



3rd September 2013

**JURY CASE AC31
JURY NOTICE JN116**

Allegation of Gross Misconduct

DECISION and PARTIAL LIFTING OF THE CONFIDENTIALITY ORDER

REPORT AND INVESTIGATION (JURY NOTICE 101)

1. On 19th August 2013 the Jury issued Jury Notice JN101. The Jury Notice stated that the Jury has information from reports and from its own investigation that persons associated with a Competitor, Oracle Team USA (OTUSA), may have committed Gross Misconduct as described in Racing Rules of Sailing America's Cup Edition (RRSAC) Rule 69.
2. Jury Notice JN101 stated that a hearing under RRSAC Rule 69 would be conducted and when the hearing was completed the Jury would publish its Decision.
3. Jury Notice JN101 ordered that all matters concerning this Case remain confidential until further order. However, the existence of the Case was not confidential.

ALLEGATIONS OF GROSS MISCONDUCT (Jury Notice 103)

4. On 19th August 2013 the Jury issued Jury Notice JN103. Jury Notice JN103 included allegations of gross misconduct as follows:
 - 4.1 Dirk de Ridder, OTUSA sailing team member, was involved in giving instructions and/or directions to shore crew to add weight into a king post of AC45 boat 4, or was aware that such weight had been added, contrary to the AC45 Class Rule.

- 4.2 Sailor X¹, OTUSA sailing team member, was aware that shore crew added weight into a king post of AC45 boat 4, and he was, or should have been, aware this action was contrary to the AC45 Class Rule.
- 4.3 Bryce Ruthenberg, OTUSA shore crew member, was involved in the addition of weight into a king post of at least one AC45 in contravention of the AC45 Class Rule and was aware this action was contrary to the AC45 Class Rule.
- 4.4 Andrew Walker, OTUSA shore crew member, was involved in the addition of weight into a king post of at least one AC45 in contravention of the AC45 Class Rule or was aware that such weight had been added and was, or should have been, aware this action was contrary to the AC45 Class Rule.
- 4.5 Kyle Langford, OTUSA shore crew member, and sailor on Ben Ainslie Racing (BAR) in the final three AC45 Series, was involved in the addition of weight being inserted into a king post of at least one AC45 in contravention of the AC45 Class Rule and was aware this action was contrary to the AC45 Class Rule.
- 4.6 Matthew Mitchell, OTUSA shore crew member, was involved in the addition of weight being inserted into a king post of at least one AC45 in contravention of the AC45 Class Rule and should have been aware this action was contrary to the AC45 Class Rule.

CONFIDENTIALITY

5. An Order was made in Jury Notice JN103 that all matters concerning this Case remain confidential until further order.

HEARING

6. Jury Notice JN103 advised that the Jury had decided to conduct a hearing under RRSAC rule 69.1 to determine if the allegations were true, and if so, to decide what disciplinary action to take. JN103 advised an oral hearing was proposed to be held 22nd August 2013 at 10h00 in the Meeting Room at the ACEA offices at Pier 23. One or two observers from OTUSA were permitted to attend the hearing.

PENALTIES

7. Jury Notice JN103 noted that if the Jury finds that one or more of the persons committed the alleged misconduct, it will either warn the person or impose a penalty in accordance with RRSAC rule 69.1(b). Any penalty (but not a warning) will be reported to the International Sailing Federation and to the person's National Authority, which bodies may impose further penalties.

COMBINED HEARING, WITNESSES

8. Jury Notice JN103 stated that the intention of the Jury was to hold a combined hearing to consider the allegations against each of the respective individuals. It

¹ For the purposes of this Decision the name of 'Sailor X' reflects that, as the allegations against him were dismissed, his identity will not be disclosed, and remains subject to a permanent Confidentiality Order.

recorded that the parties against whom the allegations were made may appoint their own counsel or advisor to represent or support them and they would be given the opportunity to call their own witnesses.

JURY NOTICE JN106

9. The Jury issued Jury Notice JN106 on 20th August 2013. The Jury Notice advised that the location of the hearing proposed for 22nd August 2013 was to be St Francis Yacht Club and provided orders in respect of specified witnesses.

