

**GENERAL PURPOSES TRIBUNAL
OF FOOTBALL NEW SOUTH WALES
FINAL DETERMINATION
IN THE FOLLOWING MATTER:**

GPT 15/08

Respondent	Ms Emma Sloan (Mt Druitt Town Rangers)
Attendees	Mr Mitchell Clark (Match Referee, Witness) Mr Matthew Cassidy (Match Assistant Referee, Witness) Mr Elias Amini (Match Assistant Referee, Witness) Mr Geoff Laverton (Referee Support, MSW State League Referees Branch) Ms Katherine Bacha (Player, Mt Druitt Town Rangers, Witness) Ms Taryn Rockall (Player, Mt Druitt Town Rangers, Witness) Mr Mark Robertson (President, Mt Druitt Town Rangers)
The basis upon which the matter is before the General Purposes Tribunal	Grievance and Disciplinary Regulations Sections 8.2 and 15.3

Key Words/Phrases	Insulting Language, Unprofessional Conduct
Date of Hearing	26 May 2015
Date of Final Determination	3 June 2015
General Purposes Tribunal Members	Mr Chris Gardiner (Chair) Mr Ray Lovat Mr Duncan Tweed

A. INTRODUCTION

1. Football NSW has established this General Purposes Tribunal pursuant to Section 5 of the Football NSW Grievance and Disciplinary Regulations 2014 ("Regulations").
2. A General Purposed Tribunal (GPT) is responsible for hearing and determining:
 - 2.1. Breaches of Misconduct and Disrepute as set out in Section 8.2 of the Regulations;
 - 2.2. Grievances between Members as set out in Section 8.3 of the Regulations;
 - 2.3. Matters referred by Football NSW's Disciplinary Committee as set out in Section 8.4 of the Regulations;
 - 2.4. Any other matter Football NSW considers important to the interests of football in the State, at its absolute discretion, as set out in Section 8.1 (a) (iii).
3. The GPT makes determinations as set out in Section 8.5 of the Regulations.

B. NOTICE OF CHARGE

4. Football NSW issued a Notice of Charge against Ms Emma Sloan dated 19 May 2015, alleging breaches of:

Section 15.3 (d) Schedule 3 Table B Number 7, and/or (e) and/or (g), and/or Clauses 2.1 and 2.2(c) and/or (f) of the FFA Code of Conduct; and

Section 15.3 (d) Schedule 3 Table B Number 3, and/or (e) and/or (g), and/or Clauses 2.1 and 2.2(d) and/or (f) of the FFA Code of Conduct.

5. The conduct alleged in the Notice was as follows:

At the completion of the Round 6 1st Grade Match of the Women's State League (WSL) between Mt Druitt Town Rangers and Parramatta FC on Sunday, 17 May 2015, the Participant used offensive, intimidating and/or insulting language towards the Match Official (Mitchell Clark) by calling him "retarded"

6. Football NSW issued a Notice of Suspension to Ms Sloan dated 19 May 2015.
7. Ms Sloan pleaded not guilty in a Notice of Response dated 20 May 2015.

C. DECISIONS OF THE GPT

8. The Tribunal determined that Emma Sloan was guilty of the charges of breaching Section 15.3 (d), specifically Schedule 3 Table B Offence Number 7, and Section 15.3 (e) of the Football NSW Regulations;

9. The Tribunal determined that Emma Sloan serve a suspension as a player, coach and/or team official of 4 fixtures for the offence of insulting language against a Match Official and a suspension as a player, coach and/or team official of 4 months from 19 May 2015 for unprofessional conduct, these suspensions to be served concurrently and to commence from 19 May 2015 which was the date Football NSW issued its interim Notice of Suspension dated 19 May 2015.
10. The Tribunal determined that Ms Sloan pay the costs of the Tribunal processes as assessed by Football NSW.

D. THE HEARING

11. The Hearing was held at Football NSW on 26 May 2015.
12. All witnesses were cautioned on the need for accurate and honest testimony.
13. The Tribunal took additional oral evidence from the Match officials without Ms Sloan present.
14. The Match Officials were released from the hearing upon completion of their evidence and Tribunal questions to them.
15. Ms Sloan was invited to make submissions on jurisdiction and competence. No submission was made.
16. The Tribunal advised Ms Sloan of the additional evidence of the Match Officials and invited her to take that evidence into consideration in her submission and evidence. The Tribunal also advised Ms Sloan of the seriousness of the sanction being faced if found guilty. Ms Sloan was provided a break in the hearing to review her submission and evidence. During the break, the Tribunal Chairman advised Mr Robertson of the provision in the Regulations allowing for leniency in response to a guilty plea.
17. The Tribunal advised Ms Sloan of her rights to appeal at the conclusion of the hearing.

E. EVIDENCE & SUBMISSIONS

18. The Tribunal accepted as evidence Match Official Incident Reports and oral testimony from each of the Referee (Mr Clark) and Assistant Referees (Messrs Amini and Cassidy) involved in the alleged incident.
19. Mr Clark's evidence was that as he and his Assistants were leaving the field after the match in which she had been involved, Ms Sloan had run towards him, looked at him and called him "retarded", and "physically assaulted me by shoulder barging me with moderate force as she ran past".
20. Mr Amini and Mr Cassidy corroborated Mr Clark's statements.
21. Mr Amini stated that he saw Ms Sloan look towards Mr Clark and use the word "retarded" towards him.

