

DISCIPLINARY COMMITTEE OF FOOTBALL AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Marcos Urena, Central Coast Mariners
Alleged offence	Offence No. 3, Serious Foul Play (eg when challenging for the ball)
Date of alleged offence	28 April 2021
Occasion of alleged offence	Match between Central Coast Mariners and Brisbane Roar
Date of Disciplinary Notice	30 April 2021
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 11.21(b)
Date of Hearing	10 May 2021
Date of Determination	10 May 2021 (oral pronouncement of determination) 11 May 2021 (written reasons for determination)
Disciplinary Committee Members	Anthony Lo Surdo SC, Chair Shaun McCarthy Robert Wheatley

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.3 of the "A-League Disciplinary Regulations" applicable to the 2020-21 A League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is duly referred, clause 3.3(a) provides that the Committee must determine the matter and impose such sanctions as are authorised and appropriate to the determination.
2. In this matter there has been a referral under clause 11.21(b) of the Disciplinary Regulations. Prior to a referral under clause 11.21(b) the player will have been given a direct red card by the referee. The consequence is that the player will have an automatic Mandatory Match Suspension (**MMS**) (in this case 1 match). No part of the above process is able to be referred to the Committee and hence cannot be appealed.
3. Further, the Match Review Panel (**MRP**) also will have formed the view that, on the material available to the MRP, an additional sanction of up to 4 matches over and above the MMS was warranted and the player will have elected not to accept the proposed additional sanction. That is what has happened here. It is abundantly clear that the function of the Committee in such a case is solely to determine the question of what additional sanction should be imposed over and

above the MMS which must be served. Guilt or innocence is not up for review. That issue has been finally determined by earlier processes. The Committee has no jurisdiction to deal with that question and will not express any view on that topic.

4. Nevertheless, it is for this Committee to determine the additional sanction to be imposed (not merely whether some or all of the additional sanction proposed by the MRP ought to be imposed over and above the MMS).
5. Further, it is open to the Committee to upgrade or downgrade the offence; albeit not to eliminate the MMS.
6. The Committee is satisfied that it has jurisdiction to deal with this referral. Further, neither party contended to the contrary.

B. THE HEARING

7. On the evening of Monday, 10 May 2021, the Committee heard the referral of the above matter.
8. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of counsel, and Marcos Urena (**Player**) was represented by Mr Simon Philips, of counsel.
9. Disciplinary Counsel relied upon the following evidence:
 - (a) video footage of the incident from several different angles;
 - (b) the referee's send off report, dated 28 April 2021;
 - (c) a disciplinary notice issued to the Player, dated 30 April 2021; and
 - (d) the Player's disciplinary record.
10. Mr Philips, for the Player, relied upon the following evidence:
 - (a) video footage of the incident from several different angles;
 - (b) a written statement from the Player, dated 7 May 2021;
 - (c) a written statement from CC Mariners' Head Coach Alen Stajic, dated 7 May 2021;
 - (d) a written statement from CC Mariners' Chief Executive Officer, Shaun Mielekamp, dated 7 May 2021; and
 - (e) oral evidence provided by the Player which, for the most part, was consistent with and in amplification of, his written statement.
11. The Committee was also assisted by the written submissions of each of the parties to which they were afforded the opportunity of addressing orally. In those submissions, each of the parties referred the Committee to earlier decisions of the Committee involving Jamie Young (14 February 2019) and Rhyan Grant (6 January 2020) and to which we return later in this determination.
12. At the conclusion of the hearing (following deliberations and pursuant to clause 22.4 of the Disciplinary Regulations) the Committee verbally announced the result of the hearing. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 22.3(c) of the Disciplinary Regulations).

