

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Team Official and club	Franz Straka, North Qld Fury
Alleged offence	Breach of Clauses 2.1 and 6.1 of the National Code of Conduct
Date of alleged offence	2 October 2010
Occasion of alleged offence	Match between North Qld Fury & CCM
Date of Notification of Sanction	11 October 2010
Basis the matter is before the Disciplinary Committee	Application for Determination pursuant to Grievance Resolution Regulations
Date of Hearing	Wednesday 13 October 2010
Date of Determination	Friday 22 October 2010
Disciplinary Committee Members	Lachlan Gyles SC, Chair; Shaun McCarthy; Peter Speed

A. INTRODUCTION

On 2 October 2010 an incident occurred when the referees were leaving the field at half time during an A-League match between North Queensland Fury (Fury) and Central Coast Mariners (CCM). The incident primarily involved Franz Straka the Fury Head Coach and the Fourth Official, Kris Griffiths-Jones.

On 6 October 2010 FFA wrote to the Fury and Mr Straka giving notice that Mr Straka's conduct may constitute breaches of clauses 2.1 and 6 of the National Code of Conduct (the **Code**), and giving Mr Straka and the Club the opportunity to provide submissions in that respect, and as to penalty.

On 11 October 2010 FFA gave notice to the Fury that it had determined that a breach of clauses 2.1 and 6 of the Code had occurred in the following respects:

clause 2.2(c):

"offensive behaviour, including offensive, obscene, provocative or insulting gestures, language or chanting."

clause 6.1 (a):

".....an Official must.....at all times behave in a manner that promotes and upholds the highest standards of integrity, dignity and professionalism."

The FFA also gave notice of the following sanctions in respect of the breaches:

... the Team Official will be suspended for the next (1) Hyundai A-League Match in which the Club plays....

While serving the suspension the Club's Head Coach may not:

1. on the day an Hyundai A-League Match is being conducted, enter the field of play, the surrounds of the field of play, the Technical Area, the players' race, the dressing rooms or any other place within a Venue where Participants are likely to assemble to prepare for that Hyundai A-League Match;
2. if attending an Hyundai A-League Match, be seated in a Venue area normally reserved for Participants; and
3. within two hours of the start of the Hyundai A-League Match from which the Participant is suspended and within one hour of the conclusion of the Hyundai A-League Match from which the Participant is suspended have any contact with:
 - (i) the Broadcast Partner or any other media where the purpose of such contact is for it to be electronically broadcast to the public, including (but not limited to) participating in any post-match press conference and participating in television or radio interviews; and
 - (ii) any Participant while that Participant is in an area included within clause 13.2(a).

Further, the [Team Official] is also sanctioned with one (1) suspended match. The suspended match will be triggered by any further breach of the Code.

That decision has been challenged by Mr Straka by the filing of an Application for Determination pursuant to the Grievance Resolution Regulations which seeks to have the sanctions overturned. The details of the basis for the challenge is set out in the Application are as follows:

"I do not believe any of my actions caused a breach of clause 2.2(c) and clause 6.1(a) or the National Code of Conduct. It is not disputed that some contact was made with the arm of the fourth official during a discussion at the half-time break in the match. However the touch was in no way deliberate and in fact the fourth official was the first to grab me around the waist. This is evidenced by video and the report of match official. I did not at any point of time in the incident use abusive, offensive, obscene or insulting gestures to the official. I was surprised by the sanctions of the FFA as the officials on the day did not take any action even though they have the power to act."

This Committee is a Judicial Body convened under the Grievance Resolution Regulations and the hearing took place pursuant to those regulations. It was a hearing de novo, with the Committee (if satisfied as to jurisdiction) going on to form its own views on the evidence as to both breach and penalty.

B. THE HEARING

On the evening of Wednesday 13 October 2010 the Committee heard the matter. Mr Cheney of Counsel appeared in person for the FFA and Mr Najem, the Fury CEO, for Mr Straka by

telephone. Mr Straka was also in attendance by telephone and gave evidence by telephone in relation to the incident.

At the conclusion of the hearing the Committee reserved its decision and sought further submissions in writing on a jurisdictional point raised by the Applicant. The sanctions imposed by FFA were stayed pending the determination being handed down. Those submissions were provided on Tuesday 19 October 2010, and having now been considered by the Committee, it is now in a position to determine the Application.

