



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

Player and Club	Mujeeb Karim, Lindfield Football Club
Decision appealed	Appeals from the Northern Suburbs Football Association Appeals Board by the Ku-ring-gai & District Football Referees Association
Date of Decisions	10 August 2016
The basis upon which the matter is before the Appeals Tribunal	Sections 9.1(c) & 9.2 of the Football NSW Grievance and Disciplinary Regulations, 2016
Ground(s) of Appeal	Sections 9.3(d) and 9.3(e) of the Football NSW Grievance and Disciplinary Regulations 2016
Date of Hearing	Decided on the papers
Date of Determination	1 December 2016
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair David Stanton, Member Anthony Scarcella, Member

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. Further, section 9.2(h) of FNSW Regulations provides that a match official who officiated in the match giving rise to the charge(s) or the relevant Referees Body, has standing to bring an appeal from a determination of a MAC if the FNSW Executive, in its absolute discretion, determines that it is in the interests of football in the State for the appeal to be heard by the AT.
3. 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).
4. 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).

5. By Notice of Appeal submitted on 17 August 2016, the Ku-ring-gai & District Football Referees Association (**KDFRA**) appeals two determinations of the Northern Suburbs Football Association Appeals Board (**NSFAAB**) each dated 10 August 2016 concerning Lindfield Football Club (**LFC**) player Mujeeb Karim (**Karim**). The NSFAAB is a MAC for the purposes of the section 9.1 of the FNSW Regulations. We understand that the FNSW Executive has, in accordance with section 9.2(h)(ii) of the FNSW Regulations determined that it is in the interests of football in the State for this appeal to be determined by the AT.
6. The AT is accordingly satisfied that it has jurisdiction to hear the appeal. Further, no party raised any objection to the AT's jurisdiction.

BACKGROUND FACTS

7. The events which gave rise to the relevant charges against Karim arose in a mens' all-age division 2 fixture against North Sydney United on 18 June 2016.
8. The match referee, Michael Ballantine, completed a match incident report in the following terms: -

"In the 65th minute of the match at about 15 metres into the North Sydney half near the centre of the field, I issued Lindfield striker, Number 69 Mujeeb Karim, FFA Number 67257691, a second yellow card for dissent. Before issuing the second yellow card and the red card, I gave Karim the first yellow for dissent in the 52 minute of the game. As Karim kept swearing I gave him two warnings and spoke to his Captain until I finally showed him the second yellow. Karim became very angry and took 6 steps towards me while saying: "You're a fucking joke, you're just a kid cunt!", before his left arm swung in a roundhouse way towards my face. I leaned back and his fist missed my face and his fingers got caught in my whistle cord, throwing my whistle a few metres away. This has left me with sore teeth.

As Matthew (another referee) was running on the pitch to support me, some North Sydney players stepped in to get Karim away from me. Karim at this point, continued to hurl verbal abuse at me. It took 3 or 4 of his own team mates to get him off the field and while being dragged away he said: "he's just a fucking kid, the young cunt shouldn't be reffing the game, he's just a fucking kid. It's a fucking joke mate" while also telling his own team mates to "fuck off" as they pushed him toward the side-line.

Once Karim had left the pitch, on Matthew's advice, I took some time to compose myself. Matthew then went to the Lindfield bench to ensure that Karim was 200 metres away from the pitch. This took approximately 5 minutes to occur. I then restarted the game with 25 minutes to go which was played with no further incident.

At the end of the game, both teams apologised to me"

9. The match referee's account was largely corroborated by an incident report completed by Matthew Gunn who was an assistant referee (AR 1) and Referees' Assessor and an incident report completed by the other assistant referee, Tegan Keevers.
10. Karim was charged with four offences arising out of these events, namely:
 - a. Use of offensive, insulting or abusive language and/or gestures;
 - b. Bringing the game into disrepute;
 - c. Threatening or intimidating an official by word or action;
 - d. Striking an official.
11. The offences were heard by the Protests, Disputes and Disciplinary Committee (**P.D. & D.C.**) under section 4.4 of the NSFA Regulations, 2016 commencing on 29 June 2016. Karim pleaded guilty to the first 3 offences and not guilty to the fourth offence of striking¹
12. The P.D. & D.C. adjourned the proceedings to 7 July 2016 to enable the match officials to attend and to answer questions from the P.D. & D.C. in relation to the striking charge. After hearing evidence from all match officials and from Karim, the P.D. & D.C. determined that the offence of striking an official was not proven.
13. In respect of the three offences to which Karim pleaded guilty, the P.D. & D.C. imposed the following sanctions:
 - a. Offence 1 - Use offensive, insulting or abusive language and/or gestures - Suspension for 1 year
 - b. Offence 2 – Bringing the game into disrepute - Suspension for 4 years
 - c. Offence 3 – Threatening or intimidating an official by word or action - Suspension for 30 years
14. The P.D. & D.C. also determined that the three suspensions were to be served consecutively with the total suspension from all football activity to be a period of 35 years.
15. In respect of the dismissed striking charge, the KDFRA appealed to the NSFAAB (**First Appeal**).
16. On 10 August 2016, the NSFAAB dismissed the first appeal. The basis of dismissing the appeal was said to be as follows: -

