

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

**DETERMINATION OF THE COMMITTEE IN THE FOLLOWING MATTER:**

<b>Player and club</b>	Avraam Papadopoulos of Brisbane Roar FC
<b>Alleged offence</b>	Spitting at a player
<b>Date of alleged offence</b>	25 November 2017
<b>Occasion of alleged offence</b>	Match between Sydney FC and Brisbane Roar FC
<b>Date of Disciplinary Notice</b>	27 November 2017
<b>Basis the matter is before the Disciplinary Committee</b>	A referral: see clause 11.37
<b>Date of Hearing</b>	Friday 01.12.2017
<b>Date of Determination</b>	08.12.2017
<b>Disciplinary Committee Members</b>	John Marshall SC, Chair Anthony Lo Surdo SC, Deputy Chair Rob Wheatley

**A. INTRODUCTION**

1. This matter concerns an incident which occurred between Avraam Papadopoulos (the **Player**) and an opposing player from Sydney FC (Matthew Simon). Thankfully cases which involve spitting are rare; the only previous matter was the *Fabiano* case.

**B. JURISDICTION**

2. Jurisdiction was accepted by the Player, nevertheless the basis of jurisdiction is recorded below.
3. The case came before the Committee after the Match Review Panel (**MRP**), pursuant to clause 11.1(d) of the FFA A-League Disciplinary Regulations (the **Disciplinary Regulations**), issued the Player with a disciplinary notice dated 27.11.2017 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. 7 (R3 for players) – *Spitting at a player* (the **Offence**).

4. The Disciplinary Notice dated 27.11.2017, which led to this hearing is set out below:



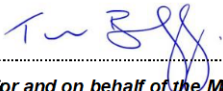
### DISCIPLINARY NOTICE (Red Card)

<b>TO:</b> <i>(Player)</i>	Avram Papadopoulos	<b>OF</b> <i>(Club)</i>	Brisbane Roar 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 issued with a direct Red Card while you were playing for your Club against Sydney FC on Saturday, 25 November 2017 in or around the 76<sup>th</sup> minute of the match.
2. Pursuant to clause 11.1(d) of the Regulations, the MRP is entitled to determine whether a Red Card 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;
3. Pursuant to the categorisation of offences listed at "Annexure A – 6. Players Table of Offences" of the Regulations, the Category 2 Offence stated by the MRP is Offence No. 7 being "Spitting at a player" (the **Offence**);
4. The Minimum Sanction for the Offence under the Regulations is six (6) Hyundai A-League matches (being the Mandatory Match Suspension plus five (5) additional Hyundai A-League matches);
5. In accordance with clause 11.37 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; and
6. 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: 27 November 2017

5. 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.
6. Pursuant to clause 11.1(d) of the Regulations, the MRP is entitled to determine on the basis of the evidence reviewed, that there is a case for the Player to answer as to why a category 2 Offence should not be found and refer the matter to the Committee.

7. Clause 11.37 provides that if a referral is made by the MRP to the Committee then the Committee must 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.
8. Clause 11.39 provides that at the hearing of the referral the 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) if it determines that the imposition of an additional sanction over and above the Mandatory Match Suspension is not warranted must pronounce this Determination, which does not lead to the Player Red Card being expunged from the Player's record or the Team Official Red Card being expunged from the Team Official's record, as the case may be; and
  - (d) may, but is not required under clause 22.4 to provide reasons for its Determination that a further sanction is not warranted.
9. It is open to the Committee to upgrade or downgrade the offence, but neither arose on this occasion.

#### **C. THE HEARING**

10. On the evening of Friday 01.12.2017 the Committee heard the matter. At the conclusion of the hearing the Committee reserved its decision. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 20.3(c)).
11. At the hearing Disciplinary Counsel was Ivan Griscti and the Player was represented by Mr Simon Philips of counsel and Mr David Pourre (Managing Director, Brisbane Roar FC). The Player attended the hearing in Sydney in person.
12. 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**

13. Around the 76<sup>th</sup> minute there was an incident involving the Player and an opposing player. The Player spat at the opposing player. It is that act which is the incident in question, although the whole of the conduct of the Player is relevant.
14. The Player received a direct red card as per the referee's report:
 

An altercation between Avram (sic) Papadopoulos and Matthew Simon had happened off the ball and it was seen that Avram (sic) had spat at Matthew before then the melee had started. So Avram (sic) Papadopoulos received a straight Red card for spitting at an opponent. This decision was made after a review took place on the advice from the video assistant referee.
15. The Fox Sports video footage shows the incident.
16. There are 5 different angles that are of use. The following sequences show the incident. The red arrows point to the spit and were marked onto the image when the image was zoomed in on a large screen where quickly switching between 2

