

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Tiago Calvano Sydney FC
Alleged offence	Unsporting conduct towards a match official
Date of alleged offence	9 November 2013
Occasion of alleged offence	Match between Sydney FC and Melbourne Victory FC
Date of Disciplinary Notice	11 November 2013
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 9.40
Date of Hearing	Wednesday 20 November 2013
Date of Determination	Thursday 28 November 2013
Disciplinary Committee Members	John Marshall SC, Chair Anthony Lo Surdo SC Rob Wheatley

A. INTRODUCTION

1. This case involves intentional contact by a player with a Referee. The FFA has made these points before:
 - (1) Players who touch or seek to verbally or physically intimidate a match official should be issued a straight red card.
 - (2) Poor behaviour when broadcast live on television has the capacity to attract negative sentiment towards the game.
 - (3) As the premier football league in Australia/New Zealand, the Hyundai A-League must set the standard for all other codes and be an example for aspiring players, coaches and supporters.
2. Two earlier decisions of this committee have made the same point. Apparently it needs to be made again.

B. JURISDICTION

3. The Committee has jurisdiction under clause 4.4 of the "FFA A-League Disciplinary Regulations" applicable to the 2013-2014 A-League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is duly referred, clause 3.3(a) provides that the Committee must determine the matter and impose such sanctions as are authorised and appropriate to the determination.
4. In this matter there has been a referral under clause 9.40 of the Disciplinary Regulations. This clause gives the FFA, in its sole and absolute discretion,

authority to refer a matter to the Committee where the FFA believes the Referee made an Obvious Error and a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia.

5. The FFA issued a Disciplinary Notice to Tiago Calvano (**the player** or **Tiago** – as he is commonly known as) on 11 November 2013 in accordance with clause 9.40. The Disciplinary Notice set out the details of the alleged offence (being, Unsporting conduct towards a match official) and referred the matter to the Committee.
6. The Committee must determine whether an Offence has been committed, and if so, what sanction should be imposed in accordance with the Disciplinary Regulations (see Clause 9.40(d)).
7. Clause 9.40 was added to the Disciplinary Regulations by amendment introduced for the beginning of the 2008-2009 A-League season. The amendment was made as a result of a notorious incident in the 2007-2008 season that went unpunished. The incident involved a player striking an assistant referee in the groin; however that player avoided suspension because he had been shown only a yellow card.
8. This is the first occasion that the FFA has utilised the power under clause 9.40 of the Disciplinary Regulations. There has been a challenge on behalf of the player to the use of such power. For the reasons which are explained below we are satisfied that the use of the power by the FFA was lawful and indeed we go so far as to say that it was an appropriate response. We add here that the origin of clause 9.40 assists in the purposive approach to its interpretation. It was introduced as a result of deliberate contact by a player with an official. That is at least one reason why invoking the power in circumstances where there has been deliberate contact by a player with an official is within the scope of the power.

C. THE HEARING

9. On the evening of Wednesday 20 November 2013 the Committee heard the referral of the above matter. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 20.3(c)).
10. At the hearing Disciplinary Counsel was David McLure and the player was represented by Elliot Hyde.

D. FACTS

(1) Overview and footage

11. In around the 25th minute of the game an incident occurred. The player's Sydney FC teammate Marc Warren (number 3) received a red card for denying an obvious goal scoring opportunity. The Referee Incident Report dated 11/11/2013 states:

In the 25th minute of the match player number 3 of Sydney FC was sent from the field for denying an obvious goal scoring opportunity.

The incident occurred in the Sydney FC defending half of the field approximately 3 metres outside the penalty area near the left, centre of the field. Player number 11 of Melbourne had received a pass from a team mate and was heading directly towards the goal with possession of the ball, when player number 3 of Sydney grabbed his arm and pulled the number 11 of Melbourne Victory causing him to lose balance and fall to the ground.

