

**DISCIPLINARY AND ETHICS COMMITTEE OF THE FOOTBALL FEDERATION OF
AUSTRALIA**

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Dean Bouzanis of Melbourne City FC
Alleged offence	Use of discriminatory language and/or gestures, including racist, religious, ethnic or sexist (R6)
Date of alleged offence	4 February 2017
Occasion of alleged offence	Match between Melbourne City and Melbourne Victory FC
Date of Disciplinary Notice	6 February 2017
Basis the matter is before the Disciplinary Committee	A referral: see clause 9.34
Date of Hearing	Wednesday 08.02.2017
Date of Determination	Thursday 09.02.2017
Disciplinary Committee Members	John Marshall SC, Chair Anthony Lo Surdo SC David Barrett

A. INTRODUCTION

1. This matter concerns an incident which occurred between Dean Bouzanis (the **Player**) and Besart Berisha around the 88th minute of the Hyundai A-League match between Melbourne City and Melbourne Victory FC which took place on Saturday 4 February 2017. It is accepted that the Player yelled abuse at an opposing player which included the words "Fucking Gypsy". That is a very significant slur of a racial or ethnic kind. These reasons explain why the sanction which we have imposed is the Minimum Sanction. Without reference to any of the evidence and surrounding circumstances it would not have been appropriate to impose the Minimum Sanction; indeed a proven racial slur made with malice is potentially season ending, if not career ending, for the reason that it has an impact not only on the person against whom the slur is directed, it also has an impact on the wider football community.
2. As a result of this incident, on 6 February 2017 the Match Review Panel (**MRP**), pursuant to clause 9.1(d) of the FFA A-League Disciplinary Regulations (the **Disciplinary Regulations**), issued Bouzanis with a disciplinary notice that asserted there was a Category 2 Offence, which was Offence no.6 (R6 for players) – *Use of discriminatory language and/or gesture, including racist, religious, ethnic or sexist* (the **Offence**), regarding an alleged racist comment by the Player.

3. This Committee was convened to hear the matter and determine whether an offence had been committed by the Player and, if so, what sanction should be imposed.
4. The Minimum Sanction for the Offence under the Disciplinary Regulations is the Mandatory Match Suspension plus four (4) additional Hyundai A-League Matches.
5. Plainly, the abuse of a player in the Hyundai A-League, or at any level of the game in Australia, on racial or ethnic grounds is abhorrent and cannot be tolerated. At the same time however, a finding that a player did make a racist comment to another can have significant consequences for the reputation and standing of the player. It is not a finding that can therefore be made lightly, and while the allegations must be taken seriously the accused player must also be treated fairly in the process.

B. THE LEGISLATION AND RULES CONCERNING RACIAL DISCRIMINATION

(1) FFA Codes and Statutes

6. Policies in place to prevent racial discrimination can be found in a number of codes, statutes and regulations in place by the FFA. The relevant sections are listed below.
7. The Disciplinary Regulations

6. TABLE OF OFFENCES

Offence No.	Offence	Minimum Sanction	Category
...			
6 (R6 for Players)	Use of discriminatory language and/or gestures, including racist, religious, ethnic or sexist	4 additional matches plus the Mandatory Match Suspension	Category 2

Definitions

Discrimination Policy means the FFA Member Protection Policy or such other policy as promulgated by FFA from time to time.

8. FFA Code of Conduct

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;

...

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

9. FFA National Disciplinary Regulations 2009

6. TABLE OF OFFENCES

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...		
6 (R6 for Players)	Use of discriminatory language and/or gestures, including racist, religious, ethnic or sexist	4 additional matches plus the Mandatory Match Suspension

10. FFA Statutes 2011

Definitions

Member Protection Policy means the national policy that addresses discrimination (sexual or otherwise) and child protection in football, as specified in Annexure C or as varied FFA from time to time in accordance with these Statutes.

Article 3 Neutrality and non-discrimination

1 FFA is neutral in matters of politics and religion.

2 FFA is committed to providing a sport and work environment free of discrimination and harassment (sexual or otherwise), where individuals are treated with respect and dignity.

3 Discrimination of any kind against a country, private person or group of people on account of race, colour, religion, language, politics, national or ethnic origin, gender, transgender, sexual orientation, age, marital status, pregnancy or intellectual or physical impairment or any other attribute specified under commonwealth or state legislation is strictly prohibited and punishable by disciplinary sanction, including suspension or expulsion.

4 Each Member must comply with the Member Protection Policy, which establishes the rights and responsibilities of Members in relation to discrimination, harassment and child protection.

5 Each spectator at a Match must comply with the Spectator Code of Behaviour, which specifies minimum standards of behaviour to ensure

11. FFA National Member Protection Policy

1. Purpose of Policy

This FFA Member Protection Policy (**Policy**) ... outlines our commitment to a person's right to be treated with respect and dignity and to be safe and protected from abuse. This Policy informs everyone involved in our sport at the national, state and local levels of his or her legal and ethical rights and responsibilities and the standards of behaviour that are required.

