

FOOTBALL FEDERATION OF AUSTRALIA DISCIPLINARY COMMITTEE

DETERMINATION IN THE MATTER OF DANIEL VUKOVIC

Committee Members: John Marshall SC (Chairman), Dominic Villa & David Ratcliffe

Date of offence: 24 February 2008

Date of Hearing: 4 March 2008

A. INTRODUCTION

1. For a period of over 6 hours on the evening of Tuesday 4 March 2008 the tribunal heard the matter of the sanction to be imposed on Central Coast Mariners goalkeeper Daniel Vukovic for striking referee Mark Shield in the final moments of the A-League grand final on Sunday 24 February 2008.¹
2. Counsel assisting the tribunal was Mr R Hollo and the player was represented by Mr J McLeod.
3. The matter came before the tribunal as an appeal (Ex 9) from the match review panel which imposed a sanction of a 15 month suspension. That sanction, like any sanction that this tribunal determines, is imposed under the FFA National Disciplinary Regulations ("**FFA NDR**") and, by FFA NDR 17.6, takes effect across Australia. It is a suspension from "Matches" as defined which means "any match played in Australia under the auspices of FFA [or] a Member Federation ..."²
4. Although formally an "appeal" per FFA NDR 11.3, in fact this is the first hearing. Hence the tribunal does not approach the matter as an appeal in the strict sense. Rather the tribunal starts afresh albeit with the advantage of the recorded views of the match review panel. Those views do not bind the tribunal, either way, as there has been no prior hearing. It is the tribunal that is the body with the relevant jurisdiction under 'FFA Statutes' article 25.2 to determine the matter on all the evidence with the benefit of a hearing and submissions.
5. The hearing focussed on the sanction because the player concedes he has committed the offence (namely "Violent Conduct – Striking Match Official."). Indeed his early recognition of guilt and his early apology are relied upon as mitigating factors.

B. FACTS

6. In around the 93rd minute of the game (at which time the Central Coast Mariners were trailing 0-1), the player protested to the referee asserting there ought to have been a penalty for a handball. When it became apparent to the player that no penalty was to be awarded the player struck the referee on the arm. The

¹ At the conclusion of the hearing, following deliberations, the tribunal verbally announced a fairly detailed explanation of the result of the hearing. This is the reasoned determination of the tribunal in accordance with FFA GRR 13.2 & 13.3.

² Such a sanction does not, in and of itself, operate to preclude a player from international matches played outside Australia. The likely effect of such a sanction in relation to international matches played outside Australia is referred to later.

action of the player was visible to many spectators at the ground and was shown on television. We have had the benefit of seeing it from three different angles of footage from Fox Sports (Ex #1).

7. Although there is a guilty plea, the characterisation of the player's action has been put in issue as the written submissions on behalf of the player (EX #11) assert the act was a 'push' and the contact was 'incidental'. The evidence ultimately given orally by the player accepted that the contact was more than a push and not incidental.

8. The material in addition to oral evidence from various witnesses, essentially character witnesses, comprised 15 exhibits. Included in the exhibits is the referee's handwritten match report (Ex 5). That records the offence as:

"Violent Conduct – Striking Match Official."

9. Subsequently a 'Referees' Incident Report Form' was completed (Ex #6) which records the following:

"In the 93rd Minute of the match Central Coast Mariners were taking a corner from the left side of the field of play. After the ball went out of play from the corner, some of the Central Coast Mariners players appealed for a penalty.

Danny Vukovic the goalkeeper for Central Coast Mariners who had come up to the Newcastle Jets penalty area for the corner, and several other Central Coast Mariners players ran towards me to protest the decision.

Danny Vukovic and the other Central Coast Mariners players surrounded me and were yelling and screaming angrily at me and when I asked them to move away Danny Vukovic deliberately struck my forearm in an aggressive manner and then ran off back towards his penalty area.

I then sent Mr Danny Vukovic from the field of play for violent conduct by showing him the red card." (underlining added)

10. One of the assistant referees also completed a 'Referees' Incident Report Form' (Ex #7). Included in the report of the assistant referee is this:

"I then clearly saw the Central Coast goalkeeper Danny Vukovic deliberately and aggressively strike the referees forearm with an open hand³ before running away."

