

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Erik Akoto of North Queensland Fury FC
Alleged offence	Assault on a player category R2-violent conduct
Date of alleged offence	Sunday 22 August 2010
Occasion of alleged offence	Match between North Queensland Fury and Melbourne Victory
Date of Disciplinary Notice	23 August 2010
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 10.2(b)
Date of Hearing	Wednesday 25 August 2010
Date of Determination	Wednesday 25 August 2010
Disciplinary Committee Members	John Marshall SC, Chair Peter Raskopoulos Arthur Koumoukelis

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of the "FFA A-League Disciplinary Regulations" applicable to the 2010-2011 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.
2. In this matter there has been a referral under clause 10.2(b) of the Disciplinary Regulations. In the case of a referral under clause 10.2(b) the player will have been given a direct red card by the referee or the Match Review Panel ("**the MRP**") will have decided (in its sole opinion) that the incident escaped the attention of the referee (see clause 9.17) and should have been sanctioned with a direct red card (see clause 9.19(a)); in either case the consequence is that the player will have an automatic Mandatory Match Suspension (in this case 1 match). No part of the above process is able to be referred to the Committee and hence cannot be appealed. Further, in the case of a referral under clause 10.2(b) the MRP also will have formed the view that, on the material available to the MRP, an additional sanction of up to 4 matches over and above the Mandatory Match Suspension was warranted and the player will have elected not to accept the proposed additional sanction. That is what has happened here.
3. As a result of amendments at the conclusion of the 2009-2010 A-League season the Disciplinary Regulations were amended and it is abundantly clear that the function of the Committee this season is solely to determine the question of what

additional sanction should be imposed over and above the Mandatory Match Suspension which must be served. Guilt or innocence is not up for review. That issue has been finally determined by earlier processes. The Committee has no jurisdiction to deal with that question and will not express any view on that topic.

4. On this occasion the MRP has proposed an additional sanction (over and above the Mandatory Match Suspension) of 1 match.

B. THE HEARING

5. On the evening of Thursday, 26 August 2010 the Committee heard the referral of the above matter so as to decide the additional sanction to be imposed on the player for the offence stated above. At the conclusion of the hearing (following deliberations and pursuant to clause 20.4 of the Disciplinary Regulations) the Committee verbally announced the result of the hearing. These are the written reasons of the Committee in the "shortest form reasonably practicable" (see clause 20.3(c)).
6. At the hearing Disciplinary Counsel was Ivan Griscti and the player was represented by Rabieh Krayem and Robbie Middleby.

C. FACTS

7. In around the 81st minute of the game an incident occurred. The referees incident report contains this statement:

In the 81st minute of the above match I had occasion to order from the field of play Eric Akoto of North Queensland Fury for R2 violent conduct. After awarding a penalty for N Queensland Fury and moving away from the incident some players from both teams came towards me. There was some general comments going back and forth between the players when Eric Akoto reacted in a violent manner by shoving forcefully in the upper body area of Kevin Muscat of Melbourne Victory, who was knocked over.

It took a high level of persuasion for Eric Akoto to leave the field of play. Eventually his manager had to escort the player away from the field.

8. We have had the benefit of seeing the incident from several different angles of footage from Fox Sports.
9. Following the referee awarding the penalty to North Queensland, the footage shows Eric Akoto approach Kevin Muscat. An exchange takes place between Eric Akoto and Kevin Muscat. At some point other players mill around and the referee becomes involved. The video footage shows an object fall to the ground. Later footage reveals that the object is a mouth guard. Eric Akoto appears to complain to the referee about Muscat putting his boot on top of the mouthguard and we infer this could be heard by Kevin Muscat. After some further mention of the mouthguard Eric Akoto goes to retrieve the mouthguard. Kevin Muscat, for whatever reason, does not step back and allow the mouthguard be retrieved. For whatever reason Kevin Muscat's boot remains on top of the mouthguard. At that point Eric Akoto pushes Kevin Muscat away from the mouthguard. Kevin Muscat falls over; although one interpretation (which has been suggested) is that he flopped "impersonating a turtle". Eric Akoto then picks up the mouthguard but at this point the referee shows Eric Akoto a red card.

10. Eric Akoto is plainly disappointed with the outcome of the situation. It is quite correct (as the referee noted) that he took considerable time to leave the field and did not do so gracefully.
11. It is the mouthguard circumstances which are relied upon by Eric Akoto in this hearing. The precise detail of what occurred, to the extent that we need to make findings, is set out below in this determination.

D. SUBMISSIONS

12. Reference has been made to clause 11.2 of the Disciplinary Regulations.
13. The matters submitted by Disciplinary Counsel included:
 - (1) The conduct cannot amount to Exceptional Circumstances.
 - (2) The conduct overall warrants two matches.
14. The matters submitted on behalf of the player included:
 - (1) An argument that Exceptional Circumstances apply.
 - (2) The factual aspects relate to the intent to recover the mouthguard.

E. CONSIDERATION AND FINDINGS

15. The term Exceptional Circumstances in clause 11.3 is defined. The definition is such as to preclude it being applicable in certain situations by reason of sub paragraph (d) of the definition. There it said that:

... the following are not Exceptional Circumstances:

...

(d) the conduct, including actions, words or gestures of any Player or Team Official of the opposing team during or related to the A-League Match.

...
16. It is asserted that:
 - (1) Eric Akoto's mouthguard fell to the ground and was then stepped on by Kevin Muscat.
 - (2) Eric Akoto made verbal reference to seeking to retrieve the mouthguard but to no avail. He then pointed at least twice to Kevin Muscat's boot which was on top of the mouthguard.
 - (3) Kevin Muscat deliberately placed and/or maintained his football boot on top of the mouthguard.
 - (4) It was the intention to obtain his mouthguard and the consequential steps taken that are the Exceptional Circumstances.
17. Whilst these are matters which if proved in a hearing against Kevin Muscat [or any player] might be expected to be dealt with by way of a sanction of some sort, it must be understood by any reader of this determination that Kevin Muscat is not on trial and his version of events has not been heard; he has had and can have no part in the hearing. The consequence is that what we have said above may have been different if Kevin Muscat had had a chance to have his say. He has had no such chance because he has not been charged with anything. The findings we

make are for the limited purpose of dealing with the case of Eric Akoto and it would be quite wrong for anyone to read our findings as having any bearing on Kevin Muscat.

18. For the purposes of this hearing against Eric Akoto we find that he has established Exceptional Circumstances. It is quite unusual that a mouthguard will be located under the boot of a player and the player is not prepared to lift his boot off the mouthguard. This we find is exceptional. We are of the view that subpara (d) is (just and only barely) not a barrier to this finding. It is not necessary to make further findings especially for the reasons identified in paragraph **17** above.
19. In light of our finding of Exceptional Circumstances, it next falls to decide the appropriate sanction.
20. Our finding of Exceptional Circumstances is obviously on the positive side of the ledger.
21. On the negative side of the ledger for Eric Akoto is the whole of the conduct for which he was sent off and his refusal (albeit in very unfortunate circumstances) to accept the decision of the referee.

F. RESULT

(1) Sanction to be imposed

22. The sanction we impose is 1 match and 1 suspended match.
23. The suspended match will be triggered by any later direct red card offence during this season and any finals.

John Marshall

J E Marshall SC, Disciplinary Committee Chair
Wednesday 25 August 2010