

## GPT NOTICE OF DETERMINATION.

Proceeding under section 8.5 of the  
FNSW Grievance and Disciplinary Regulations

### Proceeding Details:

<b>Tribunal reference</b>	MGPT 16-71
<b>Date of hearing</b>	3 November 2016
<b>Time of hearing</b>	7:00pm
<b>Venue of hearing</b>	FNSW
<b>Tribunal Member(s)</b>	Alex BROWN
<b>Respondent</b>	David BERTRAM (FFA Number 76577832)
<b>Fixture</b>	NPL Tier 2 U13's match between Balmain Tigers FC and Rydalmere Lions FC on 15 September 2016 at Rydalmere Park 3.

*This Notice constitutes the General Purposes Tribunal's Determination resulting from the Tribunal hearing listed above.*

### Charge(s) and Determination(s):

<b>Charge(s)</b>	<b>Tribunal determination</b>
<p>1. The Respondent (<b>David Bertram</b>) used offensive, insulting or abusive language or gestures towards a Match Official in breach of section 15.4(d), Schedule 3, Table B, Number 1 of the FNSW Grievance and Disciplinary Regulations (<b>Regulations</b>).</p>	<p>1. <u><i>Plea</i></u>: Not guilty <u><i>Finding</i></u>: Guilty <u><i>Determination</i></u>: <b>Three (3) fixture suspension</b> <u><i>Reasons</i></u>: <i>In making its determination the GPT, after reviewing all the evidence, was satisfied that the respondent had used words to the effect of "it makes me wonder how you got your referee's badge" towards the Referee. The GPT had particular regard to the state of the Referee at the conclusion of the game and was satisfied that her state was not sufficiently explained by her having been inappropriately addressed as "Sir". The GPT noted that the Referee had included the words "it makes me wonder how you got your referee's badge" in the match report and that the Referee repeated those words (or a close approximation) on a number of occasions during the course of the hearing. She was unshaken when challenged on whether those words were spoken.</i></p>

*The GPT had no hesitation in concluding that the conduct of the Respondent in questioning how the Referee got her badge amounted to offensive, abusive or insulting language. It met any of those labels and it was not seriously contested that, if the GPT were satisfied that such words were spoken, the charge would be made out.*

*The finding of the GPT was based upon the specific phrase "it makes me wonder how you got your referee's badge" however the GPT was otherwise satisfied that the Respondent had made comments such as "open your eyes Ref" during the course of the game. The GPT did not specifically consider whether this phrase was in itself capable of constituting the charge, but it should go without saying that it was not appropriate for the Respondent to have engaged in any form of open dissent with the Referee. The Referee fairly accepted that she would not have completed an incident report if this had been the sole instance of dissent (i.e. the comment "open your eyes Ref").*

**Sentence**

*The GPT accepted that the Respondent was concerned for the welfare of his players at the time at which the comment "it makes me wonder how you got your referee's badge" was made. The undisputed evidence was that at least two of his players were on the ground at the time and it is clear that a number of the parents from Balmain Tigers FC raised concerns over player welfare arising out of the game.*

*The GPT further took into account the deep well of good character evidence that the Respondent had to draw upon, coupled with his unblemished history over many years as a coach and player. The GPT accepted that the incident was well out of character for the Respondent and that he has otherwise shown himself to be a dedicated and responsible coach.*

*Against those considerations the GPT took into account that the target of the insulting, abusive and offensive comment was a 16 year old female Referee. While the Referee showed herself to be a resilient and confident young woman during the course of the hearing, it was clear on the evidence that the comments had upset her. The comments*

were also made by the Respondent in his capacity as coach of a junior team and accordingly modeled poor behaviour to juniors.

It was submitted on behalf of the Respondent that a suspended sentence of the minimum term would be an appropriate penalty. In particular, it was noted that any penalty imposed that was not suspended may prevent the Respondent from engaging in pre-season coaching activities. The Respondent's character was also relied upon, as was the unlikelihood of his reoffending into the future (which the GPT accepts).

The GPT was satisfied that it has the power to suspend a sentence (relying upon the FFA Regulations to the extent they are inconsistent with the FNSW Regulations) and gave anxious consideration to suspending the sentence, however ultimately determined that such a course would not be appropriate. The GPT was satisfied that a penalty could be fashioned that would not impact upon the pre-season coaching activities of the Respondent. The GPT also felt that it was ultimately appropriate that a concrete sanction be imposed in light of the aggravating features identified above (age of the target, coaching juniors and impact of the comments). The GPT determined that the minimum suspension period was appropriate.

