

**DISCIPLINARY & ETHICS COMMITTEE OF FOOTBALL AUSTRALIA
DETERMINATION IN THE FOLLOWING MATTER:**

Player and club	Aidan Simmons, Western Sydney Wanderers FC
Alleged offence	Offence No. 3, Serious Foul Play
Date of offence	27 January 2024
Occasion of offence	Match between Western United FC and Western Sydney Wanderers FC
Date of Disciplinary Notice	29 January 2024
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 11.21(b) of the A-Leagues Disciplinary Regulations
Date of Hearing	8 February 2024
Date of Determination	8 February 2024 (oral pronouncement of determination) 9 February 2024 (written reasons for determination)
Place of Determination	Sydney
Disciplinary Committee Members	Anthony Lo Surdo SC (Chair) Ben Jones Tommy Oar (Former Professional Player)

A. INTRODUCTION AND JURISDICTION

1. The Disciplinary and Ethics Committee of Football Australia (**Committee**) has jurisdiction under clause 4.4 of the "A-Leagues Disciplinary Regulations" applicable to the 2023/24 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 11.23(b) of the Disciplinary Regulations. Prior to a referral under clause 11.23(b) Aidan Simmons (**the Player**) had 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**) have formed the view that, on the material available to it, an additional sanction of two matches over and above the MMS is warranted. The Player has elected not to accept the proposed additional sanction.
4. The function of the Committee in such circumstances is solely to determine the question of whether an additional sanction should be imposed over and above the MMS, and if so, what that additional sanction should be. In doing so it is not

constrained by the recommendation of the MRP and can impose a greater sanction if it thinks fit, or a lesser one. Guilt or innocence is not up for review. That issue has been finally determined by the earlier process. The Committee has no jurisdiction to deal with that question and will not express any view on it.

5. The Committee is satisfied that it has jurisdiction to deal with this referral. Further, neither party contended to the contrary.

B. THE HEARING

6. On the evening of Thursday, 8 February 2024, the Committee heard the referral of the matter by AVL.
7. Disciplinary Counsel was Mr Ivan Griscti, of Counsel, and the Player was represented by Mr Tzouganatos, of Counsel instructed by Turner Freeman.
8. Disciplinary Counsel relied upon the following evidence:
 - (a) video footage of the incident;
 - (b) the referee's report;
 - (c) a disciplinary notice; and
 - (d) the Player's disciplinary record.
9. Mr Tzouganatos, for the Player, relied upon the following evidence:
 - (a) video footage of the incident;
 - (b) a written statement from the Player, dated 7 February 2023;
 - (c) the Player's disciplinary record; and
 - (d) short oral evidence provided by the Player.
10. 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, Disciplinary Counsel referred the Committee to earlier decisions of the Committee including *Grant* (6 January 2020), *Urena* (10 May 2021), *Sasse* (21 October 2022) and *Topor-Stanley* (31 October 2022) which he contended were the most comparable to the present. Mr Tzouganatos for the Player also referred to *Grant* and to a decision of the MRP in *Lolley*.
11. At the conclusion of the hearing (following deliberations and pursuant to clause 22.4 of the Disciplinary Regulations) the Committee verbally announced the result, being the MMS plus two additional matches. 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

12. In or around the 66th minute of the game the ball was cleared from the Western Sydney Wanderer's defensive line by its keeper with a high ball towards the centre of the field. The Player and opposing player Vidmar each approached the ball at speed. Player Vidmar stayed on his feet as he approached the ball. As he approached the ball, the Player extended his left leg and foot in an attempt to win the ball and made contact with Player Vidmar bringing him to ground.

13. 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.
14. The referee issued a direct red card for an R1 - Serious Foul Play. The Player left the field of play with no further incident after a VAR confirmation of the offence.
15. The events leading up to and culminating in the sending off of the Player are depicted in the following images taken from the video footage.
16. The first image depicts the Player approaching the ball at speed with Player Vidmar on his feet and also approaching the ball.



17. The second image depicts the Player lunging for the ball with his left leg and foot extended in an effort to win the ball with Player Vidmar on his feet and also approaching the ball which was in contest.



18. The next image depicts the moment of impact between the Player with his outstretched left foot with studs showing.



19. The last image depicts the Player's body making contact with Player Vidmar and bringing him to ground.



20. Player Vidmar required on-field medical assistance. After a short time, he got to his feet, resumed the match and played until substituted later in the game. There is no evidence that Player Vidmar suffered any injury from the incident.

