

**DECISION**

**of the**

**EUROPEAN BRIDGE LEAGUE  
DISCIPLINARY COMMISSION**

**on 18 July 2016**

President: Mr. Jurica Carić (CRO)

Members: Mr. PO Sundelin (SWE)  
Mr. Rex Anderson (IRL)

In the case of

**Mr. Fulvio Fantoni**  
**Mr. Claudio Nunes**

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## I. Facts and procedure

1. The elements set out below are a summary of the main relevant facts, as established by the European Bridge League ("EBL") Disciplinary Commission (hereinafter referred to as "the Commission") in particular on the basis of the documents regarding written and oral submissions, as well as the evidence submitted by Messrs Fulvio Fantoni and Claudio Nunes (hereinafter also referred to as "the Players") representing Monaco in the 2014 EBL European Championships in Opatija (hereinafter referred to as the "Competition"). While the Commission has considered all the facts, allegations, legal arguments and evidence submitted by the Players and their representative in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
2. The President of the EBL appointed an Investigation Committee – consisting of Messrs Eric Laurant, Jan Kamras and Jean-Paul Meyer – in order to conduct investigations into allegations that the Players cheated at the Competition.
3. The Players are bridge players affiliated to the Italian Bridge Federation ("FIGB" – Federazione Italiana Gioco Bridge), as well as to the Monegasque Bridge Federation (Fédération Monégasque de Bridge)
4. The allegations of cheating had arisen from a signalling hypothesis brought to the attention of the Investigation Committee by Mrs. Maaijke Mevius at the Competition and after analysing all boards from the 6 matches in which the Players were defenders and in which there were video recordings of the matches at the Competition.
5. After the preliminary analysis of the relevant boards from the abovementioned 6 matches, the Investigation Committee found that there was indeed evidence of the signalling hypothesis. The hypothesis as discovered was confirmed by the Investigation Committee to be that the Players place the card led vertically on the table when the led suit contains an unseen high honour; otherwise, the card led is placed horizontally on the table.
6. In a letter dated September 25, 2015 from the Investigation Committee, the cheating hypothesis and certain data from the relevant boards were sent to the Players, requiring them to submit their answers prior to October 15, 2015.  
The hypothesis was expressed in the following terms:  
  
    "... (i) vertical leads show a high honour (in the led suit)  
    and ... (ii) horizontal leads show that there is no high honour (in the led suit)..."
7. In a letter dated October 2, 2015 the Players denied the allegations against them and informed the Investigation Committee that they had appointed the law firm Balaguer Morera & Asociados and lawyer Mr. Enrique Morera Guajardo, and asked that any further communication be addressed to their lawyers. The Players also requested that

the Investigation Committee grant an extension of the deadline for filing their answer until November 11, 2015.

8. On October 9, 2015, the Investigation Committee accepted the Players' request for extension of the deadline for filing their answer. The Investigation Committee reiterated that investigation and allegations are strictly limited to a possible correlation between the orientation of the opening lead card and the holding in that suit.
9. On November 5, 2015, the Players sent another e-mail asking for further extension. Their request was again granted and the deadline for filing their response to the Investigation Committee was extended to November 20, 2015
10. On November 20, 2015, the Players filed their defence to the preliminary findings of the Investigation Committee.
11. Since the Players denied having used illicit actions, the Investigation Committee decided to seek the expertise of statistical experts— from Mr. Nicolas Hammond, Prof. Greg Lawler and Prof. Peter Büchen – who all calculated that the probability the Players' card placements were random was close to zero.
12. In light of these findings, the Investigation Committee reached the conclusion that disciplinary proceedings should be commenced against the Players for using illicit prearranged methods and made such recommendation to the EBL Executive Committee.
13. Based on the recommendation from the Investigation Committee, the EBL Executive Committee decided to constitute a Disciplinary Commission ("the Commission") to hear and determine the cheating allegations made against the Players.
14. The Commission was constituted as follows: Mr. Jurica Caric (President), Mr. PO Sundelin and Mr. Rex Anderson. The Executive Committee appointed Mr. Serge Vittoz, attorney-at-law specializing in sports law in Lausanne, Switzerland, as counsel to assist the Commission with regard to the conduct of the disciplinary procedure.
15. On April 15, 2016, the EBL filed its written submissions to the Commission. In these submissions, the EBL in particular stated, as to the alleged code used by the Players, that when defending they orientate their cards the first time they lead a suit to communicate encouragement or discouragement in that suit. A vertical position of the card typically indicates an unseen top honour (A/K/Q) or a singleton which can lead to a ruff in a suit contract. A horizontal position of the card signals discouragement. Discouragement either denies an unseen top honour or a singleton or signals that the defender would not like this suit continued.