C. FACTS

At the hearing, the Committee had regard to several video angles of the incident which we describe hereunder. The video angles were provided by the broadcaster, Foxtel. In addition, we were shown a fragment of another video provided by the Fury which was taken by a high, wide angle and was said to show the events which led to the incident. From watching the video, hearing from Mr Straka and reading the reports of the officials the following is in substance what the Committee finds is what occurred.

Just prior to half time in the game the Fury were leading 1-0 against the Mariners. In injury time the Fury was awarded a corner. Prior to the corner being taken and while the Fury player who was to take the corner was walking (rather slowly we observed) to the corner, the referee blew half time.

From the wide angle provided by the Fury, Mr Straka can then be seen in conversation with the fourth official near the half way line and out of the technical area. It is the Fury's submission that at this point the fourth official "clearly" grabbed Mr Straka. This was not clear from the video because the camera was so far away that it was difficult to determine what happened at that point, but the Committee for the purpose of the hearing is prepared to accept that the Fourth Official may have initiated contact with Mr Straka in attempting to keep him away from the referee.

The players began walking towards the tunnel and from the images provided by Foxtel, Mr Straka can be seen in animated discussion with the fourth official. Not much of what was said by Mr Straka was audible other than the words "say please". Mr Krayen submitted that those words were spoken by Mr Straka because he considered that he was being shown discourtesy by the fourth official. Mr Krayen submitted that other words spoken included "I am not an animal". That part of the conversation was not audible.

In any event, Mr Straka continued to remonstrate with the fourth official in a manner which the video discloses, and we find, was aggressive and confrontational in nature. On several occasions during this remonstrance the fourth official made contact with Mr Straka attempting to keep him away from the referee and as encouragement for Mr Straka to go to the dressing rooms. At one point he held Mr Straka by the waist for a period of approximately 5 seconds. These actions have the appearance of being carried out so as to provide a barrier between Mr Straka and the assistant referees who were walking in a line towards the tunnel but were several metres from the sideline, and the Fourth Official says this in his Report.

During the incident, Mr Straka was seen to touch the fourth official on at least two occasions. The most significant of these contacts occurred in circumstances where Mr Straka is seen to push the right arm of the fourth official with his right arm, resulting in the arm of the right official being forced upward. At and around this time Mr Straka can be seen shouting into the face of

the fourth official while the fourth official continually ordered Mr Straka to "go" while pointing in the direction of the tunnel.

At one point Mr Straka turned and walked towards the dressing room but then turned back and remonstrated further with the fourth official while pointing towards the referee.

Mr Straka was clearly upset that the referee had not allowed the corner to be taken prior to blowing the whistle. He appears then to have been further frustrated by being prevented from speaking to the Referee about the incident when he left the field.

The video evidence is inconclusive as to whether the referee was in a position to see the totality of the incident. It can be said that as the incident unfolded, the referee and his assistant gradually got closer to the incident. On one angle they appear to be looking directly towards Mr Straka and the fourth official and the referee can be seen smiling.

More directly, we have regard to the referee's report that at 3 October 2010 where the referee records that he observed:

- (1) Mr Straka and Stewart McClaren "yelling towards me";
- (2) Mr Straka walking directly toward the referee in anger while yelling;
- (3) the fourth official positioning himself between Mr Straka and the referee "to prevent any further conflict or confrontation";
- (4) Mr Straka being "continually" directed to stop and to go to the tunnel;
- (5) Mr Straka pushing the arm of the fourth official out of the way;
- (6) Mr Straka starting to walk up the tunnel and continuing to air his frustration "another time" turning around in disgust.

It was submitted on behalf Mr Straka that prior to the game resuming he apologised to the referee.

We were further favoured with another document which is described as "*referee's incident report form*" which is dated 2 October 2010. It is the report of the fourth official, Kris Griffiths-Jones, and is generally consistent with that which we have described above and does confirm that Mr Straka approached him "*at the conclusion of half time and apologised*".

As we understand it, these images were not shown live but at least a portion of the images were replayed on Foxtel before the game had finished. Further, all of the conduct described above was clearly visible to the sections of the crowd seated in the vicinity.

