



APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES

DETERMINATION IN THE FOLLOWING MATTER:

Player/Official/Member/Association Member/Participant/Club	George Lundy v ESFA Stan Stamatellis v ESFA Steve Lawrence v ESFA
Decision Appealed	Appeal from the decision of the Appeal Panel
Date of Decision	12 March 2016
The basis upon which the matter is before the Appeals Tribunal	Sections 9.1(b) & 9.2(h) of the Football NSW Grievance and Disciplinary Regulations, 2016
Ground(s) of Appeal	Sections 9.3 (a)-(e)(i)-(ii) of the Football NSW Grievance and Disciplinary Regulations, 2016
Date of Hearing	31 August 2016
Date of Determination	23 September 2016
Appeals Tribunal Members	Iain Todd, Chair Julia Sorbara, Member Iain Rennie, Member

A. INTRODUCTION AND JURISDICTION

1. The Appeals Tribunal (**AT**) has been established in accordance with sections 4 and 9.1 of the Football NSW Grievance and Disciplinary Regulations, 2016 (**FNSW Regulations**) to determine appeals from the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and Member Appeals Committees (**MAC**). “Body” is defined in the Regulations to mean a body established under section 4 of the Regulations and relevantly includes the purposes of an appeal to the AT, the DC and the GPT.

2. The sole grounds of appeal prescribed by section 9.3 of the FNSW Regulations are as follows:
 - (a) a party was not afforded a reasonable opportunity to present its case;
 - (b) lack or excess of jurisdiction of a Body or a Member Appeals Committee;
 - (c) the decision of a Body or Member Appeals Committee was affected by actual bias;
 - (d) the decision was one that was not reasonably open to a Body or Member Appeals Committee having regard to the evidence before the decision-maker;
 - (e) severity, only where the decision imposed a sanction of at least:
 - i. a Fixture/Match Suspension of 6 or more Fixtures/Matches (excluding Trial Matches, Tournaments, the NPL Pre-Season Competition, the FFA National titles or any Football NSW Representative Matches); or
 - ii. a Time Suspension of three (3) or more months; or
 - iii. a fine of three thousand dollars (\$3,000) or more; or
 - iv. a bond to be of good behaviour of three thousand dollars (\$3,000) or more;
 - v. a deduction, loss or ban on accruing six (6) or more competition points; or
 - vi. exclusion, suspension or expulsion of a Club or Team from a competition; or
 - vii. relegation to a lower division;
 - (f) leniency, but only in the case of an appeal brought by Football NSW or an appeal allowed by the Executive pursuant to section 9.2(h) (Appeal from a MAC).
3. Upon the hearing of an appeal, the AT may:
 - (a) dismiss, allow in whole or part, or vary (whether by way of reduction or increase) a Determination, including any sanction or penalty made by a Body or a MAC, as the case may be;

- (b) subject to any applicable Minimum Suspension, impose any sanction, measure or make any order it thinks fit or that a Body or MAC, as the case may be, could have imposed under the Regulations or its regulations, as the case may be;
- (c) conduct a fresh hearing of the matter (*hearing de novo*); or
- (d) refer the matter to the Body or the MAC from which the appeal originated, or to the Tribunal (or similar) that dealt with the matter at first instance for rehearing and issue any directions or orders in relation to the rehearing of the matter that the AT deems appropriate.

(s 9.4(b) of the FNSW Regulations)

4. The AT is satisfied that it has jurisdiction to hear the appeal. Further, neither party raised any objection to the AT's jurisdiction.

