



APPEAL TRIBUNAL OF FOOTBALL NEW SOUTH WALES
DETERMINATION IN THE FOLLOWING MATTER:

Club	Noel Dona v Granville and Districts Soccer Football Association Incorporated (GDSFA)
Decision appealed	Decision of the GDSFA Appeals Tribunal determination AT21-01-Noel Dona v GDSFA
Date of Decision	12 May 2021
The basis upon which the matter is before the Appeals Tribunal	Section 10.1(d) of the Football NSW Grievance and Disciplinary Regulations 2021
Ground(s) of Appeal	Sections 10.3(a), 10.3(d), 10.3(e) of the Football NSW Grievance and Disciplinary Regulations 2021
Date of Hearing	31 August 2021
Date of Determination	14 September 2021
Appeals Tribunal Members	Graham Turnbull SC DCJ, Chair Iain Rennie, member David Stanton, member

Introduction and Jurisdiction

1. Noel Dona (**Mr Dona**) appeals from a determination of the GDSFA Appeals Tribunal (the **GDSFA AT**) dated 12 May 2021. This tribunal (**FNSW AT**) has previously expressed the jurisdictional basis under the Football NSW Grievance and Disciplinary Regulations, 2021 (**FNSW Regulations**) that prescribes the power of the Appeal Tribunal.¹ In short, an appeal to FNSW AT is limited to the grounds of appeal under the FNSW Regulations.
2. Mr Dona relies upon three grounds of appeal, namely: -
 - a. A party was not afforded a reasonable opportunity to present its case (FNSW Regulations 10.3(a));
 - b. The decision was one that was not reasonably open to a body or a member appeals committee having regard to the evidence before the body or the member appeals committee (FNSW Regulations 10.3(d));
 - c. Severity pursuant to 10.3(e) of the FNSW Regulations.
3. In accordance with FNSW AT's usual practice, the parties were invited to provide written submissions and evidence in support of the appeal. Oral submissions were also received on 31 August 2021. At that time Mr Dona appeared with Zach Farah, the secretary of the Granville Waratah Soccer Football Club. GDSFA was represented by Scott Sadler, the general manager of GDSFA and Phil Gilbert, a board member of GDSFA. The proceedings were overseen by Michael Kantarovski, a legal and regulatory officer from Football NSW. FNSW AT takes the opportunity to thank all participants for their helpful submissions.

The Factual Background

4. The following background is taken from the determination of the GDSFA AT as it accurately describes the events that gave rise to the charges against Mr Dona.
5. At all relevant times Mr Dona, was the president of the Granville Waratah Soccer Football Club (**the Club**). On 3 October 2020 the Club was playing a premier

¹ See *Randwick City Council FC v Coogee United FC* dated 18 December 2020. The 2021 regulations are not relevantly different to the 2020 regulations.

league match against Auburn District 02PLR. At that time Mr Dona acted as the team official for the Club.

