

RYA 2014/3

Rule 63.6, Hearings; Taking Evidence and Finding Facts

Rule 66, Reopening a Hearing

Whether evidence is new is only relevant to the decision to reopen a hearing. When a hearing has been reopened, there is no restriction on the evidence that may be presented.

SUMMARY OF THE FACTS

An incident occurred in the first race of the National Championship when J24 4247 made contact with 4206 resulting in serious damage. At the ensuing protest hearing, 4247 was disqualified. For that hearing, a potential witness for 4247 was present at the venue but was not called to give evidence.

4247 appealed and her appeal was upheld only to the extent that the case was returned to the protest committee to reopen the hearing in order to resolve certain specified inconsistencies.

At the reopened hearing, 4247 sought to present written evidence from her witness who could not be present, but this was refused by the protest committee on the grounds that it was not new evidence. The reopened hearing dealt with the matters referred to it by the RYA and confirmed its decision to disqualify 4247, and she appealed again.

DECISION

The appeal is dismissed and the disqualification of 4247 is confirmed.

The majority of the grounds for the second appeal were against the facts found, but these are not open to appeal under rule 70.1(a). However, the non-admission of the written evidence was also cited and, in that matter, the protest committee misdirected itself when it refused the evidence on the basis that it was not 'new evidence'. There is no limitation on evidence that may be given once the decision to reopen the hearing has been made, whatever the reason for the re-opening.

Written evidence from a witness who is not available for questioning can be taken provided all parties agree (see rule 63.6 and Appendix M3.2). The written evidence was submitted with the appeal papers and the RYA is satisfied that the outcome of the case would not be different if the written evidence had been accepted as it would not affect the facts that were critical to the conclusions drawn by the protest committee.