

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

GPT 18/46

Date of Hearing	21 August 2018
Date of Final Determination	27 August 2018
Respondent	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> Rockdale City Suns FC
Attendees, Witnesses & Documents	As attached in the Schedule
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations Section 9.2, 16.4(d), FFA Code of Conduct, FFA National Disciplinary Regulations 2018.
Key Words/Phrases	Post match review & citing of player, Standing and Jurisdiction of Football NSW to cite a Participant post match, meaning of “Serious Infringement that has escaped the Referee’s attention”, Section 3.2 FFA National Disciplinary Regulations, meaning of Referee “seeing and ruling on an incident”, meaning of “playing distance”.
General Purposes Tribunal Members	Mr David P. LEWIS (Chair) Ben JONES (Deputy Chair) Robert IACONIS

A. INTRODUCTION AND JURISDICTION

1. The General Purposes Tribunal (GPT) has been established by Football NSW (FNSW) pursuant to Section 4 of the Football NSW Grievance and Disciplinary Regulations (“Regulations”). This matter was determined pursuant to the 2018 Regulations.

B. NOTICE OF CHARGE

2. During the National Premier League (NPL) U18s Match between Rockdale City Suns FC and Sydney Olympic FC at Ilinden Sports Centre on 8 July 2018, the Respondent, Mr [REDACTED] from Rockdale City Suns FC, was alleged to have kneed/kicked an opposition Player, Mr [REDACTED] two to three times while he was on the ground.
3. The Referee ruled on this incident and gave an indirect free kick against Mr [REDACTED] for playing in a dangerous manner. The Referee indicated in his written report to the Tribunal that *“I was 10 metres from play and my AR2 20 metres and we saw no kicking in the upper body at all.”*
4. On 19 July 2018, FNSW issued the Club with a Notice of Charge pursuant to section 9.2 and 16.4(d) of the Regulations relating to incidents during the abovementioned match.
5. The Respondent was charged under section 9.2 of Football NSW Regulations (Regulations) for alleged breaches by the Respondent of section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2018, namely Schedule 3, Table A, Offence Code R2 - *Violent Conduct Offence Code 02-01: “Violent Conduct when the ball is not in play or playing distance”*.

Proposed Sanction

6. Under the Regulations, Football NSW has a discretion to deal with matters without taking the matter to a hearing, provided a Participant agrees to plead guilty to the charge proposed. If a Participant does not agree, then the matter will proceed to a hearing.
7. After reviewing the reports and evidence provided, and based on reference to other similar matters dealt with by Football NSW, the FFA and other international Football Associations, the Respondent was offered the following sanction by FNSW in respect of the Charge if the Respondent agreed to plead guilty to the Charge:
8. A suspension of four (4) Fixtures from all Football Related Activity. Football NSW noted that this was the Minimum Sanction applicable for this offence.
9. The Respondent declined this offer, pleaded Not Guilty to the Charge and elected to have the matter heard by the Tribunal.

Respondent’s Submissions

10. Mr Dennis Loether, President of Rockdale City Suns FC, tendered an undated document on behalf of the Respondent called *“Submissions [REDACTED]”*. The Respondent also supplied a Witness Statement dated 26 July. These documents were not included in the Football NSW list of Annexures in this matter.
11. Rockdale City Suns FC sought a Determination that Football NSW did not have the jurisdiction to bring these proceedings under section 3.2(d)(iii) of the National Disciplinary Regulations as:
 - a. The relevant incident was not a *“serious incident”*; and;
 - b. The referee had a clear unobstructed view of the incident and ruled on the incident during the match and therefore the incident did NOT escape the Referee’s attention; and

- c. If there was standing to bring the proceedings, then the Charge of Violent Conduct (R2) is incorrect as Violent Conduct can only be proven when the ball is not in play or within playing distance.
12. The Respondent contended that:
 - a. The contact occurred whilst the ball was in play;
 - b. The contact occurred within playing distance of the ball;
 - c. The extent that reliance is placed on Law 12 of the Laws of the Game:

“Violent conduct is when a player uses or attempts to use excessive force or brutality against an opponent when not challenging for the ball, or against a team-mate, team official, match official, spectator or any other person, regardless of whether contact is made.”
13. The Respondent claimed that he was clearly challenging for the ball but was not able to do so due to the opposing player shielding the ball illegally. The only applicable charge for what occurred could be Serious Foul Play- attempting to gain possession of the ball using excessive force offence code 02-01 - Schedule 3, Table A, Red Code with the applicable sanction for a first offence being MMS +1 fixture.