Play was stopped and a direct free kick awarded to Melbourne Victory for holding. Player number 3 of Sydney was then sent from the field of play for denying an obvious goal scoring opportunity.

12. Tiago reacted to that incident. He grabbed the referee's arm and had words with him.
13. We have had the benefit of Fox Sports footage which shows the incident from several different angles. That footage clearly records the alleged offence. From that footage images have been extracted which are displayed in four groups:
 - (1) The incident the player was reacting to;
 - (2) The course the Referee was running;
 - (3) The contact by the player with the Referee; and
 - (4) The apology by the player.

(2) [The incident the player was reacting to:](#)

14. The first set of images below display the sequence of events which led Sydney FC player No 3 being awarded a red card:





15. The first of the images above shows that Sydney FC player number 3 was indeed the last relevant player and that the Referee's decision to award the red card was correct.

(3) The course the Referee was running:

16. The second series of images below display the sequence of events that occurred prior to the contact with the player and the Referee.
17. These images specifically deal with the course of the Referee prior to the incident and the position of the player in question at all times.







18. The above support the player's evidence that he did not run up from behind the referee to make intentional contact with the referee. The images also show Tiago pointing at a Sydney FC player who had run through. Tiago argued (wrongly) that the Sydney FC player who had run through was the last man and that for this reason there should be no red card.

(4) [The contact by the player with the Referee](#)

19. The third group of images below show the contact made by the player with the referee's arm. Focus should be on the nature of the contact made by the player whilst grabbing the Referee











20. The above images show the player grabbing the referee's arm when the Referee ran diagonally in front of the player. The force used by the player in grabbing the arm of the Referee was effective to make the Referee change course, stop running, and drop the red card he had in his hand. The Referee was half spun around. It should be noted that the player continues his contact with the Referee while he picks up the red card that was dropped.

(5) [The apology by the player.](#)

21. The final image below depicts (what can be assumed from the statutory declaration and the player's evidence given at the hearing) the moment the player apologised to the referee for what the player acknowledges was wrong conduct.



(6) Conclusion on the images:

22. The above images show that the player grabbed the referee's arm when the referee ran past the player. The player grabbed the arm to plead with him not to send off another Sydney FC player. Whilst grabbing the referee's arm, the player knocked the red card the referee was holding out of his hand. The player did apologise, pick up the red card and give it back to the referee.
23. There is no doubt that the contact was intentional. There was sufficient force used by the player to make the referee change course and drop the card.
24. It is unfortunate that the referee chose to be lenient in this situation. It is the view of the Committee that referees should not countenance intentional contact by a player with a referee during a game and instead should deal with such a situation by issuing a red card to the offender.
25. We can only speculate that having just sent off a player the referee was concerned not to reduce (in the one stanza) one team to 9 players and therefore did not show Tiago a red card. The resulting number of players should not have been an overriding consideration (as difficult as it may be to put such practical matters to one side).

(7) Archie Thompson

26. On a side matter, the player's representative at the hearing referred the Committee to an incident involving Archie Thompson of Melbourne Victory who made deliberate contact with the referee in the same match (indeed in the same phase). That deliberate conduct went without any sanction. Archie Thompson came from behind and then made intentional contact with the referee with the intention of seeking to persuade the Referee to send Tiago off.



27. Thompson engaged in unsporting conduct in seeking to have Tiago sent off. That should be a yellow card offence at the least. Nevertheless, it is Tiago's conduct that has come before this Committee and not the other situation involving Thompson. Contrary to the submission for Tiago, this does not afford any kind of defence to his action.

