

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

GPT 15/32

Respondent	Mr Zac Elkheir
Attendees	Mr Mohamed Elkheir (witness) Mr Andrew Fearnley (witness, Club Support) Mr Stephen McEwan (witness, by phone) Mr Tony Pantelli (witness)
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	Offensive Language and Behaviour
Date of Hearing	16 November 2015
Date of Final Determination	25 November 2015
General Purposes Tribunal Members	Mr Chris Gardiner (Chair) Mr Mendo Cklamovski Mr Louis Fayd'herbe

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 Purposes 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. NOTICES OF CHARGES

4. Football NSW issued a Notice of Charges against the Respondent dated 5 November 2015, alleging breaches of:

CHARGE 1: Parts (a) and/or (e) of the FFA Spectator Code of Behavior, Sections 15.3 (b), (e), (f), (g) and/or (h) of the Football NSW Regulations,

CHARGE 2: Parts (a) and/or (e) of the FFA Spectator Code of Behavior, Sections 15.3 (b), (e), (f), (g) and/or (h) of the Football NSW Regulations.
5. The conduct alleged in the Notice of Charges for the Respondent was as follows:

CHARGE 1: *During the U16s Round 21 Match in the Men's State League 1 competition between Western NSW Mariners and Stanmore Hawks FC on 15 August 2015 at Glen Willow Stadium, Mudgee, the Participant (Zac Elkheir) used the following language that was offensive, threatening and/or that incited violence: words to the effect of: "Go ahead and hit the dogs. Kill them" in Arabic*

CHARGE 2: *The Participant then used language and made gestures that were offensive, abusive threatening, intimidating and/or that incited violence. The language used included: "Fucking kill you all, fucking smash you fucking wait for you all outside the ground, you are all a bunch of cunts". The gestures included kicking and throwing punches*
6. The Respondent pleaded not guilty to the Charges in a Notice of Response dated 10 November 2015.

C. DECISIONS OF THE GPT

7. The Tribunal determined that Zac Elkheir was guilty of offensive language and behaviour and, so, a breach of Part (e) of the FFA Spectator Code of Behaviour and Sections 15.3(b) and (e) of the Football NSW Regulations.
8. The Tribunal determined that Mr Zac Elkheir be suspended from attending six competition fixtures in which his son participates.

9. The Tribunal determined that the costs of that part of Tribunal processes relating to his matter, as assessed by Football NSW, be met by Mr Elkheir.

D. THE HEARING

10. The Hearing was held at Football NSW on 16 November 2015.
11. The Respondent was invited to make a submission as to the jurisdiction or competence of the Tribunal. No submission was made.
12. The Respondent was issued with a general caution with regard to the need for accurate and honest evidence.
13. The Respondent was able to make opening and closing submissions on the Charges and evidence, and to have questions put to the witnesses.
14. The Respondent was advised of his rights to appeal.

E. EVIDENCE & SUBMISSIONS

15. The Tribunal accepted and relied on the following statements provided as Documents and Annexures to Notice of Charges by Football NSW and the Notice of Response:
 - 15.1. A statement from Mr Stephen McEwan dated 16 August submitted as Annexure B by Football NSW
 - 15.2. A statement from Tony Panteli dated 21 August 2015 submitted as Annexure C by Football NSW
 - 15.3. A statement from Mr Zac Elkheir dated 27 August 2015 submitted as Exhibit A by Football NSW
 - 15.4. A statement from Ms Annie Boulton dated 27 August submitted as Exhibit B1
 - 15.5. A statement from Ms Steff Rooke (undated) submitted as Exhibit C
 - 15.6. A statement from Mr Andrew Fearnley (undated) submitted as Exhibit D
16. Mr Con Avgerinopolous provided a statement dated 19 August 2015 and an additional brief statement dated 27 August 2015 submitted as Annexures A and A1 by Football NSW. Mr Avgerinopolous did not attend the hearing and did not make himself available by phone for the hearing. Mr Elkheir submitted, and the Tribunal accepted, that his statement should not be relied upon in the matter.
17. Mr Elkheir stated that he had reacted to attacks on field against his son with expressions of anger, and had responded to provocations by opposition officials and spectators, but had at no time jumped a fence, entered the field of play, or made contact with any person in the incident in question.
18. Mr Elkheir acknowledged and expressed regret for offensive language in the incident but denied the language as particularized in the Charges. He submitted that statements by one witness, Mr McEwan, regarding words spoken in Lebanese were incorrect and that the person's evidence unreliable.
19. Mr Elkheir denied his behavior in the incident had been threatening or incited violence. He stated that as a highly qualified martial artist, he had under law the obligation to advise persons of his capabilities and had done so in the incident to deter and prevent actions by others.

F. CONSIDERATION & COMMENT

20. Charge 1 depended on the reliability of evidence from Mr Stephen McEwan. Mr McEwan claimed that he had heard Mr Elkheir use certain words in Lebanese and that he knew the English meaning of these words because of his familiarity with the language through marriage and travel.
21. Mr McEwan, however, stated at the hearing that although he thought Mr Elkheir had been inciting his son, he did not believe the words as particularized could be taken literally.
22. Mr Elkheir stated that he had been angry, had called out for attacks on his son to stop, and had directed words to his son about self-defence, but had not incited violence. He challenged Mr McEwan's language expertise and gave evidence on what he claimed were errors in Mr McEwan's understanding of the language.
23. The Tribunal found Mr McEwan's general evidence to be inconsistent, and concluded that it was unsafe to prefer his recollection and interpretation of Mr Elkheir's language to Mr Elkheir's account and explanation.
24. It found Mr Elkheir not guilty of Charge 1.
25. With regard to Charge 2, the Tribunal found, on the evidence in the statements and at the hearing from Mr Pantelli, Mr Elkheir's Club, and Mr Elkheir, that there had been an altercation between Mr Elkheir and a number of Stanmore Hawks officials and spectators. It found that the altercation had been heated, had involved offensive language, but had been brief.
26. Mr Elkheir admitted that he had expressed anger in the incident. He admitted that he had used offensive language.
27. Mr Elkheir admitted that he had not just stated to persons involved in the altercation that he was a highly qualified martial artist, but had used indicative physical movements in making that point. This explained, in the Tribunal's view, the reference in a number of statement and in Charge 2 to kicking and punching gestures.
28. Both Mr McEwan and Mr Panteli stated at the hearing that they had not felt threatened in the incident.
29. Nevertheless, statements from Ms Boulton, Ms Rooke, and Mr Fearnley suggested that Mr Elkheir had to be 'calmed down' and had to be 'walked away' from the incident. His action in demonstrating rather than simply stating his martial arts skills could have been misunderstood by as provocative.
30. Mr Elkheir's display of anger, his offensive language, and his martial gestures were unfortunate, careless and unacceptable in front of his son and young people at the ground.
31. The Tribunal determined that Mr Zac Elkheir was guilty of offensive language and behaviour and, so, a breach of Part (e) of the FFA Spectator Code of Behaviour and Sections 15.3(b) and (e) of the Football NSW Regulations.
32. The Tribunal determined that Mr Zac Elkheir be suspended from attending six competition fixtures in which his son participates.

33. The Tribunal determined that the cost of the Tribunal process relating to his matter, as assessed by Football NSW, be met by Mr Elkheir.

Chris Gardiner
Chairman
25 November 2015