

DISCIPLINARY AND ETHICS COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Iacopo La Rocca, Adelaide United
Alleged offence	R2 - Assault on a Player (e.g. violent conduct when not challenging for the ball)
Date of alleged offence	Friday 05.02.2016
Occasion of alleged offence	Match between Sydney FC and Adelaide United
Date of Disciplinary Notice	Wednesday 10.02.2016
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 9.25(b)
Date of Hearing	Tuesday 16.02.2016
Date of Determination	Wednesday 17.02.2016
Disciplinary and Ethics Committee Members	John Marshall SC, Chair Anthony Lo Surdo SC Peter Tsekenis

A. INTRODUCTION AND JURISDICTION

1. The Committee (now called the "Disciplinary and Ethics Committee" pursuant to the FFA Judicial Bodies By-Law dated 11.11.2015) has jurisdiction under clause 4.4 of the FFA "Hyundai A-League Disciplinary Regulations" applicable to the 2015-2016 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 9.25(b) of the Disciplinary Regulations. In the case of a referral under clause 9.25(b) the Match Review Panel (**the MRP**) will have decided (in its sole opinion) that the incident escaped the attention of the referee (see clause 9.2) and that an Offence has been committed (see clause 9.24). 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, 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. It is abundantly clear that the function of the Committee in such a case 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. The matters in this and the preceding paragraph are clear from the Disciplinary Regulations and were referred to by the Committee in the matter of *Salley* (dated 15.12.2011).
4. Iacopo La Rocca (**the player**) was issued with a Disciplinary Notice dated 10.02.2016. The Category 1 Offence stated on the Disciplinary Notice is Offence 4 (R2 for Players) - Assault on a Player (e.g. violent conduct when not challenging for the ball). Paragraphs 1-5 of the Disciplinary Notice state:
 1. On 9 February 2016 you were advised that the MRP had cited you in relation to an incident which took place while you were playing for your Club against Sydney FC (SFC) on Friday 5 February 2016 in or in about the 24th minute of the match. Specifically, the incident involved an interaction with Matt Simon of SFC where you appeared to make contact with the opposition player (the Incident);
 2. At its meeting of Wednesday 10 February 2016, the MRP reviewed the submissions lodged by your Club in response to the Show Cause Notice issued on 9 February 2016;
 3. The MRP has determined that you committed the Category 1 Offence, as specified under "Annexure A – 6. Table of Offences", of R2 – Assault on a Player (e.g. violent conduct when not challenging for the ball);
 4. The Minimum Sanction for the Offence under the Regulations is two (2) Hyundai A-League matches (being the Mandatory Match Suspension plus one (1) additional Hyundai A-League match); and
 5. The MRP has proposed a sanction of three (3) Hyundai A-League matches, being the Mandatory Match Suspension plus two (2) additional Hyundai A-League matches.
5. It is for this Committee to determine the additional sanction to be imposed (not merely whether some or all of the additional sanction proposed by the MRP ought to be imposed over and above the Mandatory Match Suspension).
6. Further, it is open to the Committee to impose a sanction which is longer than that proposed by the MRP.
7. It is to be noted that the effect of the MRP decision is that the player must be treated as having committed the R2 offence of violent conduct (see clause 6.2 and row 4 of the Table of Offences). This involves assault on a player when not challenging for the ball.

B. THE HEARING

8. On the evening of Tuesday 16.02.2016 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)).
9. At the hearing Disciplinary Counsel was Ivan Griscti and the player was represented by Ante Kovacevic and other representatives of his club.

10. The evidence at the hearing comprised the footage from several angles, the Disciplinary Notice, and the player's Australian disciplinary record. Although the player has previously played football in Italy and Switzerland, the Committee did not have access to these records at the time of the hearing.
11. In addition, the submissions of the player were received, including video footage of incidents said to be relevant to the issue in this proceeding.

C. FACTS

12. We have had the benefit of seeing the incident from several different angles of footage and in slow motion from Fox Sports. Particularly relevant in this case was viewing the incident on a large high definition screen. Matters which were not clear when viewed on a computer screen were able to be seen on the large TV in the FFA hearing room.
13. In around the 24th minute of the game the player and Matt Simon of Sydney FC (**Simon**) were jostling for position. This was as a result of a free kick having been awarded in favour of Sydney FC just outside the Adelaide penalty area. It is probably unnecessary to reach a conclusion as to who instigated the contact but so far as the Committee can ascertain from the footage, the Committee finds that the player instigated the contact in blocking and then holding Simon. This is shown in the screenshots taken from the Fox Sports footage below.



14. The player and Simon fell to the ground.



15. After being on the ground, the player made a separate action with his left arm to strike Simon in the vicinity of Simon's head. This can (just) be seen in the screenshots below showing the contact.



