

VOLVO OCEAN RACE 2008-9

INTERNATIONAL JURY

Case VOR03

**Application by VOLVO EVENT MANAGEMENT UK LIMITED
requesting that Ericsson Racing Team (ERT) be allowed
to race E3, without a Measurement Certificate.**

JURY NOTICE JN04

Jury Decision 2nd October 2008

To: Teams, Volvo Event Management, Chief Measurer ("Parties")
From: International Jury (Jury)

1. On 23rd September 2008, the Jury Chairman received an Application from Volvo Event Management UK Limited, the Organising Authority for the Volvo Ocean Race, applying for permission for the boat Ericsson 3 ("E3") to race notwithstanding the fact that the boat would not have a valid VO70 (Version 2) certificate at the start of the In Port Race scheduled to start in Alicante on 4th October 2008.

2. The reason why a certificate could not be issued was that the Rule Management Group (RMG) was not satisfied that ERT's keel met the requirements of the VO70 Rule in that it contained cavities which could not be completely filled, and was therefore not 'solid', a requirement of the VO70 Rule.

3. Seven international judges* were appointed by the International Sailing Federation to be available to serve on an ad hoc basis for the event. The Jury chairman selected four members to join him to form a panel of five to hear this case using a 'papers only' procedure, because to hold a physical hearing would be impractical in the time available. [* David Tillett, Henry Menin, Jan Stage, John Doerr, Leo Pieter Stohl, Mats Bjorklund, Shane Borrell]

4. Notice of Race (NoR) clause 5.1 is relevant to this case:

5.1 DOCUMENTATION

(g) (i) Boats shall have a valid VO70 (Version 2) certificate at the start of a Leg or In Port race.

(ii) However if a boat does not have a valid certificate the organizing authority may apply to the Jury for permission to allow her to race. The application shall include a report from the RMG that describes

(a) details of the boat's non-compliance,

(b) details of the boats compliance,

(c) details of the endeavours employed by the boat to become compliant,

(d) if relevant, a proposal for a compensating arrangement to ensure there is no advantage by the non-compliance.

After taking evidence the Jury may adjust the compensating arrangement or impose other conditions it considers appropriate. If then satisfied that the boat has used reasonable endeavours to become compliant and that no advantage will be gained, it shall permit her to sail for one or more Legs or In Port Races.

5. Notice of Race Clause 5.1(g)(ii) provides for an Application by the Organising Authority and gives authority to the Jury to give permission for a non-compliant boat to race provided certain requirements are satisfied.

6. On 25th March 2008 the Jury published its decision in Jury case VOR02: The RMG had not exceeded its powers in interpreting the word 'solid' as meaning 'no voids or cavities'. The ERT E3 keel was therefore non-compliant.

7. Included with the Organising Authority's Application was a report from the RMG describing the circumstances of the non-compliance, stating that full measurement had not yet been completed, describing the endeavours employed by ERT for their boat E3 to become compliant, and a proposal for a compensating arrangement.

8. In the report, the RMG calculated that the weight of the billets of steel used to fill the voids was 162.55kgs compared to the weight of the steel required to completely fill the voids of 163.18kgs, leaving a shortfall of 0.625kgs.

9. In the report, the RMG expressed the opinion that ERT 'tried as far as possible to completely fill all voids, using a realistic method'

10. Included with the report was an Appendix (Appendix 5) 'Ericsson 3 keel repair detail', written by James Dadd, the Chief Measurer.

11. On 24th Sept the Jury chairman asked ERT if they wished to apply for Appendix 5 of the RMG to remain confidential. On 25th Sept an Application for confidentiality was received, and later the same day the Jury granted confidentiality as requested by ERT pending consideration of any argument against confidentiality by another team.

12. On 27th September, the Jury received a 'Combined Submission' from six teams (Puma Racing Team, Telefonica Azul Racing Team, Telefonica Negro Racing Team, Team Russia, Green Dragon Racing Team and Delta Lloyd). The submission expressed concern, claiming ERT failed to use reasonable endeavours to become compliant, and that they would gain a significant advantage if allowed to race. The Submission also contained questions addressed to the RMG and ERT.

13. On 27th September the Jury invited the RMG and ERT to respond should they so wish by 28th September, to the questions in the Combined Submission.

14. On 28th September the Jury received a Response from the RMG with a copy of an exchange of emails. These were forwarded to ERT with an invitation to request, with reasons, that these remain confidential, failing which the general principle of making all documentary evidence available to all parties, would apply. ERT replied that they were agreeable for the documents to be made available to other parties at the time they made their Reply.