JURY NOTICE JN108

10. The Jury issued Jury Notice JN108 on 21st August 2013 containing further Directions.

REQUEST FOR CONTINUANCE

11. Jury Notice JN108 stated that on 21st August the Jury Chairman received an email from Benjamin Ballard indicating that he was representing Andy Walker and requesting the hearing be rescheduled to 26th or 27th August. The request was supported by Harry Stern representing Kyle Langford, William Keane representing Bryce Ruthenberg, Paul Rosenlund representing Matt Mitchell, Terry Anderlini representing Dirk de Ridder and Sidney Luscutoff representing Sailor X.

CONTINUANCE

12. Jury Notice JN108 provided that to accommodate the requests from at least five of the named team members' Counsel, the hearing on 22nd August 2013 was to be rescheduled. The Jury was minded to have the hearing on 26th August 2013 at the same venue, with the possibility of it continuing the following morning if necessary.

DIRECTIONS HEARING

13. Jury Notice 108 advised there was to be a Directions Hearing at St Francis Yacht Club on 22nd August 2013. The six named team members were not required to attend but were required to ensure they were represented.
14. The purpose of the Directions Hearing was to address all procedural matters concerning the hearing including the conduct of the Case.

DIRECTIONS HEARING (Jury Notice JN110)

15. The Jury issued Jury Notice JN110 on 23rd August 2013 recording the outcome of the Directions Hearing.

PRESENT AT THE DIRECTIONS HEARING

16. Present at the Directions Hearing held on 22nd August 2013 were:

The five members of the Jury, and the Jury Secretary;

Harry Stern, representing Kyle Langford;
Benjamin Ballard, representing Andrew Walker;
William Keane, representing Bryce Ruthenberg;
Paul Rosenlund, representing Matt Mitchell;
Terry Anderlini, representing Dirk de Ridder;
Sidney Luscutoff, representing Sailor X (by speaker phone, who advised he had not received Jury Notice JN108).

17. Phil Bowman, Counsel for OTUSA, and Tom Ehman, Vice Commodore Golden Gate Yacht Club, attended as observers.

HEARING DATE AMENDED

18. With the agreement of all Counsel at the Directions Hearing, it was confirmed that the hearing was to commence on 26th August 2013 at 09h30 and continue till 17h00 or, with the agreement of the parties, shortly thereafter. The hearing would continue on 27th August 2013 at 09h30.

HEARING PLACE

19. The Jury noted it had accepted the kind offer of Counsel Paul Rosenlund to provide a venue. The hearing was to take place at the offices of Duane Morris LLP, One Market Plaza, Spear Tower, Suite 2200, San Francisco CA 94105-1127.

DOCUMENTS and LINKS

20. The following documents were attached and were provided for the convenience of Counsel:
 - Jury Notices relating to Jury Case AC30: JN093 JN096 JN098
 - Documents attached to Jury Notice JN098
 - OTUSA's report dated 4th August 2013
 - Measurement Committee's 'Additional Report' dated 15th August
 - Measurement Committee's Report dated 4th August 2013
 - Measurement Committee's Report to the Jury dated 11th August 2013
 - Measurement Committee's Report to the Jury dated 24th August 2013
21. The following link was also provided for the convenience of Counsel:
 - ISAF Case Book Interpretations of the Racing Rules 2013-2016.
 - <http://www.sailing.org/documents/caseandcall/case-book.php>
 - In particular Case 122: An interpretation of the term 'comfortable satisfaction'.

ORDER FOR APPEARANCE OF WITNESSES AT HEARING

22. Certain witnesses in Jury Notice JN106 issued on 20th August 2013 were ordered to appear at the hearing. This order was varied to the extent that Grant Simmer was no longer required to appear. In addition to the parties referred to in Jury Notice JN103, the following witnesses were ordered to be available to give evidence at the hearing on 26th August and possibly also on 27th August:

Nick Nicholson (Chairman of the Measurement Committee)
Russell Coutts (OTUSA CEO, AC45 Skipper)
Jimmy Spithill (OTUSA Skipper)
Mark Turner (OTUSA Shore Team Manager)
Richard Slater (OTUSA Rules Advisor)
Simeon Tienpont (OTUSA Sailor)
Dean Curtis (OTUSA Yacht rigger)