C. FACTS

13. In around the 62nd minute of the game the Player challenged Brisbane Roar player O'Shea for possession of the ball (**Opposing Player**). The Player attempted to step across the Opposing Player to get his body between the Opposing Player and the ball. In doing so, the Player raised his right leg and foot and lunged in with a "stamping like" motion in the direction of the ball. However, the challenge was mis-timed. The Opposing Player got to the ball before the Player. The Player missed the ball and instead made contact with his studs to the right shin and then the foot of the Opposing Player before bringing him to ground.
14. So much is apparent from the referee's report and from the video footage of the incident which we have had the benefit of seeing from several different angles. The challenge is depicted in the following images taken from the video footage.



Note: In this wide view, the Player wearing the customary gold and blue strip can be seen challenging for the ball with his right foot raised.



Note: In this image the Player, wearing the customary gold and blue strip can be seen challenging for the ball with his right foot raised and bearing down on and ultimately making contact with his studs to the right shin and foot of the Opposing Player.

15. The referee initially dealt with the challenge by the issue of a yellow card. However, following an on-field VAR of the incident, the referee rescinded the yellow card and issued a direct red card for an R1 - Serious Foul Play. The Player left the field of play without incident, after apologising to the Opposing Player including shaking his hand, as seen in the image below.



16. The Opposing Player did not require on-field medical or other assistance. After a short time, during which the Opposing Player was able to regain his composure and adjust his shin-pads, he got to his feet and resumed the match and played for

its duration. There is no evidence that the Opposing Player has suffered any injury from the incident apart from a 15 cm or so vertical laceration to his shin in respect of which the Opposing Player will no doubt make a full recovery. An image taken from the video footage showing the injury is depicted in the photo below.



D. SUBMISSIONS

17. What follows is a summary of the parties' written submissions. It does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the Committee notes that it has carefully considered all of the evidence and arguments submitted by the parties, even if there is no specific reference to those submissions in the following summary.
18. The matters submitted by Disciplinary Counsel included:
 - (1) the challenge by the Player falls well within the definition of "Serious foul play" as it involved the use of excessive force or brutality against the Opposing Player when challenging for the ball, the tackle endangered the safety of the Opposing Player and the Player lunged at his opponent in challenging for the ball from the side using one or both legs with excessive force and endangering the safety of the opponent;
 - (2) intent is not necessary element to serious foul play-the key issue is the risk to the safety of the opposition player;
 - (3) an important issue in a case such as this is the potential for serious injury. Fortunately, there was no such injury on this occasion, but this kind of contact is capable of causing an open wound or broken bone;
 - (4) the sanction should recognise the potential for harm and, importantly, send a message of deterrence to players;
 - (5) the challenge was late and it is difficult to see how it could have possibly resulted in the Player winning the ball;

- (6) the Player's studs made contact with the Opposing Player's leg slightly below the knee. That player was in a vulnerable position in the challenge that was reckless. The lateness of the challenge is clear, even from the footage at normal speed;
 - (7) the Player has a reasonable disciplinary record, having played in Costa Rica, Russia, Denmark, USA, Korea and the A League since 2008/09. He has two previous red cards, one in his first season (2008/09) and one in 2019/20. In 16 matches this season, he has had no prior card, yellow or red;
 - (8) after the incident, the Player appears to apologise to the Opposing Player, who accepts the apology and shakes his hand as does another Brisbane Roar teammate;
 - (9) after being shown the red card, the Player left the field of play without protest or any form of dissent;
 - (10) the prior case of Rhyan Grant (6 January 2020) is relevant. In that case, the Committee considered that the Player's actions would have been likely to attract a 3-game suspension but for his excellent disciplinary record and other evidence, including his contrition and substantial evidence regarding contribution to the football and wider community;
 - (11) the tackles in each case are comparable although on one view, the Grant tackle appears more dangerous and had a greater potential cause injury. However, the Player presently appears to have had less chance of winning the ball by reason of the tackle (Grant, in fact made contact with the ball). There was less reason for the Player to lunge in as he did.
 - (12) the sanction of 1 to 2 matches in addition to the MMS reflects the reckless nature of the challenge and the risk of injury caused by the conduct;
 - (13) the Player's remorse in reaction to the incident is in his favour and his record is a reasonable one. However, the sanction must reflect the game's need to protect players' safety; and
 - (14) the incident had the potential to cause injury and therefore the appropriate sanction is a range of 2 to 3 matches.
19. The matters submitted on behalf of the Player included:
- (1) there is no evidence of any intent or malice on his part. Whilst he accepts that there could be a finding of "Serious foul play", there is insufficient evidence to support the conclusion that a sanction of 3 matches is warranted;
 - (2) the contact occurred as a result of a split-second decision by the Player to commit to winning the ball and not being able to change the trajectory of his body or entirely pull out of the action once he realised, he probably would not win the ball;
 - (3) the nature of the contact and the force (or lack thereof) did not have the potential to cause injury to the Opposing Player and falls well short of excessive force;