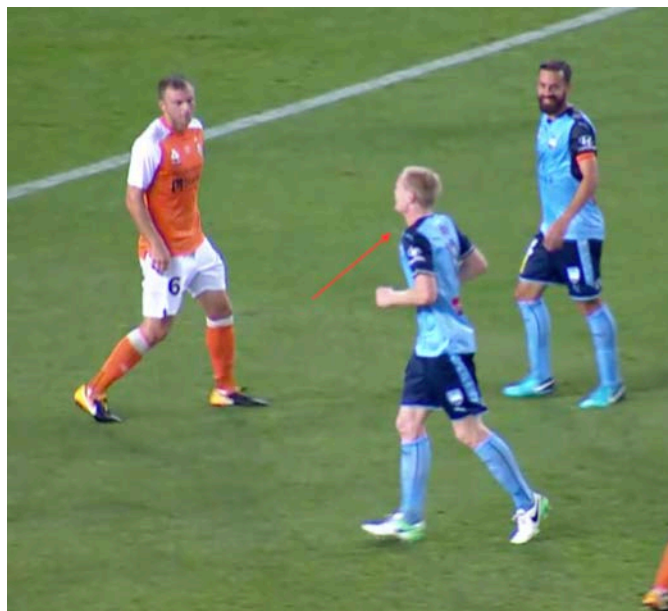
consecutive images was possible, allowing the spit to be tracked between stills. There are sometimes multiple arrows to mark the multiple droplets of spit. Some of the smaller droplets are not visible unless the background provides sufficient contrast such as in angle 4.

17. Angle 1: The below sequence shows an overview of the incident, including the Player's direction and the Player's act of aiming to spit at the opposition player.





18. From the next still the spittle has broken up into spray at different heights.



19. What follows indicates that the main glob of spit either hit Matt Simon or moved to the right of him.
20. Angle 2: The below sequence shows the height of the spit. However given the blue, shiny background it only captures the main clump of spit and not the additional 'spray' that is visible in angle 4.



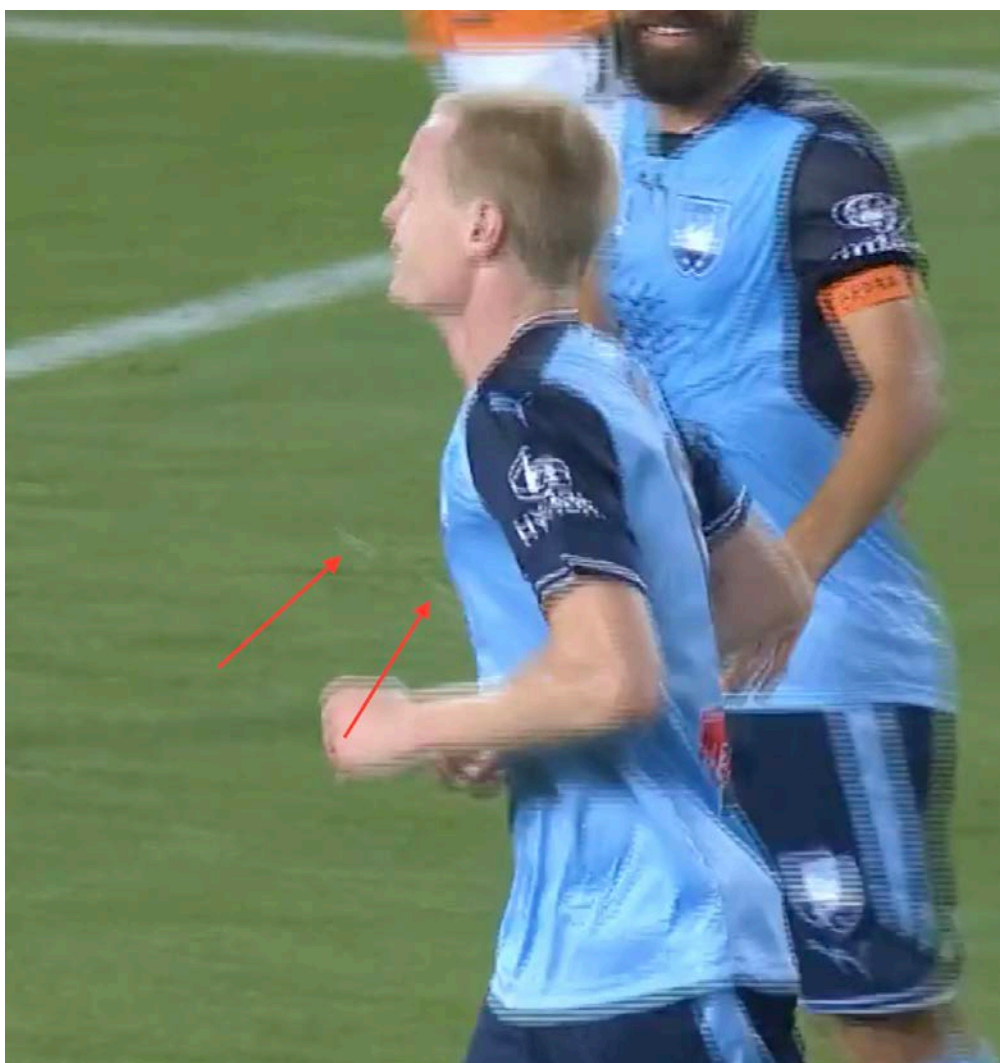
21. The major clump of spit is not above the waist of the opposing player.