15. On 29th September the Jury received two submissions from ERT, one that was copied to all other parties, and one which was marked as 'Confidential evidence' sent only to the Jury. The Jury ruled that those documents marked 'confidential' should remain confidential, as they included details of the keel design.

16. On 30th September the Jury released to all parties the RMG's answers to the questions raised in the 'Combined Submission'.

CONCLUSIONS

17. In the weeks following the Jury decision in case VOR02 published on 25th March 2008, ERT held the opinion that they could completely fill the voids, and thereby satisfy the RMG that they were compliant in respect to the requirement for the keel to be 'solid' according to the RMG's interpretation.

18. At a meeting on 28th April, ERT proposed a solution involving freezing sections of steel rod the same diameter as the bored holes and inserting them into the cavities. The RMG indicated that this may be a possible solution, and requested that ERT provide a detailed report of the proposed procedure, so as to be satisfied that the entire volume of cavities would be filled with steel.

19. To fill the voids completely, which the RMG had consistently made clear was essential for compliance, was clearly a challenging objective. ERT sought expert advice as to how the problem could be resolved, but at no time presented to the RMG a detailed proposed procedure.

20. The freezing process was not used; instead, without prior approval of the RMG, rods with diameters lesser than that the voids were inserted and welded in place. The Chief Measurer observed the modification process and advised ERT representatives that the keel was still not solid and therefore in his opinion did not comply with the Rule.

21. In the latter part of August 2008, ERT accepted that it would not be possible to carry out a procedure which would completely fill the holes and satisfy the requirement of the rule.

JUSTIFICATION FOR JURY DECISION

22. The RMG properly declined to issue a VO70 certificate to E3 as the RMG has no authority to issue a certificate to a boat that does not fully comply with the Rule.

23. In complying with the Organising Authority's request to provide a Report as envisaged by NoR 5.1(g)(ii), the RMG proposed a compensating arrangement: a 0.625kg corrector weight be fitted within the interior of the hull. The RMG gave the opinion that with this corrector in place, there would be no measureable advantage gained from the non-compliance.

24. The Jury is satisfied that, for a period of time, it was not unreasonable for ERT to hold the opinion that it might be possible to completely fill the holes and thereby become compliant.

25. However, not having received approval from the RMG for any practical procedure, there became a time at which the idea of filling the holes should have been abandoned and a new keel built.

26. The Jury is of the opinion that as a general principle, it is important that all yachts in a race hold a valid Measurement Certificate. This creates a 'level playing field' which is of fundamental importance to the sport.

27. However, in this case, the Organising Authority has an understandable desire for all entered boats to be included in the Race, notwithstanding that ERT is not fully rule compliant, provided that appropriate compensating arrangements could be made.

28. The Jury is satisfied that with the implementation of the compensation proposed by the RMG, there will be no advantage gained compared to how she would have been were she to have been compliant.

29. Although ERT could have built a new keel had they made a timely decision on becoming aware that there was no practical procedure to ensure the voids were filled to bring the keel into compliance, the Jury is satisfied that ERT made reasonable endeavours to become compliant.

DECISION

30. Provided ERT accepts and does not change the arrangements which are subject of the Application (which include the compensating arrangement proposed by the RMG) ERT E3 is permitted to race in all Legs and in all In Port races in the event.

31. In recognition of the importance that the Jury places on all boats in a race being fully rule compliant and in possession of a Measurement Certificate, the Jury considers it appropriate to impose a further condition: Whilst benefiting from this permission, ERT shall be penalized by the deduction of one point at the conclusion of any day in which there has been one or more In Port races; by one point at each Scoring Waypoint; and by two points at the conclusion of each Leg. However her score shall not be less than 'zero points' in each instance.

32. In the event that E3 becomes compliant and be issued with a certificate at any time during the Race, then this decision will not apply to subsequent races or Waypoint scores.

33. Notwithstanding the permission allowed in this decision, ERT shall comply with all obligations, and be subject to any penalties, required of a boat with a certificate.

34. On being satisfied that E3 complies in all other respects, the RMG shall produce a document to that effect. This document shall include the measurement data which would be given on the Class Certificate in accordance with Volvo Rule Appendix C. A copy of this document shall be made available in accordance with Volvo 70 rule 1.4.5

SUMMARY OF JURY DECISION

36. E3 may race notwithstanding her keel not being rule-compliant, but while racing without a certificate will be given a point penalty in each 'In Port' race, a point penalty at each Scoring Waypoint, and a two point penalty for each Leg.

A handwritten signature in black ink, appearing to read 'Bryan Willis', with a large, stylized initial 'B'.

Bryan Willis
Chairman

Jury: David Tillett, John Doerr, Mats Bjorklund, Shane Borrell, Bryan Willis.