

**DISCIPLINARY AND ETHICS COMMITTEE OF THE FOOTBALL FEDERATION OF
AUSTRALIA**

DETERMINATION IN THE FOLLOWING MATTER:

Team Official and club	Guillermo Amor, Adelaide United FC
Alleged offence	Unsporting conduct toward a match official (Table of Offences row 10)
Date of alleged offence	Friday 18.11.2016
Occasion of alleged offence	Match between Perth Glory and Adelaide United FC
Date of Disciplinary Notice	Monday 21.11.2016
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 9.30 of the regulations
Date of Hearing	Monday 28.11.2016
Date of Determination	Tuesday 29.11.2016
Disciplinary Committee Members	John Marshall SC, Chair Lachlan Gyles SC Rob Wheatley

A. INTRODUCTION

1. This is the first occasion where the Committee has had to deal with an offence concerning intentional contact with a referee or other match official by a Team Official, in this case the head coach of Adelaide United FC, Mr Guillermo Amor.
2. The Committee has zero tolerance for intentional contact with a referee or other match official. In this case the Committee finds there was contact of a kind which should not have occurred. Whilst there is a dispute about exactly what happened, it is clear that Mr Amor left the technical area to remonstrate with the 4th official as to what he regarded to be an error in the awarding of a goal against Adelaide United. It is not disputed that some contact took place, and leaving aside the question of intention, the Committee finds the contact was more than a tap on the shoulder to attract the attention of the 4th official. Mr Amor frankly conceded that he is not in a position to deny that he may have used two hands and that he may have placed them on the back of the 4th official. However Mr Amor emphatically denied that he *pushed* the 4th official and says that he cannot believe he would do such a thing. He says that at no stage did he ever intend to assault or to engage in conduct which is inappropriate. He says he only ever intended to obtain the attention of the 4th official but seemed to accept that his actions were perceived by the 4th official as having gone too far. That said he does not accept that his conduct could properly be described as a push.

3. It is against that background that this decision has been given. It is necessary to emphasise at the outset that there is no video footage of the incident and no corroborating evidence. The video footage which is available clearly shows what took place after the incident but does not shed any light on the nature and extent of contact that was made by Mr Amor.

B. JURISDICTION

4. The Disciplinary Notice dated 21.11.2016, which led to this hearing is set out below.



DISCIPLINARY NOTICE (Red Card or Expulsion)

TO: <i>(Official)</i>	Guillermo Amor	OF <i>(Club)</i>	Adelaide United FC
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The Match Review Panel (*MRP*) provides this Disciplinary Notice (*Notice*) to you in accordance with the Hyundai A-League Disciplinary Regulations (*Regulations*).

The purpose of this Notice is to advise you of the following:

1. You were expelled from the field of play, its surrounds and the Technical Area in or around the 68th minute of your Club's match against Perth Glory on Friday, 18 November 2016;
2. Pursuant to clause 9.1(d) of the Regulations, the MRP is entitled to determine whether an Expulsion incident is a Category 1 or Category 2 Offence, as specified at "Annexure A – 6. Table of Offences". The MRP has determined that the incident is a Category 2 Offence.
3. Pursuant to the categorisation of offences listed at "Appendix A – 6. Table of Offences", the Category 2 Offence stated by the MRP is "Unsporting conduct towards a match official";
4. The Minimum Sanction for the Offence under the Regulations is four (4) Hyundai A-League matches (being the Mandatory Match Suspension plus three (3) additional Hyundai A-League matches);
5. In accordance with clauses 9.30 and 9.31 of the Regulations, the MRP refers this matter to the Disciplinary and Ethics Committee for hearing to determine whether, having regard to all the circumstances, the Offence is sufficiently proven to warrant the imposition of an additional sanction in addition to the **Mandatory Match Suspension which must be served**.

Signed: _____

For and on behalf of the Match Review Panel

Date: 21 November 2016 _____

5. The Committee has jurisdiction under clause 4.4 of the "FFA A-League Disciplinary Regulations" applicable to the 2016-2017 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.

