

## DISCIPLINARY AND ETHICS COMMITTEE FOR FOOTBALL FEDERATION AUSTRALIA

<b>Player</b>	Dino Djulbic, Perth Glory
<b>Alleged Offence</b>	R2 – Assault on a player (example violent conduct when not challenging for the ball) including an attempted assault on the player
<b>Date of Alleged Offence</b>	27 December 2016
<b>Occasion:</b>	Match between Melbourne City FC and Perth Glory
<b>Date of Disciplinary Notice</b>	28 December 2016
<b>Basis of the matter before Disciplinary and Ethics Committee</b>	A referral: see clause 3.3(a) - A League Disciplinary Regulations
<b>Date of Hearing</b>	Monday, 2 January 2017
<b>Date of Determination</b>	Thursday 5 January 2017
<b>Disciplinary Committee</b>	Lachlan Gyles SC, Chair Shaun McCarthy Robert Wheatley

### INTRODUCTION

1. A series of incidents occurred within a very short time in the 91<sup>st</sup> minute of the match between Melbourne City FC and Perth Glory at AAMI Stadium on 27 December 2016. The score was 3-3. It had been a very willing game. Perth Glory were defending deep inside their own penalty area. A threatening ball was swung in by Melbourne City that was cleared by Dino Djulbic ("**Djulbic**"). In the process of clearing the ball, he was challenged by Melbourne City player, Fernando Brandan ("**Brandan**"). There was enough contact in the challenge to force Djulbic to the ground. The bodies of the two players became entwined and the left leg of Djulbic came into contact with the body of Brandan. An instant later, Brandan kicked out at Djulbic when both players were on the ground. The base of both boots (and presumably the studs) made contact with Djulbic's

thigh. Djulbic then when standing up made contact to the stomach area of Brandan by use of his left knee.

2. Both players received a straight red card. Djulbic received the red card for the knee to the stomach area of Brandan and, although there was no direct evidence with respect to it, the Committee assumes that Brandan was sent off for lashing out at Djulbic with his feet. There also appeared to be simulation by Brandan by feigning that he had been hit in the face, something which would also have also stood against him.
3. These incidents came before the Match Review Panel ("**MRP**") who notified Djulbic that it had determined the act of kneeing Brandan constituted "*assault on the player*" (example violent conduct when not challenging for the ball in accordance with Annexure A-6 Table of Offences: A League Disciplinary Regulations). There was no issue that the minimum sanction for such an offence is one additional match plus the mandatory match suspension of one match. For Djulbic, the MRP proposed a suspension of three Hyundai A League matches, being the mandatory match suspension plus two additional matches.
4. Brandan, we were informed, received a lesser suspension of two Hyundai A League matches, being the mandatory match suspension plus one additional match.
5. By way of Election Form dated 28 December 2016, Djulbic gave Football Federation Australia ('**FFA**') notice that he did not accept the proposal of the MRP.
6. There was then a referral of the matter to this Committee pursuant to clause 3.3(a) which provides that this Committee must determine the matter and impose such sanctions as are authorised and appropriate to the determination.

## THE HEARING

7. The hearing of this matter took place on Monday, 2 January 2016. Mr Djulbic appeared via an audiovisual link from Perth. He was supported in Perth by a club official, Jacob Burns, and he was represented in person at the hearing by Peter Filopoulos, the CEO of Perth Glory. The FFA was represented by Anais d'Avilie of Counsel.
  
8. The evidence of the hearing comprised, relevantly, of an undated statement by Mr Djulbic, still frames of the incidents and footage provided by *Fox Sports* taken from several angles. Mr Djulbic's disciplinary record was also before the Committee. The most critical of the screen shots are reproduced below.





9. Written submissions were provided by Mr D'Avilie who appeared on behalf of FFA. Those written submissions were supplemented orally and oral submissions were also made by both Mr Filopoulos and Mr Burns.