22. Angle 3: The below sequence shows the main clump of spit may not have hit Matt Simon. The 'spray' cannot be seen in this sequence.







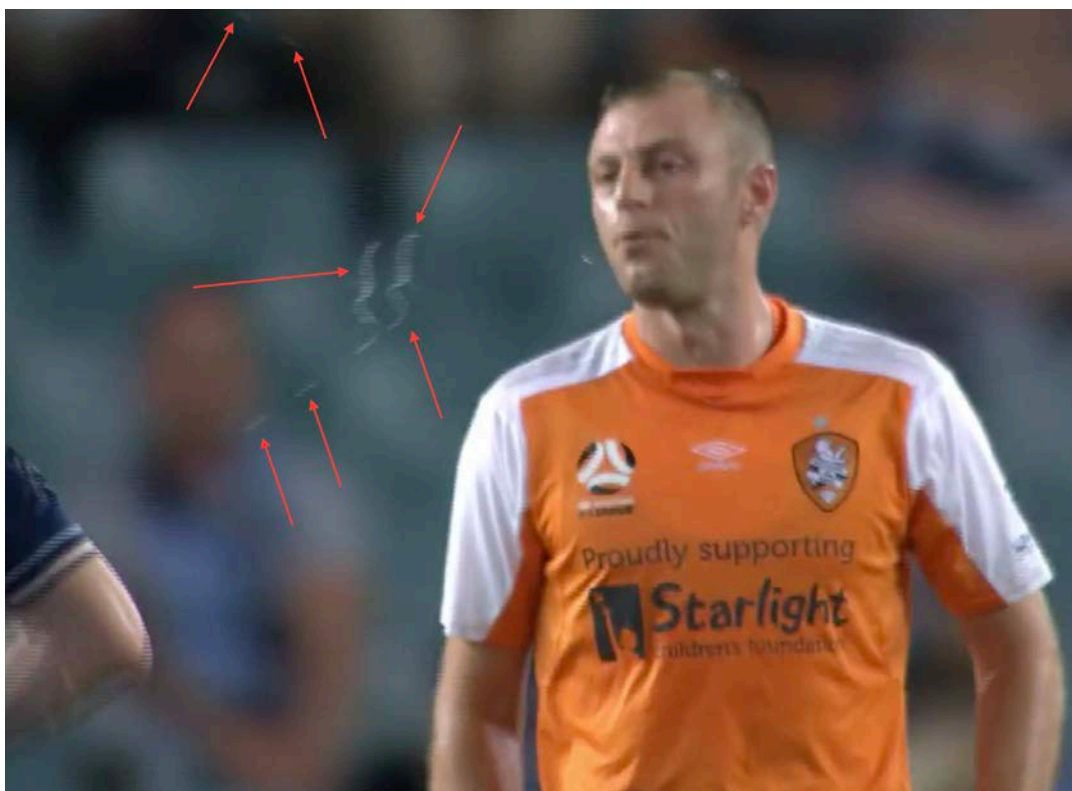
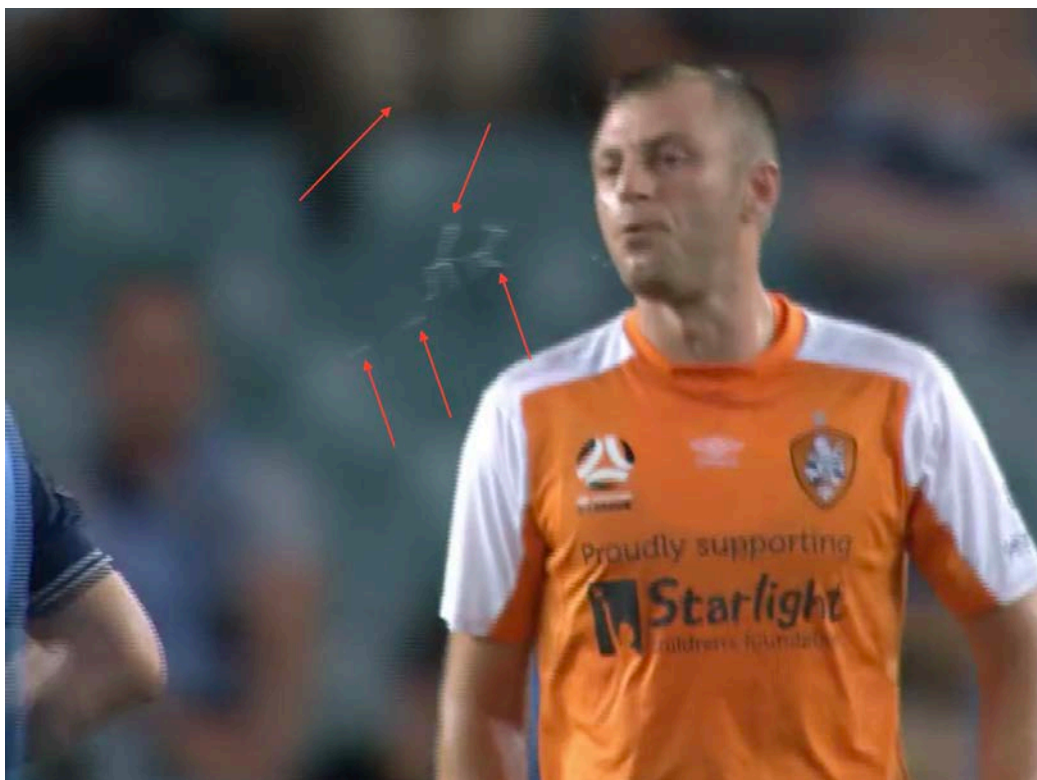