C. THE HEARING

14. Mr Dennis Loether, for the Respondent, was invited to speak to his submissions. He commenced by asserting that the Tribunal did not have standing to hear this matter for the reasons set out in paragraph 11 above.

Standing of the Tribunal to hear the matter

15. Mr Loether relied on the fact that the actions of the Respondent were neither “malicious” or made “with the intention of harming the opposing player” and on that basis could not be considered a “serious infringement” as required by Section 3.2(d)(iii) of the National Disciplinary Regulations to be a prerequisite to the citing of a Participant in such a case.

The Tribunal noted that the issues of a malicious intent or any intent of a Player were explicitly excluded from the LOTG (Laws of the Game) as a relevant consideration in the determination of a foul in Law 12 and in fact these words cannot be found in the LOTG. The use of the word “attempts” in Law 12 is sometimes misconstrued as a simile for intent however it is better understood to act as a qualifier for the action to which it refers rather than the state of mind of the Participant. The real matter to consider for a referee is whether the action of a Participant was a foul or an attempt to commit a foul.

16. Therefore, the Tribunal rejected the submission of Mr Loether in relation to the state of mind of the Participant as a relevant consideration.
17. Similarly, there is no definition of what constitutes a “serious infringement” in the LOTG, the National Disciplinary Regulations or the Football NSW Grievance and Disciplinary Regulations.
18. Under these circumstances the Tribunal suggested that it is appropriate for these words to be read as a reference to an offence that would justify the issuance of a Red Card to a Participant.
19. In addition to the above, Mr Loether contended that the Referee had a clear unobstructed view of the incident and that the video evidence clearly shows that the incident did not “escape the attention of the Referee”. In fact, the Referee had such a clear view of the incident that he awarded an Indirect Free Kick to Rockdale City Suns FC rather than against the Respondent as the Referee formed the opinion that a foul had been committed by the Sydney Olympic player and not the Respondent.

¹ LOTG 2017-18, Law 12, Fouls and Misconduct, page 104

20. Given the above, Mr Loether claimed that *“There is no standing to bring the proceedings as (the requirements of section 3.2(d)(iii) of the National Disciplinary Regulations, sic.) cannot be satisfied”*.
21. The Tribunal referred Mr Loether to two precedents that established the practice of a Football Association reviewing the conduct of a Player post match notwithstanding the fact that the referee had made a ruling in relation to the relevant incident.
22. The first incident was Ben Thatcher’s (Manchester City) foul on Pedro Mendes (Portsmouth) in August 2006². Mr Thatcher elbowed Mr Mendes in the face in a violent challenge near the sideline.

The English FA cited Mr Thatcher to appear before its Disciplinary Committee and charged him with “serious foul play” notwithstanding that the Referee had issued a Yellow Card and had effectively ruled on the incident. Thatcher was subsequently suspended for eight (8) matches with a further 15-match ban suspended for two years and was fined by his Club.

Effectively, Mr Thatcher’s Yellow card was “upgraded” to a Red Card post match.

Mr Thatcher did not appeal the FA Disciplinary Committee decision.

23. The second incident was more recent. Roy O’Donovan (Central Coast Mariners) head-butted Manny Muscat (Wellington Phoenix) in or about the 58th minute in an A-League match on 31 December 2015.³ The Referee in that match, Kris Griffiths-Jones, did not see the incident as it took place behind him and “off the ball”. He consulted his AR who advised that it had been a push by Mr O’Donovan and that a Yellow Card was the appropriate sanction. The Referee issued Mr O’Donovan with a Yellow Card and the match continued.

Mr O’Donovan was later charged by the FFA with an Assault on a Player (Violent Conduct when not challenging for the ball). The Disciplinary (and Ethics) Committee of The Football Federation of Australia was convened to hear this matter on 6 January 2016.

In their Determination that Committee noted:

“In this matter there has been a referral under clause 9.40 of the Disciplinary Regulations. In the case of a referral under clause 9.40, FFA will have determined in its sole and absolute discretion that a Referee has made an Obvious Error and that a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia. That is what has happened here.”⁴

Mr O’Donovan did not challenge the jurisdiction of the Committee to hear this matter nor did he contest the Charge as he pleaded guilty. It was clear from the video evidence that Mr O’Donovan did head-butt Mr Muscat. The Committee imposed a sanction of an eight (8) match suspension on Mr O’Donovan.

Mr Donovan appealed this Determination albeit only on the issue of severity. His appeal was dismissed by the FFA Appeals Committee on 25 January 2016.