The Policy attachments outline the procedures that support our commitment to eliminating discrimination, harassment, child abuse and other forms of inappropriate behaviour from our sport. As part of this commitment FFA will take disciplinary action against any person or organisation bound by this Policy if they breach it.

5.3 Anti-Discrimination and Harassment

The Governing Bodies oppose all forms of harassment, discrimination and bullying. This includes treating or proposing to treat someone less favourably because of a particular characteristic; imposing or intending to impose an unreasonable requirement, condition or practice which has an unequal or disproportionate effect on people with a particular characteristic; or any behaviour that is offensive, abusive, belittling, intimidating or threatening – whether this is face-to-face, indirectly or via communication technologies such as mobile phone and computers. Some forms of harassment, discrimination and bullying, based on personal characteristics such as those listed in the Dictionary at section 9 of this Policy, are against the law.

9. Dictionary

...

Discrimination means treating or proposing to treat someone less favourably because of a particular characteristic in the same or similar circumstances in certain areas of public life (Direct Discrimination) The characteristics covered by discrimination law across Australia include, but are not limited to:

...

j) Race;

k) Religious belief/activity;

7. What is a Breach of this Policy

It is a breach of this Policy for any person or organisation to which this Policy applies, to do anything contrary to this Policy, including but not limited to:

...

d) Discriminating against, harassing or bullying (including cyber-bullying) any person;

...

(2) *FIFA Disciplinary Code*

12. FIFA is the governing body of football worldwide. FIFA's provisions against racial discrimination are therefore relevant.

Section 3. Offensive and discriminatory behaviour

57 Offensive behaviour and fair play

Anyone who insults someone in any way, especially by using offensive gestures or language, or who violates the principles of fair play or whose behaviour is unsporting in any other way may be subject to sanctions in accordance with art. 10 ff.

58 Discrimination

1. a) Anyone who offends the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin shall be suspended for at least five matches. Furthermore, a stadium ban and a fine of at least CHF 20,000 shall be imposed. If the perpetrator is an official, the fine shall be at least CHF 30,000.

(3) *The FA*

13. The English Football Association (**FA**) has a strong stance on racial discrimination and hands out heavy penalties to those who breach their standard.
14. In 1993 the Commission for Racial Equality and the Professional Footballers' Association implemented the FA's 'Kick It Out' anti-racism campaign.

15. In 2009 the FA progressed and implemented an 'Equality Standard' into the Kick It Out campaign for all Clubs.
16. The Standard aims to ensure that individuals are not discriminated against on the grounds of Race, Religion, Age, Gender, Disability and Sexual Orientation and encourages compliance with the UK discrimination laws.¹

(4) FFA takes racial abuse seriously

17. The reason the matters above have been set out is to record that racial discrimination or abuse is not to be tolerated and that the sport of football and the FFA in Australia has in place policies and codes to deal strictly with established breaches.

C. JURISDICTION

18. The Disciplinary and Ethics Committee (**the Committee**) has jurisdiction under clause 4.4 of 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.
19. Clause 9.34 provides that if the MRP has determined that, on the basis of the evidence reviewed, there is a case for the Participant to answer that a Category 2 Offence has been committed, the MRP will issue to the Participant a Disciplinary Notice that:
 - (a) Notifies the Participant of the Citation Incident;
 - (b) Notifies that the MRP considers there is a case to answer that a Category 2 Offence has been committed;
 - (c) Refers the matter directly to the Committee for hearing as to whether an Offence has been committed, and if so, what sanction should be imposed.

D. THE HEARING

20. On the evening of Wednesday 08.02.2017 the Committee heard the referral of the above matter. 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)).
21. At the hearing Disciplinary Counsel was Ivan Griscti and the Player was represented by Greg O'Mahoney, of counsel. The Player attended the hearing in Sydney in person. There were also senior representatives of his club present.

E. THE FACTS

22. Around the 88th minute there was an incident following the awarding of a goal. The incident in question was between the player Bouzanis and Besart Berisha (**Berisha**) of the opposing team.

¹ Race Relations Act 1976, Sex Discrimination Act 1975, Disability Discrimination Act 1995, and Age Discrimination Act 2006, as well as any amendments to these Acts.