22. The Referees' evidence was that Mr Amini had been to the left of Mr Clark, Mr Cassidy to the right of Mr Clark as they left the field. They stated that Ms Sloan had run between Mr Clark and Mr Amini, making contact with Mr Clark as she did.
23. The Referees' evidence was that they had not seen any other players beside Ms Sloan.
24. The Tribunal accepted a statement from Ms Sloan submitted with her Notice of Response and oral testimony as evidence.
25. The Tribunal accepted a statement and oral evidence from Ms Bacha submitted with the Notice of Response, oral evidence from Ms Rockall, and a statement submitted with the Notice of Response and an oral submission from Mr Robertson.
26. Ms Sloan's evidence was that she had moved quickly to the technical area after the final whistle, from which, as she usually did, she led her teammates in a warm-down exercise, moving in a line across the field.
27. Ms Bacha, Ms Rockall and the Club President corroborated Ms Sloan's evidence in that regard.
28. Ms Sloan stated that she had been in a conversation with Ms Bacha who was to her left as they conducted their warm-down, and that in that conversation she had stated that "that decision was retarded", referring to a decision just before the end of the game. She stated that she did not direct the word "retarded" towards the Referee. Ms Bacha corroborated Ms Sloan's evidence in that regard.
29. Ms Sloan stated that she had not seen the Referees as she undertook the warm-down run. She stated that when she looked up and realized they were in front of her, she had not been able to avoid moving through them because she had a teammate either side of her. She stated that she ran between the Referee and his Assistant to his right. Ms Bacha corroborated Ms Sloan's evidence in that regard.
30. Ms Sloan acknowledged that she had made contact with the Referee as she ran between him and his Assistant, but stated that the contact was unintentional and unavoidable. She described it as a 'brush'.

F. CONSIDERATION & COMMENT

31. The Tribunal dealt first with the alleged use of the word 'retarded' towards the Referee.
32. By Ms Sloan's own evidence, the word was used approximately 2 meters before she reached the Referee.
33. For the word to have been heard by the Referee and Assistant Referees, it would have to have been spoken louder than would be suggested by a conversation between two teammates.

34. The Tribunal accepted the evidence of both Mr Clark and Mr Amini that they saw Ms Sloan use the word as she looked towards the Referee.
35. The Tribunal concluded that Ms Sloan had directed the word towards the Referee.
36. The Tribunal deemed the use of the word 'retarded' towards the Referee in front of her teammates as insulting, and so found Ms Sloan guilty of a breach of Offence Number 7 in Table B of Schedule 3 of the Regulations.
37. The Tribunal deemed the offence to be at the lowest end of the scale of seriousness and imposed the minimum suspension of 4 fixtures.
38. The second charge against Ms Sloan was very serious – pushing a Referee (Number 3, Table B, Schedule 3 of the Regulations) – and involved a minimum sanction of 1 year if guilt was determined.
39. In assessing the evidence in the context of the seriousness of the charge and consequence of any guilty finding, the Tribunal took the view that it needed to be comfortably satisfied that Ms Sloan had intended to push, and deliberately pushed, the Referee.
40. This approach parallels what is known in law as the 'Briginshaw Test', which sets criteria in regard to the burden and standard of proof required in such a matter. The principle, or criteria, for determinations, was articulated in a famous case known as 'Briginshaw' by High Court Justice Dixon, as follows:

The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer of the question whether the issue has been proven to the reasonable satisfaction of the tribunal.
41. The concept of Tribunal members having to be 'comfortably satisfied' also came from this case, articulated by Justice Rich:

*The nature of the allegation requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a **comfortable satisfaction** that the tribunal has reached both a correct and just conclusion.*
42. Ms Sloan's evidence was that she was in a warm-down run, that she looked up but that, notwithstanding she was not running at pace, or that the colleagues she stated were tightly on either side of her were able to avoid the Referees, she was unable to do other than run through the Referees.
43. The Tribunal doubted that Ms Sloan did not sight the Referees from the time she left the technical area to the point several meters into the field where she came upon them. In any event, however, the Tribunal accepted the Referees' evidence that Ms Sloan had seen them meters before contact.
44. The Tribunal concluded that Ms Sloan chose to continue her run through the Referees. The Tribunal concluded that that decision was, even if momentary, willful and disrespectful.

45. The Tribunal concluded that as a result of her decision, Ms Sloan made contact with the Referee.
46. The Tribunal could not satisfy itself that Ms Sloan intended to "push" the Referee.
47. It notes that whilst using the word 'assault', the Referee described the contact as 'moderate'.
48. A description by Mr Cassidy that Ms Sloan had dropped her shoulder before making contact was not inconsistent with Ms Sloan having to turn inward from the larger Mr Amini as she tried to move between him and Mr Clark.
49. The Tribunal was comfortably satisfied, however, that Ms Sloan had acted unprofessionally towards the Referee in continuing her run towards him, resulting in contact with him even if unintentional. The Tribunal determined that she was guilty, therefore, of a breach of Section 15.3(e) of the Regulations.
50. For a team captain in a senior team to act in this unprofessional way and, even if just carelessly and negligently, make contact with a Referee after a game, is totally unacceptable. The unprofessional conduct warranted, in the Tribunal's view, a significant sanction that emphasized the recklessness of the behavior and that deterred others from such disrespectful and risky behavior in the future.
51. The Tribunal determined that Ms Sloan be suspended for 4 months from the date of the original Notice of Suspension by Football NSW.
52. The Tribunal determined that the two suspensions imposed on Ms Sloan be served concurrently.

Chris Gardiner
Chairman
3 June 2015