D. SUBMISSIONS

21. 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 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.
22. The matters submitted by Disciplinary Counsel included:
- (1) as accurately described in the referee's report, the Player "lunges" in, going to ground and slide in with his left leg extended forward. The Player has substantial momentum and his extended leg is slightly off the ground and appearing to make contact with Player Vidmar's left knee. By reason of his momentum, the Player's body also essentially takes out Player Vidmar's right leg;
 - (2) the challenge by the Player comprised "Serious Foul Play" because the Player sought to challenge for the ball in a manner that had no regard for the safety of his opponent who, approaching the ball while keeping his feet, was in a vulnerable position. He lunged in with excessive force in a manner that endangered the safety of his opponent;
 - (3) intent is not a necessary element to serious foul play; the key issue is the risk to the safety of the opposition player;
 - (4) the Player slides in with his left boot extended and off the ground such that it follows his studs were also off the ground;
 - (5) Player Vidmar was exposed to significant risk of injury by the tackle. The Player's studs appear from the video footage to make contact with Player

Vidmar's knee. The referee had an unobstructed view of the incident and he states in his report that the stance made contact with the knee;

- (6) in addition to the danger from the raised boot, the Player's momentum made violent contact with Player Vidmar's right leg. The right leg is "crunched" and the Player's momentum had the effect of causing Player Vidmar to fall awkwardly, slinging him to the ground. As the Player slid in, contact with Player Vidmar was inevitable. No attempt was made to withdraw or seek to minimise contact;
- (7) the sanction ought to recognise the potential for harm and, importantly, send a message of deterrence to players;
- (8) the need to protect players in vulnerable positions has been recognised many times in decisions of this Committee including *Young, Mandi, O'Donovan, Grant, Urena, Ansell, Mourdoukoutas, Sasse* and *Topor-Stanley*. Each of these cases involved very experienced players with good disciplinary records over a lengthy period of time. The sanction in each of those cases, heavily influenced by playing record and other positive extenuating factors, was a two-game suspension;
- (9) the Player is 20 years of age and has a limited senior professional playing record, therefore the Player's past record is not particularly relevant. He has played 21 A-League games in the past two seasons, during which time he has received two yellow cards in addition to the red card presently under consideration; and
- (10) after receiving the red card, the Player took some time to leave the area near the field of play and was engaged in discussions with one of the match officials. There is no indication that there was anything untoward about the nature of this discussion. The video footage seems to indicate that following the incident the Player made a gesture to the referee consistent with indicating that he had made contact with the ball.

23. The matters submitted on behalf of the Player included:

- (1) the Player's attempt to get to the ball before Player Vidmar does not fulfil the definition of "Serious foul play." The Player was within his rights to deploy a slide tackle in order to get to the ball before Player Vidmar. There was no lunge because Player Vidmar did not have that the ball at any stage. The Player did not act with excessive force or brutality: he did what he was trained to do, that is, trying his best to win a 50/50 or perhaps 60/40 challenge for a loose ball by sliding on the grass without placing his "studs up" towards his opponent;
- (2) to the extent that Player Vidmar's safety was endangered, this was not a result of any serious foul play on the part of the Player; rather it was the result of the fact that Player Vidmar was engaged in a 50/50 challenge and there is always some inherent risk of injury. In those kinds of situations. There is no evidence that Player Vidmar's left knee was struck by the Player's studs;
- (3) it was not possible for the Player to withdraw from the challenge in circumstances where it was a 50/50 challenge with a loose ball and the Player lost his right footing;

- (4) there is no legitimate deterrence value in any sanction in the circumstances of this case as players ought not be deterred or discouraged from going in for 50/50 challenges for loose balls;
 - (5) there are extenuating circumstances in this case, that is, that the Player lost his right footing as he was almost upon the ball which caused him to miss it;
 - (6) the Player has an excellent record and there is no valid reason why this should not count heavily in his favour on the question of sanction, notwithstanding his youth and inexperience; and
 - (7) the appropriate sanction is the MMS (already served).
24. Neither party contended that there were "Exceptional Circumstances" for the purposes of clause 11.23(b)(ii) of the Disciplinary Regulations.

