

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

DETERMINATION OF THE COMMITTEE IN THE FOLLOWING MATTER:

Player and club	Besart Berisha of Melbourne Victory FC
Alleged offence	Unsporting conduct toward a match official
Date of alleged offence	20 October 2017
Occasion of alleged offence	Match between Adelaide United and Melbourne Victory
Date of Disciplinary Notice	23 October 2017
Basis the matter is before the Disciplinary Committee	A referral: see clause 9.41(c)
Date of Hearing	Thursday 26.10.2017
Date of Determination	30.10.2017
Disciplinary Committee Members	John Marshall SC, Chair Lachlan Gyles SC, Deputy Chair David Barrett

A. INTRODUCTION

1. This matter concerns an incident which occurred between a player and a match official where the player intentionally made contact with the match official. This is not the first case which involves intentional contact with a referee or other match official. Unfortunately it may not be the last. On the most recent occasion that such an offence came before the Committee our determination observed that the Committee has zero tolerance for intentional contact with a referee or other match official.
2. On a previous occasion the Committee made these observations:
 - (1) In 2009 when delivering the determination in the matter of Van Den Brink, the Committee made this observation:

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.
 - (2) The FFA has made these points several times now:
 - (a) Players who touch or seek to verbally or physically intimidate a match official should be issued a straight red card.
 - (b) Poor behaviour when broadcast live on television has the capacity to attract negative sentiment towards the game.

- (c) As the highest level of football in Australia/New Zealand, the Hyundai A-League must set the standard for all other grades and be an example for aspiring players.
- (3) The Committee is of the view that the message has been consistent and clear. It is well understood by the media. That was demonstrated by the live and subsequent commentary in relation to the particular incident that was then before the Committee, which perhaps was best summed up by one expert commentator: *it's quite simple really; you just can't do that.*
3. In this particular case the player made these statements of contrition which recognise that what he did was wrong:
- (1) *I genuinely respect the authority and integrity of all match officials. Until this week, I have never - in my entire playing career - including as a junior and internationally, been cited for making contact with a match official.*
- (2) *I have today personally apologised to the fourth official, and I apologise to the FFA and to the spectators for any offence which may have been taken to my actions.*
4. In short the Committee has found the offence proven and has imposed a sanction of a total of 4 matches with 2 of those suspended.
5. The case came before the Committee after the Match Review Panel (**MRP**), pursuant to clause 9.1(d) of the FFA A-League Disciplinary Regulations (the **Disciplinary Regulations**), issued Berisha with a disciplinary notice dated 23.10.2017 that asserted that there is a case to answer for why a Category 2 Offence should not be found to have been committed, being: Offence no. 10 (R6 for players) – *Unsporting conduct toward a match official (the **Offence**)*, regarding interaction and contact with the Fourth Official.
6. This Committee was convened to hear the matter and determine whether an offence had been committed by the Player and, if so, what sanction should be imposed.
7. The Minimum Sanction for the Offence under the Disciplinary Regulations is the Mandatory Match Suspension plus three (3) additional Hyundai A-League Matches.
- B. JURISDICTION**
8. Jurisdiction was accepted by Berisha; nevertheless the basis of jurisdiction is recorded below.

9. The Disciplinary Notice dated 23.10.2017, which led to this hearing is set out below:




DISCIPLINARY NOTICE

TO: (Player) Besart Berisha OF (Club) Melbourne Victory

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. The MRP has cited you in relation to an incident which took place while you were playing for your Club against Adelaide United (*ADU*) on Friday, 20 October 2017 in or around the 45th minute of the match. Specifically, an incident where you appear to interact and make contact with the Fourth Official (the *Incident*);
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. Pursuant to clause 9.1(d) of the Regulations, the MRP is entitled to determine whether a Citation Incident is a Category 1 or Category 2 Offence, as specified at "*Annexure A – 6. Table of Offences*". The MRP has determined that on the basis of the evidence reviewed, there is a case for you to answer as to why a Category 2 Offence should not be found to have been committed;
4. Pursuant to the categorisation of offences listed at "*Appendix A - 6. Table of Offences*", the Category 2 Offence stated by the MRP is Offence No.10 (R2 or R6 for Players) – *Unsporting conduct toward a match official (the Offence)*;
5. 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);
6. In accordance with clause 9.41 of the Regulations, the MRP refers this matter to the Disciplinary and Ethics Committee for hearing to determine whether the Offence has been committed and if so, what sanction should be imposed in accordance with these Regulations; and
7. The hearing before the Disciplinary and Ethics Committee is scheduled to be held at FFA's offices (Level 22, 1 Oxford Street, Darlinghurst, New South Wales) and further details will be confirmed as a matter of priority.

