

DISCIPLINARY (AND ETHICS) COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Roy O'Donovan, Central Coast Mariners
Alleged offence	Assault on a Player (e.g. violent conduct when not challenging for the ball)
Date of alleged offence	Thursday 31.12.2015
Occasion of alleged offence	Match between Central Coast Mariners and Wellington Phoenix
Date of Disciplinary Notice	Monday 04.01.2016
Basis the matter is before the Committee	A referral: see clause 3.3(a) and 9.40
Date of Hearing	Wednesday 06.01.2016
Date of Determination	Thursday 07.01.2016
Committee members	John Marshall SC, Chair Dominic Villa David Barrett

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of the FFA "Hyundai A-League Disciplinary Regulations" applicable to the 2015-2016 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. It may be noted that the Committee is now called the "Disciplinary and Ethics Committee" pursuant to the FFA Judicial Bodies By-Law dated 11.11.2015. We have proceeded on the basis references to the "Disciplinary Committee" in the Disciplinary Regulations mean the Committee, however named, as constituted from time to time. In any event, at the outset of the hearing this potential issue was identified by the Chair and the player accepted that the Committee as constituted for the purposes of the hearing had jurisdiction to determine this matter.
3. In this matter there has been a referral under clause 9.40 of the Disciplinary Regulations. In the case of a referral under clause 9.40, FFA will have determined in its sole and absolute discretion that a Referee has made an Obvious Error and that a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia. That is what has happened here. Although not a matter for our review, we observe that the circumstances of this matter fully

justified the referral by the FFA. As will be apparent from the whole of this determination this matter concerns a head-butt by a player in retaliation for a deliberate elbow to the head. The on field behaviour of both players is visually disturbing and has no place in the game. The provocation that occurred might explain but does not justify the subsequent head-butt.

4. The FFA issued Roy O'Donovan (**the player**), with a Disciplinary Notice dated 04.01.2016. The Category 1 Offence stated on the Disciplinary Notice is Offence 4 (R2 for Players) - *Assault on a Player (e.g. violent conduct when not challenging for the ball)*. Paragraphs 1-5 of the Disciplinary Notice state:
 1. FFA has cited you in relation to an incident which took place while you were playing for your Club against Wellington Phoenix (WPX) on Thursday, 31 December 2015 in or in about the 58th minute of the match. Specifically, the incident involves an interaction with Manny Muscat of WPX where you appear to make contact with the opposition player (the Incident);
 2. FFA is entitled to cite Players in accordance with clause 9.40 of the Regulations;
 3. FFA has reviewed available Broadcast Footage of the Incident. As a result of this review, FFA in its sole and absolute discretion believes that the Referee has made an Obvious Error and a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia;
 4. Pursuant to the categorisation of offences listed at "Appendix A - 6. Table of Offences", the Category 1 Offence stated by FFA is Offence 4 (R2 for Players) - Assault on a Player (e.g. violent conduct when not challenging for the ball);
 5. The Minimum Sanction for the Offence under the Regulations is two (2) Hyundai A-League matches (being the Mandatory Match Suspension plus one additional match);
5. In this situation the function of the Committee is to determine whether the player is guilty of Assault on a Player and if so, what sanction should be imposed in accordance with the Disciplinary Regulations.

B. THE HEARING

6. On the evening of Wednesday 06.01.2016 the Committee heard the referral of the above matter. At the conclusion of the hearing (following deliberations and pursuant to clause 20.4 of the Disciplinary Regulations) the Committee verbally announced the result of the hearing. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 20.3(c)).
7. At the hearing Disciplinary Counsel was Anais d'Arville and the player was represented by Shaun Mielekamp, CEO of the Central Coast Mariners, and was supported by Tony Walmsley, Head Coach of the Central Coast Mariners.
8. The evidence at the hearing comprised the footage from several angles including the footage made available on the day of the hearing, the Disciplinary Notice, the handwritten referees' match card, the player's disciplinary record, a recording of an interview given by the player which was broadcast on Fox Sports and a document showing a list of sanctions proposed by the MRP.
9. In addition the submissions and references on behalf of the player were received, which included various photographs.