- (4) it is clear from the video footage that the Player attempted to withdraw from the challenge as he did not fully execute the stepping across action that he was attempting;
- (5) there is no evidence or suggestion that the Player had any intent to endanger or injure the Opposing Player. His intention was to gain control of the ball in the final moments of the action, admittedly too late, and he attempted to withdraw;
- (6) the Player has an exemplary disciplinary record. He has played more than 250 professional matches over 10 years in Costa Rica, the USA, Korea, Russia, Denmark and Australia. He has been capped more than 60 times for Costa Rica including appearing at the 2014 FIFA World Cup. In his career to date, the Player has received two red cards which were different in nature to the offence. He has never appeared before any disciplinary committee or tribunal. During this, his first season in the A League, the Player has received one yellow card for time wasting. For these reasons, the Committee should consider that the likelihood of the Player re-offending is small;
- (7) the Player showed immediate remorse for his actions and apologised to the Opposing Player before leaving the field of play after being shown the red card;
- (8) despite the Player only having been in Australia for a short period, he has demonstrated leadership and commitment to the Club. He has been appointed as one of only three senior players at the Club to work with the Central Coast Academy (aged 9-18 years). He has also been selected by the Club as a community ambassador to represent it in key relationships with local clubs, schools, sponsors and football stakeholders. So much is apparent from the statement of the Club's CEO, Mr Mielekamp, to the Committee;
- (9) unlike the case of *Young*, in which the Committee determined that a sanction of 2 matches including the MMS was appropriate, the Player withdrew his leg in a deliberate attempt to avoid heavy contact or excessive force and thereby mitigate the risk of injury to his opponent;
- (10) in *Grant*, the Committee determined that a sanction of 2 matches including the MMS was appropriate. However, Mr Grant's offending was significantly more serious in nature than the Player's. Mr Grant lunged in a front on tackle with a straight leg over the ball leading with his studs striking the opposing player on his standing leg halfway up his shin. In contrast, the Player had taken steps to withdraw from winning the ball, his actions did not result in heavy contact to his opponent or excessive force. The potential risk to his opponent was not serious as it was in *Grant*;
- (11) the Committee should have regard to incidents involving Liberto Cacace on Anthony Canceres (19 October 2019), David Ball on Matt Simon (14 February 2021), Harrison Delbridge on Nikola Mileusnic (1 February 2020) and Kristijan Dobras on Cameron Delvin, none of which came before the Committee but addressed exclusively by the MRP as analogous incidents; and
- (12) in the event that the Committee determines that 2 matches including the MMS is warranted, 1 match should be suspended pursuant to clause 14.2(b)

of the Regulations and only come into effect if the Player were to commit another similar offence during the remainder of the current A League season.

20. No submission has been made by Disciplinary Counsel or by the Player that there are Exceptional Circumstances within clause 11.21(b)(ii) of the Disciplinary Regulations.