16. Before filing their answer, the Players filed several written submissions *ad cautelam*, i.e. without prejudice as to the jurisdiction of the Commission, in particular, with regard to the nullity of the procedure before the Commission.
17. After having been granted an extension of the deadline in this regard, the Players filed their answer on June 17, 2016, still *ad cautelam*.
18. A hearing was scheduled on July 15, 2016 at the headquarters of the EBL in Lausanne, Switzerland (hereinafter referred to as "the Hearing").
19. On July 11, 2016, the Players filed unsolicited written submissions and evidence, requesting again the annulment of the present proceedings in view of the ongoing procedure before the FIGB. On July 14, 2016, the Commission informed the parties that this issue would be discussed at the Hearing and adjudicated on in the final decision.
20. On July 14, 2016, the Players filed unsolicited written submissions and evidence, which were not admitted by the Commission, as being late.
21. The Hearing was held on July 15, 2016 in Lausanne, in the presence of all members of the Commission.
22. The Commission was assisted at the Hearing by Mr. Serge Vittoz (counsel) and Mr. Simon Fellus (technician).
23. The Investigation Committee was represented by its president, Mr. Eric Laurant and the EBL was represented by its attorney, Mr. Ross Wenzel.
24. The Players were present in person and were represented by their attorneys, Mr. Enrique Morera Gujardo and Mr. Paul Green.
25. In the course of the Hearing, the following expert-witnesses were heard in video-conference:
  - Prof. Greg Lawler
  - Mr. Nicholas Hammond
  - Prof. Peter Büchen
  - Mr. Carlo Colombo
  - Mr. Miguel Angel Canela.
26. The Players were given the opportunity to present their case and answer questions by the Commission and the Investigation Committee representatives.



## II. The Position of the Parties

27. The position of the EBL is, in substance, the following:

- a) There is no case of “double jeopardy”, in particular as the Players violated the EBL’s rules, in an EBL competition and that the EBL is only seeking suspension from EBL competitions;
- b) The EBL bears the burden of demonstrating that the Players violated the applicable rules;
- c) The standard of proof to be applied is the standard of “comfortable satisfaction”;
- d) The experts’ opinions sought by the Investigation Committee demonstrate that the Players exchanged information through prearranged method of communication during the Competition. According to the statistical experts called by the EBL, the chance that the card placements were random is statistically virtually impossible;
- e) The geometrical expert’s orientation calculation established that in 61 out of 64 boards the card has been placed vertically, between 60 and 90 degrees to the edge of the table, or horizontally, between 0 and 30 degrees to the edge of the table.

28. The Players’ position is, in substance, the following:

- a) The procedure before the EBL should be annulled in application of the prohibition of “double jeopardy”, as proceedings are pending before the FIGB;
- b) They initially considered, in their written submissions, that the applicable standard of proof is the criminal standard “beyond reasonable doubt”. However, in the course of the hearing, the Players admitted that the applicable standard of proof was the “comfortable satisfaction” of the Commission;
- c) The Players’ statistics expert opinions demonstrate that the method used by the EBL’s statistical experts were wrong;
- d) The EBL modified its accusations by basing as follows:
  - the EBL analysed 13 matches whereas only 12 were considered by the Investigation Committee;
  - the EBL based the accusation only on the leads while the Investigation Committee stated that “the signal is transmitted at trick 1 by opening leader and third hand”;
  - the EBL changed the system of calculation based on the position of the cards;
  - the EBL introduced a new argument, sustaining that the distortion of the position of the cards is irrelevant.
- e) The fact that 3 of the hands contradicted the alleged code leads to the conclusion that the Players did not use a prearranged code of communication and the allegations should thus be dismissed.
- f) The Players claimed that it was difficult to establish if the cards were placed horizontally, vertically, or diagonally.

