

BEFORE THE INDEPENDENT PANEL

IN THE MATTER OF:

OLIVIER BOVYN

Appellant

V

RACE OFFICIALS COMMITTEE

Respondent



DECISION

1. In October 2020, the Appellant lodged an appeal with regard to the Respondent's rejection of his Application for a 4-year renewal appointment as an International Measurer ("IM") for the F18 Class.

Background

2. In 2015, the Appellant lodged with the Respondent an Application for reappointment as an IM. On or about 11 November 2015, the Respondent wrote to the Appellant and advised him that his appointment as an IM had been extended for one year only, as at the time of application, the Appellant had not listed enough Principal Events to be reappointed for a 4-year period. The Appellant sought information from World Sailing regarding appealing the decision for the one year extension, but there is no evidence that this appeal was ever pursued.
3. Consistent with this decision, in the 2016 'Yearbook' released by World Sailing to all persons within or operating for World Sailing, the Appellant was listed as an IM, with date of next application being 2016.
4. On or about 25 May 2016, the Respondent wrote to the Appellant notifying him that he was due to renew his International Measurer Status ("IM Status") and that he must submit his application and associated documentation by the 1 September 2016 deadline. A subsequent email of the same nature was sent to the Appellant on or about 31 August 2016.
5. No application for renewal was received by the Respondent in 2016. Therefore, the Appellant's position as an IM was not renewed and he was removed as an IM by the Respondent. It is noted for completeness that the Appellant submits that he did lodge an application for renewal in 2016, however no evidence has been provided by the Appellant to support this submission and the Respondent has submitted they have no record of this.
6. Despite no application being considered by the Respondent, in World Sailing's 2017 'Yearbook' the Appellant was listed as an IM, noting his date "Year of Reapplication" as 2020. This error was not corrected by the Respondent in any way and the listing of the Appellant as an IM was not deleted until the 2020 'Yearbook'.
7. In correspondence sent by the Vice Chairman of the International Measurers Sub-committee to the Appellant on or about 15 March 2018, the Appellant was again made aware that he did not hold IM Status and had not held such status since 2016. The Respondent submits, and evidence corroborates, that contact was made with the Appellant on several occasions between 2015 and 2020 to advise him of his status as an IM.

8. The Appellant submits that he continued to work as an IM at several events in the period 2015-2020, both related to World Sailing and otherwise. There is no evidence to support the submission that this work required IM status and the Respondent submits that World Sailing has not appointed the Appellant to any event as an IM in the period 2015-2020.
9. The Appellant lodged with the Respondent an Application for renewal as an IM on or about 26 August 2020. The Respondent rejected the Appellant's Application on or about 30 October 2020, citing that the Appellant had not met the requirements outlined in the World Sailing Regulations with regard to IM appointment of an applicant whose previous appointment as an IM ended more than 12 months earlier.

The Legal Framework

10. For a person to be considered for *Renewal Appointment* [emphasis added] International Measurer, the application must be lodged within 12 months of their appointment ending. As per Regulation 31.16 of the World Sailing Regulations (**"the Regulations"**):

"A World Sailing Race Official whose appointment has ended within the last 12-months may re-apply and be considered as a candidate for re-appointment (that is having to meet the requirements for re-appointment and not first appointment). After 12 months, the Race Official must apply as a candidate for first appointment"

11. The Respondent's position is that as the Appellant's appointment as an IM ended in 2016, the application lodged in 2020 must be considered as a "first appointment" candidature and adhere to the requirements of application outlined in the Race Officials Roles, Qualifications and Competencies (**"RCQ"**) being:

5.3 A candidate for first appointment as an International Measurer shall have complied during the Designated Period with the following requirements:

- a) attended a WS International Measurer's seminar;*
- b) have intimate knowledge of the relevant Class rules and ERS;*
- c) sat and passed the WS examination for the discipline in accordance with regulation 31.12;*
- d) acted as an Equipment Inspector in at least two principal events of the Class he is applying for;*
- e) obtained one class endorsement form from the relevant WS Class or, for Rating Systems, by the relevant WS Rating Class Association, and*
- f) obtained one completed and positive International Measurer reference form from an International Measurer who has served at a principal event (L1) with the candidate. A reference form complete more than 4 weeks after the event cannot be considered for an application.*

12. The Appellant did not in his application attend to the necessary requirements of a first appointment candidate. Therefore, his application was rejected. It is noted for completeness that the application was rejected on the basis that it was an Application for *renewal* which was the incorrect application to lodged, rather than any consideration or discussion surrounding the content or validity of the documents provided in support of the application itself.

Recommendations

13. For completeness, the Panel wishes to note several aspects of this case which cause the Panel concern. Of particular note are the Respondent's failures with regard to the World Sailing 'Yearbook' error in 2017.

14. Not only is the error itself quite concerning, particularly as the Appellant submits that he relied on the content of the 'Yearbook', though this has been successfully rebutted by evidence of direct correspondence between the parties, it is also reasonable to assume that third parties also relied on the content of the 'Yearbook' and that the Appellant may have continued to operate with the presumed status of an IM as a result of the error.
15. Further, the Respondent's choice to not rectify the error when it was found, by formal correspondence to all persons who may hold the 'Yearbook' and by updating the 'Yearbook' in future years, compounds the potential problems relating to both the Appellant himself and third parties.
16. While the Panel accepts that the decision of the Respondent to reject the application for renewal by the Appellant was appropriate, there is no doubt that the error of the Respondent and their failure to rectify same in any manner for three years is a failing on their part which affected the progression of the matter for consideration.
17. The Panel strongly recommends that the Respondent puts in place measures which would prevent errors such as the above happening in future and, where an error occurs, takes immediate steps to clarify and rectify the error not just to those directly affected by it, but to all those who *may* be affected by it.

Judgement

18. Notwithstanding the comments made in paragraphs 13-17 above, the Panel accepts the submissions of the Respondent that the Appellant had not been an IM for approximately four years at the time of his application and was, or reasonably should have been, aware of this through correspondence between the parties. Thus, his Application for Reappointment as an IM was not appropriate as, per the Regulations, any person whose appointment ended more than twelve months prior to the application being submitted must be considered as a first appointment candidate.

The Appellant's appeal is therefore dismissed.



Georgia Briggs

(Chairperson)



Chris Atkins

(Panel Member)



Balazs Hajdu

(Panel Member)

Independent Panel

8 May 2021