6. Prior to kick off, the GDSFA football operations manager, Rosanna Lentini, advised Mr Dona that two players listed on the match sheet were ineligible as they had not played three (3) of the last four (4) games in the reserve grade to be eligible for this game. Those players were John Danbo – FFA82396276 and Collins Udaya – FFA10964624. Notwithstanding the advice from Ms Lentini, Mr Dona named the players on the team sheet and they played the premier league match against Auburn District 02PLR.
7. As a result, GDSFA charged Mr Dona pursuant to sections 16.4(d) of FNSW Regulations and 18.3(f) of the GDSFA Rules and Regulations with breaching those provisions. Section 16.4 (d) of FNSW Regulations deems conduct to be misconduct if such conduct involves a breach of the Regulations including a Schedule 3 offence. Section 18(f) of the GDSFA Rules and Regulations deems conduct to be misconduct if it is unsportsmanlike or unprofessional.
8. On 9 March 2021 Mr Dona was found guilty of a breach of these provisions in relation to each ineligible player by the GDSFA Disciplinary Tribunal. An appeal against this determination to the GDSFA AT was unsuccessful.
9. The GDSFA also alleged further breaches of the FNSW Regulations in relation to a game that occurred on 31 October 2020 when the club was competing against Rydalmere FC in the Cottam Cup. On that occasion, Mr Dona permitted four (4) ineligible players to participate in that game notwithstanding advice by the GDSFA prior to the game that the players were “cup tied” and therefore ineligible to play. Again, Mr Dona had been advised by the GDSFA Operations Manager, Rosanna Lentini that the players were ineligible to play as they had played for other teams in the Cottam Cup. Ms Lentini was the Competition Co-Ordinator and had administrative control and conduct of the Cottam Cup competition pursuant to Clause 2(a) of the Cottam Cup 2020 Regulations. In the circumstances, she was entitled to have her role and authority recognised by Mr Dona without demurrer.
10. The GDSFA brought a further four (4) charges against Mr Dona in respect of this match and like the earlier charges, he was found guilty of a breach of the FNSW Regulations by the GDSFA Disciplinary Tribunal and subsequently, on appeal to the GDSFA AT.

11. The circumstances of the finding of a breach of the Regulations are the subject of appeal grounds 1 and 2 to FNSW AT.
12. Appeal ground 3 is based upon the severity of the GDSFA AT determination. The GDSFA Disciplinary Tribunal determined that in relation to each offence proven (six offences), the appropriate penalty was one week suspension from all coaching and team management positions. For a reason that is not obvious to FNSW AT, the summary of the sanction was noted to be eight weeks suspension from all coaching and team management positions commencing on Wednesday 10 March 2021. The GDSFA Disciplinary Tribunal also determined that if Mr Dona played any further ineligible players in the 2021 or 2022 season (including the championship/Cottam Cup and all matches) in addition to any sanction in respect of the fresh offence, a suspension for a further six matches would be imposed.
13. On appeal to the GDSFA AT, the sanction imposed by GDSFA Disciplinary Tribunal was quashed and, in its place, the following sanction was substituted: -
 - a. Mr Dona was suspended for a time period of six months from all football related activity (defined to include any activity of a football nature which takes place on the field of play, playing area or within the external surrounds of a ground or venue), with a suspension of a further twelve months;
 - b. If Mr Dona has any involvement in playing ineligible players at any time in the next five (5) years, an additional sanction of twelve (12) months is to be added to the sanction imposed by a tribunal.
14. FNSW AT takes the sanction to mean that Mr Dona was banned from football activities for a period of eighteen (18) months with twelve (12) months being suspended, however in the event of a further breach in the next five years Mr Dona would be required to serve the suspended twelve months together with any further sanction that was imposed upon him.
15. Mr Dona appeals the severity of the sanction to FNSW AT.

Grounds 1 and 2 of the Appeal – A breach of the Regulations

16. These grounds are that: -
 - a. a party was not afforded a reasonable opportunity to present its case; and

- b. the decision was one that was not reasonably open to a body or a member appeals committee having regard to the evidence before the body or the members appeal committee.
- 17. The task of FNSW AT is to ascertain whether Mr Dona was given a reasonable opportunity to present his case and secondly, whether the decision of the GDSFA AT was reasonably open to it on the evidence before it.
- 18. FNSW AT is satisfied that Mr Dona was given a reasonable opportunity to present his case in relation to the charges brought against him. There was some earlier irregularity in the circumstances that resulted in charges being brought by GDSFA against Mr Dona. A GDSFA Disciplinary Tribunal determined the charges adverse to Mr Dona on 15 February 2021. An appeal from that determination by Mr Dona resulted in the GDSFA AT agreeing he was not afforded natural justice and therefore the first determination was quashed and the matter remitted to the GDSFA to consider if further charges would be pursued. Those charges were brought by notice dated 26 February 2021 and alleged breaches of the following provisions: -
 - a. 18.3 of the GDSFA Rules and Regulations