B. BACKGROUND FACTS

5. The background facts are set out in detail in the reasons of the Appeal Panel.
6. In brief, each of the Appellants is a member of the Pagewood Botany Football Club (**PBFC**). At the relevant time Mr Lundy was the President of PBFC, Mr Stamatellis was a Director and Mr Lawrence was the Coaching Director.
7. In addition, as an active coach Mr Lawrence had signed and submitted a form NRR03, a prescribed registration form under the FFA National Registration Regulations for his registration as an Amateur Player. As is evident on the face and back of a form NRR03, a signatory submits themselves to the Laws of the Game, the Competition Administrator's Competition Rules, as well the FFA Statutes, Code of Conduct and Disciplinary Regulations. It is the AT's understanding that this would include the regulatory regime administered by FNSW and its constituent members.
8. The original proceedings flow from a citing of the Appellants arising from an incident report of an Assistant Referee, Mr Dylan Memmolo, and separately from Ms Caroline Oakes-Ash, the Eastern Suburbs Referees (**ESFA**) Co-Ordinator. These incident reports related to intemperate and intimidating comments allegedly made by each of the Appellants directed at both the match officials officiating at a Men's Championship

First Grade game on 25 July 2015 between PBFC and Glebe Wanderers FC and Ms Oakes-Ash.

C. THE DECISION THE SUBJECT OF THE APPEAL

9. The Appellants were the subject of a hearing of the Judiciary Committee of the ESFA on 12 August 2015. Each of the Appellants was charged with 'Bringing the game into disrepute'. In addition, Mr Lundy was also charged with 'Using offensive, insulting or abusive language towards a match official'.
10. The Judiciary Committee found that each of the charges had been proved, imposing the following penalties on the Appellants:
 - (1) All were prohibited from taking part in any activity in relation to football: Mr Lundy until 30 December 2016; Mr Stamatellis until 30 August 2016; and Mr Lawrence until 30 July 2016.
 - (2) Each was also prohibited from being present at a match in the ESFA area: Mr Lundy until 30 December 2016; Mr Stamatellis until 30 August 2016; and Mr Lawrence until 30 July 2016.
11. In its consideration of the Appellants' 16 grounds of appeal from the Judiciary Committee, the Appeal Panel dismissed each of the appeals. In a thoughtful and well prepared determination the Appeal Panel clearly dealt with the Appellants appeals in relation to the absence of jurisdiction of the ESFA, various definitional matters arising from the citing, allegations of the absence of procedural fairness and an appeal that the penalties were too severe.

D. THE GROUNDS OF APPEAL

12. In their Notice of Appeal of 22 March 2016, the Appellants repeat regulation 9.3 of the FNSW Regulations, articulating the following grounds of appeal:
 - (1) They were not afforded a reasonable opportunity to present their case;
 - (2) Lack of jurisdiction for both the Judiciary Committee and the Appeal Panel to hear and determine matters for and on behalf of ESFA;
 - (3) The determination of the ESFA Judiciary Committee was affected by actual bias;
 - (4) The determination was not reasonably open to the Judiciary Committee and the Appeal Panel;
 - (5) Severity.

E. THE HEARING

13. The AT heard the appeal on the evening of 31 August 2016.
14. The Appellants did not attend the hearing, but were represented by Mr John Harris. Messrs John Clayton and Aaron Dibdin attended the hearing in their capacities as office holders of ESFA. FNSW did not attend.
15. Section 9.4(e) of the FNSW Regulations requires that the AT will use its reasonable endeavours to issue a short oral or written summary of its determination (**Preliminary Determination**) within 5 working days of the completion of the hearing with a formal written Determination, with reasons given for the decision (**Final Determination**), to be provided within 21 working days, of the completion of any hearing.
16. On 5 September 2016 the AT provided a Preliminary Determination (in writing). This is the Final Determination furnished in accordance with section 9.4(e) of the Regulations.

F. SUBMISSIONS

17. Both the Appellants and ESFA provided written submissions.
18. Mr Harris on behalf of the Appellants and ESFA spoke to those submissions.
19. As requested by Mr Harris, it is noted that Mr Harris relied on the Appellants' written submissions in relation to matters other than the appeal in relation to lack of jurisdiction.
20. Both parties gave considered oral submissions in relation to the question of jurisdiction.

