

BEFORE THE INDEPENDENT PANEL

IN THE MATTER OF:

PATRICE CLERC

Appellant



V

RACE OFFICIALS COMMITTEE

Respondent

DECISION

1. The Appellant applied for first appointment as an International Judge in 2019. The World Sailing Race Officials Committee (ROC) advised the Appellant by letter dated the 31st October 2019 that his application had not been successful.
2. ROC rejected the Appellant's application on the basis that it "includes an (IJ) attended seminar dated 9-11 October 2015". ROC stated in its letter of rejection that this date "does not comply with the requirement stated in the Race Officials Roles, Qualifications and Competencies document of all requirements having been complied in the 4 years prior to 14 October in the year of application".
3. World Sailing Regulation 31.7(a) states that a candidate for appointment as a World Sailing Race Official "shall meet the discipline-specific qualifications as published by World Sailing by 1 February each year". These requirements are published in the Race Officials Roles, Qualifications and Competencies document (**RCQ**) which is a policy/procedure document for such appointments.
4. Regulation 31.12.1 requires that "a candidate shall have passed the examination in the four years prior to 14 October of the year of application".
5. The current RCQ, published in March 2018, states:

"A candidate for first appointment as an International Judge shall have complied in the 4 years prior to 14 October in the year of application with the following requirements:

- a. attended a WS International Judges Seminar, with good participation and positive references from the IJ Instructors,
- b. passed the WS examination for the discipline in accordance with Regulation 31.11,"

ROC quite properly acknowledges this last reference should be 31.12 (the Regulation titled "Examinations"), and this is not disputed by the Appellant. Nothing however turns on this typographical error.

Basis of Appeal

6. The Appellant bases his appeal on the following:

- a. the IJ seminar he attended was dated 9-11 October 2015, but he has never received a document from the IJ instructors indicating good participation and positive references;
- b. he took the IJ examination during the IJ seminar, but the letter from World Sailing informing him that he had passed was not sent until 10 December 2015;
- c. he took the date of this letter as the date required to be in the 4-year period for having passed the IJ examination;
- d. even if the seminar and test dates of 9-11 October are used, it is unfair to reject an application as out-of-time when it is only out of a 4-year time period by 3 days;
- e. the Appellant first started communicating with World Sailing on or before 3 July 2019 concerning requirements for appointment;
- f. when submitting his application, World Sailing staff checked that the application contained the required supporting information, but did not raise the possibility that the seminar and test dates were out of time.

ROC Response to the Appeal

7. In its response to the appeal, the ROC justified its decision to reject the Appellant's application solely on the basis that "The Appellant's application for appointment as an International Judge did not meet the requirements set out in Regulation 31.12.1 as the Exam relied on by the Appellant was passed outside of the Qualifying Period".
8. The ROC submitted that:
 - a. the requirement for an Appellant to pass the IJ examination is contained in Regulation 13.12.1;
 - b. ROC has always taken the 4-year period for the examination to mean "within the 4 years prior to the relevant date", which in this case means 13 October 2015 to 13 October 2019;
 - c. the examination is considered to have been passed on the day it was sat, in this case 11 October 2015, the last day of the seminar;
 - d. the Regulation provides no discretion to the ROC in respect of the requirements set out in Regulation 31.12.1;
 - e. if the Panel disagrees with the ROC position, then it should remit the matter to the ROC with instruction on how to re-evaluate the application.

Further Directions

9. No party sought an in person hearing, and the Panel determined that no further Submissions were required and the matter be determined on "the papers".

Discussion: the Examination

10. The Chairman of the ROC has referred to Regulation 31.12.1 which provides:
“A candidate shall have passed (our emphasis) the examination in the four years prior to the 14th October of the year of the application”.
- One therefore has to consider what is meant by the word “passed”.
11. In this case, the Appellant sat the examination on the 11th October 2015, the last day of the International Judges Seminar of 9th-11th October 2015. Not surprisingly, no results of the examination were provided to the Appellant at the seminar.
12. The Appellant was not advised of having passed the examination until he received an email from World Sailing dated the 10th December 2015. The email advised he had passed the examination, and stated *“Congratulations on passing this demanding written test”*.
13. A distinction needs to be drawn between having sat the examination and having passed the examination. One cannot be said to have passed an examination until the examination has at least been marked and the ROC being satisfied the examination has been passed.
14. It is commonly regarded that a person has passed an examination when the results are posted. One cannot be said to have passed an examination at the time one sits an examination.
15. Accordingly, the Panel considers that the Appellant has passed the examination subsequent to 13th October 2015, and thereby has satisfied the requirements in Regulation 31.12.1.
16. Alternatively, the Panel considers that in a case where there could be said to be ambiguity in the wording of a regulation, namely here as to the date in which the candidate can be said to have passed the examination referred to in Regulation 31.12.1, it is appropriate to interpret any such ambiguity against the party who drafted the clause (contra proferentem), and therefore in favour of the Appellant. This approach would also lead to a finding that the Appellant satisfied the relevant examination requirement.

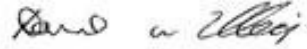
General Comments

17. The Panel considers it would be helpful for World Sailing to clarify the wording in respect of the examination, particularly as there may be a period of time between the sitting of the examination, the marking of the examination and the publishing of the outcome of the examination.
18. The Chairman of the ROC submitted that if the Panel disagreed with the Respondent’s position, then the matter should be remitted back to the ROC with instructions on how to re-evaluate the application.
19. The Panel agrees and directs that the ROC reconsider the application for first appointment as International Judge lodged by the Appellant on the basis that the

Appellant has passed the required examination on the date of the letter advising him of the outcome of his examination.

Decision

20. The Appeal is upheld. The application is remitted to the Race Officials Committee for further consideration having regard to the findings in this decision.



David Tillett (Chairman)



Balazs Hajdu



Chris Atkins

Independent Panel

16 December 2019