

**FOOTBALL FEDERATION OF AUSTRALIA DISCIPLINARY COMMITTEE**

**IN THE MATTER OF SHANE TOBIAS**

**DETERMINATION**

**Committee Member:**

Dominic Villa

**Parties:**

*Football Federation of Australia*

*Shane Tobias*

**Date of determination:      3 March 2009**

1. The Football Federation of Australia Disciplinary Committee has today convened to hear a charge of Violent Conduct in relation to a serious infringement that escaped the referee's attention during the Grand Final of the National Youth League's 2008/9 season between Sydney FC and Adelaide United FC on Saturday, 21 February 2009.
2. The FFA has charged that during the 90<sup>th</sup> minute of the Grand Final the Player, Shane Tobias, playing for Adelaide United made head high contact with Sydney FC player Brendan Gan when Gan was not challenging for the ball, which contact is charged to have been excessive, and therefore constitutes Violent Conduct.
3. The Player has been cited to appear in accordance with Clause 4 of the National Disciplinary Regulations, and there is no challenge to the Disciplinary Committee's jurisdiction to hear the charge. For the avoidance of doubt, I am satisfied having reviewed the video footage of the incident that the conduct (if proved) would constitute a serious infringement, and that it escaped the referee's attention, thereby conferring power on the FFA to cite the Player pursuant to Clause 4.1(b) of the Regulations, and conferring jurisdiction on the Disciplinary Committee to sanction the Player pursuant to Clause 4.2(b) of the Regulations.
4. By letter dated 24 February 2009 from the Adelaide United Football Club the Player, via Michael Petrillo (Director of Football), indicated his intention to plead guilty to the offence. The Player has appeared before the Disciplinary Committee by telephone and has in fact pleaded guilty to the offence charged. I am satisfied, again having reviewed the video footage of the incident, that I should accept the plea of guilty and a determination of guilt is accordingly made.
5. Accordingly, the only substantive matter for determination is the issue of penalty.
6. The question of sanction is to be determined by the National Disciplinary Regulations as supplemented by the National Youth League Competition Rules. The provisions are relevantly the same (and in any event the National Disciplinary regulations take precedence) and it is to the Regulations that I will refer.
7. I note that the Player has not previously received a direct red card, and he is to be sanctioned on that basis.

8. Clause 7.1 of the Regulations provides that a player “who receives a red card must serve a mandatory match suspension”. Of course, the Player did not receive a Red Card and so there may be some doubt about whether this provisions strictly applies. However, in my view it is appropriate to approach the question of sanction in circumstances where a player has been cited rather than receiving a red card on the basis that a mandatory match suspension must nonetheless be included in the reckoning of the minimum sanction to be considered by the Disciplinary Committee. The Player (by his representative) accepted that this was an appropriate approach.
9. Annexure A to the National Disciplinary Regulations specifies “the Offences sanctionable in accordance with these Regulations and the Range of sanctions that applies to each of these Offences”. A player who has committed an Offence “must receive a sanction within the Range at the Table of Offences.” The Range for each Offence is bounded by a minimum that must be applied and a maximum that may be applied. For present purposes, it is sufficient to note that:
  - (a) The Player has pleaded guilty to Offence numbered 4, which is “Assault on a Player (e.g. violent conduct when not challenging for the ball)”;
  - (b) The minimum sanction for that Offence is the mandatory match suspension plus 1 additional match;
  - (c) The maximum sanction for the Offence is suspension for a period of 24 months.
10. The mandatory imposition of the minimum sanction is subject to the provisions of Clause 5.4 which enables a sanction outside of the applicable Range to be imposed “in Exceptional Circumstances”. This is a defined term which means “circumstances operating at the time of the Offence and relating to the commission of the Offence and not to the impact a sanction may have on the [Player].” Examples are given, such as the importance to the Player or the Club of the match being played, the point in the match in which the Offence was committed, and the conduct of any opposing Player.
11. No submission was made to the effect that Clause 5.4 should be applied in this case, and in my view there are no relevant “Exceptional Circumstances” that warrant a departure from the specified Range.

12. What has been submitted on behalf of the Player is that having regard to the Player's admission of guilt, his acknowledgement that his conduct was inappropriate, and his willingness to issue written apologies to all parties including the opposing player (Brendan Gan), part of the sanction should be suspended.
13. I acknowledge the force of some at least of those submissions. The written apologies themselves in my view carry little weight, given as they appear to be in response to the Disciplinary Notice rather than spontaneous expressions of remorse. However, I note that the written apology sent to Brendan Gan also records that the Player had apologised to Gan personally after the game, and I accept that spontaneous personal apology as an appropriate expression of remorse.
14. I was troubled by what appeared to be attempts made on behalf of the Player to diminish the significance of his conduct. It was submitted, for example, that the opposing player Gan had raised his arm to impede the Player. The contact was dismissively described as "light contact." The potential for serious injury resulting from even "light contact" with an opposing player's head cannot be underestimated. However, rather than being "instinctive" it appeared to me to be a deliberate strike by the Player.
15. Notwithstanding those matters, I have accepted fully the Player's expressions of remorse and acknowledgement of the inappropriateness of his conduct.
16. It is appropriate that the Player be given a sanction at the lower (but not lowest) end of the range. The incident occurred during a highly charged passage of play, in the aftermath of another incident of apparent foul play. There was in fact no serious or permanent damage to the opposing player Gan. I also consider it appropriate that part of the sanction should be suspended.
17. It is the determination of the Disciplinary Committee therefore that the sanction to be imposed should be as follows:
  - (a) The Player is sanctioned by suspension for three matches (ie by analogy a mandatory match suspension, plus two additional matches);
  - (b) In accordance with Clause 12.10 (as proscribed by Clause 12.11) I order:

- (i) The first two matches of the three match suspension come into immediate effect;
- (ii) the third match of the three match suspension does not come into effect unless and until the Player, within 12 months of today's date, commits any of the R1, R2, R3, or R6 Serious Infringements described in clause 2.5 of the National Disciplinary Regulations (the Player being taken to have committed one of those Offences if he receives a Direct Red Card for such an offence, or is found guilty of such an Offence following a citation pursuant to Clause 4.1 of the National Disciplinary Regulations).

**Dominic Villa**

3 March 2009