6. In this matter the MRP acted under clause 9.1(d). As a consequence, the provisions of clauses 9.29 - 9.32 are applicable. The MRP made a determination under clause 9.1(d) that an Offence had been committed and that the Offence was a Category 2 Offence. That led to the issue of the Disciplinary Notice set out above.
7. The Committee notes that the MRP had no practical alternative on the material before it and the determination that the conduct amounted to a Category 2 offence was appropriate in the circumstances that faced the MRP.
8. In this case, row 10 of the Table of Offences specifies a minimum sanction of 3 additional matches plus the Mandatory Suspension. That could result in the Mandatory Match Suspension plus three additional matches (i.e. 1 + 3 = 4 matches). Under clause 9.31(b) of the regulations, the MRP has referred the matter to the Committee.
9. The function of the Committee in such a case is to determine the question of what additional sanction, if any, should be imposed over and above the Mandatory Match Suspension which must be served, and now has been. In the circumstances of this referral, 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.
10. Relevantly, clause 9.32 provides:
 - 9.32 At a hearing conducted pursuant to a referral under clause 9.31(b), the Disciplinary and Ethics Committee:
 - (a) must make a Determination as to whether an additional sanction over and above the Mandatory Match Suspension is warranted;
 - (b) whilst limited to determining the question of any additional sanction, may have regard to, but is not bound by the Range at the Table of Offences;
 - (c) ...
11. It is open to the Committee to upgrade or downgrade the offence; albeit not to eliminate the Mandatory Match Suspension.

C. THE HEARING

12. On the evening of Monday 28.11.2016 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 determined to reserve its decision. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 20.3(c)).
13. At the hearing, Disciplinary Counsel was Mr Ivan Griscti and Mr Amor was represented by Ante Kovacevic a senior well regarded official with the club. The assistant coach, Jacobo Ramallo, acted as an interpreter.
14. The evidence at the hearing comprised some video footage, the Disciplinary Notice, reports of the match officials and evidence from Mr Amor, Ante Kovacevic and Jacobo Ramallo.

D. FACTS

15. The Committee had the benefit of viewing some footage, but it is of limited assistance given that the incident itself was not recorded. The footage only shows what took place after the incident.
16. The actual match card was not produced which may have recorded the offence for which the referee sent Mr Amor from the technical area. This is of no particular significance because there were incident reports.
17. The incident report of Jarred Gillett (Referee) dated 18.11.201 states:

In the 68th minute of the match, Perth Glory had scored a goal and were returning to half-way for the restart of play. Before I restarted play, the 4th Official (Adam Fielding) communicated to me that after the goal, Guillermo Amor had left the technical area and physically pushed him in the back, protesting the decision to award Perth Glory a goal. After receiving this information, I then went to Guillermo Amor and dismissed him from the technical area and its immediate surrounds for this behaviour. Amor continued to protest and show dissent towards me verbally and waving his finger at me for approximately 20s after I had instructed him to leave the technical area. Once Amor had left the technical area and it's immediate surrounds, I restarted play with a kick-off to Adelaide United.

18. The incident report of Adam Fielding (4th Official) dated 18.11.2016 states:

In approximately 68th minute of the game the above named manager of Adelaide United left the technical area and remonstrated a decision made during the game by pushing me in the back.

The incident occurred during a stoppage in play and was approximately 10 yards away from the Adelaide technical area. The above named manager used both hands/arms and the contact occurred from behind.

This information was passed onto the match referee who correctly dismissed the manager from the technical area.

Please note, the above named manager did not leave the technical area straight away and delayed the restart of the match.

19. There is a further document signed by Adam Fielding dated 21.11.2016.

- (1) It opens by recording:

Due to the lack of available footage regarding the incident, the Fourth Official (Adam Fielding) stepped through the incident which was alleged to occur with Guillermo Amor. Mr Fielding provided the further information:

- (2) It continues with what apparently Mr Fielding said as follows:

When Perth Glory scored in or around the 68th minute, I walked about 10 yards away from the technical area towards the Perth Glory goal scoring end. I was focused on communications with the Referee regarding the goal which was scored.

I could hear someone coming towards me and felt two hands shove me in the back. The feeling of the contact was not a tap, but it also was not enough force to push me over. It was a remonstrating push. Then Mr Amor came around beside me and waved his finger. I asked him go back to the technical area and tried to calm the situation down. I then asked the Referee to come and remove Mr Amor for inappropriate conduct in the technical area.

The action was of the type of force that was not sufficient to push me over but was sufficient to make me take a step forward.