“Determination

¹ This was the earliest opportunity for Karim to enter a plea in respect of any charges brought against him

1. *That the original determination of the P.D. & D.C. that Mujeeb Karim had attempted to strike a match official should stand;*
 2. *That an attempt to strike a match official is punishable;*
 3. *That the original decision of the P.D. & D.C. was correct given the normal definition of "striking" used by the P.D. & D.C. in its determinations to mean an action that includes actual physical contact."*
17. LFC also appealed from the determination of the P.D. & D.C. on the basis of severity (**Second Appeal**). The NSFAAB heard the second appeal on 10 August 2016 and upheld the severity appeal in respect of offences 2 and 3. The revised sanctions were as follows: -
- a. Offence 1 – Use offensive, insulting or abusive language and/or gestures - 1 year
 - b. Offence 2 – Bringing the game into disrepute – 2 years
 - c. Offence 3 – Threatening or intimidating by word or action – 17 years (of which 15 years is suspended)
18. The effect of the NSFA Appeal Board determination is that Karim was suspended from all football activities until 7 September 2036 (a period of 20 years) however as 15 years was suspended, he was permitted to resume football activities from 7 September 2021.

THE APPEAL

19. It is from the two decisions of the NSFA Appeal Board dated 10 August 2016 (that is both the First and the Second Appeal) that KDFRA now appeals to this Tribunal.

THE GROUNDS OF APPEAL

20. The Amended Notice of Appeal articulates the following grounds of appeal.
- a. The decision was one that was not reasonably open to, relevantly, a MAC having regard to evidence before the MAC (section 9.3(d) of the FNSW Regulations); and
 - b. Leniency (section 9.3(f) of the FNSW Regulations).

THE HEARING

21. The AT directed the parties and Football NSW (as an interested party) to provide written submissions on the issues raised by the appeal. The parties and Football NSW provided helpful written submissions. The parties and Football NSW had the

opportunity to speak to those written submissions at a hearing but elected to have the appeal determined on the papers alone.

22. Section 9.4(e) of the FNSW Regulations requires that the AT 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.

CONSIDERATION AND DETERMINATION

23. The NSFAAB determination that the charge of "Striking an official" was not proved appears to turn upon a finding that such charge requires evidence of actual physical contact between a player and an official. So much is apparent from the following comment of the NSFAAB: -

"That the original decision of the P.D. & D.C. was correct given the normal definition of "striking" used by the P.D&D.C in its determinations to mean an action that includes actual physical contact."

24. That finding was consistent with that of the P.D. & D.C. in respect of which it said: -

"Whilst not unanimous, P.D. & D.C. was of the opinion the player had in fact attempted to strike the referee and only failed to make actual contact due to the referee's evasive reaction in swaying out of the way. This resulted in the player knocking the referee's whistle from his mouth".

And later

"The P.D. & D.C. considered the following 2 points to be extremely pertinent:

- 1. The panel concluded that the player took steps towards the referee, not the other way around as suggested by him, with the clear intention of confronting him;*
- 2. The panel concluded that it was only the referee's actions (moving his head backwards) that prevented actual contact being made with the referee".*

25. The NSFA Regulations under which the charges are laid is silent as to whether an attempt to strike a match official is an offence. However, the FNSW Regulations, relevantly provide as follows: -

"15.5 Misconduct – Culpability Attempt and Involvement

(a) ...

