

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

Determination of 17 September 2008 in the following matter

Player and club	Mr Ney. Fabiano, Melbourne Victory
Alleged offence	Spitting at opposing player
Date of alleged offence	12.9.08
Occasion of alleged offence	Match between Melbourne Victory and Adelaide United
Date of Disciplinary Notice	15.9.08 [mistakenly dated 15.8.08]
Basis the matter is before the Disciplinary Committee	As a referral under clause 9.14(b)
Date of Hearing	Wednesday, 17 September 2008
Date of Determination	Wednesday, 17 September 2008
Disciplinary Committee Members	John Marshall SC, Chair Daniel Moulis, Milan Blagojevic
Result (for the reasons below)	<u>Finding:</u> Offence established. <u>Sanction:</u> 8 matches over and above the Mandatory Match Suspension. <u>Suspension and probationary period:</u> No part of the sanction is suspended.

A. INTRODUCTION

1. This matter was before the Committee pursuant to a referral under the "FFA A-League Disciplinary Regulations" applicable to the 2008-2009 A-League season ("**the Disciplinary Regulations**").
2. The issues before the Committee can be summarised as follows:
 - (1) Whether the player spat at his opponent or involuntarily expelled fluid in swearing angrily the Portuguese swear word "Putá" or something similar?
 - (2) What sanction should be imposed?
3. On the evening of *Wednesday, 17 September 2008* the Committee heard the matter of the sanction to be imposed on the player for the offence referred to 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 accordance with clause 20.4.

4. At the hearing Disciplinary Counsel was Mr D. McLure and the player was represented by Mr C. Nikou, solicitor.
5. The matter came before the Committee under clause 9.14(b) of the Disciplinary Regulations. In the case of a referral under clause 9.14(b) the Match Review Panel ("**the MRP**") has formed the view that, on the material available to the MRP, an additional sanction of greater than 4 matches over and above the Mandatory Match Suspension (which in this case is 1 match) was warranted. Nevertheless, it is for this Committee to determine the additional sanction to be imposed over and above the Mandatory Match Suspension, if the offence is established.

B. FACTS

6. In around the 29th minute of the game the player was given a red card for spitting at an opposing player.
7. The experienced A-League referee reported as follows:

On the 29th minute I awarded a Free Kick against Melbourne Victory #11 Ney Fabiano for pushing. As I was delivering a verbal warning to the player he became involved in a verbal altercation with Adelaide player R. Cornthwaite.

Whilst standing about 1m from Ney Fabiano, I saw him make a deliberate and intentional spitting movement in the face of R. Cornthwaite. I saw spit leave the mouth of Ney Fabiano and travel directly towards R. Cornthwaite. I saw some of the spray go into the face of R. Cornthwaite, and a larger more compact ball of spit fly over the head of R. Cornthwaite.

I am certain that the spit was intentional as Ney Fabiano was claiming that R. Cornthwaite elbowed him moments prior to the spitting.

I showed Ney Fabiano the red card immediately up seeing the spit.

8. We have had the benefit of seeing the incident from several different angles of footage from Fox Sports.
9. The footage shows
 - (1) The lead up to the incident and the contact which led to the referee awarding the free kick.
 - (2) The referee giving the verbal warning.
 - (3) The approach of the Adelaide player.
 - (4) Mr Fabiano turn to the Adelaide player and tilt his head, consistent with a spitting action.
 - (5) The movement of the mouth of Mr Fabiano, consistent with a spitting action.
 - (6) The trajectory of what appears to be fluid, consistent with it having been released by Mr Fabiano from his mouth in a spitting action.
10. Further, and importantly, the footage confirms the close proximity of the referee to the incident, including enough angles to confirm that he was in a position to see and hear the event. In this respect, the footage permits us to give all appropriate and due weight to the report of the referee as he was well placed to see the incident as it actually occurred.

C. SUBMISSIONS

11. We have received written submissions and heard oral submissions. The thrust of the submissions can be understood from the following extract from para 8 of the written submissions:

In the process of calling Cornthwaite a "puta" that first time, the fluid was involuntarily expelled from the player's mouth. At no stage did the player intend to spit at Cornthwaite. At no stage did he motion in a manner consistent with a conscious act of spitting. It was only in the speaking action that fluid was expelled.

12. As to sanction, reference has been made to clause 11.2 of the Disciplinary Regulations which allows us to consider the following factors:
- (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.
13. Emphasis was placed on (b) by Mr Nikou, but also submissions were addressed to (d).
14. No submission has been made by Disciplinary Counsel or the player that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.

D. CONSIDERATION

(1) Issues

15. We are to resolve the issues outlined in 2 above.

(2) Offence

16. The combination of angles we have seen supports the referee's report.
17. The evidence of Mr Fabiano as to what he said has been inconsistent.
18. We accept that the action was intentional and that the player did spit at the opposing player.

(3) Sanction

19. The table of offences at p 25 of the Disciplinary Regulations records a minimum sanction of 5 additional matches plus the Mandatory Match Suspension. If that minimum were applied that would result in a 6 match suspension. The maximum sanction for all offences is 24 months.
20. We regard the following as significant:
- (1) The player spat at an opposing player, not merely in his general direction to record disgust.
 - (2) The player took aim not only at an opposing player, but at the face of that player.

- (3) The main globule of the spit did not make contact with the opposing player.
- (4) The player has had a long career and tells us this is his first direct red card. He has only been sent from the field of play on one occasion in his long career, and that was, according to his evidence, as a result of two yellow cards in the one game.

E. RESULT

(1) Finding as to offence

21. We find the offence has been established.

(2) Sanction to be imposed

22. The sanction we impose is 8 matches over and above the Mandatory Match Suspension. That is a sanction of 9 matches in all.

(3) Suspension and probationary period

23. No submissions were addressed to us seeking a suspension of part of the sanction.

John Marshall

Disciplinary Committee Chair
Wednesday, 17 September 2008