11. One of the exhibits (Ex #8) is a photo (shorn of its caption) which is below:



³ That raised a potential issue as to the nature of the gloves that Mr Vukovic wears. We have had very clear evidence of the nature of the gloves that he wears. They are of a soft kind and there is no hard structure in them as is the case in some forms of gloves which have special finger and thumb guards.

12. The aggression is shown on the player's face. The footage shows a change of facial expression which coincides with the movement of his right arm so as to hit the arm of the referee.
13. The player gave evidence that he did not intend to harm the referee. That appears to be established by the choice of impact. At that range Mr Vukovic could have made contact with the head or body of the referee had he so chosen. The referee was not injured. Had these matters been otherwise the sanction would be much greater.
14. Issues relating to the matter were reviewed by the match review panel and the match review panel gave reasons (exhibit 4) as follows:

"We have considered the charge of violent conduct against a match official, the referee Mr Shield, in the above match by the player, Danny Vukovic. It is an R2 offence with a minimum penalty fixed by Annexure A Recommended Sanctions to the National Disciplinary Regulations effective 1 January 2007. The minimum sanction is 12 months suspension. We were provided with 3 different angles of television footage of the incident, the referee's report and a report by Benjamin Wilson, assistant referee. The matters we have taken into account in reaching a conclusion on offence and sanction include:

1. the player deliberately struck the referee – that contact cannot properly be characterised as pushing or other less serious contact. Even if it were pushing, it would still fall within the R2 category of offence against a match official.
2. it was not severe or extreme force, and did not appear to be delivered with the intention of causing injury or of threatening the referee. It appeared to be in the nature of frustration, disgust or disagreement with the decision of the referee, one of disdain or disrespect. In that respect, it was at the low end of the range of conduct that would fall within this R2 charge.
3. Nevertheless, it was deliberate contact with the referee's arm and the reasons for it are not considered material. It was also contact that could have been avoided once the referee stood back from the group of player's confronting him and created some space between them. The player decided to invade that space and make contact with the referee's arm. The contact is to be distinguished from the other 'light' contact the referee encountered from at least one other Mariners' player in that group at that time.
4. a strong principle of football is that no deliberate or violent contact is to be made with a match official. All players are aware of that.

For the above reasons, we consider that:

- a) the R2 offence of striking the referee made out;
- b) an appropriate sanction to be a suspension of 15 months;
- c) under Regulation 12.9, 6 months of that sentence should be itself suspended for a probationary period of 12 months, such period to run from the expiry of the 9 month suspension period;
- d) the suspension should run from 24 February 2008; and
- e) if the player commits an R2 offence involving violence against a match official, at any time during the 12 month probationary period of the suspended sanction, the suspended 6 month period should be implemented in accordance with regulation 12.9."

15. We are in general agreement with the observations in the reasons of the match review panel as to what can be observed from the television footage (Ex #1).

16. The reasons of the match review panel include reference to "Recommended Sanctions". That is a reference to a range in a table which appears in the FFA NDR. The table is set out below (we have added the row numbers in the left column):

#	CODE	OFFENCE	EXAMPLES	RANGE OF MATCH SUSPENSIONS
1	R1	serious foul play	excessive force or brutality when challenging for the ball when it is in play eg: tackle from behind that endangers the safety of an opponent	according to the nature of the offence committed
2	R2	violent conduct	excessive force or brutality when NOT challenging for the ball, including striking, kicking, elbowing or head-butting may occur either on the field of play or outside its boundaries, whether the ball is in play or not, and against an opponent, team-mate or any other person	2 - 4 matches
3	R2	serious act of violent conduct	Violent conduct of the most serious nature that intends to cause significant bodily harm to any person Involvement in a brawl (but not if person has tried to prevent a fight, shield others or separate those involved in a brawl)	5 matches - 24 months
4	R2	violent conduct against a Match Official	pushing, striking, kicking, elbowing, head-butting	1 year - life
5	R3	spitting at a Player or any other person		4 matches - 12 months
6	R3	spitting at a Match Official		6 matches - 18 months
7	R6	use of offensive, insulting or abusive language and/or gestures		2 - 4 matches
8	R6	use of discriminatory language and/or gestures, including racist, religious, ethnic or sexist		3 - 5 matches
9	R6	use of offensive, insulting or abusive language and/or gestures against a Match Official	Intimidation to pressure that Match Official to take or omit to take certain action Harassment (including sexual harassment) of a verbal nature against a Match Official	3 - 6 matches