### **III. Merits**

#### **A. Jurisdiction**

29. According to article 33.8 of the EBL Statutes, the Executive Committee has the competence to *"prescribe a disciplinary code of conduct with rules of procedures and sanctions and to delegate the enforcement of the code of conduct to a Disciplinary Commission"*.
30. The Executive Committee is also competent to appoint the Disciplinary Commission (art. 33.11).
31. As previously mentioned, the Commission was appointed by the Executive Committee.
32. The Commission therefore concludes that it is competent to decide on the present matter.

#### **B. Double jeopardy**

33. The Players consider that the principle of the prohibition of "double jeopardy" (*ne bis in idem*) is applicable in the case, in view of the procedure before the FIGB, and that the present procedure shall be annulled for this reason.
34. The Commission agrees that this general principle of law is applicable in sports disciplinary proceedings. However, in the case at hand and as stated by the EBL, the Players allegedly committed a violation of the EBL Disciplinary Code during an EBL event and the latter only seeks a suspension from its own events. The Commission is therefore of the opinion that the procedure before the FIGB does not have the exact same object as the EBL and therefore that the principle of the prohibition of "double jeopardy" is not applicable in the case at hand.
35. The Players' request in this regard is therefore rejected.

#### **C. The modification in the EBL's accusation**

36. The Players also contend that the fact that the initial accusation, by the Investigation Committee, was based on the analysis of 13 matches and that it was modified at a later stage by the EBL to the analysis of 12 matches is not admissible. The Players therefore concluded that the whole proceeding is vitiated by nullity.

37. The Commission notes that during the formal disciplinary procedure before it, the EBL's accusations were based from the very beginning on the analysis of 13 matches and that therefore the EBL has not added a further accusation
38. The Commission applies the same reasoning for the other arguments raised by the Players regarding the alleged modification of the accusation, as the EBL did not modify its position in the course of the proceedings before the Commission.
39. The Players' request in this regard is therefore rejected.

#### **D. The applicable standard of proof**

40. The Players initially contended that the applicable standard of proof was "beyond reasonable doubt", whereas the EBL's position is that the standard of "comfortable satisfaction" is the one to be applied by the Commission. In the course of the hearing, the Players accepted that the applicable standard of proof was the one indicated by the EBL.
41. The Commission agrees with the Parties and considers that the applicable standard of proof in sports' disciplinary proceedings is the "comfortable satisfaction", which is higher than a balance of probabilities but lower than the criminal standard of beyond reasonable doubt (see, for example, CAS 2009/A/1920).

#### **E. The applicable rules**

42. The EBL Disciplinary Code sets out certain types of reprehensible conduct, which may give rise to a sanction. Examples of reprehensible conduct, in particular "illicit actions or behaviour affecting the proper running of a competition or its result" are considered as reprehensible (Article 3, para. 3) and "serious infringement of the EBL Statutes or Regulations" (Article 3, para. 1).
43. Law 73, chapter B ("inappropriate communication between partners") of the Laws of Duplicate Contract Bridge, which has been adopted by the EBL, reads as follows:
  1. *Partners shall not communicate by means such as the manner in which calls or plays are made, extraneous remarks or gestures, questions asked or not asked of the opponents or alerts and explanations given or not given to them.*
  2. *The gravest possible offense is for a partnership to exchange information through prearranged methods of communication other than those sanctioned by these laws.*



