

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

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Armando Sosa Pena (Mandi), Wellington Phoenix
Alleged offence	Assault on a Player (e.g. violent conduct when not challenging for the ball) or against any other person other than a Match Official, including an attempted Assault
Date of alleged offence	Saturday 05.01.2019
Occasion of alleged offence	2019 Hyundai A-League 11 th Round match between Adelaide United and Wellington Phoenix
Date of Disciplinary Notice	Sunday 6 January 2019
Basis the matter is before the Committee	A referral: see clause 3.3(a) and 11.21(b)
Date of Hearing	Wednesday 09.01.2019
Date of Determination	10.01.2019
Committee members	John Marshall SC, Chair Anthony Lo Surdo SC Rob Wheatley

A. INTRODUCTION

1. The incident involved a reckless kick by the player Mandi which made contact with an opposing player who was on the ground at the time. It was an unsavoury incident. The initial publicity and a quick view of the footage suggests that a lengthy sanction might be appropriate. The MRP no doubt carefully reviewed the footage and took a measured view that a sanction of a total of 3 matches was appropriate. Hence the MRP issued a Disciplinary Notice which gave the player the option to accept a proposed sanction of a total of 3 matches. The player accepts that he must serve a one match suspension but says that is all the games he should miss.
2. For the reasons explained below the Committee has determined that the appropriate sanction is a total of 3 matches (which coincides with what the MRP determined), however in light of mitigating circumstances which came to light during the hearing the Committee has suspended the 3rd match on the conditions which are set out in these reasons.

B. FORMAL MATTERS AND JURISDICTION

3. The Committee has jurisdiction under clause 4.3 of the FFA "Hyundai A-League Disciplinary Regulations" applicable to the 2018-2019 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.
4. In this matter there has been a referral under clause 11.21(b) of the Disciplinary Regulations. Prior to a referral under clause 11.21(b) the player will have been given a direct red card by the referee. The consequence is that the player 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.
5. The FFA issued Armando Sosa Pena (**the player**), with a Disciplinary Notice dated 6 January 2019. The Category 1 Offence stated on the Disciplinary Notice is Offence 4 (R2 for Players) – *Assault on a Player (e.g. violent conduct when not challenging for the ball) or against any other person other than a Match Official, including an attempted Assault*. The Disciplinary Notice appears below.

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 in or around the 68th minute of your Club's match against Adelaide United on Saturday, 5 January 2019;
2. In accordance with "Annexure A – 6. Players Table of Offences" of the Regulations, the MRP has determined that the Red Card Offence constitutes Offence No. 4 being "Assault on a Player (e.g. violent conduct when not challenging for the ball) or against any other person other than a Match Official, including an attempted Assault" (the **Offence**);
3. The Minimum Sanction for the Offence under the Regulations is two (2) Hyundai A-League matches (being the Mandatory Match Suspension plus one (1) additional Hyundai A-League match);
4. The MRP has proposed a sanction of three (3) Hyundai A-League matches, being the Minimum Sanction for the Offence plus one (1) additional match.

Player Options

5. As the MRP has proposed a sanction above the Minimum Sanction stipulated at "Annexure A – 6. Player Table of Offences" for the Offence, the Player or Club may:
 - (a) accept the sanction proposed at paragraph 4 above; or
 - (b) refer the matter to the Disciplinary and Ethics Committee for hearing and determination of the sole question of either:
 - (i) what additional sanction should be imposed above the minimum sanction (inclusive of the Mandatory Match Suspension which must be served), applying the Range at the Table of Offences; or
 - (ii) whether Exceptional Circumstances apply and therefore a sanction outside the Range at the Table of Offences should be imposed, provided always that the Mandatory Match Suspension must be served.
6. You must notify FFA of your election by forwarding the enclosed Election Form to FFA by **12.00pm (AEDT) Monday, 6 January 2019**.
7. If FFA does not receive the properly completed Election Form by the time specified in paragraph 6 above, you are deemed to have accepted the proposed sanction.

