

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Jonas Salley, Gold Coast United
Alleged offence	Item R 1 of Annexure A – 6. <i>Table Of Offences</i> in FFA A-League Disciplinary Regulations (offence of “Serious Foul Play (eg when challenging for the ball)”)
Date of alleged offence	11 December 2011
Occasion of alleged offence	Match between Sydney FC and Gold Coast FC
Date of Disciplinary Notice	13 December 2011
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 9.25(b)
Date of Hearing	Wednesday 14 December 2011
Date of Determination	Wednesday 14 December 2011
Disciplinary Committee Members	John Marshall SC, Chair Anthony Lo Surdo SC Arthur Koumoukelis

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of the “FFA A-League Disciplinary Regulations” applicable to the 2011-2012 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 9.25(b) of the Disciplinary Regulations. In the case of a referral under clause 9.25(b) the Match Review Panel (**the MRP**) will have decided (in its sole opinion) that the incident escaped the attention of the referee (see clause 9.2) and that an Offence has been committed (see clause 9.24). The consequence is that the player will have an automatic Mandatory Match Suspension (in this case 1 match). No part of the above process is able to be referred to the Committee and hence cannot be appealed. Further, the 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 Mandatory Match Suspension was warranted¹ 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

¹ In this case the additional sanction is one match over the Mandatory Match Suspension.

determine the question of what additional sanction should be imposed over and above the Mandatory Match Suspension 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.

3. Nevertheless, it is for this Committee to determine the additional sanction to be imposed over and above the Mandatory Match Suspension.
4. The MRP issued a noticed dated 12 December 2011 which stated:
 - 1 The MRP has cited you in relation to an incident which took place while you were playing for your Club against Sydney FC on Sunday 11 December in or about the 11th minute. Specifically the subject incident involves an interaction with Dimitri Petratos of Sydney where you appear to strike the other player with your elbow or forearm;
 - 2 The MRP is entitled to cite players as a part of its review of A-League matches under clause 9.1(c)(i) of the Regulations;
 - 3 The MRP reviewed footage of the subject incident at its meeting of 12 December. As a result of this review, the MRP found that you have a case to answer for committing a Category 1 Offence;
 - 4 Pursuant to the categorisation of offences listed at "Appendix A - 6. Table of Offences", the Category 1 Offence stated by the MRP is "Serious foul play (eg when challenging for the ball)";
 - 5 The Minimum Sanction for the Offence under the Regulations is one (1) A-League Match.
 - 6 You are hereby provided with the opportunity to show cause as to why an Offence should not be found to have been committed. ...
5. A submission was received on behalf of the player.
6. Following the submission the MRP then issued a disciplinary notice dated 13 December 2011 which stated:
 - 1 The MRP cited you in relation to an incident which took place while you were playing for your Club against Sydney FC on Sunday 11 December in or in about the 11th minute.
 - 2 At its meeting of Tuesday 13 December, the MRP reviewed the submissions lodged by your Club in response to the Show Cause Notice issued on 12 December.
 - 3 Having taken into consideration these submissions, you were found to have committed the Category 1 Offence, as specified under "Annexure A - 6. Table of Offences", of "Serious foul play (eg when challenging for the ball)";
 - 4 As a consequence of this finding, you are required to serve a Mandatory Match Suspension which, in this case, is one (1) match.
 - 5 The MRP has proposed a sanction of two (2) A-League Matches, being the Minimum Sanction for the charge of Serious Foul Play plus one (1) additional A-League Match.
 - 6 The Minimum Sanction for the Offence under the Regulations is one (1) A-League Match.
7. The disciplinary notice also gave the player the option to have the matter referred to this Committee. The player did that later on 13 December 2011.
8. Written submissions have been received on behalf of the player.

B. THE HEARING

9. On the evening of Wednesday 14 December 2011 the Committee heard the referral of the above matter. It was heard on an urgent basis at the request of the player. 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)).
10. At the hearing Disciplinary Counsel was Ivan Griscti and the player was represented by Clive Palmer by phone conference. During the course of the hearing the player himself was dialled in and spoke on conference phone which was heard by Mr Palmer.

C. FACTS

11. In around the 11th minute of the game there was an interaction between Jonas Salley of Gold Coast and Dimitri Petratos of Sydney where the right arm of Jonas Salley (at about his elbow or forearm) came into contact with the other player.
12. We have had the benefit of seeing the incident from several different angles of footage from Fox Sports.
13. The following images have been captured from the Fox Sports DVD of the footage:
(1) Shot 1



(2) Shot 2 – which is in the same sequence directly after shot 1



(3) Shot 3 which is from a different angle (unfortunately it is quite blurry).



