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Appeal by Andrew Palmer Against Decision of the North Harbour Table Tennis Association Incorporated - Decision of Table Tennis New Zealand

The Board of Table Tennis New Zealand Inc pursuant to its Constitution has been asked to determine an appeal under Rule 10 of its Constitution and exercise of its powers under Rule 15 of its Constitution.

The appeal has been brought by Andrew Palmer who at all material times was a member of the North Harbour Table Tennis Association (NHTTA). The appeal was opposed by the NHTTA. The appellant has provided all material documents in two bundles of evidence and both parties have provided helpful submissions. The Board has read and carefully considered the bundles and written submissions of the parties.

The decision of the NHTTA under appeal is recorded in a letter signed by Jack Stapleton, President and dated 24 January 2013. The Executive Committee of the NHTTA resolved that the appellant's actions in relation to his conduct in connection with the New Zealand junior championship teams tournament was dishonest for the reasons set out in their letter. The Executive Committee removed the appellant from all positions held with the NHTTA, imposed a ban of 24 months of non-participation in any NHTTA activities and decided that he was not eligible to be appointed or elected to any committee, subcommittee or body of the NHTTA, and that he was not able to hold membership. The ban was timed from the date of service of the letter. The Committee also considered that the appellant ought to pay to the NHTTA the sum of \$394 on account of airfares and \$750 on account of accommodation; in the event of failure to make those payments the Committee said that it would reconsider the duration of the suspension (it is inferred that the Committee would consider imposing a longer period of suspension in default of those payments being made by the appellant).

The conduct in respect of which the appellant was charged by the NHTTA is described in a letter dated 26 October 2012 sent to him under the signature of Jack Stapleton, President. That letter is attached to this decision and may be considered as read in full as part of the background to this appeal decision. The letter sets out the allegations which are essentially four in number, with allegation 2 containing numerous particulars.

There was a meeting which the appellant attended on 23 November 2012, with his lawyer Mr Nicholson, at which the allegations were gone into.

In summary, the allegations were:

- On 1 August between 5 pm and 7 pm at the NHTTA Stadium the appellant verbally abused and used foul language towards the Secretary and made threats towards the Secretary against the General Manager of the NHTTA (**Allegation 1**).
- The appellant acted “dishonestly” and inappropriately in relation to the NHTTA trip to Christchurch for the New Zealand Junior Championship held in July 2011, of which he was the Manager (**Allegation 2**, under which 7 further particulars are alleged).
- On 3 and 9 October 2012 he misrepresented himself as a member of the NHTTA Management Committee on a Facebook page (**Allegation 3**).
- On or about 10 October 2012 he disrupted a meeting of the Day Club and further misrepresented himself as a member of the NHTTA Management Committee (**Allegation 4**).

The allegations must be determined under the Constitution of the NHTTA as it was at the time of the conduct and hearing (see NHTTA Constitution dated 16 May 2006). The rules of the NHTTA were amended by lodging of a new constitution on 5 April 2013, but those rules post-date the events and decision under appeal. The Board has made its decision by reference to the rules applicable at the time of the conduct and as at the date of the decision (24 January 2013).

Rule 40(k) of the NHTTA rules defines misconduct as:

“For the purpose of this rule, ‘Misconduct’ means conduct involving dishonesty in connection with any Table Tennis match, tournament or competition or in the administration of the game of Table Tennis or which is otherwise calculated to bring the sport of Table Tennis, or the name of Association, into disrepute.”

The Executive Committee of the NHTTA was able to receive such documentary or oral evidence as it considered relevant to determining the truth of the allegations (see Rule 40(e)).

Only if the allegations appeared to the Executive Committee to be “well-founded” could it then go on to impose any penalty (Rule 40(f)). On the other hand, if the Committee found the allegations to be “unfounded” it was obliged to “forthwith dismiss the allegations” (Rule 40(g)). Unfounded in the context of this Rule must mean not “well-founded”.

The test of “well-founded” requires the Committee to be satisfied that the allegations are proved “based on good evidence or reasons”.

What has to be proved is that the misconduct on the appellant’s part was proved to involve dishonesty (Rule 40(k) in the context of any “Table Tennis match, tournament or competition or in the administration of the game of Table Tennis” or “which is otherwise calculated to bring the sport of Table Tennis, or the name of the Association, into disrepute”. What must be proven however is that the appellant engaged in “conduct involving dishonesty”: a finding of dishonesty is a serious finding against a member. A finding of misconduct requires good evidence and reasons before it may properly be made.

The appeal requires us to be satisfied that the decision of the NHTTA on the specific allegations was correct and proved in terms of the definition of misconduct, as outlined above. What the appeal does not require the Board to determine are collateral allegations that are not connected

with the issues, or are not charged. We observe that both sides, to one degree or another, delve into background matters and other allegations that at best have marginal relevance to these matters: these tended to show a background of conflict between members of the NHTTA, including the appellant.

We have read everything put before us. Insofar as any of the information has relevance, we have taken it into account.

