

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Kevin Muscat, Melbourne Victory
Alleged offence	Item R1 of clause 6.2 of the Disciplinary Regulations (serious foul play)
Date of alleged offence	22 January 2011
Occasion of alleged offence	Match between Melbourne Victory and Melbourne Heart
Date of Disciplinary Notice	24 January 2011
Basis the matter is before the Disciplinary Committee	A referral: see clauses 3.5(b), 3.3(a), 9.14(b) and 11.1(c)(i)
Date of Hearing	Thursday, 27 January 2011
Date of Determination	Thursday, 27 January 2011
Disciplinary Committee Members	Lachlan Gyles SC, Chair Anthony Lo Surdo Rob Wheatley

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 the "FFA A-League Disciplinary Regulations" applicable to the 2010-2011 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 clauses 3.5(b) and 9.14(b) of the Disciplinary Regulations. In the case of such a referral the Match Review Panel ("**the MRP**") will have formed the view that, on the material available to the MRP, an additional sanction of greater than 4 matches over and above the Mandatory Match Suspension (1 match) was warranted.
3. In these circumstances, the sole role of this Committee is to determine what additional sanction should apply in respect of the Offence over and above the mandatory one match suspension. The power of the Committee to do this comes from clause 11.1 of the Disciplinary Regulations which in turn provides that the Committee deal with the issue afresh and not be bound by any views or prior determinations of the MRP. In other words the Committee could issue a sanction less than that proposed by the MRP if this was considered appropriate.

4. There are a range of possible sanctions, however the only sanction sought to be imposed in this case is a suspension of the Player from participation in future A-League matches. The Committee has power in the ordinary case to apply a suspension for a period of up to two years, and beyond that in exceptional circumstances, although they are not said to exist here.
5. In considering that issue, the Committee can have regard to whatever it considers relevant, however some guidance is provided by clause 11.2 of the Disciplinary Regulations where it is said that the Committee **may** consider the following:

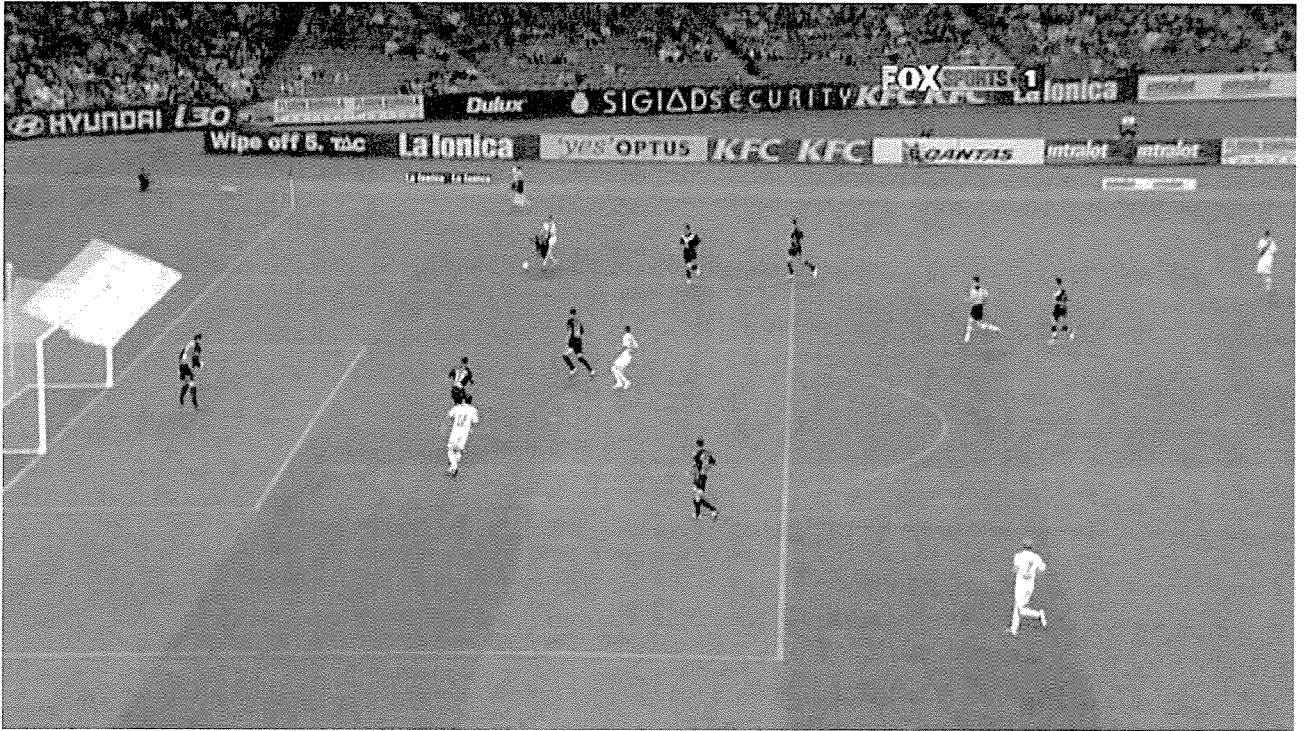
- "(a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;*
- (b) the Participant's past record and whether or not this was a repeated Offence;*
- (c) the remorse of the Participant; and*
- (d) any extenuating circumstances relevant to the commission of the Offence."*

B. THE HEARING

6. On the evening of Thursday, 27 January 2011 the Committee heard the referral of the above matter so as to decide the additional sanction to be imposed on the player. Disciplinary Counsel was David McLure and the player was represented by Chris Nicou from Middletons Lawyers.
7. The evidence comprised the Referees Report, footage of the incident and oral evidence of the Player himself. A Melbourne Victory Media release was also tendered together with a letter of support for the Player from the Chief Executive of the PFA and material relating to an incident involving the Player earlier in the year. In addition the Player's disciplinary record was tendered.
8. Submissions were received and at the conclusion of the hearing (following deliberations and pursuant to clause 20.4 of the Disciplinary Regulations) the Committee announced its decision and issued these reasons shortly afterward, which are in the "shortest form reasonably practicable" (see clause 20.3(c)).