17. The offence of the player is in row 4 of the table.
18. Whilst dealing with the table, the "Recommended Sanctions" which are those in the last column, have some significance. The reason is because the FFA NDR, by paragraphs 5.2 and 5.4, provide the tribunal "must determine the scope and duration of each sanction in accordance with the Recommended Sanctions" and that "a sanction outside the range of Recommended Sanctions may be imposed only in exceptional circumstances". That led to submissions on behalf of the player as to what constituted 'exceptional circumstances'. On one view that expression means no more than that all the circumstances of the case at hand warrant a sanction outside the range. On a more narrow view it may be limited to

the circumstances relating to the commission of the offence and not include other circumstances such as those relating to the impact of a sanction on the player. We are prepared to assume that a broad approach is appropriate.

19. The particular offence that is involved here is one which the FFA has included as its number 1 ('Player dissent towards and confrontation of Match Officials') in memos sent to clubs (three of the memos, dated 4.7.06, 14.6.07 & 24.8.07, became collectively exhibits 13).
20. The earliest memo of 4.7.06, before FFA season 2, records:

"Any players who touch or seek to verbally or physically intimidate a match official will be issued a straight red card.

Gentlemen, I don't need to remind any of you that never before has the code of football been under this much scrutiny or weight of expectation. As we work to broaden the games appeal, poor behaviour when broadcast live on television will only attract negative sentiment towards the game.

Further, as the premier football league in Australia, the Hyundai A-League must set the standard for all other leagues and be an example for aspiring players and coaches."
21. The following year the advice on 14.6.07 was

"Any players who touch or seek to verbally or physically intimidate a match official will be issued a straight red card and/or otherwise sanctioned accordingly.

With two highly successful seasons, the interest, scrutiny and weight of expectation surrounding the A-League has never been greater. Poor behaviour when broadcast live on television and in front of growing press galleries will continue to attract negative sentiment towards the A-League and the wider game.

Further, as the premier football league in Australia/New Zealand, the Hyundai A-League must set the standard for all other codes and be an example for aspiring players, coaches and supporters."
22. Mr Vukovic did not see those memos although when asked he said he assumed that poor behaviour when broadcast live on television would be something that would attract negative sentiment. He agreed that he understood that as the premier football league in Australia the Hyundai A League ought set the standard for all other leagues and be an example for aspiring players and coaches. He said he understood that a lot of people are watching and that the public need to know that poor behaviour cannot be allowed to happen.
23. The football manager of the Central Coast Mariners, Mr Lawrie McKinna, gave evidence. During his evidence he was asked to read the 14.6.07 memo and then asked whether he had seen that before. He said he had and had made a point of passing on the substance of it to players, specifically dealing with dissent towards match officials and crowding around referees.
24. As the standard for other football leagues in Australia has just been referred to, it is relevant to note that the FFA NDR applies beyond the A-League and the sanctions set out in the table referred to in para **16** above have lead to 2 life bans and a 5 year ban being imposed in 2007 by state associations for the offence of 'violent conduct against a match official' (see Ex 15). If nothing else that demonstrates the serious nature of the offence and that lengthy sanctions have been imposed in direct response to the approach of the FFA towards player dissent towards and confrontation of match officials. It is to be noted that the 3 cases

were well into the upper range, and far more serious than the actions of Mr Vukovic.