E. SUBMISSIONS

28. The matters submitted by Disciplinary Counsel included:
- (1) The Player's contact with the referee was not accidental. The Player deliberately made contact with the referee in order to stop him from raising the red card, presumably so that he could first try to persuade the referee to take a different course.
 - (2) The Player did not act maliciously or out of anger, however, the force he applied to the referee's arm was more than merely attracting the attention of the referee; it was designed to restrain the referee from showing the red card. The force was sufficient to knock the card from the referee's hand.
 - (3) Such conduct undermines the authority of the referee to control the game (see law 5) and it is unsporting, offensive and insulting.
 - (4) The sanction should be in the range of 6 to 8 matches.
 - (5) The sanction should again serve a deterrent to other players so as to discourage intentional conduct with referees in future.
29. The matters submitted on behalf of the player included:
- (1) Prior to the incident, the Referee and the player were both moving.
 - (2) The Referee was coming diagonally from left to right toward where the foul was committed. The player was moving back to the goal area.
 - (3) The player's arm was already outstretched before the referee was in the vicinity of the player.
 - (4) As the Referee and the player crossed paths, there is no doubt contact was made when the player's arm went down.
 - (5) It was not a case of the player running toward the Referee. As the player's arm came down, contact was made which is unfortunate.

- (6) The contact made with the Referee was an instinctive reaction. The player did not make contact with the Referee in anger or with any malicious intent nor was he remonstrating with the Referee's decision.
 - (7) A uniform consistent approach with respect to all clubs and all players needs to be in place.
 - (8) The match official incident report noted but does not deal with the incident.
 - (9) There was no report by the Referee or any other match official citing the conduct by the player.
 - (10) The earlier Referee report dated 9 November 2013 states only that "*player number 13 of Sydney FC came from behind me, making contact with my right forearm and knocking the red card out of my right hand and onto the ground*".
30. No submission has been made by Disciplinary Counsel or the player that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.

F. CONSIDERATION AND FINDINGS

(1) Earlier cases involving contact with a match official

31. There have only been two other players that have come before the Disciplinary Committee involving intentional contact with a match official: Daniel Vukovic in the A-League Grand Final in February 2008 and Sebastiaan Van Den Brink in a regular match in November 2009.

(2) Vukovic

32. The case involving Daniel Vukovic (**Vukovic**) came before the Committee as an appeal from the match review panel (**MRP**) which imposed a suspension of 15 months, with 3 months of that suspended. Vukovic appealed that sanction to the Committee. The hearing focussed on the sanction because the player conceded he committed the offence charged in that case (namely "Violent Conduct – Striking Match Official.").
33. In around the 93rd minute of the game, the player protested to the referee asserting there ought to have been a penalty for a handball. When it became apparent to the player that no penalty was to be awarded the player (who was already speaking and gesturing to the referee) hardened his facial expression and struck the referee on the arm.
34. The player gave evidence that he did not intend to harm the referee and the referee was not injured. Had these matters been otherwise, the Committee indicated that the sanction would be much greater. The Committee considered that the conduct was intentional and that it was as a result of anger.
35. In arriving at the appropriate sanction to be imposed, the Committee took into account matters which very heavily pointed in favour of Vukovic's good credit and his exemplary disciplinary record.
36. In the course of that decision the Committee noted that there had been memos and advices circulated by the FFA to clubs warning against contact with match officials. The points made there are stated at the outset of this decision.
37. The Committee's determination was a sanction of 12 months but with 3 months suspended on certain terms. The Committee utilised the FFA National Disciplinary Regulations (**NDR**) to suspend part of the sanction.

(3) [Van Den Brink](#)

38. In the case involving Sebastiaan Van Den Brink, the Disciplinary Committee had to determine the appropriate penalty to be imposed in relation to unsporting conduct against a match official.
39. The contact by Van Den Brink was on a completely different scale to that of Vukovic. Indeed, in the Committee's view, the contact by Tiago was considerably more significant than by Van Den Brink but not as serious as Vukovic.
40. In the course of the Van Den Brink decision the Committee made these observations:

24 As there is no such specific rule, the question which arises is whether the laws of the game that place the control of any match in the hands of the referee (see law 5) encompass a prohibition on intentional contact with the referee. There may well be questions of degree but in our view any intentional touching of the referee is unnecessary and fraught with danger. There may be situations where it does not constitute offensive or insulting conduct, such as handshakes before or after a game and there may be other situations which will not be adjudged offensive or insulting. Wherever the precise boundary lies, in our view it is offensive and insulting to walk up to a referee after a red card has been issued with the intention of disagreeing and voicing disappointment and with the precursor being to place two hands on the referee for a reason associated with and part of the approach to the referee. That is what we find happened here.