Helpful submissions were provided to us from both the Fury and the FFA. We will come to the legal issues arising from those submissions shortly but at this stage we point out that it was submitted on behalf of the Fury that the actions of Mr Straka in making contact with the fourth official were accidental. Mr Straka gave this evidence also. When pressed on whether he truly maintained that the contact was generally accidental or just not premeditated, he was not entirely clear but certainly unconvincing. In our opinion, while we have no reason to believe

that Mr Straka set out to make contact with the fourth official, we do conclude that the action of making contact with the arm of the fourth official was deliberate, albeit spontaneous.

Overall, whilst accepting that animated discussion between coaches and officials is a common occurrence and is commonly tolerated and that the initial physical contact may have been initiated by the Fourth Official, we view the conduct of Mr Straka as exceeding the level which can be comfortably tolerated. . It went beyond that in that it was shown to be aggressive and provocative in nature and unduly disrespectful, particularly when it occurred in full view of the crowd and the television cameras.

D. SUBMISSIONS

The matters raised on behalf of Mr Straka go to jurisdiction, breach and penalty. These will be dealt with separately.

The submissions of the Fury in respect of jurisdiction are essentially set out in its letter of 12 October 2010 and are re-produced below:

FFA A- League Disciplinary Regulations

Part 1 of the Regulations states:

"These Regulations form part of the FFA Statutes and, among other things apply, to Offences committed by any participant during an A-League Match."

Further, a Participant is defined on page 24 of the Regulations as:

"Participant means a Player or a Team Official"

A Team Official is determined by the regulations on page 25 as:

"Team Official meansthe coaches...."

In reading these determinations, it is clear that any offences committed during an A-League Match by a Coach would be provisioned for and fall under the Disciplinary Regulations and not the Code of Conduct as has been applied in the current determination.

The exception to this is clearly stated in clause 1.3 (e):

"1.3 The Regulations (e) do not limit or restrict the application of FIFA Statutes or FFA Statutes and, in particular, the Code of Conduct for conduct or behaviour of a Player or Team Official that occurs outside of the authority of these Regulations Generally"

In applying these regulations we note that clear duties and authority is assigned to the referee as follows:

"3.1

- (a) *Referee controls the match and has authority to enforce the laws of the game in each A-League Match to which he or she has been appointed.*
- (b) *Makes all disciplinary decisions during an A-League Match.*
- (c) *Has the powers, duties and authority:*
 - I: as specified in the laws of the game and in particular, Law 5; and*
 - II: to make disciplinary decisions from the moment he or she enters the field of play until he or she leaves the field of play after the final whistle."*

In Summary:

- (1) The referee has power, duties and authority to enforce the laws of the game from the moment they enter the field until they leave the field of play after the final whistle.
- (2) The matters referred to by the FFA occurred prior to the referee leaving the field after the final whistle.
- (3) The matters raised are within the authorities of these regulations and therefore the Code of Conduct cannot be applied.
- (4) Having witnessed the events and speaking with officials at the half time break, the referee elected not to exercise his power, duties or authority, including the ability to take disciplinary action in the case of a team official and direct the expulsion from the field of play, its surrounds and the technical area. (Clause 2.2a FFA A-League Disciplinary Regulations)
- (5) The game day video clearly shows that the Fourth Official had a hold of Franz Strakas waist for over seconds during the event, and that Strakas contact with the Fourth Official was inadvertent and not deliberate. This is supported by the Fourth Officials statement where he advises I felt the hand of the North Queensland Coach brush my arm as we waved his arms around.
- (6) The Regulations provide no provision for the Code of conduct to be exercised in the absence of or in satisfaction of a referee that has made a decision not to act.
- (7) It is unconscionable that the FFA would seek to apply a sanction that provides for a penalty in keeping with that provided for by the regulations that the referee of the game did not believe was warranted at the time the game was in play and therefore did not apply.

In short the Fury submit that the FFA (and on Appeal this Committee) have no power to issue a sanction for breach of the Code because the incident took place during a match and the only power to sanction which can arise is that under the Disciplinary Regulations, which power has not been exercised by the FFA.

FFA on the other hand submit that despite the incident taking place during a match, that the Code applies concurrently with the Disciplinary Regulations and that sanctions relevantly can be issued under either. It says that the Disciplinary Regulations by their language do not codify all of the circumstances in which sanctions may be issued.