20. Mr Guillermo Amor provided a statement (undated) as follows:

The following statement from Guillermo Amor is a brief description of the send-off incident in Perth. The statement is not complete due to Guillermo's limited English, and he would be more comfortable articulating his version of events at the hearing with the aid of an interpreter:

"In the moment the referee allowed the goal, in which we believe it was a clear foul on our goalkeeper, I approached the 4th official with the intention to seek clarification on the decision.

I didn't have any intention, in any moment, to push the 4th official, maybe the contact I made on him was a touch seeking to have his attention.

I tried to communicate verbally, but the 4th official was facing towards the other side and was very noisy at the moment. Any gesture I made it was in order to compensate my lack of vocabulary in English."

21. There was then considerable oral evidence from Mr Amor largely provided through the interpreter. The following summarises his evidence:

- (1) He commenced playing football at a young age.
- (2) He played at the highest level of professional football in Europe and retired at the age of 35.
- (3) During his playing career he could not recall any specific direct red cards but accepted that he probably had received some direct red cards during his long career. At no stage were any such red cards for making contact with a referee or other match official.
- (4) After retiring from football he has been involved in coaching and some administration roles. He worked for some years for the Barcelona FC Academy which involved providing guidance and coaching to junior coaches within that system. It has always been important to him to show respect for the referee and officials. He made sure that he instils that attitude in young players. In his opinion it is important for the right attitude to be demonstrated from the top down by coaches.
- (5) He has never been sent from the technical area before in his position as a Team Official.
- (6) He realised that the referee was expelling him and believed it was for his conduct in approaching the 4th official and something that he assumed the 4th official must have misunderstood him to have said.

22. The Committee accepts all the above.

23. Further, Mr Amor did dissent from the decision and his conduct in leaving the technical area and demonstrating dissent in the way he did would be sufficient to justify the expulsion by the referee. That of itself would have led to a mandatory one match suspension. He says he did not think he had been expelled for violent conduct or contact with the 4th official and was surprised to find that was the reason rather than what he had believed, namely leaving the technical area and expressing dissent. In the circumstances the Committee accepts that evidence largely because it was corroborated by Ante Kovacevic whose evidence the Committee accepts without hesitation.

24. The Committee also finds that at no stage did Mr Amor *intend* to physically interfere with the 4th official by pushing him.
25. Mr Amor remembers the incident but he has no specific recollection of precisely how he made contact. His reason is that he did not do anything untoward and has no reason to remember anything untoward. The Committee does not make a finding one way or another as to this matter but does find that he did not intend any violence and did not intend to push the 4th official. Indeed there is no basis to dispute his statement of intention and this was not put in issue by Disciplinary Counsel.
26. Mr Amor made it very clear that his later conduct which can be seen from the video is less than what he regards as acceptable and he was and is disappointed with himself. He seemed to say that everyone will have seen that conduct which is bad enough but he does not want to be thought of as a person who would push a match official. He went on to say, in effect, that because his conduct was poor in any event, he will accept whatever finding the Committee makes without an appeal.
27. Ante Kovacevic made a statement during the hearing that Mr Amor has an excellent reputation at the club and if he pushed the 4th official it would come as a great surprise as it would be completely out of character.
28. Jacobo Ramallo made a statement during the hearing that Mr Amor has been a role model for him in taking a calm and measured match day approach, in his dealings with players and officials alike, and he cannot get his mind to accept that Mr Amor would have ever intentionally pushed a match official.
29. In relation to the statements of Ante Kovacevic and Jacobo Ramallo the Committee accepts that they were completely truthful. That goes in favour of Mr Amor's integrity and reliability but those statements cannot themselves prove that there was no push.
30. It is not surprising that there is no evidence which corroborates the 4th official. The absence of any corroborating evidence whilst understandable does present a problem when there is no video footage of the incident.
31. All three people from the club gave evidence to the effect that none of the players, reserves, or other people on the bench saw the incident. The absence of anyone from the club to corroborate Mr Amor's version is initially surprising. It might be thought that somebody would have been watching the head coach in such a situation. However there is an explanation which is that the on ground replay was showing the goal at the very time when the incident occurred. From the perspective of Adelaide United there had been what they might have thought was a foul on the goalkeeper which led to the ball being knocked free to the striker who scored the goal. Therefore all their eyes would be on the replay to see whether their concern was vindicated. Once it was apparent that the on-ground replay would show the lead up to the goal it is easy to accept that all eyes would have been on the large screen. In these circumstances the Committee accepts that the absence of any corroboration of Mr Amor's evidence has been explained.