D. SUBMISSIONS

14. Reference has been made to clause 11.2 of the Disciplinary Regulations.
15. The matters submitted by Disciplinary Counsel included:

- (1) The contact made was such as to bring the player within the third offence in the Table of Offences to the Disciplinary Regulations.
 - (2) The player was seeking to challenge for the ball and the use of the upper arm and/or elbow was serious and foul play.
16. The matters submitted on behalf of the player included:
- (1) that there is contact between Salley and Dimitri
 - (2) both players are running while challenging for possession of the ball
 - (3) Salley is in front of Dimitri both chasing the ball and at the time of the alleged strike
 - (4) Dimitri lunges into the back of Salley prior to the incident
 - (5) Dimitri pulls up alleging he was interfered with by Salley
 - (6) The linesman was in plain sight of the players and the alleged incident
 - (7) The Referee was only 15-18 metres from the incident in plain sight from behind as per the camera view from the Southern Stand
 - (8) The Match Official apparently also saw the incident from the tunnel which I find it peculiar for him to be requesting the footage from Fox.
17. Jonas Salley provided a witness statement which included:
- As suggested I did not raise my elbow to 'strike' Dimitri as I had the front position and used my upper body movement to retain the frontal position. There was no purpose in me striking Dimitri with my elbow as suggested as I already had the frontal position. I did feel Dimitri making contact with my back as he attempted to gain the front position
18. When Mr Salley spoke by telephone conference during the hearing he said that it was not his intention to strike or hurt the other player.
19. During the hearing Mr Palmer made submissions which we refer to below.
20. First it was submitted that the incident had not escaped the attention of the Referee. The submission was based upon the footage which shows that it was possible for the assistant referee running the sideline to have seen the incident.
21. Second it was submitted that it was open for the player to dispute the finding of guilt by the MRP. It was submitted that any set of rules which did not provide for an appeal on the question of guilt was contrary to Australian law and that therefore this Committee must have jurisdiction to deal with this question.
22. Third, it was submitted that the second match over and above the mandatory match should be set aside and in the alternative that if not set aside it should be suspended under Clause 12.3. In this regard the player said that he had played professional football for over ten years. He had played football in the Ivory Coast where he was born, and subsequently in Australia for South Melbourne when he moved here in 2005. After South Melbourne he moved to the New Zealand Knights where there was an occasion he was sent from the field following a second yellow card. In subsequent years he has played for Sydney FC, in Adelaide and in China. The player tells us that the only occasion he has been sent from the field is the one whilst playing with the New Zealand Knights. It was said by Mr Palmer that the player has a good reputation and is known not to be a dirty player.

23. Fourth, it was submitted that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.
24. Fifth, Mr Palmer submitted that the process of the MRP was not valid on one or other of two grounds. The first ground was that the MRP decisions are so inconsistent that they cannot be given effect to. The second ground is that in some way, which was not precisely articulated, racial bias and/or discrimination had infected the process of the MRP. In relation to this second ground Mr Koumoukelis asked Mr Palmer during the hearing whether the bias asserted:
 - (1) was a function of the inherent structure of the MRP which somehow lead to racially biased results
 - (2) was as a result of deliberate conduct of the members of the MRP: and/or
 - (3) was as a result of directions by others given to the MRP.
25. In response Mr Palmer responded that it could actually be "laziness" in the MRP in not reviewing sufficient other incidents. It was unclear which particular ground of the above if any Mr Palmer asserted.
26. During the course of the hearing the Chairman indicated, with the agreement of the other members, that the Committee did not have jurisdiction to deal with this fifth matter and in the circumstances it was proposed to record that the submission was made and that Mr Palmer was informed the Committee felt it did not have jurisdiction to deal with these allegations. Mr Palmer indicated that he did wish to have it recorded that the submissions were made so that it could not later be said he had failed to make the submission when the matter was before this Committee. In particular Mr Palmer indicated that he had in mind curial proceedings in the Supreme Court or other Court of competent jurisdiction.
27. Sixth, Mr Palmer submitted that there should be a stay ordered by the Committee.

E. CONSIDERATION AND FINDINGS

28. In relation to the submission that the incident had not escaped the attention of the Referee it is not clear to us that the assistant referee on the sideline did see the incident. The footage indicates that he was looking slightly in advance of the players towards the ball. Nevertheless it is not even open to this Committee to deal with this question and that is abundantly clear from the last sentence of clause 9.2 of the Disciplinary Regulations. This submission fails.
29. In relation to the second submission that we could deal with the guilt of the player, the rules are very clear on this topic. They have been so for several years. It is not by accident that this Committee is unable to deal with questions of guilt or innocence in a case like this. That was a deliberate and conscious rule making decision by the FFA and was done, so far as we understand, in consultation with the Clubs and PFA. The Disciplinary Regulations on this point are consistent with the position in the FIFA Rules. Notwithstanding that the Disciplinary Regulations make it clear we have no jurisdiction on that topic, we note that the decision of the MRP is not one that denies a player natural justice insofar as the player is given an opportunity to show cause and then the player can provide submissions to the MRP on whether the offence has been committed. If it be relevant we are not satisfied that the Disciplinary Regulations in this regard are contrary to Australian law.

