

Football Federation of Australia Disciplinary Committee

Determination in the matter of a Grievance between A-League coach Miron Bleiberg (Coach Bleiberg) and Football Federation of Australia (FFA)

Committee members:

John Marshall SC (Chairman)

Anthony Lo Surdo SC

Stephen Free

1 December 2011

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A. INTRODUCTION

1. This Committee has before it a dispute between Miron Bleiberg, the coach of the Gold Coast United A-League team, (**Coach Bleiberg**) and the FFA in relation to a sanction imposed by the FFA for comments made by Coach Bleiberg in a post match interview broadcasted on Fox Sports following the game between Gold Coast and Sydney FC played in Sydney on Sunday 6 November 2011.
2. By any standard the match was an exciting contest but the last minute 3-2 loss would have proved disappointing to the Gold Coast players, Gold Coast fans and Coach Bleiberg.
3. In the post match interview Coach Bleiberg gave a lengthy description of what he described as two kinds of referees. The first he described as brave. He contrasted that with referees who make all the 50-50 calls in favour of the home team. His comments made it clear that he put the referee of the match in the second category. Some of what he said in that monologue is the subject of the allegations by the FFA. After the monologue Coach Bleiberg also said, in response to a question:

My feeling...is the referee feel for any excuse in order to give Sydney the game.

4. For this and the other remarks the FFA issued a letter dated 8 November 2011 which gave Coach Bleiberg the opportunity to provide submissions as to whether he was in breach of the rules referred to in the letter and to comment on any sanction that should be imposed in the event he was found to be in breach.
5. By letter dated 10 November 2011 Clive Mensink, the CEO of Gold Coast, provided a careful and considered response on behalf of Coach Bleiberg.
6. Following consideration of the submission on behalf of Coach Bleiberg, by letter dated 11 November 2011, the FFA determined that there had been a breach and imposed the sanction:
 - (1) A fine of \$5,000 (plus GST) payable by 25 November 2011
 - (2) A one (1) match suspension. This one (1) match suspension is suspended and shall only be triggered in the event that the Coach is found to have committed a further breach of the Code prior to the end of the Hyundai A-League season, including finals.
7. Coach Bleiberg contested the decision by filing a Grievance in the prescribed form and lodging a submission dated 22 November 2011. This is in effect an appeal from the FFA's sanction and the matter is now before the Committee.
8. This is our determination of that matter.

B. PROCEDURAL BACKGROUND

9. As noted, by letter dated 8 November 2011 the FFA notified Coach Bleiberg that he had potentially breached clauses 5.1(a), 5.1(b), 2.2(k) and 6.1(a) of the Code of Conduct. The relevant provisions of the Code are set out at paragraph **16** below. Coach Bleiberg was given the opportunity to make submissions to the FFA on substance and penalty, which he did by letter dated 10 November 2011. By letter dated 11 November 2011 the FFA notified Coach Bleiberg of its determination that he was in breach of the Code and of the sanction that was imposed (which is set out in paragraph **6** above). In the breach letter the specific provisions of the Code relied upon were clause 5.1(a), clause 2.2(k) and clause 6.1(a). The relevant parts of those clauses are underlined in paragraph **16** below.
10. The FFA submitted and Coach Bleiberg accepted that Code of Conduct paragraph 7.4 and Grievance Resolution Regulations 1.2(c), 4.1 and 4.3 were applicable. Consequently this Committee has jurisdiction to determine Coach Bleiberg's Grievance which in substance is an appeal from the FFA sanction.
11. The Disciplinary Committee sat on the evening of 30 November 2011. Submissions on behalf of FFA were made by Mr David McLure of Counsel. Submissions on behalf of Coach Bleiberg were made by Geoff Smith accompanied by Clive Mensink, Neil Favager and Coach Bleiberg himself.
12. A DVD containing the interview was before the Committee and was viewed by all members of the Committee prior to the hearing. Written evidence was received and marked 'A' through 'F'.
13. The hearing before the Committee was conducted de novo, with representatives of both parties making oral submissions on their behalf. In hearing this Grievance the Committee stands in the shoes of the original decision maker, FFA, and has approached the matter accordingly. Its obligation is to determine whether a

breach of the Code is established on the evidence and if so, what sanction should be imposed.

C. THE FFA CODE OF CONDUCT

14. The FFA has promulgated a document styled "Code of Conduct". It took effect on 1 January 2007.
15. Coach Bleiberg in his capacity as an A League coach has accepted that compliance with the requirements of the Code is part of his obligations as a professional football coach and is enforceable by the FFA.
16. The relevant provisions of the Code of Conduct are set out below:

1. APPLICATION AND SCOPE

1.1 This Code of Conduct aims to promote and strengthen the reputation of football in Australia by establishing a standard of performance, behaviour and professionalism for its participants and stakeholders. In addition, it seeks to deter conduct that could impair public confidence in the honest and professional conduct of Matches or in the integrity and good character of its participants.