E. SUBMISSIONS

32. The matters submitted by Disciplinary Counsel included:

- (1) The incident reports by the 4th official are prima facie evidence of their contents: see clause 19.2.
 - (2) The version of the 4th official should be accepted because Mr Amor was emotional and could not specifically recall the incident.
 - (3) In that situation the contact could well have been a push and therefore the version of the 4th official should be acted upon.
 - (4) If the version of the 4th official is accepted the appropriate sanction is an additional 3 matches. That submission takes into account all the potentially favourable matters arising from the relevantly unblemished prior career of Mr Amor.
33. The matters submitted on behalf of Mr Amor included:
- (1) There is no corroborating footage.
 - (2) Mr Amor has an outstanding reputation. It is inconceivable that he would push a match official.
 - (3) Mr Amor's version should be accepted.
 - (4) It is unfortunate that questions were not able to be asked the 4th official. It was not indicated that it would be suggested the 4th official was lying; however he would have been asked if he could be mistaken as to the amount of force and whether Mr Amor's version was correct. Jacobo Ramallo said that the 4th Official may well have felt under pressure at the time given the controversy surrounding the goal, and it may be that the same kind of questions that had been put to Mr Amor would have been put to the 4th official and then the Committee would have at least heard both sides.
 - (5) On Mr Amor's version, there should not be three further matches or indeed any further sanction.
34. Whilst not expressly conceded, it was more or less accepted that if we rejected Mr Amor's version and found that there was a push, a more significant sanction than the one match already served was appropriate and that 3 extra matches was not out of order.
35. No party submitted that a fine should be involved and the effect of the submissions was that it was agreed that fines are not an appropriate sanction because they operate differently depending upon the financial situation of the person and whether someone else ends up paying it. The Committee is opposed to fines.

F. CONSIDERATION AND FINDINGS

36. This is yet another occasion where the Committee has to deal with contact against a match official. The first was the decision involving Daniel Vukovic in 2008. The most recent involved Dane Milovanovic in October 2015. It is not necessary to refer in detail to those decisions. They are available on the FFA website. All of the previous cases before the Committee involving intentional contact with a match official have involved players not Team Officials. Whilst the Committee has dealt with Team Officials before, and indeed conduct of Team Officials directed against a match official, the Committee has not previously had before it a case where there is alleged to have been intentional contact between a Team Official and a match

official. On one view equivalent conduct is more serious if it comes from a Team Official.

37. *If* the Committee were to find that there had been a push in the back by a Team Official against a referee or other match official, the sanction that would be imposed would be severe. As Mr Amor put it, good conduct starts from the top. Whatever might be the position of the players, the standard of behaviour from Team Officials must be higher and they must be more accountable.
38. Indeed had there been an intentional push in the back and that was the finding of the Committee, it would be likely that the Committee would consider upgrading the charge to one of assault starting with a 6 month sanction as indicated by row 11 of the Table.
39. This particular case is unusual for several reasons and in particular because the Committee has had to deal with a disputed fact involving the evidence of a witness present at the hearing on one hand, against an untested written version on the other hand.
40. The potential need for the reports of referees and other match officials to be verified by oral evidence often does not arise. Very frequently there is video footage. Even where there is not relevant video footage, very often there is some corroboration from some other person whether it be another match official or some other witness. On other occasions the referee's version is not a matter of contest.
41. In this case, there was no corroboration. The 4th official was not made available which meant that the Committee was unable to ask questions, Disciplinary Counsel was unable to ask questions, and most significantly the person who was charged with an offence was unable to have questions asked. While it may have been expected that the 4th official would have stood by the statements made by him in relation to the incident, there was we believe a prejudice to Mr Amor in not being able to test that version of events, in the way that his version was tested at the hearing.
42. A difficulty in the present case was that on one view, Mr Amor's challenge to the 4th official's version did not fully emerge until Mr Amor gave his oral evidence, by which time it was too late to arrange for the 4th official to be available. This is however not an unusual occurrence, and in this case it was clear from the document provided by Mr Amor that there was to be an expansion of his evidence orally – he had remained in Sydney to attend the hearing in person with the aid of a translator. Special situations like this commend a course where the referee or relevant match official in such circumstances is made available on stand-by to give evidence, at least by telephone, if the Committee gives leave during the hearing in a particular case. We note that in a significant case cited by Disciplinary Counsel, the matter of *FA v Ince*, several match officials were available and cross examined **at the disciplinary hearing**.
43. The Committee therefore has to weigh on the one hand the evidence of Mr Amor given in person at the hearing against the untested written statements of the 4th official. The Committee hastens to point out that this situation was not brought about by the 4th official, and no criticism can be made of him.