25. Returning then to certain evidence of the player. The player's birthday is on 27 March 1985 and he is presently 22 years of age. Players born in 1985 are available for Olympic selection in the Olympics to take place for this year. A limited number of over age players may also be selected.
26. He commenced playing football at an early age and was initially a striker playing alongside Mark Bridge in the U12s. He became a goalkeeper at the age of 13 and played representative level fairly soon afterwards. He went to Westfield Sports High School at Fairfield West and was a successful player there. He played in the under 20's Australian side although he ultimately did not play in the World Cup.
27. In relation to the under 23 side, the Olyroos, he has played in all the qualifiers that enabled that team coached by Graham Arnold to play in the upcoming Olympics. A reference from Graham Arnold (Ex 11 attachment p3) indicates Mr Vukovic is highly respected by his peers. No doubt for this reason, in one of the matches he acted as the captain in the absence of Mark Milligan.
28. He also has been involved in training camps with the Socceroos and would be amongst the second or third choice keepers if Mark Schwarzer was unavailable for a home international.
29. Included in the player's evidence are a series of written character references. Those references can only be described as outstanding. They all tend to indicate that the conduct of the player was out of character. This determination will not list all of the references. They are from every senior coach he has been involved with and many other people he has come into contact with as a result of his football career.
30. There is a reference from the honourable Neville Wran AC QC (Ex 11 attachment p5) who it seems has come into contact with the player as a result of Mr Wran being the patron of the Central Coast Mariners. Mr Wran wrote "I can categorically state that this was out of character and that Danny deeply regrets his actions." The tribunal is aware Mr Wran was present and the match and has had a long term interest in football.
31. The tribunal was also favoured with a reference from Minister John Della Bosca MLC (Ex 11 attachment p6). Mr Della Bosca also took time out from his busy schedule to actually give evidence to the tribunal in person at the hearing. Mr Della Bosca, it seems, came to know Mr Vukovic primarily through the association of the NSW Motor Accidents Authority Arrive Alive initiative. Mr Della Bosca, like Mr Wran says that the conduct which led to the red card was completely out of character.
32. As it has been noted already, there are other references and it seems unnecessary to go through them all. We also note he is a popular player amongst fans (Ex 12).
33. Returning then to the particular incident, there was a corner taken by Mr Vukovic's team very late in the game. Mr Vukovic left his goal area and went up in an attempt to contribute some further attacking element for his side in the last moments of the game. Apparently he was instructed to do so by the coaching staff.

34. As the corner was taken he was in the area of the back post. From the footage it is apparent that the ball in flight comes into contact with the hand or arm of a Newcastle player. Mr Vukovic can be seen to gesticulate so as to indicate that he saw contact with the arm of a Newcastle player. That is apparent from the way he motions to his own arm to indicate that there had been a hand ball. He then runs some 15-20 metres to the referee. He then addressed the referee along with at least 3 possibly 4 other players. This can be seen in a still copied from the footage (Ex #1)



35. Those players then crowded around the referee.



36. At some point it becomes apparent that the referee would not award a penalty. At this point Mr Vukovic who was gesticulating and speaking to the referee can be seen to harden his facial expression, swing his right arm and come into contact

with the referee's arm (see eg Ex 8 reproduced at para 11 above - which is just prior to the contact being made). The tribunal considers that the conduct was intentional and that it was as a result of anger. Mr Vukovic did not come into contact with the referee by accident in moving away, it was not as if the referee was in his pathway.

37. In his own words: "There is no excuse for what I did". He also said: "We all know as players we are not allowed to do that". In response to later questions he agreed he was trying to get the referee to change his mind, when that did not happen he got angry and intended to hit the referee.
38. Mr Vukovic initially ran towards his own goal for the reason that there was the distinct possibility that if the ball was put into play he would be well out of position. Before he had run very far he heard the whistle blow, and he thought 'I had done something to get sent off because you know you are not allowed to touch the referee'. He turned around and saw the referee reaching for his top pocket and knew that there would be a red card issued to him for his conduct. He then changed his direction after making a minor protest. We do not attribute any significance to that. He then turned and ran from the field.
39. Once in the dressing rooms he knew he was in trouble.
40. The evidence then describes that he was seen in a great deal of distress and we accept that evidence. At some point it became apparent that he was being asked to return to the field to receive the runners up medal, he did return to the field. (Another Central Coast player John Aloisi had also returned to the dressing rooms and may have come back onto the field at about the same time.) When Mr Vukovic returned to the field he saw referee Mark Shield in discussion with one of the assistant referees and apparently all four match officials were standing more or less together. Whilst Mr Vukovic had been in the dressing room he knew he was in trouble. He did not think to say sorry as he ran from the field. His reasons were more or less sensible to us, he had already run some distance and he did not believe the referee would be interested in hearing anything at all from him. However it did occur to him that he should say sorry the moment he saw the referee as he returned to the field. He approached Mr Shield, gained his attention and made his apology. That is most commendable conduct. A lesser man may have acted out of bitterness and refused to speak to Mr Shield. A lesser man may have sought to carry on the debate as to why no penalty was awarded. Mr Vukovic is not a lesser man. His character evidence and his conduct before us tonight shows that he is a young man of good character.
41. In relation to the player's contrition a letter was later written with the assistance of his barrister (Ex 11 attachment p1). One might see that as being not so significant possibly because it was drafted by a lawyer. Another point of view might say that the fact that he knew it was so important to make an appropriate apology involving a lawyer was appropriate. So far as the tribunal is concerned the apology had already been made, made of his own volition and made in a timely way on the day. No greater significance really flows from the subsequent written apology.
42. Also whilst dealing with Mr Vukovic's understanding of the rules and so forth he accepted that every player must unconditionally recognise the authority of the referee. He was also aware and had been for some many years that the