25 If players make intentional contact with a referee they do so at their peril. Any intentional contact by a player with a referee during a game has the potential to undermine the authority of the referee and his/her control of the game. It can suggest that a player has some degree of authority or control over a referee or is attempting to assert some form of authority or control. Intentional contact with a referee is disrespectful. It is unnecessary and inappropriate. Even what may be intended as a friendly hug by senior players implies familiarity with the neutral referee which is, or at least has the potential to be, offensive from the perspective of the game and the spectators of the opposing team and that may be the case even if the individual referee is not actually offended.

26 This Committee hopes that this determination will set a clear precedent against intentional contact with a referee and that such conduct will be henceforth stamped out.

27 In our view it matters not that some referees have in the past taken no action when touched by players. In our view referees should not countenance intentional contact by a player with a referee during a game and should deal with such a situation with a red card.

29 It was pointed out [on behalf of the player] that other contact with referees this season has gone unpunished and that indeed more serious situations have occurred. Again that is true. In this regard it is perhaps unfortunate for Mr Van Den Brink that his action, which is at the low end of the spectrum, is the first to come before the Committee this season. However it is Mr Van Den Brink's conduct that has come before this Committee and not those other situations. Whilst on the topic it must be borne in mind that inaction by a referee or the MRP in other cases does not give rise to a defence for the Player here. ...

(underlining added)

41. The contact by Van Den Brink was at the low end of the scale and he had an exemplary disciplinary record. These were important factors relevant to the sanction of his case.

(4) Preliminary legal issue

42. It was contended for the player that the power of the FFA under 9.40 is capable of being reviewed by the Disciplinary Committee. It was submitted that the FFA could not have been satisfied that there was an Obvious Error as defined for the purposes of 9.40(a). It was said that it was open to the Disciplinary Committee to decide that question and if we were to find that there was no Obvious Error there could be a non-suit as it would go to the relevant jurisdiction to convene the Disciplinary Committee.
43. There are many problems with that submission. If the matter under 9.40(a) was reviewable then so too would the matter under 9.40(b). That would mean that we could review not just what might be the interests of football or the best interests of the game but a much more specific matter whether the failure to remedy this particular situation would be prejudicial to the interests or good image of football. These are in the nature of policy matters for the FFA. We do not accept that such matters were ever intended to be put before the Disciplinary Committee as a reviewable matter. Having said all that, we are satisfied that the Referee made an Obvious Error. The point of law is moot.

(5) The offence was committed

44. As to the question of whether an Offence had been committed, that turns on whether the player used offensive, insulting or abusive language and or gestures. That is the sending off offence. We are satisfied of that matter. The player deliberately made contact with the Referee for the purpose of interfering with the Referee's proper performance and control of the game.

(6) Other unpunished incidents

45. We were referred to five incidents where other players had also made contact with a Referee. It was submitted there was a lack of consistency by referees and by the FFA. This was said to go to discretion and sanction (as well as jurisdiction). What the Committee said in Van Den Brink was that "*inaction by a referee or the MRP in other cases does not give rise to a defence for the Player here*". That was correct then and remains correct now.