23. Responding to Counsel's request for the order of witnesses, Jury Notice JN110 advised the Jury was likely to call witnesses in the following sequence:

Nick Nicholson (Chairman of the Measurement Committee)
Russell Coutts (OTUSA CEO, AC45 Skipper)
Jimmy Spithill (OTUSA Skipper)
Mark Turner (OTUSA Shore Team Manager)
Richard Slater (OTUSA Rules Advisor)
Bryce Ruthenberg (OTUSA Yacht rigger)
Andrew Walker (OTUSA Yacht rigger)
Kyle Langford (OTUSA Sailor and Yacht rigger)
Dean Curtis (OTUSA Yacht rigger)
Simeon Tienpont (OTUSA Sailor)
Matt Mitchell (OTUSA Sailor and Yacht rigger)
Dirk de Ridder (OTUSA Sailor)
Sailor X (OTUSA Sailor)

24. Counsel intending to bring other witnesses were required to inform the Jury, and the parties, of the names by 24th August 2013.

STANDARD OF PROOF

25. Jury Notice JN110 recorded that as advised and discussed at the Directions Hearing, the standard of proof that will be applied to establish whether any party has committed gross misconduct under Rule 69 is the 'comfortable satisfaction' test which requires the Jury to take into consideration how serious is the alleged breach.

FURTHER ALLEGATIONS

26. Jury Notice JN110 noted that as a result of the evidence heard at the hearing, the Jury may make further allegations in respect of other persons as provided for in Rule 69.

THE HEARING

27. The hearing took place at One Market Plaza, San Francisco on 26th, 27th and 28th August 2013. Present at the hearing were the five members of the Jury, the Jury Secretary, the six parties and their Counsel referred to above; Ann-Catherine Padian assisted William Keane.

28. Also present as observers were Tom Ehman (OTUSA) and Ms Helena de Ridder-Sickler, Mr Ken Langford, and on 28th August 2013 Phil Bowman, Counsel for OTUSA.
29. At the hearing evidence was given by the parties and other witnesses referred to in paragraph 23.
30. Each of the parties' signed interview record statements obtained when Jury members Bryan Willis and Graham McKenzie interviewed team members between 13th and 16th August 2013 were admitted as exhibits as a part of the record.
31. The Jury and all parties' Counsel had the opportunity to ask questions of the witnesses and re-examine witnesses. One witness Jimmy Spithill was recalled by Sid Luscutoff.

JURY NOTICE JN114

32. On 28th August 2013 the Jury issued Jury Notice JN114, advising that it would publish its Decision on a confidential basis the following day, naming any parties found to have committed gross misconduct, and that these parties, if any, would be invited to provide submissions on penalties.
33. Jury Notice JN114 provided that the Decision would also be distributed among the Parties to the Protocol Article 60 hearing (Jury Case AC33), scheduled for 30th August 2013, but that it would otherwise continue to be subject to the Jury's Confidentiality Order.

JURY NOTICE JN115 - DECISION IN RESPECT OF THE ALLEGATIONS

34. On 29th August 2013 the Jury issued Jury Notice JN115. The Jury Notice included the Overview, Findings and Decisions, included in the following paragraphs 35-82.

OVERVIEW

35. There is evidence that at least five incidents of a breach of the AC45 Class Rule occurred:
 - Lead in a Kevlar bag was placed in forward king post on OTUSA boat 4.
 - Heavy ferrous tailings in a plastic bag placed in main king post in OTUSA boat 4.
 - Weight and resin added to forward king post on OTUSA boat BAR.
36. The report from the Measurement Committee, dated 24th August 2013, identified:
 - Extended length of main king post plus 80mm spigot on OTUSA boat 4.
 - Extended length of main king post plus 80mm spigot on OTUSA boat 5.
37. Bryce Ruthenberg in his signed interview record provided to the two members of the Jury who conducted the investigation and in his evidence at the hearing stated that he placed lead in a Kevlar bag that was put in the forward king post on OTUSA boat 4.
38. Since the lead in a Kevlar bag placed in the forward king post by Bryce on boat 4 was never found, it must have been either removed by a person or persons

unknown or it possibly fell out. OTUSA, in its report to the Jury of 4th August 2013 stated that as a result of its investigation at that time, 'it appeared both OTUSA AC45's had lead shot in a small bag that was then inserted into the king post'.