This clause stated that a charge of misconduct would be found against a member who through any act or omission: -

 - i. breached the FFA statutes and regulations;
 - ii. breached the FFA Regulations;
 - iii. breached the Association Constitution or Participation Agreement;
 - iv. breached the laws of a game;
 - v. breached the Association Laws and Regulations (including these regulations) unless a document contains a provision or provisions for dealing with any breach thereof;
 - vi. is unsportsmanlike or unprofessional;
 - vii. results in the failure to provide a safe environment for participants or to maintain public order in a match;

- viii. brings the game into disrepute or damages the reputation and goodwill of the game; or
 - ix in the opinion of the association, is or may be prejudicial to the interest or reputation of either the game of football in the State, in the region or the association or any of its sponsors.
- 19. The charge brought against Mr Dona was a breach of s 18.3(f) in that his conduct was allegedly unsportsmanlike or unprofessional.
- 20. An alternative charge under s 16.4(d) of the FNSW Regulations was brought. This provision defines misconduct to include conduct in breach of the Regulations including the Offences set out in Schedule 3. Particulars of the breach alleged however, was a breach of Schedule 3 Table C Code 21.01 (namely, breach of Football NSW Rules and Regulations or FA National Registration Regulations relating to registration (other than dual registration) and/or competitions) and secondly, Schedule 3 Table C Offence Code 32.01 namely, other action or behaviour in breach of the FA Code of Conduct, the FA National Registration Regulations, the FA Spectator Code of behaviour and/or the FA National Member Protection Policy not identified elsewhere in the table. It should be noted that in relation to each of the Schedule 3 offences, the appropriate penalty is left to the discretion of the disciplinary body.
- 21. The primary determination required the GDSFA AT to determine whether Mr Dona was provided a reasonable opportunity to present his case. It determined that in light of the fact that the GDSFA Disciplinary Tribunal had failed to provide reasons that the GDSFA AT should reconsider the matter and re-examine the evidence to ensure Mr Dona was afforded an opportunity to present a defence to the charges and that the decision was reasonably open to the GDSFA Disciplinary Tribunal.
- 22. Before the GDSFA AT, Mr Dona did not provide any further written evidence and relied upon all evidence that was before the GDSFA Disciplinary Tribunal. He was afforded an opportunity to provide written submissions and address the written submissions orally before the GDSFA AT.
- 23. FNSW AT is satisfied that Mr Dona was provided with a reasonable opportunity to present his case before the GDSFA AT. The GDSFA AT said as follows: -

*"The Appellant admitted that he **did** permit the players named in charges 3 – 8 to play in the relevant games and that at that time he was acting in a role where he had authority to do so. He also confirmed that he had*

been made aware prior to all of those games that these players were, in the opinion of GDSFA, ineligible to play in the respective games."

24. The GDSFA AT warned the Appellant that his evidence was an admission that he was guilty of the charges. He responded by noting that he believed that he was entitled to permit these players to play and that if not, he "*could work it out afterwards*". He claimed that notwithstanding the prior advice by GDSFA, it was just "*human error*" on his part.
25. It is clear therefore, that Mr Dona was provided with a reasonable opportunity to present his case before GDSFA AT and indeed, he was informed of the ramifications of the admission that he made before that body.
26. In relation to all six offences, Ms Lentini had advised Mr Dona that he could not play ineligible players. It should be borne in mind that community sport relies upon co-operation, courtesy and respect amongst all those who undertake to serve the interests of the game. Ms Lentini was entitled to expect and rely upon those shared values. Mr Dona, given his own contributions in similar roles over the years showed a significant lapse in what was and is expected and required. He acted in defiance of her decision rather than in accordance with it. Apart from this extensive and occasionally rancorous litigation Mr Dona's actions have strained previously nurturing relationships and caused, as was evident from the hearing, no little disappointment and distress amongst people united in their love for the game, including Mr Dona.
27. FNSW AT consider in the circumstances that Mr Dona was guilty of a breach of 16.4 of FNSW Regulations in that he played six players ineligible to play due to the relevant competition rules. Whilst his conduct was regrettable (and regretted by him), his conduct however was not in the circumstances unsportsmanlike or unprofessional within the meaning of s18.3 of the GDSFA Rules and Regulations. Nevertheless, due to the breach of FNSW Regulations, grounds 1 and 2 of the appeal fail.