44. In other cases the Committee has noted the significance of the allegations made and the observations of the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 366.
45. The Appeal Committee in the matter of *Fabiano* (26.09.2008) made relevant observations about the potential need for a referee to be made available for cross examination. At paragraph 16 the Appeal Committee said:

Although the referee's report contained representations of fact adverse to the Appellant, no application was made by the Appellant, who was legally represented before the Disciplinary Committee, to seek to cross-examine the referee on the contents of the referee's report before the Disciplinary Committee. We are satisfied that such an application could have been made by the Appellant and that, had it been made, it would have been given serious consideration by the Disciplinary Committee having regard to the obligation under Rule 19.1 of the Regulations to conduct the hearing in accordance with the principles of natural justice. Since the Regulations provide that the statements made in the referee's report are prima facie evidence of the fact, it seems to us that a strong case can be made for the proposition that natural justice requires that a player be given the right to cross-examine the referee if the player is wishing to assert that the facts contained in the referee's report are incorrect. Moreover, procedural fairness or natural justice also has to be seen from the referee's position. It is unfair to the referee to permit a player to attack findings or views expressed in the referee's report without giving the referee the opportunity of explaining such statements at the hearing.

46. In the end the Committee finds that the FFA has not proved to its comfortable satisfaction that Mr Amor did push the 4th official, particularly in circumstances where that is disputed by him and the competing evidence was unable to be tested. The Committee emphasises that it is the absence of any corroborating evidence that makes this case significant. This is one of the perhaps rare cases where the fact the 4th official was not available, at least by telephone, has made a difference.
47. In all the circumstances identified above the Committee is not satisfied that there was a two handed push in the back.
48. Nevertheless, the evidence of Mr Amor himself shows that he is not without blame, and he recognised as such during the hearing. The undisputed evidence is that:
- (1) Mr Amor left the technical area in order to remonstrate with the 4th official.
 - (2) Mr Amor did make contact with the 4th official.
 - (3) Mr Amor at least used one hand and was unable to dispute that he might have used two hands in order to gain the attention of the 4th official.
 - (4) Intentional contact was made with the 4th official being contact that was inappropriate and beyond what may have been necessary (assuming it was necessary which may be doubted) to gain the attention of the 4th official.
49. The conduct of Mr Amor was unsporting conduct. How far he went beyond what we have found above is unclear. Nevertheless what we have found is sufficient to conclude that there should be a sanction of one additional match over the Mandatory Match Suspension. In arriving at this decision the Committee has had regard to Mr Amor's good reputation and exemplary conduct generally, and the very positive endorsement that he received from Mr Kovacevic and Mr Ramallo.

The Committee takes into account the favourable manner in which he conducted himself during the previous A-League season.

50. However the Committee considers that a suspended sanction is also warranted. The effect of the above is to give Mr Amor the benefit of the doubt. Part of the basis of him gaining that benefit is the assertion that he is able to control himself and would not have pushed the 4th official. If that is correct a suspended sanction will prove no hardship to him. On the other hand, if he was in fact undeserving of the benefit, the suspended sanction will operate in the event he transgresses again in any way.
51. The Committee wishes to add that nothing in this decision should be taken to detract from the zero tolerance policy concerning contact with referees and other match officials, or to detract from the prima facie acceptance of the statements of match officials. The reason there has not been a more severe sanction is because the evidence here does not allow of a finding that there was a push in the back. From the perspective of the 4th official, this should not be treated as a rejection of his evidence. If he had been available by telephone, adhered to his written statement and dealt in a convincing way with any challenges made to it, it is highly likely that his evidence would have been accepted and the sanction against Mr Amor would have been different.

G. RESULT

52. The sanctions we impose are:
- (1) One match over and above the Mandatory Match Suspension.
 - (2) A suspended Sanction of two additional matches. The trigger for the suspension will be any expulsion of Mr Amor for any reason if the expulsion occurs in any competition before the end of fulltime of the next A-League Grand Final.

John Marshall

J E Marshall SC
Disciplinary and Ethics Committee Chair
Tuesday 29.11.2016