

## DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

### Determination of 7 February 2013 in the following matter

<b>Player and club</b>	Mr Adriano Pellegrino, Central Gold Coast Mariners
<b>Alleged offence</b>	Spitting at opposing player
<b>Date of alleged offence</b>	26 January 2012
<b>Occasion of alleged offence</b>	Match between Central Gold Coast Mariners and Adelaide United
<b>Date of Grievance Application</b>	5 February 2013
<b>Basis the matter is before the Disciplinary Committee</b>	Under clause 11.2 and 11.3 of the National Disciplinary Regulations
<b>Date of Hearing</b>	Wednesday 6 <sup>th</sup> February 2013
<b>Date of Determination</b>	Wednesday 6 <sup>th</sup> February 2013 (oral) Thursday, 7 February 2013 (written)
<b>Disciplinary Committee Members</b>	John Marshall SC, Chair Stephen Free Peter Raskopoulos
<b>Result (for the reasons below)</b>	<u>Finding:</u> Offence established. <u>Sanction:</u> 5 matches over and above the Mandatory Match Suspension. Total of 6 matches. <u>Suspension and probationary period:</u> 3 of the 6 matches suspended. Probationary period 24 months. Trigger any direct red card offence.

#### A. INTRODUCTION

1. This matter involves a red card offence against a player in the National Youth League. The player is aged 28 and was playing in the National Youth League match as one of the three over age players permitted.
2. The committee has power to deal with this matter because the National Youth League Disciplinary Rules, by clause 1, adopt the National Disciplinary Regulations. By the combination of clause 7.1 and 11.3 a player has an appeal to this committee from the decision of the referee to issue a red card. The nature of that appeal is governed by the rules related to "obvious error" see clause 11.3 and 4.3. There is a further ground of appeal against the sanction even if the player is unsuccessful on the obvious error aspect of the rules.

3. The issues before the Committee can be summarised as follows:
  - (1) Whether the referee was obviously wrong in concluding that the player spat at his opponent. This involves determining whether the player involuntarily expelled fluid from his mouth or whether sweat somehow came from his head/body while swearing at the opponent.
  - (2) What sanction should be imposed?
4. On the evening of Wednesday 6<sup>th</sup> February 2013 the Committee heard the matter. At the conclusion of the hearing (following deliberations) the Committee verbally announced the result of the hearing. These are the written reasons of the Committee.
5. At the hearing Disciplinary Counsel was Mr Ivan Griscti. The player was represented by Mr John McKay, CEO of Central Coast Mariners.

**B. FACTS**

6. In around the 8th minute of the game the player was given a red card for the offence of spitting at an opposing player. The player left the field without incident or complaint.
7. The National Youth Competition referee reported as follows:

In the 8<sup>th</sup> minute of the match, Central Coast have gained possession from their own half of the field. Mr Pellegrino has run with the ball at his feet into the Adelaide half of the field, when he has been tackled by an Adelaide player by a careless challenge from his left side, resulting in a free kick being awarded to Central Coast. As the Adelaide player was going back into position, Mr Pellegrino and the Adelaide players have crossed paths, standing face to face, with some comments not audible comments made between them. Mr Pellegrino has then proceeded to spit at the chest/neck areas of the Adelaide player, with the spray making contact with the player. I was standing side on to the two players approximately 2 metres away with a clear view. I have then proceeded to show Mr Pellegrino the red card for spitting at the Adelaide player. Mr Pellegrino has initially asked what the red card was for, before leaving without further incident.
8. The video coverage is of limited assistance.
9. Nevertheless, the footage shows:
  - (1) The lead up to the incident.
  - (2) The tackle by the Adelaide player (a poor challenge definitely deserving of a free kick if not more).
  - (3) The free kick awarded to Central Coast.
  - (4) Mr Pellegrino and the Adelaide player crossing paths.
  - (5) The referee blow his whistle and show Mr Pellegrino a red card. The referee did not hesitate.
10. Further, and importantly, the footage confirms the close proximity of the referee to the incident. 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.
11. In the opinion of the committee it would be preferable for the referee be available in a hearing such as this, at least by telephone. However neither the FFA nor the

player sought this to occur nor made any observation or comment as to the fact the referee was not so available. On this aspect we note that in another spitting case the appeal committee made these observations (Fabiano appeal 17 September 2008):

