

Case 061

1. On August 8, 2018, the International Jury heard case 061 submitted by the EDIO of the Aarhus 2018 World Championships against Mr. Iker Martinez for misconduct.

Procedural Comments

2. The EDIO was Alastair Fox, appointed by World Sailing, who was advised by Jon Napier.

3. At the hearing, Mr. Iker Martinez was accompanied by Antonio Otero (representative) and Asier Fernandez (advisor).

4. At the beginning of the hearing and after it had been adjourned, Mr. Iker Martinez asserted on procedure that the International Jury:

- I. Does not have jurisdiction over Mr. Iker Martinez because he was not entered in the event.
- II. Has not given Mr. Iker Martinez opportunity to find a professional legal interpreter.
- III. Has not given Mr. Iker Martinez enough time to prepare.

5. Concerning I: The International Jury was appointed for the event by World Sailing. The event is governed by the Racing Rules of Sailing (RRS). Mr. Iker Martinez tried to enter the event and initiated the process of entering the World Championships as a competitor and completed all required steps up to passing the equipment inspection. Thus he clearly intended to participate in the event and thereby agreed to accept the RRS, cf. RRS 3.1(a). The reason why he did not race was that his entry was rejected by the organizing authority, when his boat did not pass the equipment inspection on Sunday, August 5 before 14:30. Therefore, the International Jury has jurisdiction over this matter.

6. Concerning II: At the beginning of the hearing, Mr. Iker Martinez requested an interpreter. Although it is not the responsibility of the International Jury to provide interpretation, and Mr. Iker Martinez had the opportunity to contact a local interpreter, the International Jury offered another jury member as interpreter. Mr. Iker Martinez did not object until after the hearing was reconvened, and continued to use the interpreter thereafter.

7. Concerning III: Reasons for not giving additional time to prepare:

1. The alleged misconduct occurred before the first race of the World Championship.
2. The first Notice of Charge dated August 5 was sent at 22:58.
3. During the hearing on August 6 starting at 12:00 Mr. Iker Martinez requested additional time to prepare and he was granted 48 hours.
4. Mr. Iker Martinez received the second Notice of Charge on 7 August at 16:08.
5. The hearing was reconvened on 8 August at 12:00.
6. At the request of Mr. Iker Martinez, the jury provided a Spanish-speaking jury member as interpreter. He made no objection to the interpreter.
7. The items in the second Notice of Charge for which Mr. Iker Martinez requested more time to prepare are related to items already presented in the first Notice of Charge.
8. Mr. Iker Martinez had 61 hours from the time that the first charge was given until the hearing on August 8.
9. Mr. Iker Martinez argued that resolving this matter is not urgent.
10. World Sailing Misconduct Guidance advises that, "it is unfair and inappropriate to leave serious allegations of misconduct unheard for several days."

The International Jury Concludes on this:

1. The items in the second Notice of Charge are related to items already presented in the first Notice of Charge and therefore would not require more time.
2. The 61 hours given to Mr. Iker Martinez is reasonable time to prepare for both charges for a hearing under RRS 69 during an event.

Facts

8. Mr. Iker Martinez is the owner and person in charge of ESP 70.

9. ESP 70 was bought by Mr. Iker Martinez new from Nacra Sailing at the beginning of 2018. It had not been used by any other crew and was only raced with him onboard.

10. Between 2 August and 5 August 2018 (inclusive), ESP 70 was inspected by the Technical Committee and the maximum distance that the daggerboard bearing could move (between the back of the bearing and the front of the worm drive) was measured.

11. The building specifications for this measure is 75mm. The Technical Committee measured 74.5mm to 75mm on all other inspected Nacras (in excess of 60) that are competing in the World Championship.

12. On ESP 70, this distance was measured to be 79.5mm on both hulls. In addition, the round holes for the fitting in the stainless steel tracks had been elongated. This could not have been caused by damage or normal wear.

13. Using a builder-provided daggerboard bearing track, it was not possible to fit all six bolts into the holes in the hull. The back holes were further back compared to building specifications.

14. During manufacturing, all holes in the hull recess for the daggerboard bearing are drilled using a unique jig. Only one jig set (one tool for producing port hulls and one for starboard hulls) exists at the hull manufacturer in Thailand. The position of the holes on ESP 70 could not have been the result of using that jig to drill, or have been caused by damage or normal wear.

15. On August 6, 2018 ESP 70 was inspected further by the Technical Committee. This showed that in the aft side of the port side hull recess, the original holes that were in the position defined by the building specification had been filled, and new holes had been drilled further aft. Sikaflex had been applied over the holes concealing the modification.

16. The Nacra 17 is a one design class with closed class rules. This means that changes can only be made if they are specifically permitted by the class rules. Furthermore, repairs cannot be made without approval of the IN17CA Technical Committee or at an event by the event Technical Committee. ESP 70 had received no such approval.

17. On August 4 2018, Mr Iker Martinez was interviewed by the Event Disciplinary Investigating Officer (EDIO) in relation to an investigation about the modifications on ESP 70. At the start of the interview, the EDIO explained to Mr. Iker Martinez that he must tell the truth and he may be subject to disciplinary action if he stated anything false or he did not believe to be true.

18. During the interview Mr. Iker Martinez denied several times that he altered ESP 70. He was asked “Did you alter the boat, as the Jury found in the protest decision?” The answer was “No. I said that to the Jury”. Mr. Iker Martinez signed the interview record as a true and accurate record of what was said.

Conclusion

19. The international jury is comfortably satisfied, bearing in mind the seriousness of the alleged misconduct, that Mr. Iker Martinez deliberately modified ESP 70 in breach of the class rules and he concealed the modification. Thereby, Mr. Iker Martinez committed a breach of good sportsmanship contrary to RRS 69.1(a).

20. The international jury is comfortably satisfied, bearing in mind the seriousness of the alleged misconduct, that Mr. Iker Martinez did not tell the truth to the EDIO. Thereby, Mr. Iker Martinez committed a breach of good sportsmanship and unethical behaviour contrary to RRS 69.1(a).

21. The international jury is comfortably satisfied, bearing in mind the seriousness of the alleged misconduct, that Mr. Iker Martinez did not tell the truth to the International Jury during this hearing. Thereby, Mr. Iker Martinez committed a breach of good sportsmanship and unethical behaviour contrary to RRS 69.1(a).

Decision

22. Considering the level of the misconduct, a significant penalty is appropriate. However, given the severely limited range of penalties available to the jury in this case, the International Jury has decided the following:

23. The International Jury excludes Mr. Iker Martinez from the venue of the event from Thursday, August 9 at noon, and directs the organizing authority to revoke his accreditation from that point in time. Since Mr. Iker Martinez’s entry was rejected by the organizing authority before he sailed any races in the event, the International Jury cannot impose scoring penalties.

24. This decision will be reported to World Sailing under RRS 69.2(j)(2) and WS Regulation 35.4.7.

August 9, 2018, 00:20

International Jury

Lynne Beal (chair) IJ (CAN), Manuel Ken Gamito IJ (POR), Yoann Peronneau IJ (FRA), Jan Stage IJ (DEN) and Leo Pieter Stoel IJ (NED)