E. CONSIDERATION AND FINDINGS

21. The sole issue in this matter is what, if any, sanction should be imposed over the MMS of 1 match.
22. The Committee has made plain on many occasions that an important consideration is the safety of all players and, relevant to these circumstances, the safety of an opposing player.
23. The Laws of the Game (**LOTG**) state, "*[a]lthough accidents occur, the Laws should make the game as safe as possible. This requires players to show respect for their opponents and referees should create a safe environment by dealing strongly with those who whose play is too aggressive and dangerous.*"
24. Serious foul play is defined in the LOTG as:

A tackle or challenge that endangers the safety of an opponent or uses excessive force or brutality...Any player who lunges at an opponent in challenging for the ball from the front, from the side or from behind, using one or both legs, with excessive force or endangers the safety of an opponent is guilty of serious foul play.

25. Further, the LOTG and the Disciplinary Regulations defines "reckless" as "*any action (usually a tackle or challenge) by a player which disregards (ignores) the danger to, or consequences for, the opponent.*"
26. Clause 13.2 of the Disciplinary Regulations requires that when determining any appropriate sanction in accordance with the Range at the Table of Offences, a Judicial Body, which includes the Committee, may consider:
- (a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
 - (b) the Player's past record and whether or not this is a repeated Offence;
 - (c) the remorse of the Player; and
 - (d) any extenuating circumstances relevant to the commission of the Offence.

The nature and severity of the offence

27. Having regard to the video footage, the submissions made by Disciplinary Counsel and those made on behalf of the Player, and the Player's written and oral evidence, the Committee accepts that the Player did not act in an intentional manner.
28. However, as submitted by Disciplinary Counsel, intent is not a necessary element to serious foul play and the primary issue is the risk of safety to an opposing player.
29. As is evident from the video footage and the Player's written and oral evidence, the Player had "eyes for the ball". However, as the Player candidly admitted in his

evidence, he did not see exactly the location of the Opposing Player at the time that he commenced his challenge. Notwithstanding this, the Player lunged at the Opposing Player with his right foot in a stamping type motion which was mistimed and, instead of making contact with any part of the ball, he collected the Opposing Player in the right shin with the studs of his right boot before landing on the Opposing Player's right foot at the conclusion of the challenge. In the opinion of the Committee these facts alone support a finding that the Player acted in a reckless manner.

30. Much is made on behalf of the Player that he attempted to withdraw from the challenge and that this is "clear" from the video footage. Respectfully, we disagree. In the view of the Committee, what is clear from the video footage is that the Player committed to the challenge and that the force, speed and angle at which he did so did not permit him to withdraw. This conclusion is also supported by the written statement of the Player in which he said, "[I]t all happened in a split second so I wasn't able to stop the action that had already started." The Player repeated the substance of that evidence orally. He also said that when it became apparent to him that he was not going to win the ball and that he was likely to make contact with the Opposing Player, he placed his hip and body in front to the Opposing Player to protect himself from injury.
31. Further, having regard to the angle and speed of the challenge, the Opposing Player was not able to take any readily available evasive action and was thus in a position of vulnerability.
32. Whilst, in this case, the challenge did not cause serious injury to the Opposing Player, it nevertheless had the potential to do so.
33. For these reasons, we consider the Player's actions to have been reckless.

The Player's Disciplinary Record

34. The disciplinary record of the Player establishes that in the period 2008/09 to 2020/21, he:
 - (a) has played 218 senior matches both in the A League and in leagues abroad;
 - (b) in this, the Player's first season in the A League, he has played 16 matches for the Central Coast Mariners;
 - (c) he has received 19 yellow cards; and
 - (d) he has received 3 red cards including that the subject of these proceedings
35. Additionally, the Player has served his country, Costa Rica, having been capped over 60 times including appearing at the 2014 FIFA World Cup.
36. The Player has a very good playing record.

Player's Remorse

37. As is evident from the video footage and from the written statement of the Player, he has shown genuine remorse including apologising to the Opposing Player immediately after the incident and again before he left the field of play. He also

left the field of play without incident. These are matters that the Committee has taken into account in the Player's favour.