C. THE HEARING

6. On the evening of Wednesday 09.01.2019 the Committee heard the referral of the above matter. At the conclusion of the hearing the Committee announced its decision. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 22.3(c)).
7. At the hearing Disciplinary Counsel was Marco Nesbeth and the player was represented by Stephen Cottrell.
8. The evidence at the hearing comprised extensive video footage of the incident from several angles, numerous still photos, the Disciplinary Notice, the referees' incident report, the player's disciplinary record and other documents collated in a spiral binder prepared by the FFA. In that spiral binder are the written submissions on behalf of the player and Disciplinary Counsel and those submissions make reference to further materials. All those further materials have been treated as being before the Committee as evidence for what utility and relevance they may have.

D. FACTS

(1) *The incident leading to the red card*

9. In around the 63rd or 68th (it does not matter which) minute of the game a free kick was taken and following the shot on the Wellington goal Wellington player WPX #13 and Adelaide player ADL #8 came together. The events that followed have been extracted in the following stills from video footage.

Image 1



10. The image above is before the foul play by the player who is WPX #4.

Image 2



11. In the image above the player has commenced his kicking action and the ball is still visible in the image and almost certainly to the player WPX #4 as he claims.

Image 3



12. In the image above the ball is no longer visible and it would be apparent to the player WPX #4 that the ball was no longer available to be played at.

Image 4



13. In the image above the player WPX #4 makes contact with ADL #8, which he accepts occurred. The evidence also disclosed that the player made contact with his teammate WPX #13.

Image 5



14. In the image above the ball has come free to the right of ADL #8 and WPX #13.

Image 6



15. In the image above ADL #17 has raised his hand as well as other players. The Committee infers that this was because those players were by now aware that the whistle had previously blown. There may be an issue as to when exactly the whistle blew.

Image 7



16. The image above and those which follow are from a different angle from those previously.

Image 8



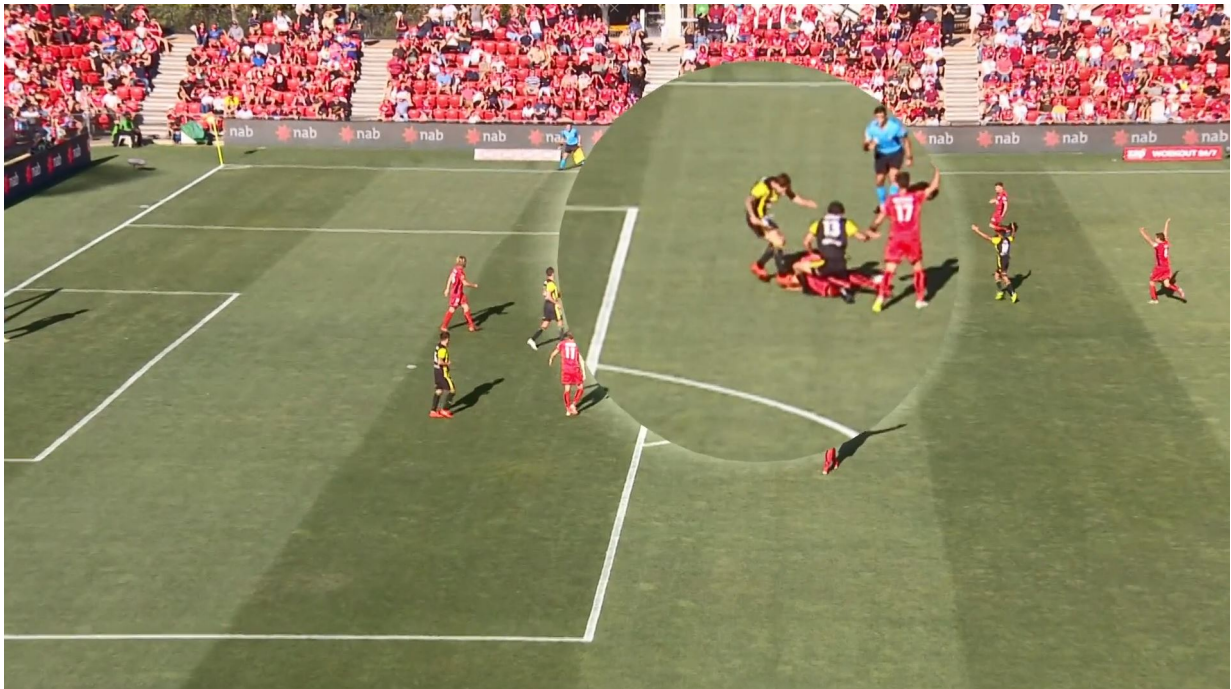
17. The image above is either immediately prior to or at the point of contact.

