

## DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

### DETERMINATION IN THE FOLLOWING MATTER:

<b>Official and club</b>	Ricki HERBERT (Head Coach, Wellington Phoenix)
<b>Alleged offence</b>	Use of offensive, insulting or abusive language and/or gestures against a match official. This offence extends to Team Officials under clause 7.1 of the Disciplinary Regulations; Appendix A row 9 of the table of offences.
<b>Date of alleged offence</b>	05/12/2010 - Week 17
<b>Occasion of alleged offence</b>	Wellington Phoenix FC v Adelaide United FC
<b>Date of Disciplinary Notice</b>	Tuesday, 7 December 2010
<b>Basis the matter is before the Disciplinary Committee</b>	A referral: see clause 3.3(a) and 10.2(b)
<b>Date of Hearing</b>	Wednesday 8 December 2010
<b>Date of Determination</b>	Wednesday 8 December 2010
<b>Disciplinary Committee Members</b>	John Marshall SC, Chair Peter Speed Anthony Lo Surdo

#### A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of 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 clause 10.2(b) of the Disciplinary Regulations. In the case of a referral under clause 10.2(b) the person concerned (here a Head Coach) will have been given the equivalent of a direct red card by the referee. In this case the Head Coach was expelled from the technical area. The consequence is that the person concerned 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.
3. Further, in the case of a referral under clause 10.2(b) the MRP also will have formed the view that, on the material available to the MRP, an additional sanction over and above the Mandatory Match Suspension was warranted and the person concerned will have elected not to accept the proposed additional sanction. That is what has happened here.

4. At the conclusion of the 2009-2010 A-League season the Disciplinary Regulations were amended and it is abundantly clear that for the 2010-2011 A-League season the function of the Committee this season is solely to 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.
5. On this occasion the MRP has proposed an additional sanction (over and above the Mandatory Match Suspension) of two matches.

#### **B. THE HEARING**

6. On the evening of Wednesday 8 December 2010 the Committee heard the referral of the above matter so as to decide the additional sanction to be imposed on the player for the offence stated above. 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 David McLure and the player was represented by Nathan Greenham.

#### **C. FACTS**

8. In around the 90+2 minute of the game, Wellington Coach Ricki Herbert was sent from the technical area for conduct directed at the referee.
9. The FIFA Laws of the Game provide that each match is to be controlled by the referee who has full authority to enforce the laws of the game (p21). The referee has full power to take action against team officials who fail to conduct themselves in a responsible manner and may at the discretion of the referee, expel a team official from the surrounding area and in particular the technical area (p22).
10. Further, the Laws of the Game provide that the use of offensive, insulting or abusive language and/or gestures is a sending-off offence in respect of a player and that conduct, if engaged in by a team official, can result in the expulsion of the team official (p35).
11. Here the referee exercised his authority in circumstances where he determined there was the use of offensive insulting or abusive, language and/or gestures directed at him.
12. In the Disciplinary Regulations conduct of that kind is referred to in clause 6.2 as R6 and appears in the Table in row 9. The minimum sanction is the Mandatory Match Suspension.

#### **D. SUBMISSIONS**

13. At the outset of the hearing, Mr Greenham on behalf of Mr Herbert applied for an adjournment so that Mr Herbert would be available to give evidence to the effect that he did not say the words attributed to him by the referee.