In respect of breach, the Fury point to the fact that no offensive or obscene language was used by Mr Straka during the incident, and that to the extent there was physical contact it was initiated by the Fourth Official. It also says Mr Straka should not have been denied his right to speak to the referee as he wished, and that any contact with the Fourth Official was in any event minor and inadvertent.

FFA challenges this and supports FFA's finding as follows:

In the terms used in clause 2.2(c) of the Code, Mr Straka had, in public, engaged in "offensive behaviour" (defined as including offensive, abusive, provocative or insulting gestures, language or chanting) and further, that in breach of clause 6.1(a) of the Code Mr Straka had failed to behave in a manner that promotes and upholds the highest standards of integrity, dignity and professionalism", is borne out by these features of his conduct, as seen on the video:

- His remonstrations, plainly, and in full view of the spectators and the television audience, directed at the Match Referee Mr Ams;
- His aggressive and hostile demeanour throughout;
- His almost hysterical shouting at the officials (each of the Officials; reports him as 'yelling' and he is seen to do so on the video);
- His actions in initiating aggressive physical contact with the 4th Official's right arm, at a time when that arm was not in contact with him (which may be contrasted with his assertion in his Application for Determination that "the touch was in no way deliberate")
- The undignified manner of his entire interaction with the officials which continues for at least 20 seconds, and includes a return to the fray after the initial aggression, when Mr Straka interrupts his trip up the tunnel to turn back towards the officials and attempt to have another go at them.

On penalty the Fury points to the fact that Mr Straka apologised to the Referee after the incident and has been reprimanded by the Club, and says that the incident is part of his animated and passionate style and should be seen in that context.

E. JURISDICTIONAL ISSUE

To determine the jurisdictional issue raised by the Fury it is first necessary to consider the interrelationship of the Code, the FFA A- League Disciplinary Regulations and the Grievant Resolutions Regulations. The key provisions of these FFA Statutes, which touch upon how they interrelate, are set out below:

The Code

1.2 This Code:

- (a) forms part of the FFA Statutes and applies to the conduct and behaviour of FFA, Member Federations, Competition Administrators, Clubs, Players, Officials and Agents (*Members*);
- (b) applies to all forms of organised football under FFA's jurisdiction, including eleven-aside, modified football, futsal, indoor and beach football;
-
- (d) does not limit or restrict the application of FFA Statutes and, in particular, the National Disciplinary Regulations, Member Protection Policy or Anti-Doping Policy.

1.3 This Code of Conduct may be supplemented by additional codes of behaviour or ethics, provided that they are not inconsistent with the terms of this Code.

....

7.1 A Football Administrator may enforce the terms of this Code and invoke the sanctions only if it has given the party alleged to have infringed this Code:

- (a) reasonable details of the alleged infringement;
- (b) notice of possible sanctions; and
- (c) the opportunity to be heard in relation to the issues of infringement and sanction.

7.2 The scope and implementation of disciplinary sanctions is as specified in Part V of the FFA Statutes.

.....

7.4 If a Member disputes the sanction or purported action taken under this Code that party may appeal in accordance with the Grievance Resolution Regulations provided that it does so within 7 business days of notice of the sanction.

Under the Code, Football Administrator is defined to mean the FFA, a Member Federation, a Competition Administrator or a Club as the case requires.

Grievance Resolutions Regulations

- 1.1 These Grievance Resolution Regulations form part of the FFA Statutes and, subject to clause 1.5, apply exclusively to determine the rules and procedure for the resolution of a Grievance that arises between FFA, Member Federations, District Associations, Competition Administrators, Clubs, Officials, Agents and Players (*Members*).
- 1.2 A *Grievance* includes a dispute in relation to decisions made or sanctions imposed under: ...
- (c) the National Code of Conduct (such as the imposition of a sanction for bringing the game into Disrepute);
- ...
- 1.5 The A-League Disciplinary Regulations specify the rules and procedures that apply to the conduct of the A-League and in particular the prosecution of disciplinary matters arising during matches in the A-League including breaches of the Laws of the Game. In the event of inconsistency between these Regulations and the A-League Disciplinary Regulations, the A-League Disciplinary Regulations prevail.
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- 13.1 A Judicial Body must determine all Grievances by reference to: (a) FFA Statutes and other relevant rules and regulations or agreements; (b) considerations of general justice and fairness; and (c) applicable law as specified in clause 25.