consequences are severe if one touches an official. He agreed that it was pretty much the worst thing you can do on a football field, he was aware that a possible sanction for violence to a match official was a life ban. He of course does not concede that that is an appropriate penalty in this case and nor do we think it is. But what it does mean is that he was aware of the very serious potential penalties that could be given in appropriate circumstances. His own words were "if you harm an official you get a life ban" and "I have let a lot of people down".

43. Much has been said in his references and during the hearing as to his status as a role model in the local area. We accept that. His status as a role model is relevant when one looks at his conduct on and off the field and, unfortunately, his conduct in this particular incident. The question of his status as a role model came up again during the evidence of Mr Della Bosca. Mr Della Bosca pointed out that from someone who is so highly respected to have acted in effect so poorly could potentially have an adverse influence on young people, but equally Mr Della Bosca pointed out that to so readily accept his error and to so promptly make an apology, unsolicited, would also be relevant as a role model as it shows the appropriate way to behave when one has done the wrong thing. Mr Della Bosca added, in effect, that the plea of guilty to the offence and accepting that there should be some appropriate sanction would also be appropriate conduct for a role model in the circumstances where there has been a transgression.
44. Having heard the witnesses for Mr Vukovic we can only be impressed.
45. However it remains for this tribunal to determine the appropriate sanction.

C. SUBMISSIONS

46. Amongst the factors pointed out on behalf of the player by Mr McLeod, who ably and passionately put his case, is the impact of missing out on the Olympics.
47. In this regard a letter of 29 February from the FFA to Mr Lyall Gorman, the executive chairman of the Central Coast Mariners (exhibit 11 attachment p24-25) is relevant. The letter deals with the potential for a sanction by the FFA via this tribunal to lead to suspension from international matches played outside Australia. The letter refers to the FIFA DC and specifically articles 143 and 144.

"143.1 If the infringement is serious, in particular ... misconduct against match officials (cf. art. 49), the associations, confederations, and other organizing sports bodies shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.

...

143.3. If the judicial bodies of FIFA discover that associations, confederations and other sports organisations have not requested a decision to be extended to have worldwide effect, even though it should have been, these bodies may themselves pass a decision.

144. The request for sanctions to be extended will be approved if:

- a) the person sanctioned has been cited properly;
- b) he has had the opportunity to state his case;
- c) the decision has been communicated properly;
- d) the decision complies with the regulations of FIFA;

e) extending the sanction does not conflict with public order and accepted standards of behaviour.”

48. The letter ends by indicating that at the conclusion of the appeal process FFA will make a request to FIFA under FIFA DC Article 143. As the tribunal sees it, FFA has little choice as the article requires FFA to do so by the word “shall”.
49. It has been submitted on behalf of the player that the likely consequence is that whatever sanction is ultimately imposed will become worldwide and that unless the sanction is less than 4 months and 16 days, the practical effect will be that the player will not compete in the Olympics.
50. During the hearing counsel assisting was asked about this and the position submitted is that we should proceed on the basis that the existing sanction would most likely operate, not by force of itself, but by virtue of other factors preclude him from playing in the Olympics.
51. We have proceeded on that basis. So, although the sanction that this tribunal imposes will not per se lead to that result, it does seem to be almost an inevitable consequence of such a sanction.
52. Apart from the disappointment of missing the Olympics, evidence from Mr Ange Postecoglou, one of Mr Vukovic’s national team coaches at U20 level, pointed out that a player of his age playing in the Olympics would gain invaluable experience and that to miss out on such an experience could in relative terms potentially hold him back. Mr Lyall Gorman, the executive chairman of the Central Coast Mariners added that earning potential from an appearance at the Olympics was also relevant. We accept that.
53. Another matter which has been urged upon us by Mr McLeod is the possible relevance of other sanctions. The player’s written submissions (Ex 11 attachment pages 33 and 34) list some five sanctions imposed on players in other countries for what may be said to be conduct in the general ball-park of the offence which Mr Vukovic has committed. They are not close similarities, nor are they urged on us as close similarities. As to the first two, it is really difficult to make any comment. In the second of those the player apparently hit an opposing team official not a match official.
54. Perhaps the most relevant although not directly parallel is the decision in relation to Portuguese player Mr Joao Pinto. In July 2002 the FIFA disciplinary committee in the matter of Pinto (Ex 14) observed

