

DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

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| Player and club | Sebastiaan Van Den Brink, Gold Coast United FC |
| Alleged offence | Item R6 of clause 6.2 of the Disciplinary Regulations (using offensive, insulting or abusive language and/or gestures) and row 10 of the table of offences (unsporting conduct toward a match official) |
| Date of alleged offence | 20 November 2009 |
| Occasion of alleged offence | Match between Adelaide United FC and Gold Coast United FC |
| Date of Disciplinary Notice | 23 November 2009 |
| Basis the matter is before the Disciplinary Committee | A referral: see clause 3.3(a) and 10.2(b) |
| Date of Hearing | Wednesday 25 November 2009 |
| Date of Determination | Thursday, 26 November 2009 |
| Disciplinary Committee Members | John Marshall SC, Chair Ante Juric 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 Adelaide United FC and Gold Coast United FC on Friday 20 November 2009 (*Match*);
2. the MRP has identified the following incident: in or about the 33rd minute of the Match, the Player made contact with the Referee (*Incident*);

3. the MRP alleges that the Incident is an offence, namely "Unsporting conduct toward a match official" (the **Offence**);
 4. in accordance with the Table of Offences set out in the Regulations, the minimum sanction for the Offence, if proven, is four (4) A-League Matches (consisting of a Mandatory Match Suspension of one (1) A-League Match and an additional three (3) A-League Matches).
 5. the MRP has proposed a sanction of four (4) A-League Matches.
4. Mr Van Den Brink ("**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 25 November 2009 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 David McLure and the Player was represented by Mr Clive Palmer together with Mr Clive Mensink 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. For the FFA there were 5 numbered documentary exhibits and for the Player there was his statutory declaration and his oral evidence.
8. In around the 33rd minute of the game the referee sent off a Gold Coast player. In the aftermath, Mr Van Den Brink made contact with the referee. The Player said in his oral evidence he knew a red card had been given (to his team mate) and he did not agree with the decision. In his statutory declaration (paragraph 4) he says "at the time I thought the decision was unfair and approached the referee to express my disappointment".
9. It is apparent he wanted to say something to the referee and the video footage shows that he did.
10. In approaching the referee, the footage shows that the player shown the red card was remonstrating, the goal keeper was remonstrating and other players were on their way. The Player approached the referee from behind. He approached so close that he placed his right hand in the vicinity of the left kidney of the referee and placed his left hand under the left armpit of the referee. Both hands touch the referee and we find that was intentional.

11. The still frame below from the footage shows the contact:



12. The Player can then be seen to be moving under and around the left arm of the referee as shown in the still below:



13. It is apparent the Player has moved extremely close to the referee.
14. The Player says he intended no malice. We accept that.
15. The contact made by the Player was before he said anything to the referee.

D. SUBMISSIONS

16. The factors submitted by the FFA included:
 - (1) The contact made by the Player was not a mere accident and was not in self defence.
 - (2) The referee is charged with conducting and controlling the game and in circumstances as seen in the footage, it is offensive and insulting to approach the referee so close that it is necessary to put two hands on the referee in the course of expressing disappointment in the decision to send off the other player.
 - (3) Such conduct falls within clause 6.2, item R6 of the Disciplinary Regulations and that the conduct is capable of being characterised as being unsporting within row 10 of the table of offences in the Disciplinary Regulations.
 - (4) Further the conduct at least falls within row 9 of the table of offences.
17. The factors submitted on behalf of the Player included:
 - (1) There is no jurisdiction as the matter did not escape the referee's attention for the purposes of clause 9.16.
 - (2) An objective viewing of the incident does not disclose any sign that the referee felt offended or insulted and no person viewing it would regard the conduct as offensive, insulting or abusive.
 - (3) Contact with a referee does occur each week in the A League and an example can be seen in a match in round 11.
 - (4) Before viewing the footage, Mr Palmer submitted the conduct was in self defence but that submission was not repeated after he had viewed the footage although he did say it had to be viewed in normal speed when assessing the situation.
18. No submission has been made by Disciplinary Counsel or the player that there are Exceptional Circumstances within clause 11.3 of the Disciplinary Regulations.
19. 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

20. In relation to jurisdiction, we find that the matter did relevantly escape the referee's attention in the circumstances where there were several players around the referee and the Player approached the referee from behind. The referee has said that he "could not recall the nature of the contact".
21. We reject the submission that the contact was in self defence. We find the contact was intentional.
22. In our view it is inappropriate for a player to make intentional contact with a referee. In this regard Mr Palmer submitted that in his own view to make contact with a referee "was a bad habit" and that whilst it did happen "it should not be there". Mr Palmer submitted that there should be a specific rule dealing with contact with a referee, but in the absence of such a rule the existing rule dealing

with offensive behaviour was not wide enough to capture the sort of conduct disclosed in the video footage.