Therefore, the Respondent is to serve a combined suspension of three (3) fixtures.

NB. The Respondent is to serve the suspension as a Team Official and in accordance with section 14.6 of the Regulations, in particular, sub-sections 14.6(h) and (i) which provide that, on the day of a Fixture, the Respondent must not:

- a. enter the field of play (or court), its surrounds, the technical area, players race, dressing rooms or any other place within a stadium, venue, ground or Centre where players and/or officials are likely to assemble to prepare for a match;
- b. be seated in an area in a stadium, venue, ground or Centre normally reserved for players and/or officials; and

	<p>c. <u>in the case of coach, must not engage or attempt to engage a third party to relay coaching instructions.</u></p> <p><u>For the avoidance of doubt, the Respondent is able to conduct training sessions and coach during pre-season trial and friendly matches. However, such matches will not count towards the serving of the suspension.</u></p>
<p>2. The Respondent failed to follow the reasonable direction of a Match Official in breach of section 15.4(d), Schedule 3, Table C, Number 8 of the Regulations.</p>	<p>2 <u>Plea</u>: Not guilty</p> <p><u>Finding</u>: Not guilty</p> <p><u>Reasons</u>: The Respondent was alleged to have failed to comply with directions from both the Referee and Assistant Referee that he leave the Match Official's change room after the game.</p> <p>There was no dispute that such directions were given to the Respondent and the GPT was satisfied that they were. The areas of dispute related to the circumstances in which the directions were given and the reasonable opportunity that the Respondent had to comply with the directions.</p> <p>The GPT was not satisfied on the evidence that the Respondent's conduct amounted to a breach of the relevant regulation.</p> <ul style="list-style-type: none"> <li>• The GPT was satisfied that the Respondent entered the Match Official's change room for a legitimate purpose.</li> <li>• The GPT was satisfied that the Match Officials did not particularly want to see the Respondent in their change room as a result of his conduct during the course of the game. The GPT was further satisfied that the atmosphere in the Match Official's change room was quite charged as a result.</li> <li>• The GPT was satisfied that it was the Assistant Referee who first spoke and not the Respondent.</li> <li>• The GPT was satisfied that the Respondent was told at least three times to leave the change room.</li> <li>• The GPT was satisfied that the Respondent did voluntarily leave the Match Official's change room after a time.</li> </ul>

	<ul style="list-style-type: none"> <li>• <i>The GPT was not in a position to reliably determine the length of time that passed between the Respondent first receiving a direction to leave and the Respondent complying with the direction by leaving the Match Official's change room.</i></li> </ul> <p><i>The GPT concluded that it was more likely than not that there was a relatively short time (less than 30 seconds) between the Respondent being directed to leave and him in fact leaving voluntarily. The GPT was not satisfied that, in all the circumstances that presented both the Respondent and the Match Officials, the conduct of the Respondent amounted to a breach of the relevant regulation.</i></p>
<p><b>3.</b> The Respondent engaged in threatening or intimidating language or conduct towards a Match Official in breach of section 15.4(d), Schedule 3, Table B, Number 5 of the Regulations.</p>	<p><b>3</b> <u>Plea:</u> Not guilty</p> <p><u>Finding:</u> Not guilty</p> <p><u>Reasons:</u> <i>The Respondent was alleged to have moved towards the Referee whilst in the change room and "got in her face".</i></p> <p><i>The GPT could not be satisfied, on balance, that the Respondent had moved towards the Referee whilst in the change room. The Respondent denied the allegation. The evidence of Mr Judge as to the positioning of individuals within the room excluded the possibility that the Respondent had stood in very close proximity to the Referee. The evidence of the Assistant Referee also tended to exclude that possibility as on his account he was, at all relevant times, between the Respondent and the Referee.</i></p> <p><i>The GPT was satisfied that all witnesses were doing their best to give a frank recollection of events. The GPT took the view that the earlier conduct of the Respondent (the subject of Charge 1 above) had a bearing on the perceptions of the Match Officials in the Match Official's room, that is they perceived his conduct as something more than it was because of his earlier dissent and discreditable conduct during the course of the game.</i></p>
<p><b>Costs:</b></p> <p>The Tribunal determined that each party should bear their own costs.</p>	

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with sections 8.8 and 9.2 of the FNSW Grievance and Disciplinary Regulations. Any appeal must be submitted by completing the online Notice of Appeal form (Prescribed Form 12 – available on the FNSW website or by clicking [here](#)) and lodging the relevant Application Fee (\$750) within 7 working days of this determination being issued.

**10 November 2016**

Alex Brown

Member

**GENERAL PURPOSES TRIBUNAL**