Image 9



18. The image above shows contact with ADL #8.

Image 10



19. The image above shows other players with their hands raised. The Committee concludes that this means that the whistle had already blown. On some occasions players raising their hands can occur before a whistle is blown to appeal for a free kick but that is not the conclusion that the Committee reaches in this case (the referee's report is important in this regard as are the reactions of the players and in particular ADL #17 and indeed a close analysis of the of the whistle hand of the referee).

20. The referee described what occurred in his incident report as follows:

In the 68th minute of the match and after an Off field Review, #4 from Wellington, Armando Sosa Pena , was sent from the field of play for violent conduct.

A free kick was awarded to Adelaide moments before the incident occurred and which a melee ensued. A yellow card was initially shown to #4 for instigating the melee. The VAR then alerted me to review for a serious missed incident.

From the footage shown, it is clear that #4 used excessive force by kicking the Adelaide player in the back whom was lying on the ground after the initial foul was awarded to Adelaide. The ball was positioned close to the Adelaide player however #4 ran in from distance and with speed.

Play was therefore stopped for the free kick and the incident that followed is deemed to be violent conduct as the player was not challenging for the ball.

(underlining added)

(2) Oral evidence of the player

21. The player did not attend the hearing in person. He attended by video link with an interpreter. He was able to hear what occurred during hearing and see what was being shown on the large screen television during the course of the hearing.

22. Although the player gave his evidence via an interpreter the Committee formed a favourable view of the player and his evidence.

23. The player commenced football at the age of 10, which is somewhat surprising considering his Spanish background although that may be explicable by virtue of the fact he was born in the Canary Islands. He played junior football from the ages of 10 through 19 and then was picked up by Real Madrid. He played several seasons in La Liga 2 (Spain's 2nd top competition) but unfortunately for him had several injuries and prior to joining Wellington faced a very uncertain future. When presented with the opportunity to trial for Wellington and play in the A-League, he funded his own airfare and initial travel costs just for that opportunity. At this point the evidence of a senior Wellington official is relevant to explain that the player and his partner risked quite a bit financially for the new opportunity. They have both fitted well into the local community and are expecting their 1st child. Apparently the player has already proven his value off the field in supporting local community matters and is vouched for as a person of good character.
24. In relation to the specific incident, the player said that his intention was to clear the ball and not to kick an opposing player. He accepts that the video and stills paint a clear picture which looks bad but in the moment he says he made a bad decision. He also said, and the Committee accepts, that part way through the action of kicking he realised that the ball had moved and he did all that he could to reduce the motion of the kick. He says it he did not feel that the contact was strong contact at all which he says supports the fact that he attempted, admittedly too late, to prevent contact. In this regard his evidence is supported by very close examination of the video and still footage. It is also supported by the fact there was no relevant injury to either the players who received the contact. He was asked why he approached the play with a full instep drive. His response was candidly to concede that it was a bad play on his part and one of those things that in the split second decision making you regret. But he did say that he made the attempt to ameliorate the consequences by controlling his follow-through as best he could.
25. The player also said that he contacted the opposing Adelaide player and apologised.

(3) Disciplinary record of the player

26. The Committee was provided with the disciplinary record of the player. Whilst there are several yellow cards over the years there has only been one prior direct should which was in the La Liga second division. In the circumstances of a 10 year professional career to date, only one prior direct red card is a relatively good record.

