

## Expert determination

This determination concerns a series of disputes arising from the conduct by Peninsula Bridge Club Inc (“PBC”) of its 2016 Pairs Championship, over a period of three weeks in February. At the end of the event Rachel Loomes and Maurice Loomes were declared to be the winners, and Lynn Baker and Peter Robinson the runners up. Subsequently, Lynn Baker and Peter Robinson appealed, on the basis that in the third round of the event Lyn Smith had played as substitute for Maurice Loomes, although she held 674.24 masterpoints whilst he held only 294.11.

The director held that the appeal had been lodged out of time, others agreed, and it is now conceded by Lynn Baker and Peter Robinson that this was correct. Nevertheless, they contend that the substitution mentioned was illegal, that an injustice has occurred, and that this injustice should be remedied by Rachel and Maurice Loomes being disqualified, and by declaring that Lynn Baker and Peter Robinson were the winners.

The parties agreed that we would give an expert determination on the various disputes, based upon their written submissions, which were exchanged, and as the parties thought fit, replied to; and they agreed that they would abide by our determination.

Our first concern was what substitution rules applied.

In 2007 the World Bridge Federation (“WBF”) adopted a set of laws known as 2007 Laws of Duplicate Contract Bridge. Law 80 effectively appointed the Australian Bridge Federation (“ABF”) as the Regulating Authority within Australia, and authorised ABF to delegate or assign to some other entity responsibility for arranging and preparing a tournament, as well as providing for the powers and duties of that entity, including “to establish suitable conditions for play ... and to ... announce regulations supplementary to, but not in conflict with these Laws”.

ABF published some Tournament Regulations which apply to tournaments conducted by it. Clause 4.1.3 of those regulations provided: “The Director is authorised to permit any substitute provided that he/she judges that the substitute is of approximately equal standard (according to the ABF Masterpoint Ranking

Scheme, the ABF Ranking Scheme, partnership experience or other relevant criteria) to the player for whom substitution is sought. Under these circumstances, scores obtained during the substitution shall not be subject to adjustment. Any contestant present at the relevant table may appeal against the Director's judgment of equivalence. Such appeal will be heard by the Tournament Sub-Committee, which may, if the appeal is successful award an adjusted score."

In respect to tournaments not conducted by ABF, as is the case here, ABF assigned, relevantly, the responsibilities conferred on it by WBF to the NSW Bridge Association ("NSWBA"), and NSWBA promulgated the NSWBA Tournament Regulations, which adopted 2007 Laws of Duplicate Contract Bridge, and went on to provide that in any session of a club affiliated with NSWBA, such as PBC, the Tournament Regulations of that club would apply, and when there were no such club regulations, the NSWBA Tournament Regulations would apply.

Clause 4.1 of the NSWBA regulations contained a definition of the expression "Equivalent standard", as meaning "that degree of equivalence where the ability of the substituting pair is neither significantly higher ("overweight") nor significantly lower ("underweight") than that of the substituted pair as determined by a simple majority of the Tournament Committee. In determining the degree of equivalence, masterpoint ranking need not be the determining factor and the relative experience of the partnership and players should be taken into account".

This definition is expressed in terms of looking at the equivalence of a substituted pair in a teams event, but it seems appropriate to treat it as applying to a substituted player in a pairs event – the definition is clearly enough intended to cover both teams and pairs events, there is no separate definition for pairs events, and the circumstances to be considered are relevantly identical.

Clause 4 goes on to require requests for substitution to be provided in writing, in advance of a session, and to provide for penalties for noncompliance: if a substitute used is not of equivalent standard, the score of the offending pair is to be reduced so that they will receive the lower of their actual score or their average score for sessions not involving unapproved substitutes. Significantly, there is no provision authorising anyone to disqualify any offending team or pair.

As well, clause 4.6.5 provides that any substitution not advised to the director or to the Tournament Committee prior to the start of the session will be deemed overweight and subject to the penalty provisions just mentioned.

PBC adopted its Operating Procedures and Playing Rules. These included clause 6, adopting a part the Laws of Duplicate Bridge 2007 concerning the duties and powers of directors; and clause 8, which provided:

- (a) “General Rules: The rules affecting play in all sessions will be permanently displayed on the Notice Board.
- (b) Special Rules: The rules applicable to a particular event will be prepared by the Tournament sub-committee and displayed on the Notice Board adjacent to the entry list for that event. Entry to the event assumes that players have read these rules and will abide by them.”

In fact, Rachel Loomes and Maurice Loomes applied to the director a week before the third round of the Championship for authority to substitute Lyn Smith for Maurice Loomes, and disclosed that Lyn Smith had a higher ABF masterpoint ranking than did Maurice Loomes. The director considered the matter, including the discrepancy in masterpoints, his view that Maurice Loomes played well above his nominal rank, and that Rachel Loomes and Lyn Smith had not played together before, and he authorised the substitution.

Notwithstanding this, Lynn Baker and Peter Robinson contend PBC should have treated the substitution as unauthorised, relying on a notice posted on one of the club’s notice boards in 2015.