In the Grievance Resolutions Regulations "Grievance" is defined to mean "a dispute that arises directly or indirectly out of or in relation to the participation of a Member in football in Australia, including a dispute about the breach, termination, validity, or subject matter of the FFA Statutes, the Laws of the Game or any Competition Rules except such dispute that is governed by the A-League Disciplinary Regulations."

FFA A-League Disciplinary Regulations

- 1.1 These Regulations form part of the FFA Statutes and, among other things, apply to Offences committed by any Participant during an A-League Match.
- 1.2 These Regulations are designed to ensure that appropriate standards of behaviour are upheld on the field of play in a consistent manner across A-League Matches and in interpreting and applying these Regulations that objective is to be given effect.
- 1.3 The Regulations:

- (a) apply to FFA, Clubs, Players and Team Officials;
- (b) apply to all A-League Matches;
-
- (d) form part of the FFA Statutes; and
- (e) do not limit or restrict the application of FIFA Statutes or FFA Statutes and, in particular, the Code of Conduct for conduct or behaviour of a Player or Team Official that occurs outside of the authority of these Regulations generally.

In terms of the rules and procedures that apply to the conduct of the A-League the A-League Disciplinary Regulations also relevantly provide:

3.1 The Referee:

- (a) controls each match and has authority to enforce the Laws of the Game in each A-League Match to which he or she has been appointed;
- (b) makes all disciplinary decisions during an A-League Match;
- (c) has the powers, duties and authority:
 - (i) as specified in the Laws of the Game and, in particular, Law 5; and
 - (ii) to make disciplinary decisions from the moment he or she enters the field of play until he or she leaves the field of play after the final whistle.

...

7.1 A Referee may Expel a Team Official from the field of play, its surrounds and the Technical Area where a Team Official commits an Expulsion Offence specified in the Table of Offences.

7.2 A Team Official who has been Expelled from the field of play, its surrounds and the Technical Area by a Referee must serve a one (1) mandatory match suspension and is subject to an additional sanction in accordance with the Table of Offences.

...

9.1 At the conclusion of a round of A-League Matches, the Match Review Panel must:

- (b) review A-League Matches for:

- ... (ii) commission by a Team Official of Offences specified in the Table of Offences, that have escaped the Referee's attention (as defined by clause 9.17); ..

...

9.19 The Match Review Panel will, after conducting its review, identify any incident that escaped the attention of the Referee involving a: ...

- (b) Team Official which in its opinion should have been sanctioned with Expulsion.

9.20 For each incident identified by the Match Review Panel pursuant to clause 9.19, the Match Review Panel must apply the Range at the Table of Offences to the facts of the case to determine what sanction it proposes should apply in addition to the Mandatory Match Suspension. The Mandatory Match Suspension is not subject to further review or appeal and must be served.

....

9.24 Where FFA in its sole and absolute discretion believes:

- (a) that a Referee has made an Obvious Error; and
- (b) a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia,

FFA may issue to the Participant a Disciplinary Notice that:

- (c) includes reasonable details of the alleged Offence; and
- (d) refers the matter to the Disciplinary Committee for hearing to determine whether an Offence has been committed and if so, what sanction should be imposed in accordance with these Regulations.

In these Regulations an Obvious Error is defined to include a decision by the Referee to "not Expel a Team Official when Expulsion was warranted".

Conclusions

Having regard to the terms of the FFA statutes quoted above including the rules and procedures that apply to the conduct of the A-League under the A-League Disciplinary Regulations, the jurisdictional issue raised by the Fury has some initial attraction in circumstances where the FFA accepts that the incident took place during a match, and accepts that the Referee could have dealt with it under the authority of the A-League disciplinary Regulations. It was under those Regulations open to the Referee to expel Mr Straka from the field of play and the technical area, which would in turn have carried a mandatory one match suspension.

If one was to find that the intent of the interrelationship between the Code and the Regulations in respect of incidents during matches (the Code of course applies to off-field matters as well) was to create a system whereby the Code applied to all matches other than A-League matches, but that the Regulations applied to such matches, then the issuing of sanctions under the Code for these offences would be inconsistent with that intention and thereby not within power.