44. As to the applicable sanctions which can be applied, Article 4 of the EBL Disciplinary Code reads as follows:

*Article 33.8 of the Statutes makes provision for a certain number of sanctions liable to be imposed on NBOs persons. Depending on the gravity of the case, sanctions can take the following form:*

- 1. warning, possibly published on the EBL website;*
- 2. suspension of the NBO or the person concerned from one or several official events;*
- 3. exclusion from participating in EBL activities;*
- 4. banning from participating in EBL events;*
- 5. monetary fine.*

#### **F. The violation of the EBL Disciplinary Code**

45. The Commission considers that the EBL established to its comfortable satisfaction that the Players have breached Article 3 of the EBL Disciplinary Code, through the use of the exchange of information through a prearranged method of communication, which is forbidden by Law 73 of the Laws of Duplicate Bridge.
46. To reach this conclusion, the Commission first thoroughly analysed the video recordings of the matches in question. After hearing the representations made on behalf of the Players, the Commission accepted that the boards used to discover the existence of the code should not be used to verify the existence of the code. Accordingly the Commission considered only the leads made in the 64 boards in the matches played by the Players against Bulgaria [11 boards], Denmark [8 boards], Germany [8 boards] Iceland [8 boards], Ireland [10 boards], Israel [11 boards] and Romania [8 boards]. The conclusion is reached based on the video evidence and the bridge experts' written and oral evidence relating to mathematics and probability.
47. In relation to the Players' claim that the code has not been used in all situations and that the allegations should therefore be dropped, the Commission is of the opinion that not using the code may sometimes be used to protect the code and that cannot constitute the basis for the dismissal of the allegations. If it was acceptable that a small percentage of cards played diagonally raises doubt and constitutes a ground for the dismissal of the allegations, everybody could use the code on, for example, 95 out of 100 boards, and claim innocence.
48. Furthermore, the Commission considers that the statistics expert opinions provided by the EBL are convincing and that they support the above conclusions.



49. The Commission therefore confirms that the Players have breached the above-mentioned regulations, by using the code, which is considered as a prearranged method of communication.

#### **G. The sanctions**

50. The Commission agrees with the EBL that the Players' conduct contravenes the spirit of bridge, injures its integrity and eliminates the equality of chance that is the essence of any sporting competition. The Players have engaged in a form of illicit behaviour, which is described as the gravest offence possible in the Laws of Duplicate Bridge.
51. Furthermore, the Commission also stresses that the length of a career in the sport of bridge is longer than for most of other sports. Therefore, this should also be taken into consideration when determining the quantum of the sanction.
52. Considering the above, the Commission rules that the Players shall be (i) banned from participating in all or any EBL events or activities as individual players for a period of five (5) years, (ii) banned from participating in all or any EBL events or activities as a pair playing together for life and (iii) that the Players shall bear the costs of the present proceedings, including the costs incurred by the EBL in the investigation and prosecution phase in the amount of 20.000 EUR each.
53. Finally, the Commission does not impose any monetary fine on the Players, as requested by the EBL, as it considers that the above sanctions already have a sufficient financial impact on them.

#### **H. Entry into force**

54. The present decision enters into force on the date of the notification of its operative part to the Players.

## ON THESE GROUNDS

### The Disciplinary Commission hereby rules:


1. Messrs Fulvio Fantoni and Claudio Nunes are banned from participating in EBL events or activities as individual players for a period of five (5) years.
2. Messrs Fulvio Fantoni and Claudio Nunes are banned from participating in EBL events or activities as a pair playing together for life.
3. Messrs Fulvio Fantoni and Claudio Nunes shall bear the costs of the present proceedings including the costs incurred by the EBL in the investigation and prosecution phase in the amount of 20.000 EUR each.
4. All other motions or prayers for relief are dismissed.

Date of the decision: July 18, 2016

Date of the reasoned decision: August 24, 2016

### THE DISCIPLINARY COMMISSION

Jurica Carić  
President



PO Sundelin  
Member



Rex Anderson  
Member