C. FACTS

10. In around the 58th minute of the game the player and Manny Muscat of Wellington Phoenix were running towards the ball when the player pulled on the shirt of Manny Muscat. That can be seen in the screenshot taken from the Fox Sports footage below:



11. The referee awarded a free kick for the shirt pull.
12. After that free kick, Muscat raised his right arm and pushed the player away which can be seen in the next screenshot.



13. After the above action, Muscat made a second and separate action with his right arm where he used his elbow and forearm to strike the player in the vicinity of the left cheek and eye. This can be seen in the screenshots below.





14. No action was taken by the referee. That is unfortunate but it may well be the case that the referee and the two assistant referees were unsighted.
15. The player then appealed to the referee for a foul, being of the view, correctly, that he had been assaulted by Manny Muscat:



16. When no action was taken by the referee, the player remonstrated by yelling at the referee and indicating that Muscat had fouled him with an elbow. The player continued to yell at the referee:



17. The player then saw Muscat approaching him from his left rear (7 o'clock on the clock face):



18. Next the footage reveals that the player turned, focused on Muscat and head-butted him. The footage made available on the day of the hearing showed the incident at normal speed. The action was a quick, sharp movement of the head so as to make contact with the side of Muscat's head. There appears to have been considerable force in the head-butt. It cannot be fully captured in screenshots. The speed and timing of the head-butt can only be fully appreciated by viewing the footage at normal speed.
19. The next two screenshots show the player immediately before and immediately after the contact was made.





20. Below are screenshots from different angles showing the head-butt:







21. It can be seen that just prior to the player's head making contact with Muscat, the player clenched his teeth together:



22. The player was asked about this and agreed that he had clenched his teeth together. His explanation was that by doing this he would avoid injuring himself in the process. That was a frank concession.
23. After the head-butt Muscat went to the ground as shown in the next screenshot:



24. Muscat was treated by the trainer. He was required by the referee to leave the field but returned and played the whole of the remainder of the game.



25. At this point the Committee notes that no member of Muscat's team showed any concern for him once he was on the ground. It may have been that Muscat's teammates realised he had no serious injury and were therefore unconcerned.
26. After the head-butt the referee halted play. Wellington players swarmed around the player and he was assaulted. He was confronted pushed and jostled. Only one aspect of that was dealt with by the referee. The Wellington players involved should consider themselves fortunate not to have been dealt with more harshly by the referee. The conduct of Durante and Powell was excessive and long after the whistle was blown. Some of their highly inappropriate conduct is shown below. It is part of the matrix of facts that came to pass as a result of the interaction between Muscat and O'Donovan.





27. Although the later conduct of the two Wellington Phoenix players was not the subject of the hearing, the Committee observes that such conduct is serious and unacceptable at any level of football.
28. The player walked away from this melee. That goes in his favour.
29. The next screenshot shows that there is blood coming from the corner of O'Donovan's left eye caused by the elbow of Muscat.



D. SUBMISSIONS

30. Reference was made to clause 11.2 of the Disciplinary Regulations which provides:
 - 11.2 When determining any appropriate sanction in accordance with the Range at the Table of Offences, a Judicial Body may consider:
 - (a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
 - (b) the Participant's past record and whether or not this is a repeated Offence;

- (c) the remorse of the Participant; and
- (d) any extenuating circumstances relevant to the commission of the Offence.