One must seek to interpret the intent of any legislation (or contract) from the words used. Clause 1.1 of the Regulations indicates that the objective is that they apply to Offences committed by any Participant during an A-League match. Further, under Clause 1.3(e) the Regulations are said not to limit or restrict the application of other FFA Statutes including the Code of Conduct in relation to conduct that "*occurs outside of the authority of these Regulations generally*".

The FFA submits that this wording expressly indicates that the Code can have application to conduct during an A-League match, however as we see it, it also implicitly indicates that the application of the Code was intended to be limited or restricted where such conduct occurs within the authority of the Disciplinary Regulations. The words as chosen must be given some purpose.

The wording would on that basis support a common sense construction of the Regulations whereby matters which the Referee, or Match Review Panel, are given authority to deal with under the Regulations fall within the exclusive jurisdiction of the Regulations, and matters which they are not authorised to deal with fall outside of that. In other words in relation to A-League matches the Code only applies to conduct which the referee is not authorised to deal with.

This construction is also consistent with Clause 3.1 of the Regulations which gives the Referee the power to "make all disciplinary decisions from the moment he or she enters the field of play until he or she leaves the field of play after the final whistle."

In addition Article 27.4 of the FFA Statutes is also consistent with this approach in that it states that the Regulations specify the rules and procedures that apply to disciplinary matters arising in A-League matches, and that the A-League Disciplinary Regulations should have priority if there is inconsistency with the Grievance Resolution Regulations.

The Offences which can be dealt with by the Referee include "Use of offensive, insulting or abusive language and/or gestures against a match official", however they do not for example include conduct which does not promote and uphold the highest standards of integrity, dignity and professionalism.

The real question for consideration is whether the Regulations apply exclusively to conduct during A-League matches or whether the Code applies concurrently. The Committee is not aware of this issue being dealt with by the Disciplinary Committee before.

The FFA submits that the Disciplinary Regulations do not purport to, and do not, codify and provide an exclusive jurisdiction in respect of any disciplinary issues arising in A-League matches. As a general proposition and consistent with authorities applying to whether Statutes are intended to cover the field (see *Clyde Engineering v Cowburn* (1926) 37 CLR 466 @ 489; *Ex Parte McLean* (1930) 43 CLR 466 @489), we agree with this, however the Committee has

serious misgivings about the application of the Code to matters which the Referee is given the power to deal with under the Regulations.

Under the Regulations, unless the Referee does not see an incident, which is covered by the Match Review Panel being able to issue its own sanction, or unless there is Obvious Error, disciplinary matters are essentially left to the Referee. This has benefits in that matters can be dealt with on the spot rather than after the event, and the referee is often in the best position to deal with such matters. Further, to allow sanctions to be issued in respect of disciplinary matters which the referee has seen but not dealt with may be seen as undermining his or her authority.

It would for example be an unusual outcome if a player or coach could only be sanctioned after the conclusion of a match in respect of a matter which the Referee had the power to deal with, but chose not to, if the Match Review Panel were satisfied that the Referee did not see the incident, and for there to be mandatory sanctions, but that at the same time there was also a power under the Code to sanction at large in relation to the same conduct despite the referee having seen it and chosen not to act.

In any event, we can dispose of the current issue without needing to resolve the issue of whether the Code can apply to matters which the Referee is authorised to deal with under the Regulations because one of the relevant breaches being a breach of Clause 6.1(a) is not something which the Referee is given authority to deal with, and therefore is something that occurs outside of the authority of the Regulations. That means that the operation of the Code is expressly not excluded.

In approaching the matter in this way we are in effect accepting FFA's "Second Alternative Submission", but not expressing a final view on the Primary or First Alternative Submission. We should say however that these matters should be dealt with as a matter of substance rather than form, and just because certain conduct for example can be described as bringing the game into disrepute in a general sense does not necessarily take that conduct outside of the authority of the Referee if also falling squarely within what he can deal with. An example of this is a dangerous or reckless tackle which causes serious injury which may bring the game into disrepute at a general level but where the referee is given specific power to deal with such conduct and is in a very good position to do so. In those circumstances we would have to be convinced that sanctions could be issued under both the Disciplinary Regulations and the Code.

The net result is that the FFA was in our view within jurisdiction in imposing a sanction in respect of the Clause 6.1 breach. The same would apply to the examples given by the FFA such as match fixing, corruption or supporting a political movement. The referee has no power to deal with such matters and there is therefore no inconsistency brought about if the Code applies to them.