E. CONSIDERATION AND FINDINGS

25. The sole issue in this matter is what, if any, sanction should be imposed over the MMS.
26. 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.
27. 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."
28. 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."
29. Further, the LOTG define "reckless" as "any action (usually a tackle or challenge) by a player which disregards (ignores) the danger to, or consequences for, the opponent."
30. 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

31. 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 and that his only intention was "to get first to the ball, to take control of the ball on behalf" of his team.
32. 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.
33. Whilst, in this case, the challenge did not cause serious injury to Player Vidmar, it nevertheless had the potential to do so.
34. The Player approached the ball at speed in an attempt to get to it before Player Vidmar. Player Vidmar stayed on his feet at all times as he approached the ball. In an attempt to win the ball, the Player lunged forward with his left leg and studs showing. It is not clear from the video footage as to whether there was actual contact between the Player's outstretched left leg and foot with studs showing and Player Vidmar's left knee although the referee who appears to have had an unobstructed view of the incident noted in his report that there had been contact.
35. The Player's momentum was such that his body came into further contact with Player Vidmar causing him to fall heavily to the ground. The Player made no evident attempt to withdraw from the challenge nor, it would appear could he given the speed with which he approached the ball and his proximity to Player Vidmar at the time that he commenced to lunge at the ball.
36. The Committee is comfortably satisfied that, regardless of whether the Player's studs made contact with Player Vidmar's knee or any part of his body, the incident caused an unacceptable risk of injury to Player Vidmar who was in a position of vulnerability. This brought the conduct within the definition of serious foul play but at the lower end of reckless.
37. As to comparable cases, the Committee repeats the following observations it has made in previous determinations.
38. Each case turns on its own merits and circumstances. Comparing incidents alone without being cognisant of all of the circumstances that informed the Committee's reasoning process is of little assistance in achieving the objective of consistency in decision making. For example, much is said about the severity of the incidents in *Grant* and *Urena* and the sanctions imposed by the Committee. But in each of those cases, the exemplary disciplinary record of the players and their long-playing history together with other mitigating factors informed the Committee's decision. The Committee noted in each of those cases that but for those mitigating factors the sanction in each case would have been greater than that ultimately imposed.
39. In so far as *Lolley* is concerned, that was a decision of the MRP and the Committee is not aware of the full facts of that offence and matters taken into consideration by the MRP nor is the Committee bound or necessarily influenced by such decisions.

40. None of the previous decisions of the Committee to which reference is made is particularly analogous to the present circumstances except to the extent that, for example, *Grant*, *Mourdoukoutas* and *Ansell* each involved players lunging or leaving their feet in the course of effecting a challenge.

The Player's Disciplinary Record

41. The Player has a good playing record and Disciplinary Counsel accepts this. However, the Committee also takes note of the fact that the Player is 20 years of age and has only played 21 A-League games having debuted in the 2022/23 season. His disciplinary record whilst in the main positive is not of long standing and whilst taken into account is, in the present circumstances, neutral.

The Player's Remorse

42. The video footage immediately after the incident shows the Player gesturing to the referee that he had made contact with and won the ball by way of apparent justification for his challenge.
43. The footage does not disclose the Player making any on-field approach or gesture to Player Vidmar consistent with remorse.
44. As is evident from his evidence and the submissions made on his behalf, the Player does not accept that his conduct comprised "Serious foul play" and contends that he was justified in contesting for the ball in the manner in which he did.
45. The Player has shown no remorse.

Extenuating circumstances

46. The Player contends that he lost his right footing as he was almost upon the ball causing his right leg to go under his body and his left leg to go through and that this comprises an extenuating circumstance, that is, a factor relevant to mitigation of sanction.
47. Assuming that the Player did, as he claims, feel his right foot slip as he was running to the ball, the Committee is far from persuaded that this caused or contributed in any material way to his left foot and leg being outstretched in the final moments of the challenge. As the Player accepts and the video footage makes plain, he was running towards the ball at speed to win possession from Player Vidmar who was also approaching the ball. The Player extended his left leg and foot in an attempt to win the ball.
48. We accordingly do not accept that any slippage in the Player's right foot caused or significantly contributed to the incident and that it was therefore an extenuating circumstance in this case.

Conclusion

49. Weighing up these factors, the Committee considers an appropriate sanction to be the MMS plus two additional matches. This sanction recognises the recklessness of the conduct and the potential for serious injury to a vulnerable opponent.

F. RESULT

50. The sanction we impose is the MMS plus two additional matches.

A handwritten signature in red ink, appearing to read 'A. Lo Surdo', with a stylized flourish at the end.

AP Lo Surdo SC, Disciplinary & Ethics Committee Chair
Friday, 9 February 2024