



IN THE MATTER
of the Protocol
Governing the 37th America's Cup

AND

IN THE MATTER
of a Report received by the Arbitration Panel
in relation to Rule 69 of the
Racing Rules of Sailing – America's Cup Edition Version 4.07 with
regard to Misconduct

AMERICA'S CUP ARBITRATION PANEL CASE 006

ACAP37/006 – DECISION (14th October 2024 at 14:00 UTC)

In accordance with the America's Cup Arbitration Panel Rules of Procedure, the World Intellectual Property Organisation ("WIPO") electronic ADR case facility ("eADR") is in use for this Case. This Decision will be made available on eADR to all relevant contacts provided by the respective teams.

REPORT

1. The Arbitration Panel has received information contained in a report claiming that misconduct had occurred in contravention of Rule 69 of the Racing Rules of Sailing – America's Cup Edition Version 4.07 ("Racing Rules AC").
2. At the conclusion of Race 3 on 13th October 2024 in an on-water post-race interview with Sir Ben Ainslie ("Ben"), in a live broadcast:

Stephen Mclvor (Interviewer):

"Are you still believing you're as close when it comes to performance as I get that feeling coming off your boat?"

Ben:

"Well, maybe that's the Kiwi commentator in you, mate."

Stephen Mclvor (Interviewer):

"Ok, I'll take that one on the chin, thanks buddy."

After the interview had been completed and as Ben was exiting the cockpit, he said:

Ben:

"F*****g W*****r"

DISCUSSION

3. The Arbitration Panel has considered Racing Rules AC Rule 69 and in particular Rule 69.2(b) which provides,

- “(b) When the Arbitration Panel, from its own observation or from information received from any source, including evidence taken during a hearing, believes a person may have broken rule 69.1(a), it shall report the matter to the Event Disciplinary Investigating Officer under World Sailing Disciplinary Code 35.4.3 in schedule 3.”
4. The Arbitration Panel has listened to a replay of the live broadcast, spoken to two senior TV Host Broadcaster representatives from AC Media, and reviewed other replays of the same Race 3.
 5. The Arbitration Panel notes that in the same race, as Emirates Team New Zealand crossed the finish line, Peter Burling (“Peter”) said, “F**k we crossed swords there didn’t we.”
 6. The Arbitration Panel understands that all competitors are aware that all times during the broadcast feed, whatever they may say is live and may be broadcast.
 7. The Arbitration Panel considers that the comment made by Ben, “Well, maybe that’s the Kiwi commentator in you, mate” is not biased. With regard to the words “F*****g W****r”, the Arbitration Panel considers that they were made when Ben clearly believed the interview had been completed and he was off-air, and the words were not clearly audible. The Arbitration Panel members were watching and listening to the live broadcast in three different locations and none of them heard such words.
 8. With regard to the words used by Peter, the Arbitration Panel also did not hear those words on the live broadcast and no report has been received raising objection before the Arbitration Panel.
 9. The Arbitration Panel notes that neither AC Media nor the America’s Cup Event Authority have received a complaint about the words used by Ben or by Peter.

DECISION

10. The Arbitration Panel considers that in the particular circumstances of this case, the words used by Ben and by Peter did not break Racing Rules AC Rule 69.1(a).
11. The Arbitration Panel determines that neither Ben nor Peter committed misconduct under Racing Rules AC Rule 69. The broadcast has not caused widespread offence and has not brought the sport into disrepute. Accordingly, the Arbitration Panel has determined that the matter is not referred to an Event Disciplinary Investigating Officer under World Sailing Disciplinary Code 35.4.3.
12. The Arbitration Panel reminds all those competing in the 37th America’s Cup Match that what they say on board may be broadcast live and that they have an obligation not to commit misconduct.

14th October 2024

America’s Cup Arbitration Panel
David Tillett AM (Chair)
Graham McKenzie
Bryan Willis

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