(7) Matters going to sanction

46. It was submitted that the player did not run to the Referee, the player did not strike the Referee and that the player immediately apologised to the Referee. It was said that the conduct was not forceful.
47. We accept that the player did not run to the Referee. To some extent that counts in his favour.
48. We also accept that the player apologised to the Referee and again that counts in his favour.
49. Further, we accept that the player did not strike the Referee. Had that happened there would have been a minimum suspension of 6 months.
50. As to the extent of the force, we have commented on that earlier in this decision. There was enough force to change the momentum of the Referee and half spin him around and to cause him to drop the red card. The player is an elite athlete

with a lean but impressive physique of 188 centimetres and 85 kilograms. An athlete in the A-League, especially one that size and weight, would have no difficulty in applying force. An effortless action would still be forceful.

51. Ultimately, one of the questions that we have to decide is the scope of the matters that can be taken into account when deciding the appropriate sanction. The question of deterrence is significant. On two previous occasions the Committee has had to make clear statements as to the standard expected of players in the A-League, which sets the benchmark for player conduct at all levels of football in Australia.
52. This Committee (however constituted) has consistently taken the view that intentional contact by a player with a referee during a game simply should not occur. Thankfully, such cases are few and far between. However, it seems it is again necessary by this decision to emphasise that such conduct will not be tolerated by this Committee and should not be countenanced by referees.
53. Tiago ultimately gave evidence (although initially he only was prepared to provide a statutory declaration). His evidence made clear that he appreciated that there was no excuse for what he had done. All players know that they are not allowed to make contact with a referee. He even gave evidence that his 6 year old daughter said she knew that and he told the Committee that he had told her that he did too and was very disappointed for what he had done. The fact that Tiago did ultimately give evidence and give his explanation for what happened was significant. In giving evidence there was an outpouring of emotion which demonstrated his contrition. But for that evidence, an even more lengthy suspension might have been appropriate.
54. The appropriate sanction should be at the upper range submitted by Disciplinary Counsel. It should be a sanction of 8 matches had it occurred as an isolated incident. It did not. There was other action in the same match and the player has a poor disciplinary record. Some further measure is appropriate.

(8) Scope of power to suspend a sanction

55. Clause 12.2 of the A-League Disciplinary Regulations mirrors Article 33.2 of the FIFA Disciplinary Code and clause 12.10 of the FFA National Dispute Regulations. These are set out below.
 - (1) 2013-2014 A-League Disciplinary Regulations:

Suspended portion of sanctions for probationary period

12.2 In respect of sanctions of less than six (6) matches or six (6) months, a Judicial Body may order that part of the match suspension:

 - (a) comes into immediate effect; and
 - (b) the other part does not come into effect unless and until an additional Offence is committed during a specified probationary period (i.e. is suspended).
 - (2) 2009 FFA National Dispute Regulations :

Suspended Sanctions

12.10 In respect of sanctions of less than 6 months (as determined in accordance with clause 13.5(a)) or 6 matches, a Competition Administrator or Judicial Body may order that part of the match suspension:

 - (a) comes into immediate effect; and
 - (b) the other part does not come into effect unless and until an additional Offence (excluding an indirect red card) is committed during a specified probationary period (i.e. is suspended). The Offences (excluding an indirect red card) bringing

this suspended portion of the sanction into effect should be outlined by the Competition Administrator or Judicial Body in accordance with clause 12.12(a).

(3) 2011 FIFA Disciplinary Code:

Partial suspension of implementation of sanctions

33.2 Partial suspension is permissible only if the duration of the sanction does not exceed six matches or six months and if the relevant circumstances allow it, in particular the previous record of the person sanctioned.