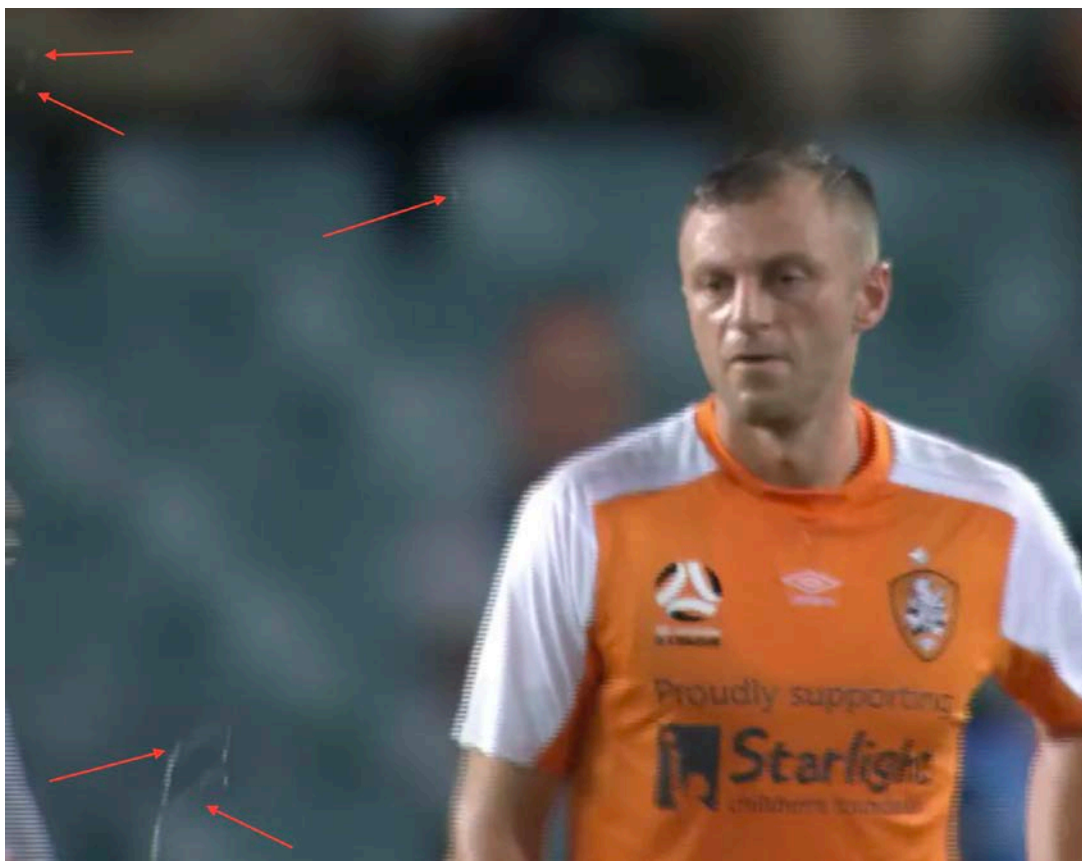
23. The below image shows a main clump of spit moving diagonally down and to the right of the image.