C. FACTS

9. In around the 81st minute of the game Melbourne Heart player Adrian Zahra was in possession running down the outside of his attacking penalty area. Approximately 10 yards from the goal line, Adrian Zahra was tackled by the Player using both legs and contact was made with Adrian Zahra's right knee.
10. The referee was less than 15 yards from the incident and with a clear view. The Player was immediately shown a Red Card and sent from the field.
11. We have had the benefit of seeing the incident from several different angles of footage from Fox Sports. That footage became an unnumbered exhibit. Copies of 3 photographs taken from that footage and showing the incident are replicated below.





D. SUBMISSIONS

12. The matters submitted by Disciplinary Counsel included:
 - (1) That the tackle was reckless and that the Player agreed that the tackle was "grossly reckless";
 - (2) That the Player has a poor on-field record and admitted in a recent press release to playing the game "on the edge";
 - (3) That a player of the Player's skill and experience should have exhibited greater care and restraint;
 - (4) That for a player with the Player's significant adverse on-field record the Committee should afford little weight to the Player's stated remorse especially when viewed in light of the explosive manner in which the Player left the field when shown the Red Card by the Referee; and
 - (5) There had never been an incident of this level of seriousness in the history of the A-League.

13. The matters submitted on behalf of the Player included:
 - (1) That the incident was not "off the ball";
 - (2) That the action was not intentional but rather reckless, and thereby carried a lesser degree of culpability;
 - (3) That the Player was genuinely remorseful and embarrassed by his actions – and has apologised both publicly and privately;
 - (4) That the tackled player, Adrian Zahra, will make a complete recovery having suffered ligament damage to his right knee; and
 - (5) That the Player had represented his country with distinction and has made a valuable contribution to the A-League and to Australian football generally.

14. 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

15. In the end there was relatively little dispute in relation to the key facts. The Player accepted whilst giving evidence that he had acted with gross recklessness in executing the tackle in question and the Club did not take issue with that description. It is also important to remember that the Referee who was well placed to view the incident described the Player as having used excessive force and brutality, seriously endangering the safety of the opponent.
16. In the circumstances, we have little difficulty in finding that the Player exhibited gross recklessness in committing the tackle and in doing so used excessive force and brutality against an opponent, Adrian Zahra, when challenging for the ball. He lunged at his opponent from the side with both legs making contact with the opponent's right knee and thus seriously endangering his safety and wellbeing.
17. The Player seeks to make a distinction between foul play which is intentional and that which is reckless. He accepts that he did act with recklessly, which is defined in the FIFA laws of the game as ***acting with complete disregard to the danger to, or consequences for, his opponent***, but says that his conduct was not intentional, and therefore less blameworthy.
18. We do not see very much weight in this distinction in the present case, because even if one was to accept that there was no actual intention, this particular tackle was so blatant and illustrated such a lack of regard for the safety of the opposing player, that the Player should be properly held accountable for the harm done by it. In other words, so far as reckless conduct is concerned this was at the higher range of culpability.
19. We also take into consideration that the Player, when shown the Red Card, expressed dissent to the Referee by both words and action.
20. The Committee was told during the hearing that the Player had made the best part of 600 appearances as a defender making thousands of tackles over his career. In these circumstances the Player should have appreciated the serious risk of injury brought about by the manner of this tackle.
21. Given the state of the game at the time and in circumstances where the Player comprised the last line of defence a submission may have been available that the Player's conduct was intentional, however it is not necessary for us to consider that point as Disciplinary Counsel has not urged us to make that finding.
22. In any event, viewed as an individual incident we believe that a lengthy suspension is justified and necessary, both as a deterrent to the Player and to signal to the other players in the A- League that such conduct will not be tolerated. The Committee was advised that Adrian Zahra suffered serious ligament damage and is likely to undergo surgery and a lengthy period of rehabilitation. He will not play again this season.
23. In some instances a player's disciplinary record may provide a reason to reduce the length of a suspension. In this case it works the other way. Leaving aside any prior conduct, since the A-League commenced in 2005, the player has received numerous yellow cards, red cards and suspensions for offences including

unsporting behaviour, foul play, dissent, violent conduct and bringing the game into disrepute. The nature and regular occurrence of such offences strongly supports a lengthy sentence being imposed on this occasion.

24. We accept that despite no contrition being exhibited at the time, the Player has done the right thing in facing up to the seriousness of the incident and apologising both publicly and privately for it, and we have taken this into account in our considerations.
25. Finally, we have also had regard to the comments of Mr Schwab and to the Player's contribution to the game, and to the A-League (and his Club) since its inception, which have no doubt been substantial, however this is something of a two edged sword in that one might reasonably expect the highest standards of behaviour and discipline from a person of that experience and standing in Australian football and a role model for younger players.

F. RESULT

(1) Sanction to be imposed

26. Therefore in the circumstances the sanction we impose is 7 matches over and above the Mandatory Match Suspension, making a total suspension of 8 matches. To the extent that the Player's Club does not play that number of games in the current season the intention of the Committee is that the balance of the suspension is to be served in the subsequent A-League season.

(2) Suspension and probationary period

27. The Committee does not consider that any part of the sanction should be suspended and it will therefore have full and immediate effect.
28. We add that no submissions were addressed to us seeking a suspension of part of the sanction.



Lachlan Gyles SC
Disciplinary Committee Chair
Thursday, 27 January 2011