Signed: 
 For and on behalf of the Match Review Panel

Date: 23 October 2017

10. The Committee has jurisdiction under clause 4.3 of 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.

11. Clause 9.41 provides that if the MRP has determined that, on the basis of the evidence reviewed, there is a case for the Participant to answer that a Category 2 Offence has been committed, the MRP will issue to the Participant a Disciplinary Notice that:
 - (a) Notifies the Participant of the Citation Incident;
 - (b) Notifies that the MRP considers there is a case to answer that a Category 2 Offence has been committed;
 - (c) Refers the matter directly to the Committee for hearing as to whether an Offence has been committed, and if so, what sanction should be imposed.
12. Clause 9.42 provides that the hearing of the referral the Committee:
 - (a) must make a Determination as to whether an Offence has been committed and if so, what sanction should apply, applying the Range at the Table of Offences;
 - (b) must determine any sanction in accordance with and subject to clause 11 of these Regulations; and
 - (c) must provide written reasons for its Determination in accordance with clause 20.4.
13. It is open to the Committee to upgrade or downgrade the offence.
14. On this occasion Committee was asked to downgrade the offence but declined to do so.

C. THE HEARING

15. On the evening of Thursday 26.10.2017 the Committee heard the 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)).
16. At the hearing Disciplinary Counsel was Ivan Griscti and the Player was represented by Elliot Hyde, of counsel. The Player attended the hearing in Sydney in person. There were also senior representatives of his club present.
17. The evidence at the hearing comprised certain video footage provided by Fox Sports, the Disciplinary Notice and some other materials most of which are referred to below.

D. THE FACTS

18. Around the 45th minute there was an incident involving Berisha and an opposing player. Following that incident there was an interaction between Berisha and the Fourth Official at the end of which Berisha pushed the Fourth Official. It is that interaction which is the incident in question, although the whole of the conduct of Berisha is relevant.
19. The Fox Sports video footage clearly shows the incident. The Fourth Official was separating Berisha from the opposing player and the rest of the Adelaide team. Stills from the footage are shown below with observations as to those stills.



20. The above photo shows the initial contact by Berisha with the Adelaide player which led to the incident and ultimately Berisha receiving a yellow card. Following this the Adelaide player and Berisha started to square off and the Fourth Official moved in quickly, which can be seen in the next photo.



21. The photo below shows a 2nd Adelaide player seeking to get involved.



22. In the above 2 photos, Berisha's right hand can be seen to make contact with the Fourth Official. One interpretation is that he was instinctively reacting to having been pushed by the opposing player and was seeking to get the match official out of the way so that he could retaliate.
23. A different interpretation which is less adverse to Berisha is also open. The next photo shows that Berisha was pushed.



24. Berisha said that the reason he made contact was because he had been pushed and swung his arm out to maintain balance and that is why his right arm contacted the match official.
25. Even if the explanation if Berisha is correct, and it may well be, the point is the Fourth Official had intervened and Berisha stood his ground. Had he simply walked away after the Fourth Official intervened there would have been no occasion which resulted in initial contact by Berisha with the Fourth Official.
26. The next series of photos show the Fourth Official continuing to intervene and effectively escort Berisha away from the area of the initial incident. However, other Adelaide players sought to involve themselves.



27. The same point as shown in the photo above is seen from a different angle in the next photos.



28. Berisha did not react well to the other Adelaide player approaching him, which can be seen in the next photo.



29. Then more Adelaide players approach, which can be seen in the next photo. One might speculate as to why they approached. The reason is not relevant. The fact that they did approach is relevant and that they might do so had been anticipated by the Fourth Official. Berisha said that he has been "provoked in the past". Undoubtedly this was known to the Fourth Official.