“... it must also be recalled that this incident occurred in the World Cup finals, FIFA’s premier tournament, which is watched by thousands of people who all have the right to expect that the players will respect the rules of Fair Play.

However, the Committee does not have to take into account the importance of the match or what was at stake. The Committee is of the opinion that an experienced professional player should be able to control himself in such circumstances.

Furthermore, any player taking part in a football match must unconditionally recognise the authority of the match referee.

In these circumstances, a suspension of six (6) months is justified.”

[Of that 2 months was suspended.]
55. At that time the relevant FIFA rules provided for a minimum suspension of 3 matches for an assault on a referee (that being recorded in paragraph 4 under the

heading "Law"). The FIFA rules themselves have been dramatically changed and there is now a minimum sanction of 6 months under rule 49.1(b) for conduct that would appear to be the conduct of Mr Pinto.

56. Of course we are not proceeding under the FIFA Disciplinary Code, however before leaving the FIFA DC there are other aspects of the FIFA Disciplinary Code which are interesting.
- (1) The FIFA DC indicates a minimum sanction of 6 months: 49.1b. Any sanction over 6 months is not able to be suspended: 33.2.

"33.2 Partial suspension is permissible only if the duration of the sanction does not exceed six matches or six months and if the relevant circumstances allow it, in particular the previous record of the person sanctioned."
 - (2) Further, the FIFA DC 34 provides:

"The duration of a time sanction can be interrupted by rest periods during or between seasons."
 - (3) The FIFA DC indicates that the sanction where a match official is involved is to be far greater than when it is another player: contrast 49.1b with 48.1d. The same approach is manifest in the FFA NDR.
 - (4) The FIFA DC views spitting (min of 12 months) as more serious than pushing and striking (min of 6 months) whereas the FFA NDR views it very much the other way around: spitting is 6 matches – 18 months and pushing and striking is 1 year - life.
57. Whilst comparing sanctions it is relevant to have regard to the fact that the FFA has fixed a recommended sanction for an offence of this category very much higher than the recommended range for any other offence. The low end of the range for this offence is 12 months. The low end of the range for all other offences is between 2 matches and 6 matches.
58. The other circumstances which are relied upon by Mr Vukovic were dealt with in oral submissions and in the written submissions on his behalf (Ex 11). It is pressed on us that there are objective and subjective factors and by subjective factors those are the matters referred to in paragraph 12 of the written submissions.
59. We have had regard to those submissions and those have been discussed during the course of the hearing with Mr McLeod. Some of the propositions contained in the written submissions (Ex 11) as to the factual matters we do not necessarily accept. For example the proposition in paragraph 10(b) that the player was merely seeking to push the referee's hand away or that the contact was merely incidental. However the broad thrust of the submissions has been explained ably and we have had regard to that.
60. The primary submission on behalf of the player was that the operable part of any sanction should operate for no longer than 4 months and 16 days so as to permit the player to take part in an Olyroos friendly on Sunday 13 July.
61. Without meaning to be critical of the submission, it was candidly put as being calculated to facilitate Mr Vukovic's participation in the Olympic games.
62. We do not accede to that submission. Such a sanction is one plainly reverse engineered with the primary objective to facilitate Mr Vukovic's participation in the

Olympic games and without sufficient apparent regard to all the circumstances. Such a sanction would expire before the commencement of the next A-League season (putting aside reference to a pre-season competition). When it was pointed out that it may seem curious that a sanction for serious misconduct in the A-League could result in no actual A-League matches being missed, the possibility of activating some or all of the sanction after the Olympics was floated.