39. It is possible that there was also weight added to the main king post in boat 5. Supporting this hypothesis are:
 - the email instructions to 'fill king posts' (plural) (email from Kyle Langford, dated 10th July 2013);
 - the testimony from Kyle Langford: 'I became aware that ... weight was added [to] ... the race boats, boat 4 and 5, their king posts were heavier and I just saw it as another item on the list to prepare and make the BAR boat equal to our other race boats';
 - the email from Bryce dated 11th July 2012 to Kyle Langford, Andrew Walker, Andrew Henderson, Craig Phillips, CC Dean Curtis: 'don't forget to add lead to both king posts' on boat BAR, again with the intention of 'copying what was on boats 4 and 5' (Kyle Langford's testimony).
40. However, no physical evidence was found in respect of weight being added to the king posts on OTUSA boat 5 and no person gave evidence that they had performed such work on OTUSA boat 5.
41. Having regard to the way the team worked and lived together, it is inconceivable that an action as significant as putting lead shot in king posts would not be known by a number of team members.
42. During the hearing evidence was given by a number of parties as to their understanding of the AC45 Class Rule and how OTUSA managed rules compliance. Andrew Walker, Kyle Langford and Matthew Mitchell all stated they had little or no knowledge of the Class Rule, and that Richard Slater was the person who knew the rules.
43. The Jury sought to identify what formal procedures and directives were in place to ensure the AC45 Class Rule was complied with. Jimmy Spithill when asked what systems were in place to ensure such rules were complied with, testified 'in my mind that was Richard Slater.....everyone knew his role in the team, that was the process if you had a question.' There was little evidence of an effective OTUSA rule induction programme or an on-going rule education process. Rather, team members seemed to simply rely on knowledge that Richard Slater was the 'rules person'.
44. Nick Nicholson, chairman of the Measurement Committee (MC), stated that with limited resources the MC relied on a level of trust from the Competitors. When he was asked 'You referred to ... a level of trust, because it was a one-class boat. When you found these unauthorized modifications, what was your reaction?', he replied: 'I felt old, and used, and stupid'.
45. When Nick Nicholson was asked what he would have done had he been requested consent to make any of these modifications, he said 'with regard to the specific modifications of adding ballast [to the king posts], we would have laughed them out of the room.'

FINDINGS IN RESPECT OF BRYCE RUTHENBERG

46. During June 2012, at the venue of the AC45 Regatta in Newport, Rhode Island, Bryce placed approximately 1.8kg of lead weight in a Kevlar bag in the forward king post of AC45 boat 4 (known as 'Oracle Spithill'), knowing that it was in breach of the Class Rule.
47. The foregoing was admitted by Bryce at the hearing and in his signed interview record. The Jury is satisfied that he was carrying out instructions from a member of the sailing team; it is inconceivable that a shore team rigger would, of his own volition, decide on implementing what he thought was an illegal modification enhancing performance, which if it turned out not to be an improvement, would risk the success of a team of which he was a member and result in him experiencing the wrath of the sailors he respected.
48. Bryce could have refused to carry out the instructions or reported the action to his line manager but felt under pressure to do the job. The sailing team, and in particular the wing trimmer Dirk de Ridder, were held in very high regard and respect by the shore team and by Bryce. Bryce felt privileged to be a part of the team. It is therefore understandable he believed that if he had not done the work, others would have done it.
49. Partly because of Bryce's respect for the sailing team, he did not question the instruction or direction he received to add weight to the king post. The Jury accepts Bryce's evidence that he did not act alone.
50. The Jury found Bryce to be an honest and credible witness. Bryce was not driven by reasons of self-benefit.

DECISION AS TO BRYCE RUTHENBERG

51. The Jury is comfortably satisfied that this conduct constituted a gross breach of a rule and of good sportsmanship.

FINDINGS IN RESPECT OF ANDREW WALKER

52. When Mark Turner, OTUSA shore team manager, left the site of the AC45 Regatta in Newport, Rhode Island in June 2012, it was clear in his mind that Andrew Walker was in charge of the shore team at the regatta. This established the seniority of Andrew over Bryce Ruthenberg, among others. Andrew denied this seniority in the hearing.
53. Andrew was involved in frequent conversations with other members of the shore team, and particularly Dirk de Ridder from the sailing team, regarding the progress of the work that needed to be completed before the boat was ready for measurement and practice sailing.
54. In June 2012, at the site of the AC45 Regatta in Newport, Rhode Island, Andrew acquired the necessary lead shot and assisted Bryce Ruthenberg with the placement of approximately 1.8kg of lead weight in a Kevlar bag in the forward king post of OTUSA boat 4 (known as 'Oracle Spithill').