30. What this shows is that the intervention of the Fourth Official was not merely appropriate, but necessary to prevent further escalation of the situation.
31. There have been some public observations, including from the Melbourne Victory coach, which assert that the Fourth Official should not have intervened as he in fact did. The Committee concludes those observations are wrong at least for 2 reasons. *First*, there was a situation developing on the pitch which required a judgment decision by the Fourth Official as to what to do. That judgment decision had to be made in real time. If in fact the intervention proved, with hindsight, to be unnecessary the most that would have happened is that the players would have walked away and wondered why the Fourth Official thought they might misbehave. *Second*, detailed after the fact examination of the multiple angles shows that the intervention of the Fourth Official was timely, appropriate and the continued intervention for a period of time until after flared tempers had died down proved useful.
32. Also relevant to the question of the conduct of the Fourth Official is Berisha's own evidence:
- There was a brief heated discussion with the opposing player and the fourth official stepped in to calm the situation down. I was being taunted by the opposing players and the fourth official ushered me away from the area by putting his hand on my shirt and leading me away. I was and remain grateful to the fourth official for seeking to remove me from the area, and to some extent "*protecting*" me. I have been provoked in the past and have made a real effort in recent times to "*walk away*" from those sorts of situations.
33. Rather than countenance criticism of the Fourth Official, Berisha's own evidence and the review by the Committee of the many angles shows that the conduct of the Fourth Official was appropriate and the decision to put himself in between opposing elite athletes whose tempers had flared indicates a degree of commitment to the job that is to be applauded.
34. Towards the end of the intervention by the Fourth Official Berisha can be seen to push the Fourth Official away. That is shown in the following photos.







35. In relation to the above incident, the Fourth Official provided the following statement:

Around the 45th minute of the match, an incident near the touch line on halfway involving Besart Berisha (MV) and Jordan Elsey (AU) required my intervention. Berisha had thrown Elsey to the ground, an action I deemed to be Unsporting Behaviour. I moved in between the two to stop any further incident, and moved Berisha away from the incident using my hands. Once we were out of the incident, Berisha then used his hands to make contact with me. Due to the extremely small amount of force I felt this action had no violent conduct or unsporting behaviour about it in any way, and therefore had no reason to inform the referee. I then told Referee Shaun Evans to show Berisha a yellow card for the initial action (Unsporting Behaviour with Elsey).

(underlining added)

36. The underlined portion cannot be determinative of the issue although it may be relevant to the extent of any sanction.
37. The referee's report confirms that the referee did not see the incident. It contains no reference to the incident and records that Berisha received a yellow card for the foul on the opposing player.
38. At a later point the Fourth Official spoke with the referee as to the initial contact between Berisha and the Adelaide player. This resulted in Berisha being shown the yellow card.



39. It can be seen that Berisha did not agree with this decision of the referee and sought to explain why the decision was wrong. Something which can be seen in the next photo.



40. During the hearing Berisha gave evidence that he did not argue with referees. The deputy Chair of the Committee indicated that may well be correct but observed that Berisha did seem to give "advice" to referees upon various occasions. Berisha agreed with that observation.
41. The Player's disciplinary record is not unblemished. During his long career he has received three direct red cards and many yellow cards. However, at no point previously has he been cited for offences involving contact on match officials.
42. There were several character references provided on behalf of the player. Significant amongst those was one from Ange Postecoglou.

E. SUBMISSIONS

43. The central issue before the Committee related to the submission on behalf of the player that the charge should be downgraded “from row 10 to row 9”. That refers to the rows in the table of offences in the Disciplinary Regulations reproduced below.