As set out above we would in the circumstances, and where there is no need to do so, prefer not to express a view on the question as to whether there was also jurisdiction to issue a sanction in respect of the breach of Clause 2.2(c). In this respect it would however seem to be for the benefit of all concerned if the relationship between the Code and the Regulations could be made clearer. At present the position is at best ambiguous.

F. BREACH

We have set out our factual findings in respect of the incident above. Ultimately we find that the conduct was plainly unacceptable from the head coach of an A-League Club. The A-League is the showcase of the game in Australia, and it is not unreasonable to expect that full time coaches will act with the highest levels of dignity, integrity and professionalism, particularly in dealing with Match Officials.

Mr Krayern for Mr Straka ultimately did not really challenge the proposition that the conduct was not acceptable, but sought to justify it by the fact that contact with Mr Straka had been initiated by the Fourth Official. Mr Straka essentially did the same. This could only be relevant to penalty but given what we observed was largely immaterial. On any reasonable view Mr Straka's behaviour and lack of discipline set a very poor example to his own players, to the spectators and to the television audience. Showing discourtesy and disrespect to Referees is unacceptable in the game and needs to be effectively stopped, starting at the highest levels.

We therefore find that a breach of Clause 6.1(a) has been made out. It is possible that a breach of Clause 2.2 also took place but we do not propose to deal with that in the light of the jurisdictional complexities referred to above, and do not do so. That said, we should not be taken to have rejected the proposition that Mr Straka's conduct also brought the game into disrepute.

G. PENALTY

The FFA has sought the same sanction as was imposed in the Notice, that is a suspension for two matches with one suspended. Under Clause 6.4 of the Code the maximum suspension for a breach of Clause 6.1(a) is two matches. By way of comparison, Offences under the Disciplinary Regulations relating to use of offensive gestures or unsporting conduct against a referee carry mandatory one and three week suspensions, while assault of a match referee carries a six month penalty, although for the record we do not believe that an assault finding would be open in the present case on what we have seen.

We have had regard to the submissions both of the Fury and the FFA on this issue. We do not give great weight to the provocation defence nor to the argument that such conduct was part of Mr Straka's emotional and flamboyant character. Greater levels of self discipline should have been shown. We have however had regard to the fact that he apologised to the Referee and that the Referee himself did not impose any sanction or express significant dissatisfaction about in his report.

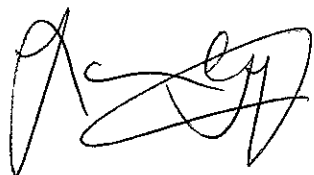
In the end we accept that the FFA sanction was reasonable and justified in the circumstances. The conduct was unacceptable and needs to be penalised. Anything less than a one match suspension is in our view insufficient as a matter of general deterrence and the imposition of a suspended 2nd match is also in our view sensible and justified. It will of itself provide a strong incentive for Mr Straka not to re-offend.

H. RESULT

The Committee therefore unanimously agrees that the following sanctions should be imposed:

- (a) a one match suspension from the next a-league match being the Round 11 Match between the Fury and the Newcastle Jets on 27 October 2010);

- (b) a suspended Sanction of an additional match which shall be served upon the FFA determining that Mr Straka has committed any further breach of the Code during the 2010/2011 regular season or any finals series matches;
- (c) While serving the suspension Mr Straka may not:
1. on the day an Hyundai A-League Match is being conducted, enter the field of play, the surrounds of the field of play, the Technical Area, the players' race, the dressing rooms or any other place within a Venue where Participants are likely to assemble to prepare for that Hyundai A-League Match;
 2. if attending an Hyundai A-League Match, be seated in a Venue area normally reserved for Participants; and
 3. within two hours of the start of the Hyundai A-League Match from which the Participant is suspended and within one hour of the conclusion of the Hyundai A-League Match from which the Participant is suspended have any contact with:
 - (i) the Broadcast Partner or any other media where the purpose of such contact is for it to be electronically broadcast to the public, including (but not limited to) participating in any post-match press conference and participating in television or radio interviews; and
 - (ii) any Participant while that Participant is in an area included within clause 13.2(a).



Lachlan Gyles
L.V.Gyles SC, Disciplinary Committee Deputy Chair
Friday, 22 October 2010