55. Following completion of the installation of the Kevlar bag with the lead shot into the king post, Bryce reported this to Andrew. Andrew stated at the hearing that he received this report before the boat was launched and confirmed that he knew this was against the Class Rule.
56. On 11th July 2012, Andrew was in receipt of an email from Bryce reminding the shore team not to forget to put weight in the king posts of boat BAR. Even though he knew the modification contravened the AC45 Class Rule, Andrew assumed that the modification must have been approved by Dirk de Ridder and Richard Slater.

DECISION AS TO ANDREW WALKER

57. The Jury is comfortably satisfied that this conduct constituted a gross breach of a rule and of good sportsmanship, and that this was compounded by not telling the truth during the hearing.

FINDINGS IN RESPECT OF KYLE LANGFORD

58. In June 2012, during the assembly of the OTUSA AC45 Yachts at the ACWS Regatta in Newport, Rhode Island, Kyle was present together with Andy and Bryce when he became aware in a general conversation that weight was being added to the king post or king posts of boat 4.
59. Kyle sent an email dated 10th July 2012 to Andrew Walker, Andrew Henderson, Craig Phillips and copied to Dean Curtis, starting a job list in respect of work to be carried out on boat BAR. It included the words 'Fill Kingposts'. On a separate BAR job list with the date 10/7/2012 the words 'King post added weight' appear.
60. In his evidence at the hearing Kyle stated that he became aware (in Newport) that weight was added to boats 4 and 5 and that their king posts were heavier. Kyle stated that he saw adding the weight as another item on the list to prepare and make boat BAR equal to the two other OTUSA AC45 Yachts. Kyle did not consider whether this might be a breach of the rules.
61. Despite his young age Kyle is an experienced competitive sailor. Kyle's testimony was honest and the Jury does not doubt his integrity. The Jury accepts that it was unlikely Kyle knew that adding weight to a king post was a breach of the AC45 Class Rule. However, not knowing the rules relating to a 'one-design manufacturer's class' is not the conduct required of a professional sailor.

DECISION AS TO KYLE LANGFORD

62. The Jury is comfortably satisfied the conduct constituted a gross breach of a rule and of good sportsmanship.

FINDINGS IN RESPECT OF MATTHEW MITCHELL

63. After his arrival in San Francisco on 15th July 2012, Matthew Mitchell was involved with the assembly of boat BAR. It was the first time Matt assembled an AC45. Matt testified that he had never read the AC45 Class Rule.

64. He was aware that filling a king post was on the BAR job list, but at the hearing he claimed that he did not know what 'fill kingpost' meant and that he did not realize that it might involve a rules violation.
65. Simeon Tienpont stated in his signed interview record as well as in the hearing that, after Matt asked him for help, he and Matt carried out the job of filling the kingpost with resin together. Matt claimed he did not see anyone fill the kingpost. The Jury is comfortably satisfied that Matt participated in filling the forward kingpost of BAR with resinous material.
66. In his evidence Matt claimed he had only picked up the kingpost from the workbench and noted it was heavy, and that he looked into the end and saw resinous material with something floating in it. In his signed interview record Matt stated that he did not think the kingpost being heavy was exceptional. The Jury finds that Matt participated in filling the forward kingpost, but even if he was not involved in including the additional weight, Matt knew that the kingpost was heavy. It should have been apparent to a sailor of Matt's experience that when finding a kingpost that was nearly 2.5 times heavier than the norm, its legality was obviously questionable.
67. Matt was the BAR boat captain. He is currently a AC72 boat captain and AC34 is his fifth America's Cup campaign. The AC45 class rule is 12 pages long. It is difficult to accept that a person with Matt's experience would not have familiarized himself with the rules.