### **THE FACTS**

10. The relevant facts have been set out, in short form, in paragraph 1 above, and the screen shots reproduced above speak for themselves. Although it was submitted by Mr D'Avilie that Djulbic instigated the incidents by unnecessarily and intentionally making contact with Brandan in the course of the initial challenge, we reject this submission. While it is clear that Djulbic's left leg did make contact with Brandan as the two men fell to the ground in the tackle, the fact of the contact between the leg of Djulbic and the body of Brandan was simply incidental to the tackle. The legs became entangled and in the momentum of the falling bodies, the leg of Djulbic came into contact with Brandan. This may have angered Brandan and caused him to lash out with his feet against

Djulbic, but there was no direct evidence on this point and we make no relevant finding as to the motivations of Brandan.

11. Brandan did not challenge the proposed sanction of the MRP. In the statement of Djulbic, he described the incident as being “*accidental*” and “*without any malicious intent*”. While those statements may be seen as being consistent with a not guilty plea, Mr Filopoulos, very fairly, narrowed the issue for determination to a contention that a suspension of three weeks for Djulbic was too harsh and in all the circumstances, the appropriate sanction should have been two matches. The effect of this concession was that Djulbic accepted that his conduct in making contact with Brandan with his knee was in fact an “*assault on a player*”.

## **SUBMISSIONS**

12. We have already rejected the submission made on behalf of the FFA that Djulbic instigated the incidents that led to the red cards. The FFA submitted that the appropriate factual finding was that “*the contact with Brandan’s chest/stomach area was not an accident and that Djulbic intended to cause the contact ...*” [21 written submissions]. Further, FFA submitted that there was no proper basis requiring parity between the suspensions of Brandan and Djulbic.
13. We accept the latter submission for two reasons. First, the “*proposed sanction*” for Brandan was made by the MRP. No reasons are available, and we are not bound by decisions of the MRP in any event. Second, the conduct of each player was different, and every case turns on its unique facts. Here the critical difference was the use of the knee, a matter it would seem that the MRP considered to be worse and more reckless than the use of the feet, thereby justifying the additional week.

14. Next, FFA submitted that the disciplinary record of Djulbic was a neutral factor because it was not so good so as to give rise to an extenuating circumstance in favour of leniency nor was it so bad as to be an extenuating circumstance warranting a longer suspension. While we more or less agree with the submissions of the FFA on this point, it should be pointed out that despite playing hundreds of professional football games in a number of leagues throughout the world, Djulbic had never previously been sent off for any offence relating to “*violent conduct*” or “*assault on a player*”. In our opinion, the disciplinary record of Djulbic, considering the longevity of his career and his position he occupies on the field (central defence), is relatively good.
15. Lastly, it was submitted that the Committee should be guided by the facts and the decision in the matter of *La Rocca* (17 February 2016) in which a three-match suspension was handed down for striking an opposition player with an arm.
16. When it came to the submissions of Djulbic, there was much said about the player “*only having eyes for the ball*”, trying to get up as quickly as possible and being large in stature. Some of these submissions seemed to imply that Djulbic was still denying any intention to knee Brandan, but overall it was the position, distilled, that:
  - (i) the contact with Brandan was intentional but not malicious;
  - (ii) there was no intention to hurt Brandan. Had that been the intention, serious injury could have easily been occasioned given the disparity in size between the two players;
  - (iii) the action occurred “*in retaliation*” to Djulbic being studded in the leg by Brandan; and;
  - (iv) all this happened in a very short period of time in circumstances where the ball was still in play, meaning that Djulbic had to get to his feet as quickly as possible

in order to position himself to defend the next attack on goal and in doing so, was “reckless”, in making contact with Brandan;

- (v) there was no justification for treating Brandan more leniently.
17. As to these submissions, this Committee accepts that Djulbic did not intend to injure Brandan. While the contact was not trivial, we accept that, had he so intended, Djulbic could have kned Brandan with significantly more force.
18. To the extent that such a submission survived both the cross examination of Mr d’Avilie and the questions posed by members of the Committee, we reject any submission that the contact between the left knee of Djulbic and the body of Brandan was accidental. While it is true that these events all occurred in a very short period of time and in the exigence of the moment, Djulbic did in fact go out of his way, seemingly by a metre or more, to knee Brandan who was on the ground. In our opinion, the contact could easily have been avoided, and the player ultimately accepted this. This does not necessarily make the contact “malicious”, but it did constitute an “assault” as prescribed by the Regulations. It was also reckless, in the sense that Brandan could have been badly injured despite a lack of intent to cause that.
19. We also do not accept that Djulbic only had eyes for the ball. While, without question, Djulbic was focused on positioning himself so as to prevent another goal, he had sufficient presence of mind to target Brandan for retribution.