Ground 3 of the Appeal– Severity

28. One can see from the chronology above that a sanction of six (6) weeks from football related activity was extended by the GDSFA AT to a minimum period of six months. The basis for doing so is not apparent from the reasons of the GDSFA AT determination.

29. Mr Dona and GDSFA confirmed at the hearing of the appeal before FNSW AT that no notice was given to Mr Dona or GDSFA of the intention of the GDSFA AT to increase the sanction of the GDSFA Disciplinary Tribunal.
30. A differently constituted FNSW AT has previously considered the failure to provide an opportunity to be heard by an appeals tribunal when it considers increasing a penalty when hearing a severity appeal.² FNSW AT determined that whilst in a sporting context the application of strict legal rules is too onerous upon sporting bodies, a failure to do so may result in a finding that a person charged has not been provided with a reasonable opportunity to present its case. Thus, in such circumstances, a severity appeal may succeed pursuant to 10.3(a) of FNSW Regulations (namely that a party was not afforded a reasonable opportunity to present its case) rather than under 10.3(e) (namely, severity).
31. We are firmly of the opinion that in the circumstances of this case, and noting the submissions made by Mr Dona and GDSFA on sanction, we accept Mr Dona was not afforded a reasonable opportunity to present his case contrary to 10.3 (a) of FNSW Regulations.
32. There were a number of relevant matters to be taken into account on the issue of sentencing. They were as follows.
 - a. Whilst Mr Dona accepts that he fielded players that were ineligible, he mistakenly thought that bylaw 4.5(d) of the GDSFA Match Regulations permitted him to do so if the opposing team did not raise any objection. That bylaw is in the following terms: -

"No protest or appeal concerning a match result shall be heard unless both clubs concerned agree that the validity of all players to take the field was confirmed by the opposition team via EMS"
 - b. This bylaw has the effect of preventing a challenge to the match result in circumstances where both clubs competing in the match confirm the validity of all players to take the field via EMS. The bylaw does not protect a club who fields an otherwise ineligible player. It simply has the effect that the match result shall stand if the other club does not raise objection but does not detract from the fact that fielding an ineligible player is a

² See *The Entrance Bateau Bay Football Club* dated 21 September 2018.

breach of the FNSW Regulations relating to the fielding of ineligible players.

- c. In relation to the match on 3 October 2020, Mr Dona was provided with the names of the two ineligible players by the coach and manager of the premier league reserve team. Mr Dona however, was the team match official for the purpose of the match card and whilst FNSW AT accepts that he did not make the decision to play the two ineligible players, as the team match official, he has the obligation to ensure the players were eligible to play.
- d. At all times Mr Dona acted in an open and transparent way in performing the tasks of a match official. He took comfort from the fact that neither team in the two matches took exception to the approach nor raised any complaint to GDSFA regarding his conduct.
- e. The interruption to the 2020 season by the Covid lockdown meant that the Club had difficulty fielding a team particularly for the Cottam Cup. In those circumstances, Mr Dona's concern was to ensure that those members of the Club who wanted to play football were able to play as the Club was able to field a full team.
- f. Mr Dona has had a significant contribution to football in the Granville District on a voluntary basis for an extremely long period of time. His submission on severity deserves repeating. He said: -