24. In the alternative, that is if the Tribunal finds that Football NSW had standing to hear this matter, Mr Loether submitted that the Respondent had been charged incorrectly under R2, Violent Conduct when the ball is not in playing distance. He suggested that the correct Charge should have been R1, Serious Foul Play: “attempting to gain possession of the ball using excessive force offence code 02-01 - Schedule 3, Table A, Red Code with the applicable sanction for a first offence being MMS +1 fixture.”

Mr Loether submitted that the Respondent was clearly challenging for the ball but was not able to do so due to the opposing player shielding the ball illegally and on that basis the Charge could not be supported.

² Manchester City v Portsmouth, 23 August 2006, English Premier League, City of Manchester Stadium

³ Central Coast Mariners v Wellington Phoenix, A-League, Central Coast Stadium, 31 December 2015

⁴ FFA Disciplinary Committee, Roy O’Donovan, CCM, 6 January 2016, paragraph 3.

25. On these matters, Football NSW made the following submissions:
- a. Football NSW sought advice on the video evidence (Annexure C) from senior A-League past and present Referees. Their unanimous opinion was that the actions of the Respondent warranted the issue of a Red Card;
 - b. Section 3.2(d)(iii) of the National Disciplinary Regulations thereby enabled Football NSW to cite the Respondent to answer the Charge;
 - c. The Respondent was offered the Minimum Sanction in the Notice of Charge;
 - d. There is clear precedent, both national and international, for a review of a Referee's on-field decision when there has been an obvious error or omission;
 - e. The relevant incident was a "*serious infringement*" as required by Section 3.2(d)(iii) of the National Disciplinary Regulations as the video clearly showed the Respondent knee making contact with the head/neck area of the opposing player;
 - f. The Charge was the correct charge as the video evidence was consistent with the view that the ball was not in playing distance and that the Respondent both made contact with the Sydney Olympic Player's head with his knee and then kicked him at a time when he had no reasonable opportunity to play the ball.

D. CONSIDERATION & DETERMINATIONS

26. Section 3.2(d)(iii) of the National Disciplinary Regulations provides that:

A Competition Administrator:

....

(d) may cite a Participant to appear before its Disciplinary Committee in relation to:

(i) a Red Card

(ii) an Expulsion; or

(iii) a serious infringement that has escaped the Referee's attention;

27. Section 3.3 of the National Disciplinary Regulations provides that:

A Disciplinary Committee:

(a) has jurisdiction to hear, and must determine, matters that have been referred to it in accordance with these Regulations;

(b) must impose such sanctions as are authorised and appropriate to the determination, which may include sanctioning a:

(i) Player in relation to a Direct Red Card;

(ii) Team Official in relation to an Expulsion;

(iii) Player or Team Official in relation to a serious infringement that has escaped the Referee's attention; and

(c) may, in accordance with these Regulations, rectify an Obvious Error in a Referee's disciplinary decision.

28. The National Disciplinary Regulations clearly apply to Football NSW and the above sections clearly grant a discretion to Football NSW to cite a Participant (the Respondent) if the conditions of section 3.2 are met. Similarly, under section 3.3 the Tribunal has jurisdiction in such matters and is obliged to impose sanctions on such Participants, if appropriate.
29. To restate, the Respondent, via Mr Loether, submitted that the relevant incident was not a serious infringement and/or that the incident did not escape the Referee's intention and therefore the conditions in section 3.2 were not met and that this construction of the events meant that Football NSW had no standing to cite the Respondent.

