

## DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

### DETERMINATION IN THE FOLLOWING MATTER:

<b>Player and club</b>	Kevin Muscat, Melbourne Victory FC
<b>Alleged offence</b>	Item R1 of clause 6.2 of the Disciplinary Regulations (serious foul play)
<b>Date of alleged offence</b>	29 January 2010
<b>Occasion of alleged offence</b>	Match between Melbourne Victory FC and Gold Coast United FC
<b>Date of Disciplinary Notice</b>	1 February 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 3 February 2010
<b>Date of Determination</b>	Wednesday 3 February 2010
<b>Disciplinary Committee Members</b>	John Marshall SC, Chair Milan Blagojevic 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 2009-2010 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 relation to the matter described in the table above.
3. The Match Review Panel ("**MRP**") issued a notice which stated:

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

1. the MRP has reviewed the A-League Match between the Club and Gold Coast United FC on Friday, 29 January 2010 (*Match*);
2. the MRP has identified the following incident: in or about the 39<sup>th</sup> minute of the Match, the Player struck an opponent, Jason Culina, with his elbow (*Incident*);
3. the MRP alleges the Incident is a Red Card Offence, namely "Serious Foul Play (e.g. when challenging for the ball)";
4. the Mandatory Match Suspension for the Offence, if proven, is one (1) A-League Match. The MRP proposes an additional sanction of one (1) A-League Match. The total proposed sanction is two (2) A-League Matches;
5. the minimum sanction for the Offence under the Regulations is one (1) A-League Match.

*Player Options*

6. You may either:
    - (a) accept the sanction proposed at paragraph 4; or
    - (b) refer the matter to the Disciplinary Committee for determination on
      - (i) the alleged Offence; and
      - (ii) the sanction to be imposed.
  7. You must notify FFA of your election under paragraph 6(a) or 6(b) by forwarding the enclosed Election Form to FFA by 12.00pm (your time) Tuesday 2 February 2010.
  8. If FFA does not receive the properly completed Election Form by the time specified in paragraph 7, you are deemed to have accepted the proposed sanction.
4. Mr Muscat ("**the Player**") has not accepted the MRP's notice and disputes the offence and the proposed sanction.

**B. THE HEARING**

5. On the evening of Wednesday 3 February 2010 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)).
6. At the hearing, Disciplinary Counsel was Mr I Griscti and the Player was represented by Mr T Walsh together with Mr G Cole and the Player himself.

**C. FACTS**

7. We have had the benefit of seeing Fox Sports footage of the incident from several different angles. That footage became an unnumbered exhibit.
8. For the FFA there were numbered documentary exhibits (1, 2A, 2B, 3 & 4) and for the Player there was the report of an expert, various photos and his statement and oral evidence.
9. In around the 39th minute of the game an incident occurred between player Muscat and opposing player Jason Culina. The incident was not observed by the referee or other match officials.

10. The still frames below from the footage show the contact:



11. The Player accepts there was contact; however he says it was with the back of his left triceps not his elbow.

**D. SUBMISSIONS**

12. The factors submitted by the FFA included:

- (1) The Player intentionally swung his left arm back so as to make contact with Jason Culina.
  - (2) The action was intentional and satisfied the requirements for a red card.
13. The factors submitted on behalf of the Player included:
- (1) The Player did intend to swing his left arm back but says he did so in conjunction with moving his right arm back so as to maintain balance and/or shrug off Jason Culina.
  - (2) Whilst he accepts that he did make contact with Jason Culina it was not his intention to do so.
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.
15. Reference was made to the factors which appear in clause 11.2 of the Disciplinary Regulations, although that clause was not specifically referred to.

#### **E. CONSIDERATION**

16. We find that the Player moved his left arm back extremely quickly and intentionally. We reject that the purpose of doing so was to maintain balance or to shrug off Jason Culina.
17. We find that the action was subtle and hopefully (from the point of view of player Muscat) one that would be unobserved but nonetheless one designed to strike the opposing player.
18. It was suggested that the expert report concluded the matter in favour of the Player but we do not accept that submission. In fact the first paragraph of the expert report contains a proposition of fact which we do not agree with nor do we agree with the conclusions reached.
19. A player as experienced as Kevin Muscat would be well aware that Jason Culina would probably attempt to (as in fact he did) move past Muscat's left. In this situation we find that Muscat expected Culina to be where he in fact was when contact was made.
20. The next aspect is the appropriate sanction.
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 and the only reason that the elbow may not have been the point of contact is because Jason Culina moved in so close.
22. No submission was made by the FFA that the two match suspension proposed by the MRP was not adequate. In the view of the majority of the Committee the appropriate sanction was two matches. One of the members was of the view that a longer sanction could well be appropriate. In the absence of any submission by the FFA that anything more than two matches was appropriate we are unanimous in reaching the conclusion that the sanction should be two matches.

**F. RESULT**

(1) Finding as to offence

23. We find the offence has been established.

(2) Sanction to be imposed

24. The sanction we impose is a total of two matches, ie one matche over and above the Mandatory Match Suspension under row 3 of the table of offences.

(3) Suspension and probationary period

25. Under clause 12.2 it is open to us to suspend part of the sanction. We are of the view that it is not appropriate to suspend any part of this sanction.

*John Marshall*

J E Marshall SC, Disciplinary Committee Chair  
Wednesday 3 February 2010