(b) Acts amount to attempt are also punishable. A Body may, however, reduce the sanction envisaged for the actual offence and determine any extent of mitigation as it sees fit;

(c)”

26. The AT sought submissions from the parties and from Football NSW regarding the interaction between the NSFA Regulations and the FNSW Regulations and in particular, to what extent section 15.5(b) of the FNSW Regulations applies in the circumstances where there is no identical or relevantly identical provision in the NSFA Regulations.
27. In its undated submissions, FNSW contended that the NSFA is required by its own constitution to have regulations that are consistent with the FNSW Regulations.² It further submitted that if there is any inconsistency between NSFA and FNSW’s regulations, then the FNSW Regulations prevail and apply to the extent of any inconsistency pursuant to clause 7.4(c) of the FNSW By-Laws. This clause is in the following terms: -
- “(c) Where there is any inconsistency between the constitution, rules or regulations of a member and the Football NSW Rules and Regulations, then to the extent of such inconsistency, the Football NSW Rules and Regulations shall apply”.*
28. FNSW submitted that the NSFA Regulations are silent in relation to acts amounting to attempt to commit an offence. The FNSW Regulations however, by section 15.5 state that acts amounting to an attempt are punishable. It follows that it is an offence for a player to attempt to strike a match official under the FNSW Regulations but not under the NSFA Regulations. There is an inconsistency between the two regulations and in those circumstances, section 15.5 of the FNSW Regulations applies with the effect that an attempt to strike a match official is an offence.
29. In its submissions of 25 October 2016, the NSFA accepts that the NSFA Regulations are *“out of step with existing FFA and FNSW Regulations and that in the event of a discrepancy those regulations take precedence over our regulations.”* It otherwise made no submission on this matter.³
30. LFC submitted that the FNSW Regulations apply in circumstances where a member’s own regulations are silent. Submissions to a similar effect were also made on behalf of the KDFRA.⁴

Attempt to strike or strike?

² See clause 37.1 of the NSFA Constitution

³ Likewise, NSFA agrees the FNSW Regulations take precedence over the NSFA regulations – See letter from Damien Miles, NSFA Competitions Manager

⁴ Undated submissions of 4 pages by Adrian Stark, Secretary

31. The P.D. & D.C. found that Karim had attempted to strike the referee. Indeed, the attempt resulted in the referee's whistle being knocked from his mouth.
32. The P.D. & D.C. did not find that Karim's actions amounted to a strike. The parties were invited by the AT to make further submissions on this issue. FNSW, LFC and the NSFA each submitted that the actions of Karim did not amount to a strike as no physical contact was made by Karim with the referee. The KDFRA however, submitted that the referee's equipment (eg, whistle, cards or flags) "*could be considered an extension of the referee and, as such, striking any of that equipment whilst in the possession of the referee could be deemed as striking the referee.*"⁵
33. In a criminal context, the touching of a person's clothing may amount to an assault. In R v Thomas, Ackner L.J said as follows:
- "An assault is any intentional touching of another person without the consent of that person and without lawful excuse. It need not necessarily be hostile or rude or aggressive.....There could be no doubt that if you touch a person's clothes while he is wearing them that is equivalent to touching him"*⁶.
34. Whilst the AT appreciates that this is not a criminal matter and Karim has not been charged with assault, the above case provides some guidance as to the approach to be taken when physical contact occurs through the medium of an inanimate object. Karim's conduct in the present case resulted in him coming into contact with a piece of equipment connected to the referee, namely a cord to which was attached his whistle that at the time was being held between the referee's teeth. By reason of the actions of Karim, the whistle was forcefully pulled from the referee's mouth, causing some minor discomfort to the referee's teeth.
35. However, we are of the view that as both the P.D. & D.C. and the NSFAA correctly, in our opinion, found that Karim's actions amounted to an attempt to strike the referee and, for the reasons that follow, such an attempt is punishable under the FNSW Regulations, we do not need to finally determine the issue as to whether the conduct also constituted an act of striking.
36. Section 15.5 of the FNSW Regulations makes the offence of attempt a subset of the main offence. It does so by directing that the penalty for the actual offence may be reduced to take into account the fact that an attempt only occurred (rather than an actual strike).
37. A decision is not reasonably open to a tribunal having regard to the evidence before it if that evidence in its totality preponderates so strongly against the conclusion found by the tribunal that it can be said that the conclusion was not one that a reasonable tribunal member could reach: Calin v The Greater Union Organisation Pty Ltd (1991) 173 CLR 33; Mainteck Services Pty Limited v Stein Heurtey SA [2013] NSWSC 266.