...

2. BRINGING THE GAME INTO DISREPUTE

2.1 A Member must not bring FFA or the game of football into Disrepute.

2.2 Without limiting the generality of clause 2.1, a Member will be taken as having brought football into Disrepute if any of the following occurs:

(a) discriminatory behaviour, including public disparagement of, discrimination against, or vilification of, a person on account of an Attribute;

(b) harassment, including sexual harassment or any unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances;

(c) offensive behaviour, including offensive, obscene, provocative or insulting gestures, language or chanting;

(d) provocation or incitement of hatred or violence;

(e) spectator or crowd violence;

(f) intimidation of Match Officials, which may take the form of (but is not restricted to) derogatory or abusive words or gestures toward a Match Official or the use of violence or threats to pressure a Match Official to take or omit to take certain action regardless of where such action is taken;

(g) forgery and falsification, including creation of a false document, forgery of a document or signature, the making of a false claim or providing inaccurate or false information on a prescribed form;

(h) corruption, including offering a Benefit or an advantage to a Player or an Official in an attempt to incite him or her to violate FIFA Statutes or FFA Statutes;

(i) abuse of position to obtain personal benefit;

(j) commission or charge of a criminal offence; or

(k) any other conduct, behaviour or statement that materially injures the reputation and goodwill of FFA or football generally.

...

5. DISPARAGING MEDIA STATEMENTS

5.1 A Member must not make any statement in public, including any contribution to television, radio or print media that:

(a) is disparaging or derogatory of a Match Official, opposition team or any Player or Official;

(b) is disparaging or critical of FFA, or any FFA Statute or FFA policy decision, without reasonable basis or justification; or

(c) comments on any matter the subject of a current hearing before the Match Review Panel, Disciplinary Committee or the Appeals Committee....

6. RESPONSIBILITIES OF PROFESSIONAL PLAYERS, REPRESENTATIVE PLAYERS & OFFICIALS

6.1 Professional Players, Representative Players and Officials are the public face of football in Australia and so their behaviour is subject to greater scrutiny.

Accordingly, a Professional Player, a Representative Player and an Official must:

(a) at all times behave in a manner that promotes and upholds the highest standards of integrity, dignity and professionalism;

...

Disrepute means any conduct, statement or appearance in public that is damaging to reputation.

(underlining added)

17. The sanctions that may be imposed are dealt with by clause 7.2 of the Code which incorporates part of the FFA Statutes, relevantly Art 28.2 which is the list of sanctions that may be imposed by this Committee in its original jurisdiction. Hence the range of sanctions for breach of the Code that can be applied by the FFA and by the Committee are fully aligned.

D. MATTERS GOING TO THE ISSUE OF BREACH

18. The FFA has focused in particular on the matters in and comment quoted in paragraph **3** above and submits that those matters alone support the allegations under clause 5.1(a) and clause 6.1(a).
19. During the course of the hearing Coach Bleiberg said he had not viewed the DVD of the post-match interview saying "*I don't like it much*". He also, candidly, said to the Committee "*did I make a mistake - yes*". Coach Bleiberg stated that when he reflected upon what he said that night he felt that an apology was appropriate and he caused an apology to be issued the following day. We make reference to this in paragraph **34** below.
20. There is a critical distinction between expressing disagreement with a referee's decision, on the one hand, and a comment which fairly understood impugns the motives or questions the impartiality of the referee, on the other. The matters in and comment quoted in paragraph **3** above, viewed objectively, contain an assertion of bias; and it matters not at all, on the question of breach, whether Coach Bleiberg intended to assert bias.
21. The Committee finds there has been a breach of the Code in that the matters in and comment quoted in paragraph **3** above were disparaging and derogatory of a Match Official contrary to clause 5.1(a) and fell short of a standard of behaviour which promotes and upholds the highest standards of integrity, dignity and professionalism contrary to clause 6.1(a).

22. The FFA also contended that the matters charged and the comments overall "*materially injured the reputation and goodwill of FFA or football generally*" so as to be a breach of clause 2.2(k). Coach Bleiberg said that this contention caused him personal anguish as he has for the whole of his career sought to uphold the reputation and good will of football and worked to support the FFA. The Committee finds in favour of Coach Bleiberg on this point.

E. MATTERS AFFECTING A SANCTION

23. The FFA notes that in 2010 Coach Bleiberg was given an official reprimand by way of sanction for post match comments in relation to a referee when Coach Bleiberg said:

You play against 12 men...

the referee and a few others were supporters of [the other team] today.

24. In relation to the allegations on that occasion Clive Mensink on behalf of Coach Bleiberg said that Coach Bleiberg "*will not repeat the offence*".
25. Prior to the hearing the committee sought information as to sanctions for similar conduct in football and in other football codes. The committee was provided with a few instances. Formal decisions in this area may be difficult to obtain and the committee has had regard to media releases in what follows:
- (1) Rugby League player Matt King, following the 2006 NRL grand final in which his team lost, said the following day:

As everyone knows, [name of referee] is a dickhead.