E. SUBMISSIONS

27. Reference was made to clause 13.2 of the Disciplinary Regulations which provides:
- 13.2 When determining any appropriate sanction in accordance with the Range at the Table of Offences, a Judicial Body may consider:
- (a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
 - (b) the Participant's past record and whether or not this is a repeated Offence;
 - (c) the remorse of the Participant; and
 - (d) any extenuating circumstances relevant to the commission of the Offence.
28. The matters submitted by Disciplinary Counsel included:

- (1) The correct categorisation was violent conduct and not merely serious foul play.
 - (2) Irrespective of the categorisation the actual offence warrants a sanction of 3 matches in light of all the circumstances including the prior disciplinary record involving only one direct red card.
 - (3) The positioning of the ball inside the left foot of WPX #13 coupled with the position of ADL #8 meant that the ball was not really available to be played at, which emphasises the reckless nature of the play.
29. The matters submitted on behalf of the player included:
- (1) The referee had not blown his whistle prior to the player completing his kick which he says was at the ball.
 - (2) The player accepts he made contact with ADL #8 but says he did not follow through "with force". He also accepts that "his actions can be deemed reckless in that he ought to have had more regard for the danger to, or consequences for, the player on the ground".
 - (3) Opposing player ADL #8 was not injured.
 - (4) Reference back to the oral evidence referred to above and mitigating factors which have been referred to in these reasons.
 - (5) In relation to remorse it was said that the player made an apology to ADL #8.

F. CONSIDERATION AND FINDINGS.

30. Starting with general matters not specific to this player, an important consideration is the safety of all players and relevant to this situation, the safety of an opposing player. The laws of the game are not silent on this topic.
31. For example, the laws of the game state:
- Although accidents occur, the Laws should make the game as safe as possible. This requires players to show respect for their opponents and referees should create a safe environment by dealing strongly with those whose play is too aggressive and dangerous. The Laws embody the unacceptability of unsafe play in their disciplinary phrases, e.g. 'reckless challenge' (caution = yellow card/ YC) and 'endangering the safety of an opponent' or 'using excessive force' (sending-off = red card/RC).
32. Further, the laws of the game and the Disciplinary Regulations provide these definitions:
- (1) violent conduct:

Violent conduct is when a player uses or attempts to use excessive force or brutality against an opponent when not challenging for the ball, or against a team-mate, team official, match official, spectator or any other person, regardless of whether contact is made.
 - (2) reckless

Any action (usually a tackle or challenge) by a player which disregards (ignores) the danger to, or consequences for, the opponent.
 - (3) serious foul play

A tackle or challenge for the ball that endangers the safety of an opponent or uses excessive force or brutality; punishable by a sending-off (red card).

(4) playing in a dangerous manner

Playing in a dangerous manner is any action that, while trying to play the ball, threatens injury to someone (including the player themselves) and includes preventing a nearby opponent from playing the ball for fear of injury. A scissors or bicycle kick is permissible provided that it is not dangerous to an opponent.

33. The action of the player showed a disregard for the danger that it posed to ADL #8 who was on the ground at the time. Further, the player used excessive force. Finally it was play in dangerous manner because it threatened injury to ADL #8. The fact that the player should have anticipated a collision makes the whole situation serious.
34. In the view of the Committee the offence was correctly categorised as violent conduct but even if the correct categorisation was only serious foul play, in the circumstances of this case that would not affect the outcome. It is to be noted that in the 18 May 2018 O'Donovan decision, he was only charged with serious foul play but received a sanction of 10 matches.
35. Taking into account all the circumstances including the past record of the player and other mitigating factors, the appropriate sanction is that which is recorded under the following heading.

G. RESULT

36. The sanction the Committee imposes is suspension for 3 matches but the 3rd match of the sanction is suspended. The condition which would trigger the 3rd match is a direct red card at any point up until the conclusion of the Hyundai A-League 2018/19 Season, including Finals Series.

John Marshall

J E Marshall SC, Disciplinary & Ethics Committee Chair
Thursday 10.01.2019