### **CONSIDERATION AND FINDINGS**

20. Pared-down, the narrow issue for determination is whether the three match suspension proposed by the MRP should stand or whether it should be increased or decreased. Out of fairness to Djulbic, the Chair informed him that this Committee would not increase the

sanction without due warning to him. As no such warning has been given, there is no occasion to increase the sanction proposed by the MRP.

21. While this Committee can, in its absolute discretion, vary sanctions proposed by the MRP, it does so only when given good reason. It was with this in mind that the Committee asked Djulbic to set out what he considers to be the “*extenuating circumstances*” relevant to underpinning its submission that the suspension should be reduced by one week in length. The claimed extenuating circumstances were really no broader than those set out at [16] above, ie Djulbic had just been assaulted, he was desperate to prevent another goal being scored and the ball was still very much in play at a crucial moment of what had been a very high intensity game. Further that there should have been parity between the two sanctions.
22. In our opinion, Djulbic has not demonstrated sufficient extenuating circumstances to cause us to vary the sanction of the MRP. On the contrary, this Committee, whilst acknowledging that, as evidenced by his disciplinary record, Djulbic is generally a fair player, his conduct on this occasion did himself a significant disservice and set a very poor example to others. Although we accept that it was not Djulbic’s intention to injure (and apparently he did not cause significant injury), we do not condone, in any circumstances, the use of the knee on the football field. The use of the knee in that way, as evidenced by the screen shots above, must be discouraged by the setting of appropriate sanctions likely to deter such an incident that could have, on another day, caused serious injury. The fact that the use of the knee was made in circumstances where the opposing player was on the ground is a further factor that has influenced our determination.

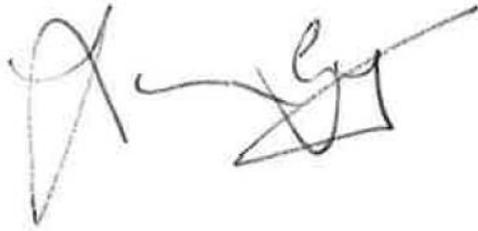
23. Another important factor to our determination is Djulbic's concession that he acted in "*retaliation*". In our opinion, retaliation should not be an extenuating factor, but rather counts against the player. Greater control and self-discipline is expected and required of A-League players.
24. In coming to our determination, we also take into account the public image of the game and the fact that this contest was broadcast to a significant television audience. There was also some evidence at the hearing that some 12,000 spectators were at the ground on the evening. In our opinion, it would be sending an inappropriate message to the football community if we were to vary the proposed sanction of the MRP so as to lessen it. Such a determination might lead to the misconception that kneeling a player on the ground is not a grave breach of the regulations, let alone, the spirit of the game. It is a very bad look. Further, it is clear, and it was not submitted otherwise, that the proposed sanction of the MRP is "*within the range*".
25. As stated, this Committee has the power to increase the sanction. In exercising our discretion to not do so, we have considered recent determinations of this Committee including those of *La Rocca* and *Novillo*. While we are not strictly bound by those determinations, the facts of those cases and the reasoning pertaining to those facts are informative and the determination we have come to is not inconsistent with those previous determinations; particularly *La Rocca* which shares some factual similarities with the present case.

## **RESULT**

26. The sanction we impose is two matches over and above the mandatory match suspension, which is the same as proposed by the MRP in the Disciplinary Notice. The Appeal against that sanction therefore is dismissed. The intentional use of the knee by

any player, particularly as a means of retribution, will not be tolerated and should have no place in football.

**DISCIPLINARY AND ETHICS COMMITTEE**

A handwritten signature in black ink, appearing to read 'Lachlan Gyles', written in a cursive style.

Lachlan Gyles SC, Chair

Shaun McCarthy

Robert Wheatley

Dated: 5 January 2017