For this the NRL fined him \$10,000.
 - (2) In October 2008 a Queensland Roar coach Frank Farina was fined \$2000 by the FFA for remarks in relation to match officials where he said:

Two blind mice missed it.

He must be blind Freddy.

The linesman and the referee have killed us tonight.
 - (3) In April 2011 coach of the Newcastle Knights rugby league team was fined \$10,000 for post match comments in relation to the referee where he said:

The Knights weren't going to win today mate as far as the refs were concerned ...
 - (4) In October 2011 a former German coach Rudy Voeller was fined €10,000 for unsporting behaviour. It is not clear from the report exactly what he said.
 - (5) In November 2011 Tony Pulis, manager of the Stoke team in the EPL, was fined £10,000 for post match comment where he said:

You can't have some rules in one box and different rules in the other box.
 - (6) Also in November 2011 the coach of Chelsea was fined £12,000 for his conduct in respect to the referee. That same report records other fines ranging from £8,000 up to £30,000 for EPL managers in relation to comments as to referees.
26. Geoff Smith for Coach Bleiberg also drew attention to the comments of a player in the same week where a player said of a referee that he was the "*worst referee ever*" and that he was "*gay, biggest homo going around, you gypsy*". For that,

the FFA sanctioned him with a suspension of three matches, two of which were suspended. There was also a requirement that he undertake counselling. There was no fine.

27. Coach Bleiberg pointed out that the sanction imposed by the FFA was in respect of all of the charges and because he had succeeded in having some of the charges dismissed, the sanction should be reduced. We have some sympathy for that submission however the sanction should reflect the most serious of the breaches that are established. In our view the comments by Coach Bleiberg were more serious than those by Frank Farina. The comments of Farina were highly critical of the referee and a breach of the code but fell just short of impugning the motives or suggesting bias on the part of the referee. The breaches we have found against coach Bleiberg are of the latter kind.
28. The fine imposed by the FFA was, in our view, in the range of appropriate fines in the circumstances as then viewed by the FFA. However as we have taken a different view of one of the charges we must also consider whether that fine should stand.
29. In the view of the committee it is most important to make some observations as to the exemplary character of Coach Bleiberg. He is an extremely experienced coach, having coached at a high level since 1984. He is knowledgeable in relation to the game, articulate and his intelligence is manifest. During the course of the hearing he was described by Geoff Smith as being high-profile and colourful. We accept that.
30. Coach Bleiberg is also a Fox Sports commentator and his commentary in that capacity provides stimulating observations. The same is often true of his pre and post match interviews.
31. To put it shortly he is exactly the sort of coach and official that the A League and football ought be proud to have.
32. Of course the point made in paragraphs **29-31** above cuts both ways.
33. Given his experience and intelligence the comments that he made, which are described in paragraph **3** above, are ones which ought not have been made. To make a statement which, reasonably understood, suggests the referee was looking for any excuse to make a decision which would enable the opposing team to win is not acceptable. Coach Bleiberg himself accepts that he would have preferred to have expressed himself differently.
34. Subsequent to the controversial remarks Coach Bleiberg released this statement:

We lost a goal and lost the game in the final 30 seconds of the contest and naturally my emotions and disappointment were running very high at that time, just as they were in our dressing room.

Perhaps my emotions got the better of me and if I offended anyone then I apologise for that. It was more an expression of disappointment made in the heat of the moment.

The match was a spectacle and a great advertisement for the Hyundai A-League in which we contributed to the best of our ability. Credit should go to Sydney for their comeback and the character they showed.
35. The committee concludes that Coach Bleiberg had no malice in the comments and also concludes that his apology was sincere.

36. In relation to the FFA's imposition of a match suspension Coach Bleiberg was asked during the hearing whether he viewed a fine of \$5,000 as more serious than a one week suspension. He said that he viewed a suspension as more serious. The Committee gave consideration to whether or not a suspension should be involved. Given the prior offence the Committee was of the view that some form of suspension should be involved.
37. In all the circumstances and taking into account the earlier instance in November 2010 the committee concludes that a sanction is appropriate as set out below.

F. CONCLUSION

38. The Disciplinary Committee makes the following determination:
- (1) There has been a breach of clause 5.1(a) and of clause 6.1(a) of the Code of Conduct.
 - (2) In our view a fine of \$3,000 is appropriate in light of the charges we have found made out. That fine is payable by 15 December 2011.
 - (3) There is to be a one (1) match suspension. This one (1) match suspension is suspended and shall only be triggered in the event that Coach Bleiberg is found to have committed a further breach of clause 5.1 of the Code prior to the end of the current Hyundai A-League season, including finals.

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