Prior to the posting of the 2015 notice, there had been an earlier notice, dated 2013. The 2013 notice, headed “Substitutes in major events”, said relevantly: “The Director is authorised to permit any substitute of approximately equivalent standard provided that he/she judges that the substitute is of approximately equivalent standard to the player for whom the substitute is sought. **Equivalent standard** means that degree of equivalence where the ability of the substituting partner/pair is not significantly higher than that of the substituted partner/pair. In determining the degree of equivalence, masterpoint rank need not be the determining factor and the relative experience of the partnership and the players should be taken into account.” (We note in passing that whoever

authorised this notice apparently construed the NSWBA regulations in the way we have, that is, treating the definition as applying to both teams events and pairs events.)

The minutes of a meeting of the PBC committee on 11 March 2015 record this: under the heading “Sub-committee reports”, and a further heading “Tournament”, there appears: “Substitute players at all Tournaments should be of the same standard, but this rule hasn’t been fully observed during the Padman Trophy so far.” Then, under the heading “Actions arising from consideration of Sub-Committee Reports” there appears: “V. Busteed Put a notice on the Notice Board which highlights that substitute players at all Tournaments should be the same standard.”

Vickie Busteed then caused to be placed on the notice board a notice reading, relevantly: “The Director is authorised to permit any substitute provided the substitute is of equivalent standard to the player for whom the substitution is sought. **Equivalent standard** means the same masterpoint level or lower (“the 2015 notice”).

The notice was unsigned, the evidence is silent as to who chose the words in the notice, and the notice did not say that it represented a change in the rules. Further, it was ambiguous in that it did not explain what was meant by “the same masterpoint level”: it might, on its face, have referred solely to the number of masterpoints, or it might have treated players as being of equivalent standard if they were both, for example, state masters, albeit with different numbers of masterpoints. (With the benefit of hindsight now, it may have been better if the committee had asked the Tournament Sub-Committee to draft the notice, that is, to have relied upon the collective knowledge and experience of the Sub-Committee members, and the instructions given were difficult to implement, but this insight comes well after the event.)

Both the 2013 notice and the 2015 notice remained posted, although it seems on different notice boards, or perhaps different parts of one large notice board, until after the playing of the 2016 Pairs Championship, when the 2016 notice, mentioned below, was posted.

Lynn Baker and Peter Robinson rely on the 2015 notice, saying that it must be taken to have superseded the 2013 notice. We are not confident that this conclusion necessarily follows without more than the different dates on the notices, or that the 2015 notice was intended to constitute club rules replacing the NSWBA rules.

The language of the committee, as recorded in the minutes, does not appear to be the language of wishing to repeal or to change any existing rule. Rather, it spoke of the existing rule not having been fully observed, and directed that action be taken to highlight the need for players to be of the same standard.

Rachel and Maurice Loomes draw attention to and rely upon clause 13 of the PBC constitution, which is in these terms:

“Powers of the committee

Subject to the [Associations Incorporation] Act, the [Associations Incorporation] Regulation and this constitution and to any resolution passed by the association in general meeting, the committee ... (d) may make or amend playing rules and operating procedures as it may think expedient for the internal management of the association. All such rules shall be binding upon members unless repealed by the committee or set aside by a resolution of a general meeting. No playing rule shall be inconsistent with the Laws of Contract Bridge as laid down from time to time by the Australian Bridge Federation.”

This seems to us to be a valid point. The Laws laid down by ABF included such relevant Laws as ABF had authorised NSWBA to make, and these included clause 4 of the NSWBA Tournament Regulations, extracted above. That is, the suggested rules, as spelt out in the 2015 notice, were inconsistent with the Laws laid down by ABF, through NSWBA, and therefore ineffective by force of the PBC constitution: the suggested rule treated the masterpoint ranking of two players (the substitute and the absent player) as the sole criterion, whereas the NSWBA Regulations made it clear that other matters were able to be considered. The 2015 notice, if read literally, would mean that an older player, obviously declining in skill, but possessing a relatively high masterpoint ranking achieved perhaps many years ago, could not substitute for a newer, younger player, obviously a rising star,

when the NSWBA rules (and, it might perhaps be noted, the ABF rules) allow for circumstances such as this to be considered and weighed.

Additionally, the suggested rules did not mention the problem of underweight substitutes, although in the circumstances this hardly matters.

We conclude therefore that whatever the intentions of the various committee members on the occasion of the meeting of 11 March 2015, and whatever various club members thought were the applicable tournament rules, whether relying on the 2015 notice, or otherwise, the correct view of the matter is that the club was bound by its constitution to make playing rules only if they were consistent with the NSWBA Tournament Regulations.

It follows that the substitution of Lyn Smith for Maurice Loomes, sought in good time, and approved by the director, was quite legal: the judgment to be made was that of the director, where the masterpoints of those in question was a matter for consideration, but not the sole criterion.