56. Article 33.2 of the FIFA Disciplinary Code only permits a suspended sentence if the penalty imposed does not exceed six matches or six months. This evidences a policy decision aimed at ensuring that no part of a serious sanction should be suspended. The use of the word "or" in conjunction with "does not exceed" is unambiguous. If the sanction exceeds one or other than no part can be suspended.
57. When drafting both the A-League Disciplinary Regulations and the FFA National Dispute Regulations, there is no doubt that the FFA intended to adopt and implement the terms of the FIFA Disciplinary Code.¹ However the way that has been done has resulted in a drafting anomaly.
58. The terminology in clause 12.2 of the A-League disciplinary regulations is very similar but is crucially phrased differently when it comes to the use of the word 'or'. The FFA documents use the phrase '*in respect of sanctions of less than six matches or six months, a Judicial Body may order ...*'. To convey the concept that the sanction had to be less than six months and less than six matches, the word "or" should have been replaced with "and". This gives rise to a situation where the literal meaning of the phrase is different to the FIFA Disciplinary Code. There is no dual requirement to satisfy both the *matches* and *months* threshold; instead the clause reads that being less than either requirement will suffice.
59. Accordingly, the Committee does not adopt the literal interpretation but rather the purposive interpretation; the result of which is to read the provision as if "or" was replaced by "and".
60. In light of that, a suspended sanction in form is not permissible.

[\(9\) Need for an alternative pathway](#)

61. The Committee does not believe that a sanction of 8 matches alone is sufficient. The overriding duty of the Committee is to impose an appropriate sanction. The power of the Committee is supplied by Article 28 of the 2011 FFA Statutes.
62. Article 28.2(d) and or 28.2(n) of the 2011 FFA Statutes allow the Disciplinary Committee to place the individual on a bond or impose such other disciplinary sanctions or measures as is appropriate in all the circumstances.
63. The circumstances of this case and the prior record of the player are such that the Disciplinary Committee considers it appropriate to impose an additional sanction of 4 matches. This can be thought of as a non-pecuniary bond. However, this additional sanction will only come into operation if at any point during the remainder of the A-League season, including finals matches, the player is issued a direct red card for any offence.

¹ Clause 2 of the FFA A-League Disciplinary Regulations provides: 'The Laws of the Game as drafted by the International Football Association Board and as adopted in FIFA Statutes govern the conduct of A-League Matches.' The FIFA Disciplinary Code is within the FIFA Statutes.

64. The Committee is mindful that the additional sanction imposed is to the same effect as a 12 match sanction with 4 matches suspended. Nevertheless, the sanction we have imposed is permitted by the FFA Statutes and we do not believe it is precluded by clause 12.2 of the Disciplinary Regulations.
65. We add that without this additional sanction a greater suspension than 8 matches would have been applied.

(10) Observation as to Sydney FC

66. Tiago's team, Sydney FC greatly assisted Tiago at the hearing. He was represented by a well regarded Sydney solicitor from a large firm who instructed experienced counsel.
67. During the course of the hearing, a senior representative of Sydney FC was present providing assistance and support to Tiago.
68. It is obvious that he is a well regarded player at that club. The support shown to him by Sydney FC is to be commended which is why we have made specific note of it in these reasons.

G. RESULT

(1) Power of the FFA

69. If we had the power to review the conduct of the FFA in referring the matter under clause 9.40 (which we do not believe we have) we would find that the conduct of the FFA was lawful and appropriate.

(2) Offence

70. We find that the offence has been established. The player should have been issued with a red card for using offensive, insulting or abusive language and or gestures. The relevant gesture was making deliberate contact with the referee. That was at the very least offensive and insulting to his authority.
71. That red card satisfies the description in the table of unsporting conduct toward a match official.

(3) Sanction to be imposed

72. The sanction we impose is 8 matches. As Tiago has now completed his current sanction of two matches for the other offence he committed in the same game, the 8 match sanction will now commence so as to preclude him playing in the next scheduled game.
73. The Disciplinary Committee also utilises its powers under articles 28.2(d) and/or 28.2(n) of the FFA Statutes by imposing an additional conditional sanction of 4 matches. The condition which would trigger those additional 4 matches being served is if the player receives a direct red card for any offence during the remainder of the 2013-2014 A-League season including finals games.

John Marshall

J E Marshall SC, Disciplinary Committee Chair
Thursday, 28 November 2013