31. The Committee has previously held that provocation proximate to the Offence can be taken into account as an extenuating circumstance. Reference was made to the 2010 decision involving Steve Pantelidis, then of Gold Coast United FC.
32. The matters submitted by Disciplinary Counsel included:
 - (1) The player's conduct falls directly within "*violent conduct when not challenging for the ball*". The player's head-butt was violent and neither party was challenging for the ball.
 - (2) The player's conduct was an assault on Muscat.
 - (3) The assault was a direct result of the player's dissatisfaction with the referee's decision to award Muscat a free kick and retaliation for Muscat's actions, which were not penalised by the referee.
 - (4) The appropriate sanction is a suspension of between 6-8 matches. The starting point as to sanction is Annexure A of the Disciplinary Regulations. That is the minimum suspension is 1 match plus the Mandatory Match Suspension which is a minimum suspension of 2 matches. The maximum suspension is 24 months.
 - (5) There are no extenuating circumstances in this case. Although there is some provocation, there is a gap between the incident that occurred here and the actions of Muscat that occurred beforehand being the elbow. There is at least a few seconds of time where the two players move away and are not involved in the play. It can only be an extenuating circumstance in circumstances as that in *Pantelidis* which is a single motion being an immediate reaction to a motion. Here the player retaliated to the unjust outcome of the earlier action.
 - (6) If that submission is not accepted, the provocation should be given little weight.
 - (7) The present matter is more serious than the matter of *Pantelidis* as what happened was not continuous (the player walked away, had the chance to walk away and think about it and still decided to retaliate and take the matter into his own hands and head-butt). The ban for *Pantelidis* was 5 matches (being 4 matches plus the Mandatory Match Suspension).
33. The player did not deny that contact was made between him and Muscat in the 58th minute of the match. The player accepted that the Offence had been established. The hearing was conducted on the basis that there was a guilty plea and that the only remaining issue was the appropriate sanction. It was submitted that in light of the circumstances put forward on behalf of the player a sanction in accordance with the decision of the Committee in the case of Nick Mrdja was appropriate. In the case of Mrdja the sanction was 2 matches.
34. The matters submitted on behalf of the player included:
 - (1) Muscat was the aggressor throughout the altercation.

- (2) Muscat continued after the whistle to assault the player with a "vicious elbow". The player's only reaction was to "walk away and appeal to the referee ...".
 - (3) The incident would not have happened "if the referee had done his job at the time and addressed the Muscat elbow".
 - (4) The incident would not have happened if the player "had taken a fall, which is not in the spirit of the game".
 - (5) The incident would not have happened if Muscat had not aggressively run at O'Donovan with a torrent of abuse.
 - (6) The player was dazed, hurt and visually impaired whilst Muscat was approaching and was confused as to why the referee was taking no action and looking straight at him.
 - (7) The player felt threatened as he heard Muscat approach and "without looking at Muscat leaned his head across to defend himself" from a likely attack by Muscat.¹
 - (8) The player did not anticipate Muscat would run at him with such pace.
 - (9) The player at no stage looked directly at Muscat.
 - (10) The player did not cause injury or serious contact to Muscat.
 - (11) The player made a public apology the next day and is deeply remorseful for his actions.
35. The Committee has considered all the matters advanced on behalf of the player listed in paragraph **34** above but does not need to set out its findings on each point seriatim. To the extent practicable that is done by what is recorded in this determination.
 36. Two character references were submitted in support of the player, one by Tony Walmsley, Head Coach of the Central Coast Mariners, and one from Steve Kean, Head Coach of the Brunei DPMM FC.
 37. No submission has been made by Disciplinary Counsel or the player that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.

E. CONSIDERATION AND FINDINGS

38. There was no dispute that the Offence of Assault on a Player was made out.
39. From the guilty plea it means the minimum sanction is a 2 match suspension. The effect of the submissions for the player was that the minimum sanction of 2 matches should be all that the Committee should impose. The Committee rejects that submission.
40. During the course of the hearing the player acknowledged the following matters:
 - (1) The incident "looks spectacular on the TV".
 - (2) It looks like I "cleaned him out".

¹ The underlining is added to show one aspect that is specifically rejected.