24. Angle 4: The below sequence shows the 'spray' that occurs when the Player spits. This top bit of 'spray' may be what landed on Matt Simon's head. The sequence also shows the Player's direction and aiming.







25. Angle 5: The below sequence shows the 'spray' that occurs when the Player spits. This top bit of 'spray' may be what landed on Matt Simon's head. The sequence also shows Matt Simon relative to the spit.





26. The Committee concludes that the spit broke up and spittle sprayed in different angles probably in a cone style so that each clump, major and minor, had a different trajectory. Some of the spit was high enough to have struck the head of Matt Simon.



27. In the still below there appears to be a little spit (which is probably the wider spray) that passes at about ear level to Matt Simon. As the spittle probably travelled in a cone trajectory some of the spittle would have been in the same plane but in a position to strike Matt Simon.



28. The point of this is that Matt Simon immediately reached to his right ear and behaved in a way which demonstrated that he believed he had been spat on and that some spit had struck his ear. In light of the video footage analysed above in stills the Committee concludes that the contemporaneous and immediate reaction of Matt Simon should be treated at face value; namely meaning that he had in fact the sensation of some spit hitting his right ear which sensation corresponded with the spitting action from the Player. The above analysis was necessary to deal with the submission on behalf of the Player that no spit had made contact with the face of Matt Simon and that Matt Simon had in effect simulated.

29. After the alleged spitting incident, Matt Simon confronts the Player. The Player is then seen to be holding his face in the following images.



30. During the hearing the Player was asked about the fact that he had put his hands on his face. He gave an explanation which indicated that Matt Simon had made contact with an area below his face. He concluded his explanation of why he put his hands on his face with "I don't know why".
31. He was also asked by disciplinary counsel whether the reason he had put his hands on his face was to encourage the referee to believe that Matt Simon had struck him in the face so as to achieve the outcome that Matt Simon would receive a red card. His initial response was to shrug his shoulders, nod and said "I think yes". There was then an objection to the effect that the player had not understood the question. After discussion as to the legitimacy of that line of questioning the Chair of the Committee asked the Player whether he had put his hands on his face to make it more likely the referee would give Matt Simon a red card. At that point he said "no".

32. The denial was not convincing. Another matter also seems relevant to that denial.
33. Once the Player returns to his feet it is clear that he has been accused of spitting at Matt Simon. In response to that, on two occasions, the Player can be seen to be indicating that he had spat directly at the ground. This matter was raised by disciplinary counsel in written submissions and flagged clearly during the course of the hearing. The Player elected not to lead any evidence to explain his actions and his counsel accepted that the footage could be interpreted without oral evidence from the Player.
34. In this situation the Committee concludes that the Player was on two occasions seeking to falsely deny, by action, having spat at an opposing player.

#### **E. SUBMISSIONS**

35. For the Player it was submitted that the facts relating to the offence together with the character evidence warrant only the minimum sanction. Further it was submitted that it was open to the Committee on the proper interpretation of the Regulations to apply clause 14.2 which relates to suspending a portion of a sanction so that some portion of the sanction imposed could be suspended.
36. Disciplinary counsel submitted that there were factors which justified a sanction above the minimum and also submitted that clause 14.2 could not be interpreted in the way contended for by the Player with the consequence that no portion of the sanction could be suspended.