23. The video footage does not have sufficient sound to detect the words in question but it is fairly apparent from the images that Bouzanis called Berisha a "Fucking Gypsy". Bouzanis admits that.
24. The Player says he did not know that this was a racial slur, but simply considered it to be a derogatory term. The FFA accepts that evidence.
25. When Mr Munn of Melbourne City explained to the Player that it was a "*racist term*" Bouzanis was shocked, felt bad and wanted to apologise to Berisha immediately.
26. The Player had been involved in somewhat of a verbal feud with Berisha and he accepts that he let his emotions get the better of him, however he did not intend to insult Berisha in a racial way.
27. Through the PFA and at the Player's request arrangements were made for the Player and Berisha to meet.
28. A letter from Mr Didulica of the PFA records that the Player initiated the meeting and made an unconditional apology to Berisha.
29. The letter also notes that the PFA has taken steps to connect the Player to a global cultural awareness program run by FIFApr, a global umbrella body for national player associations that represents the global interests of more than 45,000 players from over 100 nations. The letter states the PFA will work with the Player to ensure he concludes the awareness program. Mr Didulica concludes:

"In our view, Dean has shown absolute contrition and remorse for his actions which affected a fellow member. To demonstrate this, Dean proactively sought a face-to-face meeting with Besart to apologise, undertook such apology with absolute sincerity and has committed to educating himself about the cultural sensitivities at play in the global game that is football. As a consequence, he has our absolute support".
30. The Player has a positive disciplinary record.
31. The Player gave evidence in person at the hearing as did Mr Munn. The Committee accepts the evidence of the Player and Mr Munn.
32. The Player gave evidence that his father had been involved in his football career since the age of 5. The Player first played professionally at the age of 15. His father was present at the game and subsequently found out what had happened. The Player gave evidence that his father was extremely disappointed in him but continued to support and indeed his father attended the hearing in person. The Player said he felt he had let his father down.

F. SUBMISSIONS

33. The following submissions were made on behalf of the Player:
 - (1) The Player accepts that the relevant Category 2 Offence has been committed and submits that the Committee should hand down the least severe penalty available.
 - (2) The Player accepts that his ignorance of the real meaning and significance of what he said has no bearing on the hurt that the term was capable of causing and did cause.
 - (3) The Player takes full responsibility for his actions and accepts they must carry consequences.

- (4) In the circumstances of this case a sanction of 5 matches is appropriate and no greater sanction should be imposed.
34. FFA made the following submissions:
- (1) The minimum sanction for the offence is the mandatory match suspension plus four additional games (total of five games).
 - (2) The minimum sanction is a significant one, reflecting the seriousness of the charge.
 - (3) There is no scope, in this case, for the player to receive a sanction less than the minimum sanction or to receive a partially suspended sentence that is more favourable to him. There are not exceptional circumstances and the Disciplinary Regulations contemplate that any portion of a sentence that is suspended is in addition to the prescribed minimum sanction (Regulation 12.3).
 - (4) In view of the matters set out in the evidence submitted by the Player together with the submissions, FFA accepts that the minimum suspension is an appropriate sanction. Of particular significance are:
 - (a) The Player's immediate acceptance of the consequences of his words.
 - (b) His contrition.
 - (c) His proactive steps to initiate a meeting with and apologise to Berisha.
 - (d) His willingness to undertake two programs. One initiated by the PFA and also the MCFC community program.
 - (e) His acceptance of the charge in these proceedings.
 - (f) His otherwise good disciplinary record.
35. The FFA also pointed out that but for the particular facts of this case and the immediate contrition of the Player a sanction greater than the minimum would have been appropriate but in this particular case as the minimum was 5 matches, that sanction was acceptable.

G. CONSIDERATION AND FINDINGS

36. It is not in dispute that the words "Fucking Gypsy" were said by Bouzanis to Berisha. The Offence was committed.
37. It is apparent from the PFA letter attached to the statement of Scott Munn that Berisha considered the use of "Gypsy" to be racially discriminatory and was offended by it. It is also apparent from this submission that Berisha desired a face-to-face apology from Bouzanis resulting from the incident, which has occurred. The Committee accepts the apology by Bouzanis was sincere and accepted by Berisha.
38. There has been a character reference submitted on behalf of Dean Bouzanis by John Tsatsimas, CEO of Western Sydney Wanderers.
39. The statements of Bouzanis and Scott Munn, as well as the letter by the PFA, indicate that Bouzanis is voluntarily undertaking a racism and cultural awareness course with the PFA as a result of this incident.
40. In accordance with clause 11.2 of the Disciplinary Regulations the Committee took into account the following matters:
- (1) The severity of the Offence. Without anything else the Offence would have required a sanction greater than the minimum.

- (2) The intent or otherwise of the Player. In this case there was no intent to make a racial or ethnic slur and the conduct was negligent and/or reckless but relevantly not intentional.
 - (3) The Player's past record is in his favour and he is not a repeat offender.
 - (4) The Player has shown genuine remorse.
 - (5) There are other circumstances as relevant which are in favour of the Player.
41. Having regard to the particular facts of this case it is one which does not require a sanction above the minimum. It is significant that the minimum itself is 5 matches which, relative to other football offences, is quite a lengthy sanction.

H. RESULT

- 42. The Offence has been established.
- 43. The sanction imposed is a total of 5 matches.

John Marshall

J E Marshall SC, Disciplinary and Ethics Committee Chair
Thursday 09.02.2017