30. Mr Loether sought to distinguish the Thatcher and O'Donovan matters on the basis that the severity of the incidents in those matches could not be compared to the Respondent's actions. Most certainly the vicious elbow by Ben Thatcher and the premeditated head-butt by Roy O'Donovan were very serious infringements even more so as they took place at the highest level of the game and each attracted significant media exposure. However, the level of the violence exhibited in those matters is not the relevant test - rather this latter element is of relevance to the sanction imposed on the assailant rather than the determinant as to whether it is a matter that is a "serious infringement".
31. In the absence of any evidence of the meaning of the words "serious infringement" in the governing regulations, the Tribunal preferred to attribute a lower level meaning to these words. The Tribunal found that a Red Card infringement should be the test of what constitutes a "serious infringement" for the purposes of section 3.2(d) of the National Disciplinary Regulations and that a knee making contact with the head/neck of an opposing player was a "serious infringement".
32. The second test that required consideration by the Tribunal was what is meant by an "*infringement that has escaped the Referee's attention*". Mr Loether submitted that as the Referee was proximate to the incident and had ruled on it, that this and this alone was sufficient to assert that the referee had therefore seen the incident and therefore it had NOT escaped the referee's attention.
33. The Tribunal did not accept this submission. In the Thatcher matter, the Referee, Dermot Gallagher, had seen the incident and issued a Yellow Card. The English FA Disciplinary Committee found that what he had seen was inconsistent with the video evidence and therefore he could not be deemed to have seen the event clearly. The O'Donovan matter was similar although the referee relied on his AR (Assistant Referee) for his decision to issue a Yellow Card. Once again the FFA Disciplinary Committee found that the Match Officials had made a clear error and the fact that they had adjudicated on the incident did not preclude subsequent review of that decision.
34. In this matter, the evidence contained in the referee's statement, which was confirmed during oral evidence, was that he did not see any contact between the Respondent and the opposing player "*I was 10 metres from play and my AR2 20 metres and we saw no kicking in the upper body at all.*" Accordingly, the referee did not rule on the appropriateness of any contact between the Respondent and the opposing player as he did not witness any such contact.
35. The video evidence tendered clearly shows that the Respondent's knee made contact with the head/neck of the opposing player. This was not challenged by the Respondent. In such circumstances it is clear that, whilst the referee has seen the interaction between the Respondent and the opposing player, the "serious infringement" that occurred as part of that interaction escaped his attention.

Meaning of Playing Distance

36. Finally, Mr Loether submitted that the actions of the Respondent, if they constituted a foul at all, were at the lowest level and in fact could not be the subject of a R2 Offence - Violent Conduct, as the ball was within play at the moment of contact and was within playing distance. He preferred R1 - Serious Foul Play, offence code 02-01 with the applicable sanction for a first offence being MMS +1 fixture.
37. Mr Loether, the Respondent and his father, ██████████ ██████████ argued that the Sydney Olympic player was falling into the Respondent and that the Respondent's actions were permissible as he was attempting to play the ball. They also asserted that the Respondent had no intent to injure the Sydney Olympic player particularly as they were friends who were former team mates.
38. In the Laws of The Game there is a Glossary which "*contains words/phrases which need clarification or explanation beyond the detail in the Laws and/or which are not always easily translated into other languages*".⁵

⁵ LOTG 2017-18, Page 167

Playing Distance is there defined as follows:

“Distance to the ball which allows a player to touch the ball by extending the foot/ leg or jumping or, for goalkeepers, jumping with arms extended. Distance depends on the physical size of the player”.

39. The Tribunal found that the ball was NOT within playing distance to the Respondent as it was almost a full body length away from the Respondent and it was unreasonable for him to make the contact with the head of the Sydney Olympic player with his knee in the manner in which he did.
40. This contact was with excessive force, was dangerous and showed a lack of concern for the safety of the Sydney Olympic player.
41. Further, the two subsequent kicks at the Sydney Olympic player, who by that time was on the ground, could not possibly be considered to be an attempt to play the ball as it was also on the other side of that player’s body and had by that time been retrieved by another player.
42. The above definition of “playing distance” when considered with the video evidence made it clear to the Tribunal that it was NOT within playing distance to the Respondent and therefore the R2 Charge was the appropriate charge.

E. FINDINGS

43. The Tribunal found the Respondent was Guilty of the Charge.
44. In relation to the Charge, the Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table A, Offence Code R2 - *Violent Conduct Offence Code 02-01: “Violent Conduct when the ball is not in play or playing distance”.*
45. The Respondent is to serve the suspension as a Player and in accordance with section 15.6 of the Regulations, in particular, sub-sections 15.6(h) and (j) 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
 - c. in the case of coach, must not engage or attempt to engage a third party to relay coaching instructions.

F. SANCTIONS AND COSTS

46. The Respondent was suspended for **four (4) Fixtures**.
47. The Tribunal was advised that the Respondent had commenced his suspension and had voluntarily stood down for the past three (3) Fixtures and therefore his suspension will expire AFTER his team’s next Fixture. The Tribunal will permit the Respondent to continue train with his club so that he has the opportunity to mentor and assist juniors and thereby ensure that others do not similarly offend.
48. The Tribunal determined that the Respondent should pay the costs of the Tribunal processes as determined by FNSW.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with articles 9.6 and 10 of the FNSW Grievance and Disciplinary Regulations 2018. Any appeal must be submitted by completing the online Notice of Appeal form (Prescribed Form 12) to tribunal@footballnsw.com.au with the relevant Application Fee within seven (7) working days of this Final Determination being issued.



David P. Lewis

Chairman

27 August 2018

The Schedule

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ANNEXURE B	Medical Reports
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ANNEXURE MO1	Match Official Report - Referee
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