G. CONSIDERATION AND DETERMINATION

21. At the Hearing the following matters were accepted by the parties:
 - (1) That ESFA is an incorporated association and the relevant governing body of its football competition.
 - (2) That PBFC was a member of ESFA at the relevant time, and as such subject to ESFA's Constitution and regulatory regime.
 - (3) The Men's Championship First Grade game on 25 July 2015 between PBFC and Glebe Wanderers FC (which was the occasion that gave rise to the

incident reports concerning the Appellants) was subject to ESFA oversight and regulation.

22. However Mr Harris submitted that none of the Appellants were members of ESFA at the relevant time, and as such were not subject to its regulatory regime. As a consequence of this submission Mr Harris contended that neither the Judiciary Committee nor the Appeal Panel had any jurisdiction to consider the citings or the appeal that followed.
23. Mr Harris proposed that the following statement of the Appeals Panel at paragraph 19 of its determination generalised and misstated important contractual connections in relation to the Appellants:

‘The documents provide an interlocking suite of obligations on the part of the ESFA, member Clubs, and members of those Clubs that are binding upon participants (including players, match officials, and team and Club officials) in matches played under the auspices of the ESFA.’
24. As a general statement the AT believes the above paragraph to be a helpful summary of the likely effect of the interaction of complex documents and facts. However, as Mr Harris displayed in this instance, there are sometimes important matters of detail which may significantly affect various participants, and thus reveal the above paragraph to be wrong.
25. The AT is satisfied that the meaning of Member under the ESFA Constitution does not capture those individuals who are members of a member club of ESFA - see the definition of Member is clause 2.1 and generally clause 5 of the ESFA Constitution. Although it is a detail, the effect of the ESFA Constitution’s definition of Member means that members of Clubs who are ESFA Members (in this case PBFC) are neither ESFA Members nor obliged to submit to its regulation. It is not clear to us that this consequence was unintended or a drafting failure. Indeed, it may be that the intended consequence was that in circumstances such as the present it should be PBFC that should be the subject of the citings (rather than its members).
26. As matters stand the AT agrees that the Appellants have proven that there is a lack of jurisdiction in regard to ESFA and its regulatory organs and procedures in relation to the Appellants.

27. However, as was noted in paragraph 7 above, Mr Lawrence had submitted himself to the regulatory environment of FNSW and FFA. On this basis we are satisfied that Mr Lawrence is in this capacity subject to the jurisdiction of ESFA, its Judiciary Committee and the Appeal Panel.
28. Other than in regard to Mr Lawrence, it was not appropriate for the AT to consider the other grounds of appeal as they apply to Mr Lundy and Mr Stamatellis.
29. However based upon the material provided to us, including the oral and written submissions, and the parties' earlier responses to a 28 June 2016 Direction of the Chair of the AT, it is our view that all of these grounds fail in regard to Mr Lawrence.
30. We feel that it is appropriate to comment specifically in regard to Mr Lawrence's appeal on the grounds of severity. In making the following remarks we are struck that because of the intricacies of the facts applying to the different Appellants Mr Lawrence is the only one the subject of these comments. However it is our view that his conduct was poor, calculated and hurtful. We accept ESFA's submission that Mr Lawrence's penalty was within the FNSW penalty guidelines. On this basis the AT rejects Mr Lawrence's appeal that his penalty was severe.
31. As an observation, we believe that those other individuals involved in the offensive behaviour have acted with no credit. Such behaviour is all the more regrettable because they were at the relevant time office holders of PBFC. It is a matter for that Club to reflect on the conduct of its senior officeholders, and consider whether that conduct is for the good of the game. It is not a manly thing to vilify or humiliate others, and such behaviour ultimately threatens the community that is amateur football. As noted above, whilst the Appellants are not members of ESFA, PBFC is a member of that association and therefore subject to its regulatory oversight.

H. RELIEF

32. The appeal is:
 - (1) Upheld in regard to Mr Lundy and Mr Stamatellis;
 - (2) Rejected in regard to Mr Lawrence.

Iain Todd
Chair
Appeals Tribunal
Football NSW