6. TABLE OF OFFENCES

Offence No.	Offence	Minimum Sanction	Category
1 (R4 or R5 for Players)	Denying the opposing team an obvious goal-scoring opportunity, as prescribed in Law 12 of the Laws of the Game	The Mandatory Match Suspension	N/A
2 (R8 for Players)	Use of offensive, insulting or abusive language and/or gestures	The Mandatory Match Suspension	Category 1
3 (R1 for Players)	Serious foul play (e.g. when challenging for the ball)	The Mandatory Match Suspension	Category 1
4 (R2 for Players)	Assault on a Player (e.g. violent conduct when not challenging for the ball) including an attempted Assault on a Player	1 additional match plus the Mandatory Match Suspension	Category 1
5 (R 2 or R8 for Players)	Serious unsporting conduct	The Mandatory Match Suspension	Category 1
6 (R8 for Players)	Use of discriminatory language and/or gestures, including racist, religious, ethnic or sexist	4 additional matches plus the Mandatory Match Suspension	Category 2
7 (R3 for Players)	Spitting at a player	5 additional matches plus the Mandatory Match Suspension	Category 2
8 (R2 or R8 for Players)	Inciting a brawl	5 additional matches plus the Mandatory Match Suspension	Category 2
Specific Offences Against a Match Official			
9 (R8 for Players)	Use of offensive, insulting or abusive language and/or gestures against a match official	The Mandatory Match Suspension	Category 1
10 (R2 or R8 for Players)	Unsporting conduct toward a match official	3 additional matches plus the Mandatory Match Suspension	Category 2
11 (R2 for Players)	Assault of a match official	6 months including the Mandatory Match Suspension	Category 2
12 (R3 for Players)	Spitting at a match official	12 months Including the Mandatory Match Suspension	Category 2

44. Under row 10 the charge is “*Unsporting conduct toward a match official*” which has a minimum sanction of a total of 4 matches. Under row 9 the charge is “*Use of offensive, insulting or abusive language and/or gestures against a match official*” which has a minimum sanction of 1 match.
45. The difference in language between the 2 charges and the difference in the minimum sanction conveys that the charge under row 10 is a more serious charge and relevantly involves more than merely a gesture.
46. Disciplinary Counsel submitted that the difference was between some form of body language without contact which would be a *gesture* and, relevantly intentional contact which would be one of the ways in which *unsporting conduct* would be established.

47. Counsel for Berisha pointed to the decision in *Van Den Brink*. In that case the Committee did downgrade the charge to the equivalent of row 9. Disciplinary Counsel submitted that *Van Den Brink* was distinguishable and in any event should be seen in the context where it was the first case to come before the Committee of intentional contact with a referee (other than *Vucovic*, which involved a charge of assault – and was quite a different case).
48. Counsel for Berisha further submitted that if the charge was not downgraded the facts supported a conclusion of *Exceptional Circumstances* within the meaning of clause 11.3 notwithstanding the definition of that term in clause 27.1.
49. Finally, counsel for Berisha submitted that if a sanction was to be imposed under row 10:
- (1) the sanction should not exceed the minimum sanction of 4 matches; and
 - (2) the Committee should exercise its power under clause 12 to suspend half of the total sanction, which is the most that can be suspended pursuant to clause 12.3(b).
50. In support of the final submission counsel for Berisha pointed to all the matters relevant to duration of any sanction and the relevant mitigating circumstances. That included:
- (1) The fact that Berisha had personally apologised to the Fourth Official.
 - (2) The fact that the Fourth Official had not taken an adverse view of the event of the contact by Berisha.
 - (3) The evidence of Berisha himself which was not challenged by Disciplinary Counsel:
 - (a) In his statement, Berisha accepted he made contact with the Fourth Official and acknowledges that the Fourth Official was seeking to "protect" him from the attention of the opposition. Berisha stated he became uncomfortable with the Fourth Official still having his hand on him, said that he was "okay" and sought to move the hands of the Fourth Official off him.
 - (b) Berisha also stated:
 ... my action was instinctive and bore no malice. I certainly did not intend to harm the fourth official. Indeed, I would never seek to deliberately make contact, harm or offend a match official.

F. CONSIDERATION AND FINDINGS

51. *First*, as to the grading of the offence the Committee considers that the offence was properly allocated by the MRP under row 10 and is properly characterised as more serious than the row 9 offence of *Use of offensive, insulting or abusive language and/or gestures against a match official*.
52. The facts here are distinguishable from *Van Den Brink*. In that case, the contact was to seek to gain the attention of the referee. Here the contact was to push the match official away. In any event *Van Den Brink* was decided in a point in time when it was necessary to set a precedent in relation to intentional contact with match officials. Although the Committee did conclude that the charge in that case was within row 9, the Committee went on to indicate that the facts could also have properly been determined within row 10 but that in all the circumstances at that

time the preferable charge was row 9. The circumstances referred not only to the particular facts of the case but also that there had not been, until then, a clear statement by the Committee that intentional contact with a match official should be stamped out. There is no specific rule in the FIFA Laws of the Game that says that in terms so it was necessary in view of the Committee to spell that out in its decision in *Van Den Brink*.