Further, even if the substitution was to be taken to have been unauthorised, or improper, because the director ought to have come to a different view, the penalty to be applied is not an unauthorised disqualification, but an authorised adjustment to the score; and since the score achieved in the round of the Championship when Lyn Smith played was the lowest score achieved by the Loomes pair, the result must stand.

Additionally, PBC has no authority, either under its constitution or otherwise, to disqualify a pair on the grounds suggested.

Nevertheless, Lynn Baker and Peter Robinson understandably felt that an injustice had been done for two reasons. First, because of the unfortunate circumstance that Lynn Baker had been advised to look at the 2015 notice (rather than at the NSWBA regulations), she followed that advice, and relied on the notice, and having looked unsuccessfully for a substitute with an equal or lower masterpoint ranking than that of Peter Robinson, felt obliged to co-opt a novice as substitute. Secondly, she perceived that Rachel and Maurice Loomes had been independently unfairly advantaged.

One circumstance relied upon was that Rachel Loomes had been present at the meeting of 11 March 2015 so that, it was said, she must have known that the committee intended to change the rules. Rachel Loomes denies that there was such a decision, and as noted above, the minutes do not make it apparent that there was any such decision made. In the materials made available to us, the parties offer competing versions of what others said or thought, all in the nature of hearsay, but nothing more as to what anybody ever actually said, so that it is impossible for us to know just what was said, or by whom or in what context. We do note however that what objective evidence there is supports the version of Rachel Loomes, and on the materials before us we see no reason to think otherwise than that she acted quite properly.

There is a puzzling aspect to the proposition that in March 2015 the club intended to change and did change the playing rules. In March 2016 another notice (“the 2016 notice”) was put up on the notice board, reading relevantly: “The Director is authorized to permit any substitute provided that the substitute is of equivalent standard to the player for whom the substitute is sought. **Equivalent standard** means that degree of equivalence where the ability of the substituting partner/pair is not significantly higher than that of the substituted partner/pair. In determining the degree of equivalence, masterpoint rank need not be the determining factor and relative experience of the partners and players should be taken into account.”

Plainly enough, this takes one back to the NSWBA regulations, but nobody has said or suggested that the 2016 notice resulted from a further change in view, or of any resolution of the committee. This is puzzling, but not determinative.

A significant debate ensued, with some very unpleasant things being said. The PBC committee attempted unsuccessfully to reconcile the parties, and later resolved that, because inequitable conditions had arisen, so that the integrity of the Championship had been compromised, it declared the 2016 Pairs Championship null and void. It must be said immediately that the committee had no power to do this: there is nothing in the PBC constitution, or in the Laws of Contract Bridge, or in the NSWBA Tournament Rules, or the PBC’s Operating Procedures and Playing Rules that authorises such a course. As well, if the Championship was null and void, it would presumably follow that all players (and not just the winners and

runners up) who earned masterpoints in the Championship would lose these points, and the entry fees paid would have to be refunded. Those pairs of players who came third, fourth and a little later would be unlikely to think that this was the proper or correct outcome.

It is impossible not to feel very great sympathy for the committee members, volunteers conducting the affairs of the biggest bridge club in NSW not employing paid management staff, and doing so with conspicuous success. On the evidence they were acting in good faith and trying to achieve harmony within the club, as well as to achieve a just result in very difficult circumstances, but for the reasons given, we conclude that both the placing of the 2015 notice on the notice board so as to purportedly change the rules, and the purported voiding of the Championship, were ineffective, because they exceeded the constitutional authority of the committee, indeed of the club.

It might be thought that the result turns on a technicality, and indeed it does, but it is a technicality that goes to the very heart of a complicated game: it all depends on the rules, and anybody at all who competes at other than a social bridge game must him or herself personally take appropriate steps so as to be familiar with the rules: how else might we all compete on a mutually acceptable basis?

There are outstanding two other disputes: each of the pairs in question complained about the conduct of the other. This matter has now been ongoing for more than six months. It is sincerely hoped that this determination, flowed by the withdrawal of the two outstanding complaints, will see a conclusion such that all parties can apologise and return to a mutual respect for their ongoing contribution not only to the game of bridge, but also to the continued success of Peninsula Bridge Club.

Having reviewed all the documentation received from all three parties, together with a Club premise visit, our expert determination is firstly, that the 2016 Club Pairs Championship event be reinstated, secondly that the results published at the time be confirmed, and thirdly that the masterpoints awarded be processed accordingly (if this has not already been done).

Although it is not part of our task now, we respectfully suggest to the committee that any future decisions as to substitutes might be entrusted to the



club's Tournament Sub-Committee, rather than to an external director: the Sub-Committee is much more likely to be able to come to a well informed decision as to the equivalence of standards of the player(s) in question. As well, we suggest reviewing the Operating Procedures and Playing Rules, and the layout of the notice board, ensuring that there is posted there, in a place close to where members might sign entries for events, a full copy of at least the relevant parts of the NSWBA Tournament Regulations: people will tend to summarise rules like these, but if the rules are there to be read, disputes are less likely to arise.

John McIlrath

John Brownie

5 September 2016