

APPEAL	NABC+ THREE
Subject	Unauthorized Information (UI) - Tempo
DIC	Henry Cukoff
Event	Silodor Open Pairs
Session	First Final
Date	March 14, 2009

BD#	24
VUL	None
DLR	West

Don Stack	
♠	K T 3
♥	7 3
♦	A Q J 4
♣	A 9 7 2

Daniela Von Arnim		Spring 2009 Houston, TX		Grace Jeklin	
♠	A	♠	Q 9 8 4	♥	9 8 5 4
♥	A Q J 6 2	♦	7 2	♣	Q 5 3
♦	K 9 8 6				
♣	T 8 4				

Pierre Flatowicz	
♠	J 7 6 5 2
♥	K T
♦	T 5 3
♣	K J 6

West	North	East	South
1♥	Dbl	3♥	3♠
4♥	Pass ¹	Pass	Dbl
Pass	Pass	Pass	

Final Contract	4♥ doubled by West
Opening Lead	♠3
Table Result	Down 2, E/W - 300
Director Ruling	4♥ W down 2, E/W - 100
Committee Ruling	4♥ W down 2, E/W - 100

(1) Alleged break in tempo (BIT).

The Facts: The director was called after the double of 4♥. North said that the BIT was definitely not more than ten seconds. In screening the director obtained further information about the BIT:

North judged that the BIT was 3-5 seconds and South 4 seconds.

East judged that the pass was not in tempo with previous calls. West said that there was a BIT – obvious thinking.

The Ruling: The director judged that there was a BIT, which demonstrably suggested action, and that pass was a logical alternative. Therefore, the result was adjusted to 4♥ by West down two, E/W minus 100, in accordance with Laws 16B and 12C1(e).

The Appeal: N/S appealed the director's decision. All four players attended the hearing. West called the director after the double. E/W thought that North had stated to the director that his action took no longer than 10 seconds, as the director indicated on the Appeal Form and that they had thought that to be accurate.

South thought his double was clear, since he did not expect North to have a light takeout double in second seat. He said that his partnership would not double on a shaped ten-count

The Appeal Form noted that "North said that the BIT was not more than 10 seconds." In the hearing North testified that he had not said there was a BIT and that he had actually said, "It took way less than 10 seconds." Both North and South said North took on the order of 3-5 seconds, which South claimed was consistent with North's deliberative manner. The director testified before the committee. He agreed that North had not admitted to a BIT, and he explained that he judged a BIT likely because of North's phrasing. The director was unsure whether North had said, "It took no longer than 10 seconds" or "It took less than 10 seconds." In his opinion, however, either phrase implied a noticeable pause for thought.

The Decision: The committee was troubled by the inconsistency between North's apparent statement to the director and his denial in the hearing. Although he said had not wanted to be too definitive in describing the length of his action, no one else recalled hearing him say, "It took way less than 10 seconds." The committee felt that the fact that West called the director immediately after the South's double gave additional weight to E/W's contention that North had broken tempo. Although the committee thought that a 3-5 second pause would not be a BIT in this instance, it found that it had no reason not to accept the director's version of the facts. In cases where the facts cannot be established clearly, the director takes testimony and hears evidence much closer to the time that it occurs than the committee does, and the committee gives substantial weight to his determination of the facts.

Having found that there was an unmistakable hesitation, the committee easily decided that pass was a logical alternative and that double was demonstrably suggested by the UI, since it catered to whatever North had for his BIT. The committee felt that double was not at all clear and that many players would pass, as four out of five did when polled by the director. Therefore, the committee upheld the director's adjustment of 4♥ by West, down two, E/W minus 100 for both sides.

A minority opinion was that North's hand was clearer evidence than any of the muddled testimony that North's pause was more likely to have been an acceptable 3-5 seconds rather than a fatal 8-10. North had nice transferrable values, but nothing that would warrant taking more time than was usual to process an auction reaching the four-level with everyone else bidding when he held more than his share. The minority would have allowed the table result of 4♥ doubled down two, E/W minus 300 to stand for both sides. One possible response to this argument is that North might have been considering doubling 4♥ as a two-way action.

The appeal was determined to have had merit.

The Committee: Ron Gerard (Chair), Jay Apfelbaum, Tom Carmichael, Ed Lazarus and JoAnn Sprung.

Commentary:

- Goldsmith** Tough call. Determining whether there has been a BIT is frequently difficult, and here the two most reliable indicators are in conflict. North had nothing to think about over 4♥, which suggests that there was no BIT. But South's double wasn't mainstream, which suggests that there was one. If North had claimed he acted in tempo, this would be a very tough case. Overall, I like the committee's ruling. The director thought that there was a BIT. If his misunderstanding North at the table was a significant contribution to his decision, that's unfortunate, but when in doubt, the director's findings in cases of disputed facts ought to be accepted. Does the appeal have merit? N/S didn't offer any sort of case. If there had been a BIT, then the ruling is nearly automatic. N/S didn't disagree that there was a BIT, only how long it was. So where's the merit? Yeah, there' would have been a case if North had acted in tempo, but no one ever claimed that. Appeal without merit warning (AWMW).
- Polisner** Here again, I see no unmistakable BIT based upon the facts presented and would have allowed the table result to stand. It seems that a 3-2 vote about whether there was an unmistakable BIT would be by definition, not unmistakable.
- Rigal** The committee made the right decision. I see little merit in the minority position; we all know that people with the problem have no idea of how long they are taking.
- Smith** I think everyone misunderstood what North said to the director, but I don't think it matters. The fact that the director was called immediately after the double convinces me that North committed an unmistakable hesitation. The rest is easy, so obviously I agree with the directors and the majority decision of the committee.
- Wildavsky** I agree with the director and committee rulings.
- Wolff** A good ruling, although very close since the hesitation was arguable.