⁵ Supplementary submissions, undated and received on 29 November 2016 by Adrian Stark, Secretary

⁶ (1985) 81 Crim. App. Rep.(331) at p 354

38. The P.D. & D.C. and the NSFAAB erred in failing to sanction the offence of attempting to strike. That error arose because the NSFA Regulations do not in terms render acts amounting to attempt as punishable and both tribunals below failed to have regard to the effect of clause 7.4(c) of the FNSW By-Laws. That clause has the effect of importing section 15.5(b) of the FNSW Regulations into the NSFA Regulations. In the circumstances, both the P.D. & D.C. and the NSFAAB's respective determinations were not reasonably open to them and should be set aside.
39. Those tribunals should have found that the Player was guilty of the offence of striking because section 15.5(b) mandates that acts amounting to attempt, in respect of which a positive finding was made, are also punishable.

Leniency

40. FNSW submits that the NSFAAB's interpretation and application of suspended sentences is inconsistent with the FFA National Disciplinary Regulations (**NDR**) and the Federation International de Football Association (**FIFA**) Disciplinary Code.
41. The relevant provisions are as follows: -

Articles 1.2, 12.10 and 12.14 of the NDRs state:

"1.2 These National Disciplinary Regulations are mandatory and are designed to ensure that appropriate standards of behaviour are upheld on the field of play in a consistent manner across Australia. The Regulations may be supplemented, but not varied, by Competition Rules.

12.10 In respect of sanction of less than 6 months where the sanction is given in terms of a period of time, or less than 6 matches where the sanction is given in terms of matches, a Competition Administrator or Judicial Body may order that part of the match suspension or period of time suspension:

(a) comes into immediate effect; and

(b) the other part does not come into effect unless and until an additional Offence (excluding an indirect red card) is committed during a specified probationary period (i.e. suspended. The Offences (excluding an indirect red card) bringing this suspended portion of the sanction into effect should be outlined by the Competition Administrator or Judicial Body in accordance with clause 12.12(a).

12.14 Where a Judicial Body or Competition Administrator imposes a sanction involving a suspension from participating as a Participant (whether by reference to a number of matches or period of time), the sanction must:

- (a) impose a continuous suspension; and
- (b) not be structured in more than one (1) part or in any way that allows the Participant to serve the suspension in a fragmented way by participating in a certain match or matches (in whatever competition) and then resuming the suspension.

42. In addition, Article 33.2 of the FIFA Disciplinary Code provides as follows: -

“Partial suspension is permissible only if the duration of the sanction does not exceed six matches or six months and if the relevant circumstances allow it, in particular the previous record of the person sanctioned.”

43. The effect of these provisions is to permit partial suspension of sanctions in the limited circumstances where the sanction does not exceed 6 matches or 6 months. The clear intent of these provisions is that there should not be a suspension in cases where a tribunal considers an offence to be sufficiently serious as to warrant a sanction that is greater than 6 matches or 6 months.
44. The NSFAAB suspended 15 years of a 17 year sentence in relation to charge 3 (threatening or intimidating an official by word or action). In doing so, it erred because, having regard to the aforementioned provisions, it had no relevant power to do so. Accordingly, the sanction imposed by the NSFAA for offence 3 by which it reduced the sanction imposed by the P.D. & D.C. from 30 years to 17 years of which 15 years is set aside.

APPROPRIATE SANCTIONS

45. That now leaves for determination the appropriate sanction to be imposed in relation to each of the four offences which have been proven.
46. There is no place in football for the behaviour displayed by Karim towards the referee. This Tribunal and the FFA Disciplinary and Ethics Committee have repeatedly said that there is zero tolerance for intentional contact with a referee or other match officials.
47. In our view, the sanctions imposed by the NSFAAB in relation to offence 1 (using offensive, insulting or abusive language &/or Gestures – 1 year) and offence 2 (Bringing the game into disrepute – 2 years) were appropriate.
48. The two offences that remain for consideration is that of threatening or intimidating an official by word or action (offence 3) and attempting to strike the referee (offence 4). The sanctions for each of the offences under clause 4.27.2 of the NSFA P.D. & D.C. Regulations are as follows: -
- a. Threatening or intimidating an official by word or action – Minimum 8 matches, maximum life;
 - b. Striking, kicking, elbowing – minimum 1 year, maximum life.