16. It is very difficult to take screenshots from the footage on this occasion. Nevertheless when the footage is viewed on a large screen television with high resolution as is available to the FFA, it is apparent that the player did make a separate and second swing with his arm to make contact with Simon. Many of the submissions on behalf of the player proceeded on the basis that there was no such conduct. The Committee finds there was a strike by the player with his left arm to the head area of Simon and that the strike was intentional or at least reckless.
17. Following the impact the footage shows that Simon was stunned and needed treatment. The footage is clear in demonstrating that he was affected by the strike to the face. Indeed, in his evidence the player accepted that he had made contact with the head of Simon. Nevertheless the player asserted that it was not his intention to throw an elbow.

D. SUBMISSIONS

18. Reference has been made to clause 11.2 of the Disciplinary Regulations.
19. The matters submitted by Disciplinary Counsel included:
- (1) As the player got up he swiftly threw his left arm back and made contact with Simon's face. The contact can be described as violent. It is apparently to Simon's mouth area.
 - (2) The force and point of contact is confirmed by the footage including Simon's reaction to the contact.
 - (3) Previous decisions of the MRP are not relevant for the purposes of this committee in propounding a sanction.
 - (4) The sanction proposed by the MRP is appropriate.
20. The matters submitted on behalf of the player included:
- (1) The player was trapped and tried to push away.
 - (2) The contact which did take place was accidental. That can be demonstrated because the player was not looking at Simon and claimed to have no intention to throw an elbow.
 - (3) None of the other Sydney FC players reacted.

- (4) Although Simon did get some treatment, there was nothing serious unlike other cases.
- (5) The minimum sanction is all that should be imposed. If there is to be a third match imposed as part of the sanction, that third match should be suspended pursuant to clause 12.

21. Observations were also made by a representative of the player's club that there was a gap in the rules which denied the player the opportunity to contest guilt. This echoes a submission made by Clive Palmer then of the Gold Coast United Club in the matter of *Salley* (dated 15.12.2011). On that occasion the Committee stated:

29 In relation to the second submission that we could deal with the guilt of the player, the rules are very clear on this topic. They have been so for several years. It is not by accident that this Committee is unable to deal with questions of guilt or innocence in a case like this. That was a deliberate and conscious rule making decision by the FFA and was done, so far as we understand, in consultation with the Clubs and PFA. The Disciplinary Regulations on this point are consistent with the position in the FIFA Rules. Notwithstanding that the Disciplinary Regulations make it clear we have no jurisdiction on that topic, we note that the decision of the MRP is not one that denies a player natural justice insofar as the player is given an opportunity to show cause and then the player can provide submissions to the MRP on whether the offence has been committed. If it be relevant we are not satisfied that the Disciplinary Regulations in this regard are contrary to Australian law.

- 22. Decisions of this Committee and the Disciplinary Regulations are available on the FFA's internet site.
- 23. No submission has been made by Disciplinary Counsel or the player that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.

E. CONSIDERATION AND FINDINGS

- 24. When determining any appropriate sanction in accordance 11.2 with the Range at the Table of Offences, a Judicial Body may consider:
 - (a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
 - (b) the Participant's past record and whether or not this is a repeated Offence;
 - (c) the remorse of the Participant; and
 - (d) any extenuating circumstances relevant to the commission of the Offence.
- 25. The player referred to incidents which had come before the MRP but not before this Committee.
- 26. The approach which this Committee ought adopt in the face of a submission concerning decisions of the MRP was addressed by the Appeal Committee most recently in the *O'Donovan* decision (dated 25.01.2016). That appeal decision binds this Committee, is sensible and will be applied.
- 27. For many years this Committee took the view that decisions of the MRP were not relevant jurisprudence and certainly not determinative on sanction. That position was confirmed by the Appeal Committee decision of *Pantelidis* (dated 03.02.2011).

28. Nevertheless, when the *O'Donovan* matter was before this Committee (dated 07.01.2016), the Committee said this:

51. The Committee has taken into account the conduct of Manny Muscat. It was noted that despite the contact of the head-butt, no serious injury was occasioned. The sanction which was proposed by the MRP and accepted by Muscat was a sanction of 2 matches. That sanction was not one imposed by this Committee. Although the Committee has not heard from Muscat as he is not a party, the Committee is of the view that he was well advised to accept the 2 match suspension as it could have been considerably more had his conduct come before this Committee.

52. The fact remains that whatever sanction is imposed by this Committee will be viewed in connection with the sanction on Muscat proposed by the MRP. Rightly or wrongly, the Committee has felt constrained by what it perceives to be the low level of sanction imposed on Muscat. That has worked in favour of O'Donovan. (underlining added)

[The Appeal Committee subsequently found that this was an error ie "wrongly" and the Committee should not have felt constrained.]