30. In relation to the extra match being the third submission made above, it is first important that we record our findings in relation to the incident. The Committee is of the opinion that the player did deliberately raise his arm so as to make contact with the opposition player. We have viewed the Fox Sports footage² carefully and in our view the right arm of player Salley makes a movement that is not consistent with the motion an arm makes when merely running – there is more. We do not accept the contact was other than intentional but we do accept that Mr Salley did not intend to injure the imposing player.
31. Incidents concerning contact made by the arm and in particular the elbow (or similar) have come before the Committee on at least two occasions.
32. Once such case involved Steven Pantelidis from October 2007 when he was playing with the Melbourne Victory. In that case Mr Pantelidis, to put it bluntly, was provoked. As a result he *“decided to use some considerable force to throw his arm backwards towards the payer from the other Club”* (paragraph 8 of the decision). Paragraph 9 of the decision records:

9 ... I am not convinced he intended to use the point of his elbow and indeed the initial contact was his bicep. Although ultimately there is contact from his elbow I am satisfied that its effect was greatly exaggerated by the opposing player who clutches at his face, where so far as I can tell there was no contact.

There is some similarity here as the Sydney FC player may have exaggerated the effect of the contact. However we are satisfied that there was intentional contact.

The decision continued (paragraphs 13 and 14)

13 In all of the circumstances nevertheless it is a very serious matter which does require a 3 match suspension, of those the third match I propose to suspend under Rule 12.9 of the National Disciplinary Regulations. ...

14 Under no circumstances should anybody interpret these reasons as approving or condoning retaliation and certainly not any approval or condoning or retaliation using an elbow. It is for that very reason that the 3 match suspension has been confirmed. ...

(underlining added)

33. Another case concerning an elbow involved Kevin Muscat and his contact with Gold Coast player Jason Culina in January 2010. On that occasion the Committee said this (paragraph 21):

21 In our view the use of the elbow cannot be condoned. Here there is some question as to whether the contact was only with the back of Kevin Muscat’s upper arm (as he maintains) or whether also the elbow came into contact with Jason Culina. In our view whether the ultimate point of contact was the elbow or not does not matter here because the arm was swung back with a view to making contact ...

(underlining added)

34. In our view the appropriate sanction is one match over and above the Mandatory Match Suspension. All of the reasons previously given by this Committee in the Pantelidis and Muscat cases are reasons why the use of the elbow must not be tolerated.

² The arm action is visible from the footage but possibly not so clear on the still images above.

35. Nevertheless the player has an excellent disciplinary record as a professional footballer and given that he has only ever been sent from the field on one occasion and that occasion was one in relation to two yellow cards, we are minded to suspend the additional match. The evidence of Mr Salley on this topic was not before the MRP. The details of this aspect are set out in the conclusion of this decision.
36. In relation to the fourth submission, the argument was based on a misreading of the definition as the word "not" had been overlooked by Mr Palmer such that his submission on sub-paragraph (e) of the definition of Exceptional Circumstances could not be sustained. In any event Exceptional Circumstances would only be relevant under clause 11.3 and as the sanction that we impose is within the range there is no scope for Exceptional Circumstance to do any work in this case even if they existed.
37. In relation to the fifth point (as intimated during the hearing) we do find that the Committee does not have jurisdiction to deal with the invalidity submission. Lest some might misunderstand, we take very seriously allegations of racial discrimination and had the allegation been properly before this Committee in circumstances where we had jurisdiction we would not hesitate to deal with the allegation and if substantiated impose severe consequences on the offender. However that is not the case here. The allegation was raised late. It was non-specific. The persons potentially the subject of the allegation were not parties to or represented at the hearing. There may well be scope within the FFA Statutes to have such an allegation brought before this Committee in some other way; but if not as Mr Palmer observed he can take his allegation to the appropriate court with full curial jurisdiction. In any event as the persons potentially the subject of the allegation were not parties to or represented at the hearing, to have attempted to hear and determine the allegation would have been an error.
38. In relation to the sixth point being the stay, we conclude there is power to stay the Mandatory Match Suspension within Article 28.2 (n) of the FFA statutes, being such other measure as is appropriate in all the circumstances. However whether that power should be exercised is an entirely different matter. If the subject matter of our decision would effectively be concluded against a player and his appeal rights therefore rendered nugatory we might be inclined to order a stay pending an expedited application for an appeal. However it is so clear in our view that there is no power of this Committee to undo the Mandatory Match Suspension that there is no prospect of an appeal on that point being successful. For that reason we do not stay the Mandatory Match Suspension.

F. RESULT

(1) Offence

39. The MRP found that the offence was made out. In our view the nature of the conduct was such as to warrant a one match suspension over and above the Mandatory Match Suspension.

(2) Sanction to be imposed

40. The sanction we impose is one match over and above the Mandatory Match Suspension.

(3) Suspension and probationary period

41. Under clause 12.2 it is open to us to suspend part of the sanction and we propose to do so as in our view a suspended sanction is (just) appropriate in this case. It was indeed a close thing but given the many years of professional football we are minded to be somewhat lenient with what is otherwise a serious contravention. We note that the Committee took into account the long playing service and good record to suspend part of the sanction in the case of Sebastiaan Van Den Brink.
42. The one suspended match is suspended for the probationary period which runs to the end of the 2011-2012 A-League Season including any finals matches. The trigger for the suspended portion will be any red card offence.

John Marshall

J E Marshall SC, Disciplinary Committee Chair
Thursday 15 December 2011