53. The Committee made these specific relevant observations which were part of the circumstances that led to the fact that Van Den Brink was not dealt with under row 10.

23 ... contact with a referee should not occur and ... 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. ...

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. ...

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.

(underlining and bold added)

54. As the Committee had not previously had the occasion to make a clear statement on the topic, the Committee was minded not to come down with full force on the player who happened to be the first one to come before the Committee in such a situation. For that reason the words in bold – henceforth stamped out – were important as a circumstance which resulted in that case with the charge being dealt with under row 9.
55. The Committee wishes to make it quite clear that *Van Den Brink* will not be regarded as any authority that intentional contact with a match official could be dealt with under row 9. Intentional contact with a match official is properly dealt with under row 10 or row 11.¹
56. Further, the more recent decision of *Amor* is relevant. In *Amor* the Committee noted the undisputed evidence was 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.

¹ Subject to obvious exceptions, such as a handshake before or after the game.

- (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.
57. The Committee went on to find that the conduct of Mr Amor was unsporting conduct under row 10 and stated in paragraph 51
- 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...
58. The Committee is of the view that the zero tolerance policy concerning contact with referees and other match officials must be maintained.
59. Finally, in *Amor* the ultimate sanction was 2 matches served plus 2 matches suspended, which was the minimum under row 10.
60. *Second*, as to *Exceptional Circumstances*, a conclusion of *Exceptional Circumstances* within the meaning of clause 11.3 notwithstanding the definition of that term in clause 27.1 is not warranted on the facts. The definition of *Exceptional Circumstances* makes it clear that "*the conduct, including actions, words or gestures of any Player or Team Official of the opposing team during or related to the A-League Match*" cannot be *Exceptional Circumstances*. The Committee considers that conduct of match officials is of the same type and (probably) could not be something which would give rise to an *Exceptional Circumstance*. In any event for the reasons given earlier the conduct of the Fourth Official was appropriate and in the view of the Committee is not a basis to find *Exceptional Circumstances*. The Committee is of the view that nothing in this case gives rise to *Exceptional Circumstances* within the meaning of clause 11.3.
61. *Third*, as to the question of the sanction and whether any of it should be suspended, the Committee took into account the demeanour of Berisha and the fact that in the immediate aftermath he showed displeasure with the yellow card. Nevertheless the whole of the circumstances including the apology by Berisha, the view taken by the Fourth Official himself as to the contact, the lower level of fault by Berisha and the wider circumstances of him never having been subject to an offence related to a match official have led to the conclusion that the submissions of counsel for Berisha as to sanctions should be accepted.
62. The Committee was impressed with the evidence of Berisha and the totality of the evidence, suggest that Berisha is a player of good character who does a considerable amount to benefit the community and the game generally.
63. On one view the conduct was more serious than was ultimately found in *Amor* and on that basis 2 of the matches being served by Berisha with 2 suspended might not be sufficient. Nevertheless, in all of the circumstances (including that Disciplinary Counsel did not make such a submission about *Amor*) the Committee considers that a 2 match ban together with a further 2 matches suspended is an appropriate general deterrent and also a specific deterrent that hopefully will prevent any further contraventions of this kind by Berisha. Berisha should consider himself fortunate not to be dealt with more severely than *Amor*. Should he come before the Committee again he may not be so fortunate.

G. RESULT

64. The offence of *Unsporting conduct toward a match official* under row 10 of the targetable offences had been made out.

65. The appropriate sanction is the minimum sanction under 10 of a total of 4 matches.
66. Of those 4 matches, 2 should be served as the next 2 matches of his team. The further 2 matches will be suspended. The terms of the suspension are that the two (2) matches (presently suspended) will have to be served in the event that, in any future match up until the conclusion of the Hyundai A-League 2017/18 Regular Season, Berisha commits any infringement against a match official which results in the issue of a red card (which is not overturned) or other infringement against a match official which results in the equivalent of a sending off offence.

John Marshall

J E Marshall SC, Disciplinary and Ethics Committee Chair
30.10.2017