- (3) It "looks horrendous".
- (4) It "does look like my head moved quickly".
41. The player was asked whether he had turned and seen Muscat coming. He did not respond directly but he did say that he could not deny "what you can see on the TV".
 42. Having been challenged on his version of events that he had merely leaned across without looking at Muscat, the Committee finds that he did in fact see Muscat coming and did intend to head-butt Muscat. The Committee does not accept that the player (merely) "leaned in". Nevertheless the Committee accepts that it was, in the words of his coach, a "*momentary lapse of judgment*". Perhaps related (and a factor that the Committee has taken into account in favour of the player) is that he says he was dazed by the hit from Muscat. Also in relation to the coach, the Committee accepts that his coach genuinely believes the player is a "*really good guy*" and has otherwise behaved himself well throughout this season at the club.
 43. In favour of the player is the fact that there was a severe assault occasioned on him by Muscat. That is an extenuating circumstance within clause 11.2(d). On the other hand that conduct had occurred some seconds earlier and relevantly was in the past. The player got his retaliation in when Muscat approached abusing him.
 44. Also in favour of the player is the player's past record. He has only had one prior direct red card. It was for a studs up tackle in the 2008-2009 season whilst playing for Dundee United. The Committee proceeds on the basis that in the last 15 years the infringements of the player are minor and do not count against him. The absence of any citations apart from the few in his record is in his favour.
 45. The player's conduct after the head-butt indicates that he appreciated he had infringed and could have been sent off. He did not retaliate to the conduct of the other Wellington players when approached and shoved. This goes in his favour.
 46. Yet another factor in favour of the player is that he shook hands with Muscat after the game and made himself available to Fox Sports for an interview the following day in which he apologised to the fans for his behaviour.
 47. Heavily against the player is the nature of his infringement. A head-butt is extremely violent and unusual. No Offence involving a head-butt has come before the Committee in any of the previous A-League seasons.
 48. The Committee does not accept that the player was defending himself. The Committee finds that the conduct was a deliberate assault in the nature of retaliation when the opportunity presented itself by the means of Muscat's approach.
 49. The Committee is of the view that the conduct of the player is more serious than that of Pantelidis in 2010 in which a sanction of a 5 match suspension was imposed.
 50. Further, the Committee finds that the conduct of the player was far more serious than that of Nick Mrdja.
 51. The Committee has taken into account the conduct of Manny Muscat. It was noted that despite the contact from the head-butt, no serious injury was occasioned. The sanction which was proposed by the MRP and accepted by Muscat was a sanction

of 2 matches. That sanction is not one imposed by this Committee. Although the Committee has not heard from Muscat as he is not a party, the Committee is of the view that he was well advised to accept the 2 match suspension as it could have been considerably more had his conduct come before this Committee.

52. The fact remains that whatever sanction is imposed by this Committee will be viewed in connection with the sanction on Muscat proposed by the MRP. Rightly or wrongly, the Committee has felt constrained by what it perceives to be the low level of sanction imposed on Muscat. That has worked in favour of O'Donovan.
53. But for the matters in favour of the player noted above, the Committee would have imposed a sanction in excess of and possibly well in excess of 10 matches. A head-butt has no place in football and is abhorrent to civilised conduct. The head-butt by O'Donovan is inexcusable and that is so even if viewed as one incident which spanned the pulling of the shirt by O'Donovan, the elbow of Muscat through to the head-butt by O'Donovan and even allowing of the fact that the player was frustrated and annoyed that no action was taken against Muscat. There is no justification for a player taking matters into his/her own hands. Previous experience has indicated that violent behaviour by one player can lead to significant escalation involving a melee. That is what happened in this case.
54. The incident is the most serious R2 Offence against another player which has come before the Committee and should be sanctioned appropriately. The sanction to be imposed is set out below.

F. RESULT

(1) Offence

55. The Committee finds that the Offence has been established and in any event the player entered a guilty plea.

(2) Sanction to be imposed

56. The sanction the Committee imposes is suspension for 8 matches.

John Marshall

J E Marshall SC, Disciplinary Committee Chair

Thursday 07.01.2016