Character evidence

38. In a statement tendered to the Committee, Head Coach Alen Stajic speaks of the Player as a consummate professional footballer who "...has added real value to the younger players, showing them the attitude, standards and work ethic that is required to be a professional footballer and leading by example."
39. In a statement tendered to the Committee, Club CEO Shaun Mielekamp, also refers to the Player as "*the ultimate professional*". He speaks of the appointment of the Player, along with two other senior players at the Club, as "Community Ambassadors" who play a huge role in the Club's engagement with the community of fans, local businesses and local football organisations critical to the Club's identity and its ongoing success.
40. The Committee accepts unreservedly the character evidence tendered on behalf of the Player which has been taken into account in its determination.

"Comparable" Incidents

41. We do not consider the matter of *Young* to be comparable to the facts of the case under consideration. Whilst both involved offences for serious foul play, the facts of the offence are distinguishable. A further distinguishing factor is that Mr Young had, prior to the incident in question an essentially "unblemished career" in terms of disciplinary issues, having played professional football both in England and Australia for in excess of 15 years as at the date of the offence.
42. We have been taken to the Committee's determination in the matter of *Rhyan Grant*. We agree with the submissions made on behalf of each of the parties that *Grant* is relevantly analogous though not identical to the facts under consideration. In that case, the Committee imposed a sanction of 2 matches, being the MMS plus 1 additional match for an Offence No. 3, "Serious Foul Play (eg when challenging for the ball)."
43. In *Grant*, the Committee noted that but for the evidence adduced at the hearing on behalf, of Mr Grant, in particular, his evidence of contrition, his *exceptional* disciplinary record (emphasis added) and his significant contribution to the football and wider community, that it would, in all likelihood, have imposed a sanction of 3 matches.
44. Relevantly, the incident in question was the first red card that Mr Grant had received in a professional career which, as at the date of the offence, had spanned over 10 years including 250 senior matches, 178 of which had been in the A League. The Committee considered this to be an "*exemplary record especially for a person who has played in mostly defensive positions over the course of his career to date.*"
45. The conduct of the Player in this case is similar to *Grant*, in that they both involved lunging type challenges from the side using one or both legs with excessive force and/or endangering the safety of the opponent. The tackle by Mr Grant had an arguably greater potential to cause injury although he had a better prospect of winning the ball by reason of the challenge which is evident by the fact that he made some contact with the ball. By contrast, the Player in this case had

less prospect of successfully challenging for the ball and in fact made no contact with the ball in the challenge. They were, however, both reckless challenges.

46. Whilst the Player's disciplinary record is very good, it is not comparable to *Grant*. Like *Grant*, the Player has had a long-playing career and, in the short time that he has been in Australia, this being his first season, he has made a positive contribution to the Club and to the Central Coast football community.
47. The Committee was urged to take into consideration incidents which the Player submitted were comparable but which had not come before the Committee and in which the sanctions had been determined exclusively by the MRP. In the matter of *Steve Pandelidis, Gold Coast FC and FFA* (3 February 2011), the FFA Appeal Committee said the following (at [28]):

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

48. The approach of the Appeal Panel in *Pantelidis* was endorsed by the Appeal Panel in the matter of *Roy O'Donovan* (25 January 2016).
49. The Committee is bound by the each of these determinations of the Appeal Panel. Accordingly, it has not taken into consideration as submitted by the Player the determinations in each of the matters referred to in its submissions and identified at paragraph 20(11) of this determination as to do so would not be a valid or jurisprudential exercise for the purposes of its own power to impose a sanction.

Conclusion

50. Weighing all of these factors, the Committee considers an appropriate sanction to be 1 match over and above the MMS. But for the Player's very good disciplinary record, his evident and immediate contrition and the character evidence adduced on his behalf including his contribution to the Central Coast football community, the offence would, in the view of the Committee, have most likely justified the imposition of a sanction of the MMS plus 2 matches.

F. RESULT

51. The sanction we impose is 1 match over and above the MMS.



A P Lo Surdo SC, Disciplinary Committee Chair
Tuesday, 11 May 2021