23. We agree that contact with a referee should not occur and that it may well be preferable if there was a specific rule so stating in terms.
24. As there is no such specific rule, the question which arises is whether the laws of the game that place the control of any match in the hands of the referee (see law 5) encompass a prohibition on intentional contact with the referee. There may well be questions of degree but in our view any intentional touching of the referee is unnecessary and fraught with danger. There may be situations where it does not constitute offensive or insulting conduct, such as handshakes before or after a game and there may be other situations which will not be adjudged offensive or insulting. Wherever the precise boundary lies, in our view it is offensive and insulting to walk up to a referee after a red card has been issued with the intention of disagreeing and voicing disappointment and with the precursor being to place two hands on the referee for a reason associated with and part of the approach to the referee. That is what we find happened here.
25. If players make intentional contact with a referee they do so at their peril. Any intentional contact by a player with a referee during a game has the potential to undermine the authority of the referee and his/her control of the game. It can suggest that a player has some degree of authority or control over a referee or is attempting to assert some form of authority or control. Intentional contact with a referee is disrespectful. It is unnecessary and inappropriate. Even what may be intended as a friendly hug by senior players implies familiarity with the neutral referee which is, or at least has the potential to be, offensive from the perspective of the game and the spectators of the opposing team and that may be the case even if the individual referee is not actually offended.
26. This Committee hopes that this determination will set a clear precedent against intentional contact with a referee and that such conduct will be henceforth stamped out.
27. In our view it matters not that some referees have in the past taken no action when touched by players. In our view referees should not countenance intentional contact by a player with a referee during a game and should deal with such a situation with a red card.
28. Mr Palmer points out that intentional contact by a player with a referee during a game has occurred in other A-League games and he is right. In our view it simply should not occur. Why referees have not consistently acted with a red card is not clear. If it is out of concern that such contact is so frequent that too many players will be sent off then it is certainly time to act to reverse such a trend.
29. It was pointed out by Mr Palmer that other contact with referees this season has gone unpunished and that indeed more serious situations have occurred. Again that is true. In this regard it is perhaps unfortunate for Mr Van Den Brink that his action, which is at the low end of the spectrum, is the first to come before the Committee this season. However it is Mr Van Den Brink's conduct that has come before this Committee and not those other situations. Whilst on the topic it must be borne in mind that inaction by a referee or the MRP in other cases does not give rise to a defence for the Player here. As was noted during the hearing the conduct of the Gold Coast keeper at the same time appears from the video footage

to be worse than that of Mr Van Den Brink. The keeper appears to have held the arm of the referee and attempted (to some degree) to prevent him raising the red card. That plainly did not escape the referee's attention and hence the MRP (and indirectly this Committee) are powerless to deal with it. Mr Palmer frankly accepted the keeper was lucky. We can only speculate that having just sent off a player the referee was concerned not to reduce (in the one stanza) one team to 9 players and therefore did not show the keeper a red card.

30. In any event we find the conduct of the Player was offensive and insulting and falls within clause 6.2, item R6 of the Disciplinary Regulations. On that basis, we are satisfied the conduct falls within row 9 of the table of offences as an offensive and/or insulting gesture against a match official.
31. We were of the view that the matter may have come within row 10 of the table of offences, however in circumstances where the Player and the FFA agreed we had power to downgrade the charge¹, in all the circumstances we are of the view the preferable charge is the lesser charge in row 9. We proceed on that basis.
32. The next aspect is the appropriate sanction, which is dealt with below.

F. RESULT

(1) Finding as to offence

33. We find the offence has been established.

(2) Sanction to be imposed

34. The sanction we impose is a total of two matches, ie one match over and above the Mandatory Match Suspension under row 9 of the table of offences.

(3) Suspension and probationary period

35. Under clause 12.2 it is open to us to suspend part of the sanction. We are of the view to suspend the additional match and in doing so we have taken into consideration several matters on behalf of the Player including:

- (1) he has played for over 22 years and tells us he has never had a red card;
- (2) his action is at the low end of the spectrum; and
- (3) no malice or injury was intended to the referee.

36. The one suspended match is suspended for the probationary period which runs to the end of the 2009-2010 A-League season including any finals matches. The trigger for the suspension will be any offence involving a match official (whether it be a yellow card or red card offence).

John Marshall

J E Marshall SC, Disciplinary Committee Chair
Thursday, 26 November 2009

¹ It seems to us that if not explicit such a power is implicit in the Disciplinary Regulations and as the matter was not disputed we need not deal with it further.