63. Whilst dealing with the Olympic issue, for a player in both the Olyroos and Soccerroos squads, as is Mr Vukovic, one might hypothesise that a lengthy sanction for violent conduct towards a match official almost inevitably would lead to missing big matches or tournaments. As a matter of mathematics a one year sanction would have a 50% chance that a player in such teams would miss one or the other of the World Cup or the Olympics. Even if such a one year sanction fell in an odd year (non World Cup nor Olympic year) there could well be something of significance such as the Asian Cup or qualifying matches for the World Cup or the Olympics. To miss such qualifying matches might significantly prejudice team selection upon the expiry of such a sanction.
64. However, we accept that in this actual situation a sanction over 4 months and 16 days will almost inevitably preclude Mr Vukovic's participation in the Olympic games and that in fact is a significant matter.
65. A fallback submission on behalf of the player was that if a 12 month sanction was imposed 8 months of that should be suspended under FFA NDR 12.9.
66. In relation to FFA NDR 12.9 the player via Mr McLeod has urged upon us that it is open to the tribunal when ascertaining whether to suspend part of the sanction to specify both the probationary period and the trigger for the probationary period. He submits that it is not just "another infringement" (which would include a yellow card) that is the trigger.
67. We propose to proceed on that basis.
68. During the course of the hearing there was discussion as to what should be the appropriate trigger. It was suggested that perhaps the trigger adopted by the Match Review panel did not cover all the range of matters which should be triggers. There was some lengthy discussion about whether in addition to a red card for violent conduct against a match official, there also ought be a trigger for the red card R6 being the ninth line on the table "use of offensive, insulting or abusive language and/or gestures against a match official". Ultimately it was accepted on behalf of the player that the trigger should be not merely conduct in the fourth line but should also include conduct in the ninth line and the sixth line of the table. There was some discussion as to whether conduct in the third line should or which parts of it but ultimately the player's representative did not accept that all conduct within that should be the trigger.
69. Ultimately the triggers that we will apply for any suspended portion are the matters accepted by Mr McLeod as appropriate and no others. They are a sanction for an offence appearing in either the fourth line, the sixth line or the ninth line of the table referred to in para **16** above.

D. RESULT

70. It is not appropriate in our view to dissect each of the relevant factors and then attempt to attribute a weight to each factor. We must reach an overall determination as to what is the appropriate sanction. We do so in light of requirements of the FFA National Disciplinary Regulation and bearing in mind
- (1) the contents of paragraphs 5.2 and 5.4,
 - (2) the contents of paragraph 11.4 (as to the matters in 11.4 that "may" be taken into consideration we regard it appropriate to take them into consideration) and
 - (3) paragraph 12.9 which deals with the possibility that some or all of the sanction may be suspended.
71. We have taken into account the matters which very heavily point in favour of Mr Vukovic's good credit and his exemplary disciplinary record (EX #3) beforehand with the exception of the one red card earlier this season. Whilst on that red card (his first ever) the video footage of that match indicates that when he was shown the red card he took it with good grace and left the field. That is not always the case with other players.
72. There is also the evidence that we have heard (which the Match Review panel did not hear) as to the likelihood of him re-offending, this conduct being said to be out of character.
73. We have reached a unanimous decision, albeit that there has been some thought amongst the tribunal that perhaps the initial starting point of 15 months adopted by the match review panel might have been somewhat lenient based on the footage alone.
74. The decision that we have reached has several components.
75. Our determination is that all the circumstances appropriately warrant a sanction of 12 months on the terms that follow. Of that 12 months there should be a minimum of 9 months ending on midnight on 24 November 2008. The balance of 3 months will be suspended. The probationary period under FFA NDR 12.9 should be 12 months. The trigger that will apply for the 3 month suspended portion is an offence appearing in either the fourth line, the sixth line or the ninth line of the table referred to in para **16** above.
76. In reaching that determination we have not felt constrained by FFA NDR 5.2 to find a sanction inside the range in row 4 of the table. Our assessment of all the circumstances including the gravity of the offence of "Violent Conduct – Striking Match Official", to which the player has pleaded guilty, is that the appropriate sanction is as we have imposed above.
77. Accordingly that is the determination of this tribunal.
78. We cannot, however, conclude without communicating in a formal way in these reasons our sympathy to Mr Vukovic and it gives no pleasure to this tribunal (nor we imagine any tribunal) to impose a sanction which most likely will have the consequence that he will miss the Olympic Games.

John Marshall

Chairman