14. On that application the Chairman explained to Mr Greenham the view that the Committee has which is that it would be futile to grant such an adjournment (our reasons will appear below).
15. Mr Greenham did not accept that view and pressed his application. That was denied.
16. The Chairman then suggested that Mr Greenham may wish to take into consideration that submissions could still be made as to Mr Herbert's good reputation and other matters that might be relevant to reducing or suspending part of any additional sanction.
17. Mr Greenham after a short adjournment indicated no further submissions were to be made and that legal advice would be taken. The Chairman then pressed Mr Greenham to consider whether he would nevertheless wish to make some submissions on the footing and on the express understanding that by doing so Mr Herbert would not be accepting that he said the words used.
18. There was then another short adjournment after which Mr Greenham made submissions to the following effect:
  - (1) For 21 years Mr Herbert has had an unblemished record, domestically and internationally, and has never been sent from the Technical Area.
  - (2) Prior to his coaching career he played 84 games for his country and even captained his country on several occasions.
  - (3) Mr Herbert was integral in securing an A-League licence for Wellington. He has been involved with the Wellington Phoenix to the success of that club, to the credit of New Zealand football and to the overall benefit of the A-League.
  - (4) As the national team coach he was integrally involved in the success of the New Zealand team in qualifying and whilst in South Africa performing without defeat. Throughout his performance as a coach was of the highest quality technically and his manner and demeanour was such that he brought credit on football managers generally, New Zealand football in particular and obviously himself.
19. Mr Greenham emphasised that Mr Herbert's work in securing the A-League licence for the Wellington Phoenix in New Zealand has meant Mr Herbert has played an integral part in bringing the A-League to New Zealand.
20. The matters submitted by Disciplinary Counsel included:
  - (1) There is no scope for the Committee to consider, in the circumstances of this case, whether or not the words upon which the referee based his decision to eject Mr Herbert were said or not. It is not as if it was a case of the severity of a push where the push could not be disputed. It was a case where the essential fact constituting the offence for which there is no appeal is the saying of the words.
  - (2) As to sanction, there was precedent where an MRP in 2008 had given a total of only two matches to a player who used words very similar to those the subject of this case.
  - (3) It would be open to the committee to suspend part of any additional sanction provided the requirements of clause 12.3 and 12.4 were met.

**E. CONSIDERATION AND FINDINGS**

21. Whether or not the referee correctly heard what was said, or correctly interpreted what was said, and indeed whether or not Mr Herbert used the particular words is not open to be determined by the Committee in this hearing.
22. In our view there is a *res judicata* on the offence itself. Further there is an issue estoppel on the essential facts constituting that offence. Given the only essential fact is the speaking of the words, it is not open to Mr Herbert to assert in this hearing that those words were not said.
23. We view this as a direct consequence of the amendments to the Regulations at the end of the 2009/2010 season. Indeed given the amendments it would be curious if we could find that the words were not said and then reduce part of the sanction. It would mean that there would be two inconsistent findings: one of the referee upheld on appeal by the MRP (that the words were said) and one by the Committee that the words were not said. That could not happen in a court of law. It cannot happen here in our view given the words of the Regulations.
24. What that means is that Mr Herbert maintains his vigorous denial of having ever used the words in question yet Mr Herbert is unable to argue his case in the Committee. That is a function of the procedure whereby the appeal from a decision of the referee is limited to an obvious red card error.
25. Notwithstanding Mr Herbert's denial we wish to point out that we make no finding one way or the other as to whether the words were said, as it is not our function to make any finding on that topic.
26. What we do propose to do is take into most serious consideration the matters referred to by Mr Greenham on the topic of Mr Herbert's exemplary record. Whilst everyone comes before the Committee with prima facie with a good reputation, we cannot help but be impressed by Mr Herbert's long-standing service to the game at a high level and apparently without any blemish.
27. To the observation of the Committee (which we believe we are entitled to have regard to) Mr Herbert deported himself throughout the recent World Cup to the great credit of football in New Zealand and Australia.
28. In all the circumstances we are of the view that there should be only one additional match over and above the Mandatory Match. Our reason is that an offence of this kind by a coach is a serious matter.
29. Having said that, all the above matters relating to Mr Herbert's fine service in football, the fact that he immediately left the area upon realising that the referee had ejected him and the fact that whatever was said could not have been said so loudly as to carry further than the referee, lead us to the conclusion that the third match proposed by the MRP should be expunged and that the second match we propose (i.e. one additional match) should be suspended under clause 12.3(b). The suspended match will bite if Mr Herbert in the next 6 months is found to have committed an offence as a Team Official of using offensive, insulting or abusive language and/or gestures.
30. We do wish to emphasise that the Committee believes prompt, on-field acceptance of the decision of a referee is extremely important in football. While Mr Herbert did return to the technical area we accept without question that he only did so

because he had at that stage not realised he had been expelled. It is to the credit of Mr Herbert that although he hotly denies using the words, once he appreciated that the referee had expelled him he accepted that he must leave the technical area and did so.

**F. RESULT**

(1) Sanction to be imposed

31. The sanction we impose is 1 match over and above the Mandatory Match Suspension.

(2) Suspension and probationary period

32. The extra match is to be suspended on the terms we have indicated above.

(3) Other matters

33. Whilst the suspension operates the Regulations provide for the effect of the suspension in clause 13.2. Disciplinary Counsel says that the orders should include reference to this. We believe this is not necessary, but as we have been asked we do so anyway.

*John Marshall*

J E Marshall SC, Disciplinary Committee Chair  
Wednesday 8 December 2010