DECISION AS TO MATTHEW MITCHELL

68. The Jury is comfortably satisfied that the action was a gross breach of a rule and of good sportsmanship.

FINDINGS IN RESPECT OF DIRK DE RIDDER

69. During June 2012, at the site of the AC45 Regatta in Newport, Rhode Island, Dirk effectively gave instructions or direction to Bryce Ruthenberg and Andrew Walker to add lead to the king post of boat 4, knowing this to be in contravention of the AC45 Class Rule. The instruction or direction may not have been explicit, but it was such that Bryce and Andrew were left in no doubt that they should carry out the work.
70. Dirk disputed that he gave the instruction to put weight in the king post. However, Bryce gave clear evidence that he received the instruction or direction from Dirk and the Jury accepts Bryce as a more credible witness.
71. Furthermore, the signed interview record (exhibit 17) shows that Dirk accepted that he knew the weight had been added to the king post either at the time of the Newport or San Francisco Regatta. At the hearing, Dirk disputed that he had said that he knew weight had been put in the king post.
72. Exhibit 17 includes the phrase 'aware of work done in dolphin striker but not amount weight or time'. When cross-examined, Dirk claimed that the word 'weight' was referring to a desire to make the king post longer, which would add weight (a

change of less than 100 grams but which would have required permission from the Measurement Committee). The Jury considers his explanation as unconvincing and does not accept this as a credible explanation.

73. Another phrase included in exhibit 17 was 'don't know when aware'. It is the Jury's view from the cross-examination that Dirk had indicated the truth at the pre-hearing interview – that he knew about the weight in the forward king post.
74. The Jury is satisfied that Dirk knew that the weight had been added to the forward king post, knowing it was in breach of the AC45 Class Rule, during the Newport Regatta.
75. Dirk is a very successful and experienced sailor. Like many successful sailors, he has a reputation for attention to detail and a philosophy of many small increments having a significant effect on the performance of the boat. He is assertive by nature and respected by the shore crew.
76. The Jury is comfortably satisfied that:
Dirk gave the instruction or direction to add the weight to the forward king post;
Dirk knew the weight had been added;
Dirk knew it was a breach of the AC45 Class Rule;
Dirk did not tell the truth in the hearing in this regard.

DECISION AS TO DIRK DE RIDDER

77. The Jury is comfortably satisfied that this conduct was a gross breach of a rule and of good sportsmanship.

FINDINGS IN RESPECT OF SAILOR X

78. Bryce's recollection of having impromptu meetings with the sailors including Sailor X was doubtless correct in the sense that there were many such impromptu meetings at regattas. However, in respect of the regatta in Newport, evidence showed that Sailor X arrived late on Friday 22nd June 2012 and boat 4 was rigged and sailing the next day.
79. Like all the witnesses Bryce was being asked to recall events that occurred some 14 months ago. It was Bryce's 'best recollection' at the hearing that there were five people present at the impromptu meeting including Sailor X where adding the weight to the forward king post was discussed.
80. The Jury is satisfied that Sailor X was not at the particular impromptu meeting at which the instruction was given to Bryce to add weight to the forward king post.
81. There was no other evidence that established Sailor X was aware that the shore crew added weight in breach of the AC45 Class Rule.

DECISION AS TO SAILOR X

82. The case against Sailor X is dismissed.

PENALTY SUBMISSIONS

83. Jury Notice JN115 advised that a hearing of the parties to consider penalty (in all cases except that of Sailor X) with regard to the above findings would be held on Saturday 31st August 2013, at Duane Morris LLP, 1 Market Plaza, Spear Tower, Suite 2200, San Francisco.

CONFIDENTIALITY

84. Jury Notice JN115 advised that it was envisaged that when the Jury issued its Decision on penalty, it would be released into the public domain, together with the Decision above. Unless Counsel for Sailor X requested otherwise by Monday 2nd September 2013, namely that the reference to allegations of gross misconduct against Sailor X, together with the findings and decision in relation to Sailor X, would remain confidential. The court reporter uncertified rough draft transcript of the proceedings would continue to remain confidential.