#### **F. CONSIDERATION AND FINDINGS**

##### *(1) Clause 14.2 – power to suspend a portion of a sanction*

37. Clause 14.2 provides:
 

14.2 In respect of sanctions of less than six (6) matches if the sanction is given in terms of matches, or less than six (6) months if the sanction is given in terms of a period of time, a Judicial Body may order that part of the match suspension:

  - (a) comes into immediate effect; and
  - (b) the other part does not come into effect unless ...

(underlining added)
38. The Player's argument was that the sanction was less than 6 weeks having regard to the fact that the minimum sanction in the table of offences is "*5 additional matches plus the Mandatory Match Suspension*".
39. The Committee does not accept that argument. The text of Annexure A to the table of offences refers to the minimum sanction as being that set out in the table. The table has a column headed "minimum sanction". In the relevant row for spitting at a player the minimum sanction is the sum of 5+1 which results in 6 matches. Hence for the purposes of clause 14.2 the sanction in this case cannot be less than 6 matches.<sup>1</sup>

##### *(2) Sanction over the minimum*

40. In the view of the Committee there are factors which indicate that a sanction above the minimum should apply.

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<sup>1</sup> Unless Exceptional Circumstances applied; but that is not this case.

41. When considering sanction clause 13.2 provides the Committee *may* consider these matters:
- (1) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
  - (2) the Participant's past record and whether or not this is a repeated Offence;
  - (3) the remorse of the Participant; and
  - (4) any extenuating circumstances relevant to the commission of the Offence.
- The term "extenuating circumstances" is not defined.
42. The Appeals Committee has implicitly suggested that "may" means should and this Committee regards it as appropriate to consider all those factors against the possibility that *may* in this context means *should*.<sup>2</sup>
43. The offence was committed intentionally however that is probably neutral given the nature of the offence. There is no evidence which suggests that this was a repeat offence. That deals with the first two matters.
44. The other two matters are best considered together with the whole of the conduct of the player including the lead up to and the actions surrounding the offence.
45. Disciplinary counsel indicated there was no provocation from Simon and that the spit was directed in a way which made it probable contact could occur with the face or head of Simon. Both are correct.
46. In the 2008 decision of the Appeals Committee in *Fabiano* the Appeals Committee noted in that case:
- The conduct of the opposing player, who was a much bigger man, is clearly evident from the DVD footage and includes unnecessarily and intentionally approaching the Appellant in an apparently aggressive way and making apparently derogatory comments to him.
- The Appeals Committee went on to note that such matter was an extenuating circumstance for the purposes of the Regulations.
47. That approach tends to indicate that the absence of any provocation could also be regarded as a relevant factor.
48. In the view of the Committee the conduct of the Player following the interaction with Simon (as referred to in paragraphs **29-34** above) is against him and is a factor relevant to the duration of sanction. In light of the whole of the evidence and the way in which the Player gave evidence at the hearing the Committee is satisfied that the Player did feign being struck in the face and did so for the purpose of encouraging the referee to award a red card to Simon which is what happened.
49. Disciplinary counsel submitted that an appropriate sanction would be a total of 8 matches.
50. The Committee is of the view that a sanction above the minimum is appropriate in light of the particular facts present in this case. The Committee imposes a sanction of a total of 7 matches.
51. That sanction is imposed having had regard to the 2008 decision of the Appeals Committee in *Fabiano*.

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<sup>2</sup> In other words whether the text of clause 13.2 makes it mandatory is moot.

52. In the view of the Committee the offence of spitting at a player is arguably different to spitting on a player. The actual offence only involves a directional requirement. The fact that in this case the Player's spit made contact with Simon is a circumstance, taken with those to which the Committee has referred, that tends towards an increase above the minimum suspension.
53. Further the Committee recognises that the minimum sanction specified of 6 weeks is lengthy. The mandate for that minimum sanction comes directly from FIFA. FIFA has weighed the relevant policy considerations and determined that the minimum should be 6 matches when the offence is made out. That determination is long standing. The maximum sanction under the regulations is 24 months.
54. Having regard to the fact the minimum sanction is lengthy but also weighing the totality of the circumstances, the Committee considers it should apply a sanction in excess of the minimum and in this case 1 additional match is at least appropriate.

**G. RESULT**

55. The offence is established and indeed was not disputed.
56. The sanction imposed is a total of 7 matches which includes the 1 mandatory match.
57. No part of that sanction is available to be suspended on the proper interpretation of clause 14.2.

*John Marshall*

J E Marshall SC, Disciplinary and Ethics Committee Chair

08.12.2017