16 ... Although the referee's report contained representations of fact adverse to the Appellant, no application was made by the Appellant, who was legally represented before the Disciplinary Committee, to seek to cross-examine the referee on the contents of the referee's report before the Disciplinary Committee. We are satisfied that such an application could have been made by the Appellant and that, had it been made, it would have been given serious consideration by the Disciplinary Committee having regard to the obligation under Rule 19.1 of the Regulations to conduct the hearing in accordance with the principles of natural justice. Since the Regulations provide that the statements made in the referee's report are prima facie evidence of the fact, it seems to us that a strong case can be made for the proposition that natural justice requires that a player be given the right to cross-examine the referee if the player is wishing to assert that the facts contained in the referee's report are incorrect. Moreover, procedural fairness or natural justice also has to be seen from the referee's position. It is unfair to the referee to permit a player to attack findings or views expressed in the referee's report without giving the referee the opportunity of explaining such statements at the hearing.

17 We have discussed this matter because one of the submissions that Mr Pappas made was that certain statements in the referee's report were clearly wrong and that the referee could not have seen what he asserted to see. Thus, according to Mr Pappas' submission, the Disciplinary Committee was wrong to have regard to the views expressed by the referee in his report. In the light of the failure of the Appellant to seek to cross-examine the referee before the Disciplinary Committee, we would attach little or no weight to the submission even if we considered it was otherwise a relevant one. For the reasons which follow, however, we do not consider it to be a relevant submission.

### **C. SUBMISSIONS**

12. We have received written submissions and heard oral submissions. The thrust of the submission for the player is he did not spit at the opposing player. Somehow sweat came from him and went on the opposing player. Possibly that in the process of saying "*fuck off*" (and/or something else) liquid came from his mouth but that it was not an intentional spit.
13. As to sanction, reference has been made to clause 11.4 of the Disciplinary Regulations which allows us to consider the following factors:
  - (a) the nature and severity of the Offence;
  - (b) the Participant's past record and whether or not this is a repeated Offence;
  - (c) the culpability of the offender (including whether or not the infringement was intentional, negligent or reckless)
  - (d) any reasons prompting the offender to commit an infringement
  - (e) the remorse of the Participant; and
  - (f) any extenuating circumstances relevant to the commission of the Offence.

14. Reference was also made to the possibility of there being Exceptional Circumstances.

**D. CONSIDERATION**

(1) Issues

15. We are to resolve the issues outlined in 3 above.

(2) Offence

16. The most favourable that could be said is that the player's action was reckless and that his reckless swearing with considerable liquid in his mouth caused spit to spray onto the chest area of the opposing player.

17. The most serious that could be said is that he did spit intentionally which is what the referee has reported.

18. Matters that point in favour of the first alternative are:

- (1) The player's long playing career record without ever having a direct red card.
- (2) The apparent lack of reaction by the opposing player, which is said to be inconsistent with what would have been the reaction had there been an intentional spit as opposed to one that was reckless.
- (3) The opposing player's written statement that he does "*not believe Pellegrino would purposely spit on me*".

19. Matters that point towards the second (more serious) alternative are:

- (1) The referee's report and his action when showing the red card (see paragraphs **9(5)** & **10**). (Neither the FFA nor the player sought to have evidence from the referee. In those circumstances we feel it is acceptable to take the referee's report at face value. Had the player sought to question the referee on his report and the referee not been available we might have come to a different conclusion. See paragraph **11**)
- (2) The player made no apparent protest to the red card. (On one approach if falsely accused, some kind of legitimate protest might be expected.)
- (3) The statement of player number 12 on the opposing team who apparently said at half time in the presence of Central Coast person "he spat at him". (It may be little weight should be attached to this second item. It may be no more than a statement based solely on what he heard the referee say. On the other hand he was the player who was submitted by Mr McKay to be the one who pushed Pellegrino after the red card was awarded. That would place him in a very good position to have seen the incident and also motivated him to protect a young player from what he might have seen as an inappropriate approach from the Central Coast person.)