PENALTY HEARING

85. The hearing of the remaining parties to consider penalties took place at One Market Plaza, San Francisco on 31st August 2013. Present at the hearing were:
 - the five members of the Jury, the Jury Secretary, Harry Stern and Kyle Langford;
 - William Keane and Bryce Ruthenberg;
 - Paul Rosenlund and Matt Mitchell;
 - Terry Anderlini and Dirk de Ridder;
 - Benjamin Ballard (by speaker phone) and Andrew Walker
86. Also present, as observers, were Tom Ehman (OTUSA), Ms Helena de Ridder-Sickler and Mr Ken Langford.

PROCEDURAL ISSUES IN RESPECT OF CONFIDENTIALITY

87. The Panel Chairman drew Counsel's attention to the fact he had been advised by Phil Bowman (OTUSA's attorney with observer status) that he had spoken to the parties' Counsel and heard there were concerns that the transcripts had been made available to three parties (refer to paragraph 90) to another hearing (Jury Case AC33 in relation to Protocol Article 60). The Panel Chairman drew Counsel's attention to the fact that the Jury considered they had agreed to this being done and that he had given instructions for the three parties other than OTUSA to destroy these files.
88. Counsel Anderlini expressed his displeasure and said he, and all Counsel present, did not give consent to all parties to the Article 60 hearing receiving copies, and submitted a motion that the Jury disqualify itself from the entire proceedings.
89. The four Counsel representing the other parties expressed a range of views on the motion that the Jury disqualify itself. One wished to reserve their position, and the other Counsel either did not support the motion or did not have an opinion.

90. There followed several adjournments, the result of which was the Jury ruled it would not proceed with the penalty hearing until such time as the motion to disqualify the Jury had been addressed. With all Counsel's agreement, the legal representatives from the three parties to whom the court reporter uncertified rough draft transcript had been emailed on a confidential basis (America's Cup Race Management (ACRM), America's Cup Event Authority (ACEA) and Emirates Team New Zealand (ETNZ)) were requested to forthwith attend the hearing to advise what process they had undertaken to maintain the ordered confidentiality in respect of the court reporter uncertified rough draft transcript.

EVIDENCE ON CONFIDENTIAL COURT REPORTER TRANSCRIPT

91. Hamish Ross, General Counsel for ACRM, testified that after receiving an email from Bryan Willis asking him to destroy the court reporter transcript files, he removed those files from his computer in-box and trash-box. He also testified that he had advised Regatta Director Iain Murray, to whom he had sent the files for the purpose of briefing him and obtaining instructions in respect of Jury Case AC33, to do the same, and that he had watched Iain Murray remove the relevant files from his computer in-box and trash-box.
92. Russell Green, legal and rules advisor for ETNZ, testified that he had received an email from Bryan Willis, asking him to delete the transcript in accordance with the discussions at the time of Jury Case AC33. He confirmed that he had neither printed the transcript nor forwarded it to anybody else, and that he had deleted the files.
93. Sam Hollis, General Counsel for ACEA, testified that at the Case AC33 hearing he had given evidence that he had read the transcripts online on his computer without printing them, and that, in order to take instructions, he had forwarded them to his CEO Stephen Barclay with an express note that they must not be forwarded or shared with anyone. He further testified that Stephen Barclay had confirmed to him since that he had not printed or forwarded the transcript. Sam Hollis submitted that at the hearing he had undertaken to work with their IT department to ensure that the files were destroyed, but that that had not yet been done.
94. All Counsel were given an opportunity to ask questions of Hamish Ross, Russell Green and Sam Hollis.
95. The Jury acceded to the request that it issue a further notice to the parties reminding them of their obligation to destroy the court reporter uncertified rough draft transcript, and that it would inform all parties as soon as it received confirmation of such destruction. This was done on 1st September 2013.
96. Upon receipt of these assurances and after a short adjournment, Counsel Anderlini withdrew his motion that the Jury disqualify itself. All Counsel agreed to this and to proceeding with the hearing on penalty.

AGREEMENT TO PROCEED WITH PENALTY SUBMISSIONS

97. The Panel Chairman proposed that submissions on penalties should be heard from each party independently. Only Counsel Anderlini was against this proposal.

98. The Jury adjourned and returned to announce its decision to hear the submissions on penalties in accordance with usual practice from each party independently.