29. On appeal, the Appeal Committee quoted those paragraphs (51 & 52) in its determination and then went on as follows:

38. This [meaning the two match sanction imposed on Muscat] was a factor that weighed in the Appellant's favour. This does not support the Appellant's submission that the sanction was excessive, and unreasonably so. The Appeal Committee considered a similar factor in *Steve Pantelidis, Gold Coast United FC and FFA*, dated 3 February 2011, at paragraph 28, where it was submitted that the Committee should have made a comparison with a sanction imposed by the Match Review Panel. The Appeal Committee said:

"There was no evidence before the Disciplinary Committee that would have enabled it to properly address the comparative severity of the conduct in those two cases and the conduct of the Appellant in the present. Even if there were, it is doubtful that any comparison of penalty would be a valid one. That is because the 2 match sanctions in each cases were imposed by the Match Review Panel, and not by the Disciplinary Committee. There is no facility in the Regulations for the FF A to appeal against a sanction imposed by the Match Review Panel (which would enable it to appeal against sanction it considered too lenient). As a result, in our view it would not be a valid logical or jurisprudential exercise for the Disciplinary Committee to use sanctions imposed by the Match Review Panel as "comparative verdicts" for the purposes of its own power to impose a sanction. In the course of argument it is apparent that this was the position of the Chairman of the disciplinary Committee, and we respectfully agree with that position."

39. This Appeal Committee agrees with this reasoning and respectfully disagrees with the position adopted by the Committee in this case."

30. In these circumstances this Committee does not propose to engage in an exercise that has been held not to be logical nor valid. For this reason the proposed sanctions of the MRP in other cases are of no weight.
31. The Committee finds that the player did engage in a deliberate (or at least reckless) action in which he swung his left arm and made contact with the head of Simon. Contrary to the submissions of the player, the Committee rejects the assertion that there was neither intent nor recklessness.

32. Not that the Committee thinks it is relevant, but only because it was asserted by the player, the Committee makes the finding that other Sydney FC players did react to the incident and did claim that they had seen an elbow thrown. This is visible in the footage.
33. Otherwise the factual findings we make are set out earlier in the decision when dealing with what can be seen from the footage.
34. No submissions were advanced on behalf of the player by reference to other decisions of this Committee. Nevertheless we make the following observations.
 - (1) The incident in which Manny Muscat threw an elbow was dealt with by the MRP. This Committee was plainly of the view that the two match sanction proposed by the MRP was inadequate. See *O'Donovan* (dated 07.01.2016) at paragraphs 51 & 52.
 - (2) The incident involving Nick Mrdja also involved an offence of the same kind (R2). On that occasion the Committee said "... *but for the long and outstanding record of player Mrdja who tells us he has never received a red card at any level of football and but for the glowing character reference, we would have been of the view that a sanction longer than the two matches proposed by the Match Review Panel would be appropriate. However no submission was made by the FFA that the two match suspension proposed by the MRP was not adequate. In these circumstances we reach the conclusion that the sanction should be two matches.*" See *Mrdja* (dated 03.03.2010).
 - (3) The incident where Kevin Muscat was charged with Offence R1 involved a swinging arm by Kevin Muscat against Jason Culina. The MRP had proposed a total of two matches. The Committee observed that one of its members was of the view that a longer sanction could well be appropriate but in the absence of any submission by the FFA the sanction would remain at two matches. That involved a different and lesser charge than the one here which is an assault away from the ball. See *Muscat* (dated 03.02.2010).
 - (4) The incident in which Steve Pantelidis came before the Committee was more serious than the one involving the player in this case. On that occasion the Committee imposed a sanction of a total of five matches. See *Pantelidis* (dated 03.02.2010).
35. The earlier decisions of this Committee indicate that a sanction of three matches or four matches is the appropriate range for the conduct of the player in this case.
36. The player's past record indicates that he was sent off in 2014 for serious foul play. On that occasion he accepted the four match suspension proposed by the MRP.
37. Submissions were (belatedly) made on the topic of the player's remorse. There is no evidence of this indicated on the day. There is no evidence he made contact with or expressed any concern towards Simon on the day or subsequently.

F. RESULT*(1) Offence*

38. The player committed the offence in row 4 of the table being offence R2 - Assault on a Player (e.g. violent conduct when not challenging for the ball). The Committee was not required to review the guilt of the player in these proceedings.

(2) Sanction to be imposed

39. The sanction we impose is 2 matches over and above the Mandatory Match Suspension (ie a total of 3 matches). That is the same as the sanction proposed by the MRP. One member of the Committee was minded to impose the sanction of 3 matches over the Mandatory Match Suspension (ie a total of 4 matches).

(3) Suspension and probationary period

40. Whilst under clause 12.2 it was open to the Committee to suspend part of the sanction (being the third match) we decline to do so as in our view a suspended sanction is not appropriate in this case.

John Marshall

J E Marshall SC, Disciplinary and Ethics Committee Chair
Wednesday 17.02.2016