

VOLVO OCEAN RACE 2008-9 INTERNATIONAL JURY

**Case VOR02
Request for Redress from Ericsson Racing Team (ERT)
regarding interpretation of 'solid'**

JURY NOTICE JN03

Jury Decision

25th March 2008

To: Teams, Volvo Event Management, Measurer ("Parties")
From: International Jury (Jury) appointed to hear two Requests for Redress

1. On 28th February 2008, the Jury received a Request for Redress. Ericsson Racing Team (ERT) claimed that in issuing its Public Interpretation no. 33, the Rule Management Group (RMG) had exceeded its powers in interpreting the word 'solid' in the way it did, causing ERT's keels not to comply with the Volvo 70 Rule.
2. On 3rd March 2008, the Jury issued 'Jury Notice JN01' in which it proposed hearing the case without an oral hearing (i.e. by 'papers only'), and provided a timetable giving deadlines for responses by the parties and inviting observations from other competitors.
3. Submissions relating to this case were received from Chris Simon (ERT), James Dadd (RMG), Ian Walker (Green Team), Ken Read (PUMA Ocean Racing), Bill O'Hara (Volvo Event Management), Andreas Hanakamp (Team Russia), Richard Slater (Spanish Team).
4. All submissions from parties other than the Applicant were supportive of the RMG's position.
5. On 18th March, the Jury received a Reply from Chris Simon of ERT.
6. VEM argued that ERT has no right to request redress as they have not entered the race, and have no score to make 'significantly worse'.
7. ERT completed an 'Application for entry for the Volvo Ocean Race 2008-2009' and received an acknowledgement.
8. The Notice of Race for the Volvo Ocean Race includes the clause '3.1 The Race will be governed by the rules as defined in the Racing Rules of Sailing (RRS)'. These rules include the RRS.

9. Racing Rules for Sailing (RRS)

RRS 60.3(b) 'A protest committee may ... call a hearing to consider redress...'

RRS N2.2(a) 'Unless the organizing authority directs otherwise, the jury shall ... decide questions of eligibility, measurement or boat certificates...'

RRS 60.1(a) 'A boat may ... request redress.'

RRS 62.1 (a) 'A request for redress ... shall be based on a claim or possibility that a boat's score in a race or series has, through no fault of her own, been made significantly worse by ... an improper action or omission of the race committee ... or organizing authority'

10. The Jury believes the RRS envisage judicial services being available to competitors even before they may have been officially accepted. VRM has for some time, facilitated Volvo 70 rule interpretations to competitors. Furthermore, ERT are advertised by VRM as one of the competing teams.

11. As to having no score to make worse, RRS 62.1(a) speaks of a 'claim or possibility' and therefore may include a future possibility. The Jury interprets rule 62.1 so that it can be extended to future scores.

Decision on the question of ERT's right to make the Request for Redress

12. The Jury determines that ERT has the right to make a Request for Redress.

13. Racing rule 64.3(b) states: 'When the protest committee is in doubt about the meaning of a measurement rule, it shall refer its questions, together with the relevant facts, to an authority responsible for interpreting the rule. In making its decision, the committee shall be bound by the reply of the authority.'

14. The Jury determines that the RMG is the authority responsible for interpreting the VOR 70 class and measurement rules.

15. The RRS recognises the unique role of the Measurement Committee (in this case the RMG) in the interpretation of the measurement and Class rules, and gives to it the sole authority to interpret technical rules.

16. The Jury determines that the RMG is the 'authority responsible for interpreting the rule' in that in relation to the VOR, the RMG is the authority responsible for interpreting the Volvo 70 Rule.

17. The Jury will therefore limit its role in this case, to making a determination as to whether the RMG has exceeded its powers by making an interpretation which is unreasonable or acted in a way contrary to the rules of natural justice.
18. Volvo 70 Class Rule 2.14.4 (g): ‘... The basic construction of the keel fin shall include the lever arm for the attachment of the cant mechanism clevis arrangement, and shall be solid except in way of fin/hull, fin/bulb, fin/cant clevis and/or fairing attachment points and recesses ...’
19. Volvo 70 Rule: ‘1.3.1 Interpretations of the Volvo 70 Rule shall only be made by the RMG. ...’
20. NOR 3.3: ‘...the RMG may make amendments to the Volvo Open 70 Rule Version 2’.
21. Volvo 70 Rule 1.2.1: ‘The language of the Volvo 70 Rule is English. The meaning of any word shall be by reference to the Oxford English Dictionary second edition ...’.
22. ERT claimed that by issuing interpretation no.33, the RMG ‘changed’ Volvo 70 rule 2.14.4 (g) rather than interpreting it.
23. Any rule that may be open to more than one interpretation which is subject to a decision which has the effect of removing one or more possible interpretations, changes the rule to the extent that the removed interpretations are no longer available. However this does not constitute a ‘change’ to the rule. If it did, then any interpretation would constitute a change.
24. The RMG correctly based its decision on the Oxford English Dictionary, as required by the Volvo 70 Rule.
25. The RMG may decide the most appropriate of the definitions or meanings therein.
26. ERT claimed that issuing Public Interpretation NO. 33 had the effect of making illegal ERT’s keel. In the view of the RMG, the ERT keel was always illegal, PI33 simply confirmed this position.
27. The Jury can find no evidence of the RMG being other than consistent in its views on the interpretation of ‘solid’.

Decision on the substantive matter

28. Provided that it acts reasonably, the RMG is the sole authority for interpreting the Volvo 70 Rule. The Jury will not interfere with its interpretations except in cases where it makes an interpretation outside its jurisdiction.

29. The Jury is satisfied that the RMG acted reasonably in interpreting the word 'solid' in the way it did. There was therefore no error by the Measurement Committee that could give rise to redress.

30. The Request for Redress is denied.

David Tillett
Chairman

Volvo Ocean Race Jury: David Tillett, Bryan Willis, Jack Lloyd, Pertti Lipas, Egil Wold.