at the protest hearing, she may only be penalized with a scoring penalty by the protest committee, unless she failed to retire when rule 44.1 required her to do so. However, the protest committee may penalize the protestor by disqualification if they are found to have broken a rule.

8 An Arbitration hearing shall not be reopened.

9 The Arbitrator does not constitute the Race committee or the Protest committee; therefore, the outcome of the Arbitration hearing cannot be grounds for redress by any of the parties or be appealed.

10 In all cases, the penalty taken must be appropriate for the infringement. A boat taking a penalty other than retirement cannot have caused injury or serious damage, or have gained a significant advantage from her breach.

If a judge would like to learn the process, it is allowable to have them sit in as an observer as long as the two parties representing the boats agree, but the observer cannot then sit on any ensuing protest committee.

The Arbitrator is free to discuss the incident with the parties only after both parties have agreed to accept the Arbitrator's decision and have signed to that effect.

Compiled by Tom Arthur