As to **Allegation 1**, it had to be proved that any verbal abuse or foul language towards the Secretary that may have occurred was conduct involving dishonesty, which was calculated to bring the sport of Table Tennis or the Association into disrepute. We do not consider that the evidence established any such conduct by the appellant involving dishonesty, or conduct of that or any other type that was calculated to bring the sport of Table Tennis, or the name of the Association, into disrepute. Most of what occurred appeared to be interpersonal conflict between members, including the appellant: it is not possible for fault to be established either way. What we have to consider is whether the conduct was proven misconduct. We are satisfied that it was not. Insofar as Allegation 1 is concerned, we are not satisfied that the NHTTA was correct to find it proved to the standard outlined above (as set forth in its Rules, to which it did not appear to turn its mind): we uphold the appeal and quash its decision regarding Allegation 1.

As to **Allegation 2**, this alleges dishonesty in relation to the NHTTA trip to Christchurch for the New Zealand Junior Championships. This appeared to us to be the most serious allegation, supported by 7 particulars or subsidiary allegations. We refer again to the specifics of the allegations in the copy of the notice sent to Mr Palmer dated 26 October 2012, which we have carefully considered, along with the parties' evidence and submissions on them. We are not satisfied that the evidence was sufficient to prove that the appellant acted dishonestly in connection with this matter. While we agree that the appellant did not have authority to make the request to, or to include, Blake in a composite team, it appears to us that he believed he was entitled to do so by virtue of his contacts with Mitchell Barker, a NHTTA selector and coach, and by virtue of the other discussions referred to and helpfully outlined in the appellant's submissions commencing paragraph 16. We have carefully considered the reasons of the NHTTA for being concerned about the informality of this process and understand its concerns. But equally we are satisfied that the NHTTA was not entitled to decide, on the evidence, that there was any dishonesty on the appellant's behalf, notwithstanding the procedural irregularity. The procedural irregularity is something that the NHTTA can explain if need be to any third party: the consequences for funding or administration do not justify a finding of dishonesty, where the evidence otherwise does not prove it. We are not satisfied that there was sufficient evidence to conclude there was any dishonesty in relation to the cost of the accommodation or the payment of \$150 for food by Blake, and note the statements on this issue provided to the NHTTA. Whether there is any obligation on anyone to refund any money is an administrative matter which the NHTTA can resolve by reference to the applicable rules. It appears to us that any participation by the appellant in an attempt to transfer an air ticket was a practical step: the evidence does not show dishonesty on the appellant's behalf. There is no evidence of dishonesty on the appellant's behalf as it appears clear he was endeavouring to facilitate the participation and travel of the member, albeit in a muddled manner. It follows we do not agree that the appellant's actions have had the effect of bringing the NHTTA or the sport of Table Tennis into disrepute. We therefore uphold the appeal and quash the decision on **Allegation 2**.

Turning to the question of whether there was any misrepresentation of the appellant of his membership of the NHTTA Management Committee, whether on Facebook or at a meeting of the Day Club (**Allegations 3 and 4**), the evidence is conflicting as to the manner of his resignation, but in any event there was no sufficient evidence of misconduct as required by Rule 40(k). Whether the resignation had been formally tendered or not, it appears that the NHTTA position was that the resignation was a verbal one and accepted: while in that respect there

appears to be some room for disagreement, whatever version is accurate, the evidence is far from sufficient to prove misconduct on the appellant's behalf. We quash the decision of the NHTTA in relation to Allegations 3 and 4.

We note for completeness that the NHTTA was not empowered to impose a financial penalty on a voluntary basis, and then leave it open to reconsider the term of suspension if that voluntary payment was not made. That was an improper process of penalising the conduct it found proved: the suspension should have been based upon the findings and proven allegations rather than based on any notional failure to pay or reimburse monies allegedly owed.

This appeal does give rise to some administrative issues that may require attention, although it appears they may have been adequately addressed by the NHTTA.

It is the decision of Table Tennis New Zealand that the appeal is allowed in whole. The decision of the NHTTA is set aside.

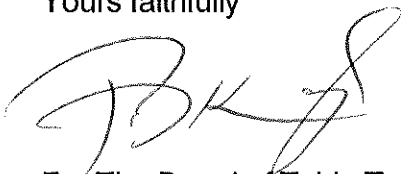
However, we also find that the appellant did fail to follow procedures in some important respects, although this fell short of misconduct.

We record that Table Tennis New Zealand urged, in terms of the process of appeal set out in Rule 10 of Table Tennis New Zealand's Constitution, that the parties resort to mediation rather than go directly to the formal appeal process. The parties were unable to agree upon a mediator and asked for a decision. The giving of this decision does not, however, preclude the parties mediating such issues that may remain in contention between them for the good of their Association and the sport of Table Tennis, and they are urged by us to do so.

In the circumstances we do not think it appropriate that either party should receive an award of costs, given that there appear to us to have been errors on both sides; but if either party disagrees with that evaluation we would be prepared to accept written submissions on costs, on the papers. However the parties are urged to agree on any costs issues between themselves and we would expect them to do so.

The NHTTA and the appellant now need to work cooperatively to ensure that administrative and procedural matters highlighted by this process are addressed adequately in the future. The NHTTA and the appellant must bear in mind the good of the sport of Table Tennis and earnestly work through their differences. Table Tennis while huge worldwide is very small nationally, and we can ill-afford both financially and reputationally to have these types of disputes and appeals. In closing, we repeat, the need for resolution of outstanding matters by way of mediation.

Yours faithfully



For The Board of Table Tennis New Zealand