SUBMISSIONS ON PENALTY

99. At the hearing each party then made a submission on penalty. The mitigating factors submitted by the respective Counsel included as follows in paragraphs 100-104.
100. In respect of the rules violation several parties claimed that:
- members of the shore team did not think they had a right to countermand anything a sailor might instruct or direct them to do. This was compounded by their lack of knowledge of the AC45 Class Rule;
 - many parties thought that because the work ‘fill kingpost’ was on the job list, it would have been checked by the Rules Advisor and approved by the Measurement Committee, which sometimes had a casual style of communicating decisions;
 - the parties had no reason not to trust their colleagues;
 - the rules violation was a result of negligence or lack of knowledge, not the result of any intent to break the rule;
 - the effect of the rules violation was miniscule in terms of performance enhancement;
 - the rules violation was a one-time incident. Lessons have been learned and all parties vowed that such a violation would not happen again.
101. In respect of the parties’ behaviour:
- each party apologized for their actions. They had behaved in a dignified manner throughout the interviews and the hearing proceedings.
102. In respect of the consequences of the rules violation parties claimed that:
- going through the process of interviews and hearings has been punishment enough;
 - the entire team has been suffering in the final preparation for the America’s Cup in many ways;
 - since discipline equals training and education, not punishment, the only purpose of penalties would be to take away the parties’ ability to earn a living;
 - parties will be living with the mistake personally and professionally for a long time.
103. In respect of untruthful testimony parties claimed that:
- the rules violation happened some 14 months ago. Everybody’s memory of it is different. A heavily disputed fact should not be the basis for a finding of false testimony.
104. The Jury was presented with further mitigating factors pertaining specifically to individuals, including various levels of sailing and America’s Cup experience.

DECISIONS ON PENALTIES

105. Bryce Ruthenberg

Bryce Ruthenberg is excluded from further participation in any role in the 34th America's Cup. RRSAC rule 69.1(c) requires the Jury to inform his National Authority (Australian Yachting Federation) and the International Sailing Federation, which bodies may impose further penalties; however, in view of his full, frank and early admissions, the Jury will recommend that no further action be taken.

106. Andrew Walker

Andrew Walker is excluded from further participation in any role in the 34th America's Cup. RRSAC rule 69.1(c) requires the Jury to inform his National Authority (Yachting New Zealand) and the International Sailing Federation, which bodies may impose further penalties.

107. Kyle Langford

In light of his age and inexperience in an America's Cup environment, the fact that he had no involvement in the work done and his truthfulness during the hearing, together with his sincere efforts to acquaint himself with the Class Rules since the matter came to light, Kyle Langford is warned to use his best endeavours not to be involved with any activity that may be in breach of a rule in the future. The Jury is not required to make a report to any federation.

108. Matt Mitchell

Matt Mitchell is excluded from sailing on a Yacht competing in the Match for the 34th America's Cup until 4 races have been completed. RRSAC Rule 69.1(c) requires the Jury to inform his National Authority (Yachting New Zealand) and the International Sailing Federation, which bodies may impose further penalties; however, the Jury will recommend that no further action be taken.

109. Dirk de Ridder

Dirk de Ridder is excluded from further participation in any role in the 34th America's Cup. RRSAC Rule 69.1(c) requires the Jury to inform his National Authority (Koninklijk Nederlands Watersport Verbond) and the International Sailing Federation, which bodies may impose further penalties.

ORDERS

CONFIDENTIALITY ORDER IN RESPECT OF SAILOR X

110. Pursuant to Rule 6.1 of the Jury Rules of Procedure, the Jury orders that, as the case against Sailor X was dismissed, his identity shall remain subject to a permanent Confidentiality Order.

111. The court reporter uncertified rough draft transcript from Jury Case AC31 that formed part of the record of this Case shall remain permanently confidential.

PARTIAL LIFTING OF CONFIDENTIALITY ORDER

112. The Confidentiality Orders in respect of Jury Notices JN101, JN103R, JN106, JN108R, JN110R, JN114 and JN115R are now lifted and are to be published on

the America's Cup Official Race Notice Board immediately. 'R' designates that the Jury Notice has been redacted in order not to disclose the identity of Sailor X.



David Tillett

JURY: David Tillett (Chairman), John Doerr, Josje Hofland, Bryan Willis, Graham McKenzie