49. The parties brought to the attention of AT the FFA decisions in *Calvano* and *Vukovic*. Each of these cases involved a player in the A League making intentional contact with a match official. Each of these decisions is distinguishable in the following material respects. First, neither Calvano nor Vukovic swung a punch in the direction of the match official. Secondly, neither player continued to berate the referee and other players when shown a red card. Karim's conduct was, as the referee's incident report makes plain, of a wholly different and more severe nature. Indeed, had the player's "round-house" swing at the referee made contact with any part of the referee's head or face it is highly likely that the referee would have suffered potentially serious physical injury.
50. We have also been referred to a number of decisions of the GPT involving instances of abuse and/or violent conduct towards a referee (eg Nobrega GPT 14/36, Mr X GPT 15/17 and Ngyuen 16/12). The AT is, of course, not bound by any determination of the GPT but we have nonetheless taken them into account in our deliberations.
51. We have also taken into consideration Karim's age (early 20's) background and apparent desire to contribute to football in the years to come. Whilst Karim is a young man, the AT is mindful that a suspension may not only impact on his personal desire to play but has the potential to affect other contributions that he may wish to make to football through, for example, coaching, refereeing or even spectating should family members wish to pursue the sport. We also take into account the fact that Karim has played since the age of 11 years and has not been the subject of any prior sanction in respect of his football career. In this regard, the AT has read the numerous references and submissions by all parties on the issue of penalty.
52. Taking all these matters into account, we are of the view that the appropriate sanction is as follows: -
 - a. Offence 3 - Threatening or intimidating an official by word or action – 2 years.
 - b. Offence 4 – Attempt to strike a match official – 4 years.
56. The remaining issue is whether the suspensions for the 4 offences should be served concurrently or consecutively. Where an offence, or charge, contains common elements arising out of the same or substantially the same facts, the offender should not be punished twice for the commission of elements of the respective offences that are common. The relevant tribunal should fix an appropriate sentence for each offence and then consider questions of cumulation or concurrence, as well as questions of totality (*Pearce v The Queen* (1998) 194 CLR 610 at 623-4).
23. The principle of totality requires a tribunal sentencing for multiple offences concurrently to review the aggregate of the sentences and consider whether their total effect is just and appropriate. The tribunal must look at the totality of the impugned behaviour and ask itself what is the appropriate sanction for all of the offences. An appropriate result, consistent with principle, may be achieved by making the sanctions wholly or partially concurrent or lowering the individual sanctions below that which would otherwise be appropriate to reflect the fact that a number of

sanctions are being imposed. Where practicable, the former approach, that is, of making sanctions wholly or partially concurrent, is to be preferred (*Mill v The Queen* (1988) 166 CLR 59 at 62-63).

53. In our opinion, the sanctions in respect of offences 1 (use of offensive, insulting or abusive language &/or gestures) and 3 (threatening or intimidating an official by word or action) arise out of the same or substantially the same facts. Accordingly, and having regard to the principles enunciated earlier, the sanctions for each of those offences should be served concurrently.
54. In so far as offence 2 is concerned, the conduct was carried out in public and clearly had the potential to diminish public opinion of the sport of football. Whilst that conduct is, in essence, the facts which together constitute the subject of the other 3 offences, nevertheless it warrants a sanction over and above that imposed in relation to those other offences. The sanction in respect of offence 2 should accordingly be served consecutively with those other charges.
55. The sanction in respect of offence 4 (striking a match official) should be served concurrently with the sanctions in respect of offences 1 and 3.
56. As a result, Karim is suspended from any football related activity, with the exception of spectating, for a period of 6 years.

RELIEF

57. The AT upholds the Appeal by the KDFRA from each of the determination of the NSFAAB.

SUMMARY

58. The AT finds Karim is guilty of the following offences:
 - a. Offence 1 – Use offensive, insulting or abusive language and/or gestures;
 - b. Offence 2 – Bringing the game into disrepute;
 - c. Offence 3 – threatening or intimidating an official by word or action;
 - d. Offence 4 – attempt to strike a match official.
59. The sanction imposed by the AT in respect of each offence is as follows: -
 - a. Offence 1 – Suspension for 1 year;
 - b. Offence 2 – Suspension for 2 years;
 - c. Offence 3 – Suspension for 2 years;
 - d. Offence 4 – Suspension for 4 years.

60. The suspension for Offence 2 is to be served consecutively with the suspensions for offences 1, 3 and 4. The suspensions for Offences 1, 3 and 4 are to be served concurrently.
61. Karim is accordingly suspended from all football related activity, with the exception of spectating, for a period of 6 years, that is, from 18 June 2016 until 17 June 2022.

A handwritten signature in black ink, appearing to read 'Lo Surdo', written in a cursive style.

Anthony Lo Surdo SC
Chair
Appeals Tribunal
Football NSW