20. Before proceeding further it is important to record that the player himself actually proffered no particular explanation of how fluid from his mouth hit the opposing player. In his written statement he says, "*I responded by telling him to get away and get on with things. It was at this point where I believe that it was my sweat that sprayed off my face and head towards [the other player's] direction*".

21. When asked during oral evidence how sweat could travel horizontally he speculated that it ran into his mouth and sprayed while he was swearing. During the hearing the player accepted that if sweat was involved it could only have been sweat that had come into his mouth and was sprayed when he said "*fuck off*" to the Adelaide player. It is our finding that the fluid was spittle and possibly a combination of spittle and sweat. Further there is no doubt that fluid came from the player's mouth and impacted upon the opposing player's chest area.
22. The way we wish to approach our finding is to say the referee observed what he described this way:
- Mr Pellegrino has then proceeded to spit at the chest/head areas of the Adelaide player ...
23. We are not satisfied the referee's report is wrong. The offence is "*spitting at*" an opposing player. We are not satisfied that referee was wrong. We are certainly not satisfied that there was an obvious error.
24. In these circumstances the first aspect of the appeal fails. Our finding also has ramifications for sanction.

**(3) Sanction**

25. The table of offences at p 13 of the National Disciplinary Regulations, for the offence of "*spitting at a player*", 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. Hence the range is between six matches and 24 months.
26. The existing sanction therefore is the minimum within the range of sanctions. By clause 5.4 we are only permitted to go below that minimum where there are Exceptional Circumstances.
27. Various matters were urged as being Exceptional Circumstances. One was the quality of the video footage. Another was the absence of reaction of the opposing player. In our view there were no matters that qualify as Exceptional Circumstances. If we were of the view the referee was wrong, but not obviously wrong, that may have been an Exceptional Circumstance.
28. In this situation the minimum sanction is the sanction which the player has been given; ie 6 matches.

**E. RESULT**

**(1) Finding as to offence**

29. We find no error and certainly no obvious error in the decision of the referee. The result is the offence must be taken to have been established.

**(2) Sanction to be imposed**

30. No submission has been made that any greater sanction should be imposed. In the circumstances the minimum sanction must stand.

**(3) Suspension and probationary period**

31. One match has already been served. Two further matches should be served. We suspend the remaining three matches. The trigger for the suspension is any direct red card offence within the next 24 months.

32. The power to suspend part of the sanction is contained in clauses 12.10 and following.
33. The reasons we have decided to suspend half of the sanction are several.
34. First and perhaps most importantly we attach considerable weight to the fact that the opposing player took no personal offence and chose to believe the action was not deliberate. He goes on to say in his letter that he holds no ill will towards Pellegrino. In our view one of the reasons spitting is regarded as a serious offence is because of the impact it has on the recipient. In this particular case the recipient was not aggrieved at the time and is not aggrieved upon reflection.
35. Another important factor is the long career of the player without ever having received a direct red card. He has an excellent past record albeit many yellow cards (but we do not think those significant in this context).
36. The player is genuinely upset and concerned as to the impact of this send off and the potential adverse bearing it will have on his future career. We do regard the potential for people to think poorly of the player as a very significant impact in and of itself. In part, to ameliorate that, we think it appropriate to take this in to account in our reasons for suspending some of the sanction.
37. The tackle of the opposing player was poor, to say the least. The opposing player apparently went on to accuse Pellegrino of diving. The one thing the video footage does show it that Mr Pellegrino did not dive. Indeed it would have been impossible for him to have stayed on his feet. These are certainly aggravating circumstances.
38. If no part of the sanction was suspended, at this point in the season and at this point in the player's career, a full six matches may have a very significant ongoing effect on the player.

*John Marshall*

Disciplinary Committee Chair  
Thursday, 7 February 2013