"I have been involved with Association Soccer Football for twenty-five consecutive years as coach and club committee member. In this time I have never had a red or even a yellow card issued to me and I have never been before any tribunal needing to defend any charge against me. I am the current President of Granville Waratah and have been for twenty-two consecutive years – the longest serving club president in the GDSFA. For most of those years I also coach two teams simultaneously and for two of those years, I also coached three teams simultaneously. I served on the GDSFA Board for almost four years, resigning only in the middle of last year. Previously, I served on numerous sub-committees. I have won awards from and for serving the GDSFA. I have drafted and initiated the Zero Tolerance Policies of the GDSFA in 2005. During my time on the GDSFA Board, I committed to years of extensive research to re-write our rich history including finding our new foundation date being two years

earlier in 1900 (acknowledged by soccer historians as "sensational"), I initiated the Phoenix League female football joint venture with Blacktown Association, helped introduce multiple association knock out competitions and then I dedicated them all to our past soccer legends, created professional historic videos, introduced live-streaming to our association, created a social media presence for both the GDSFA and my club, respected as among the best in association football, revised the Association logo, replaced the old GDSFA website with a new website full of information and materials, solely fought the GDSFA battle for our northern boundary whilst on the Board and while all others lost interest – and still helping the general manager now, introduce multiple prestigious awards to the GDSFA annual presentation dinner including, Fred Barlow Award and designed the medal, Phillip Williams Referee of the Year Award, Gold Boot Award, Social Media Award, Fair Play Award, Long Time Service Award, produced an annual dinner gala night amongst the best in association football and now continued by the Board, network political relationship for the benefit of the GDSFA, an activated the Atkinson Prize Challenge Cup (1887) with the Highland Soccer Association, introduced popular elements to improve the grand final day experiencing including new medals, champion signage and referee selected player of the match receiving the game ball."

- g. There can be little doubt that Mr Dona's dedication to football in the Granville District has involved him devoting the majority of his adult life to the sport in a voluntary way. Further, the depth of his commitment to the sport and his otherwise unblemished record in his various football roles, are significant matters that need to be taken into account when having regard to the appropriate sanction and circumstances.
33. The determination of the GDSFA AT did not disclose the matters taken into account by it in determining the appropriate sanction for the breach of the Regulations as found. We believe that if the GDSFA AT were advised of the above significant matters particularly in relation to Mr Dona's contribution to the sport, the outcome on penalty would have been different. The failure to permit Mr Dona to be informed of the intention of the GDSFA AT contemplating increasing the penalty means that he was not afforded the opportunity to do so and therefore, not afforded a reasonable opportunity to present his case.

34. Having done so before FNSW AT, we believe the above mitigating factors should result in a penalty that reflects obviously the fact that a breach has occurred, however the circumstances are such that FNSW AT is satisfied that there was no attempt to bring the game into disrepute or to obtain some unfair advantage.
35. In the circumstances FNSW AT believes that the appropriate penalty is one (1) match suspension in respect of each offence. As six (6) offences were proven, this results in a suspension from football activity for a period of six (6) weeks.
36. The first determination of the GDSFA Disciplinary Tribunal was dated 9 March 2021. The period of six weeks suspension from football activity will commence from Wednesday 10 March 2021.
37. In conclusion, FNSW AT uphold the appeal on the basis that Mr Dona was not afforded a reasonable opportunity to present his case on sanction. The determination of the GDSFA AT is quashed and in its place, FNSW AT determines as follows: -
 - a. Mr Dona is guilty of charges 3 – 8 of the Notice of Charge dated 26 February 2021 relating to fielding ineligible players on 3 October 2020 (2 charges) and 31 October 2020 (4 charges);
 - b. The appropriate sanction pursuant to FNSW Regulations is one (1) week suspension from football related activity in respect of each charge, amounting to a total suspension period of six (6) weeks;
 - c. The six (6) week period will commence from 9 March 2021 being the date of the GDSFA Disciplinary Tribunal determination.



Signed by David Stanton, Member on behalf of

Graham Turnbull SC DCJ, Chair and

Iain Rennie, Member

Football NSW

Appeals Tribunal