



**FOOTBALL
NSW**

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

GPT 19/26

Date of Hearing	5th August 2019
Date of Final Determination	9th August 2019
Respondent	Mr Emmanuel Ponce, (the Respondent).
Documents	As attached in Schedules 1
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations 2019 Sections 9.2, 16.4, FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Violent Conduct, Schedule 3, Table A, R2, Offence Code 02-01 - " <i>Violent Conduct</i> ", video evidence, alleged assault of goalkeeper, insertion of finger into anus.
Finding & Sanction	Guilty Suspended for six (6) Fixtures
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Robert Iaconis Mr Marcelo Valerio

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 2019 Regulations: The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICES OF CHARGES

2. On 25 July 2019, Football NSW (FNSW) issued a Notice of Charge on the Respondent, **Mr Emmanuel Ponce**, a Participant as defined in Schedule 1 of the Regulations (“the Respondent”) relating to his conduct during the 1st Grade NPL3 match between Dulwich Hill FC and Parramatta FC on 13 July 2019 at Arlington Oval Dulwich Hill.
3. The Notice to the Participant specified the following charge:
Charge 1
“During the 1st Grade NPL3 match between Dulwich Hill FC and Parramatta FC on 13 July 2019 at Arlington Oval, Dulwich Hill FC player, Emmanuel Ponce (#64), (**Respondent**) allegedly inserted his finger into the backside of Parramatta FC’s goalkeeper.”
4. The Respondent was charged under section 9.2 of Football NSW Regulations (“the Regulations”) for alleged breaches by the Respondent of section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2019, namely Schedule 3, Table A, R2, Offence Code 03-01 – “Serious and/or premeditated violent conduct”.

Proposed Sanction

5. Under the Regulations, Football NSW has discretion to deal with matters without taking the matter to a hearing, provided the Respondent agrees to plead guilty to the charge proposed. If the Respondent does not agree, then the matter proceeds to a hearing.
6. After reviewing the reports and evidence provided, and based on reference to other similar matters dealt with by Football NSW, this discretion was not exercised, FNSW issued the above-mentioned Notice of Charge and the Respondent was directed to issue a Notice of Response.
7. The Respondent pleaded NOT GUILTY and the matter proceeded to a hearing before the General Purposes Tribunal (GPT).

C. NOTICE OF RESPONSE AND EVIDENCE

8. In his defence the Respondent tendered a short undated statement dated to FNSW (“the Statement”) in addition to the Prescribed Form 10 – Notice of Response. In the Notice of Response the Respondent pleaded Not Guilty to the Charge.
9. The Respondent submitted the following:
“With 10 minutes to the end of the game we scored a goal, and the goal keeper from the opposition team grabbed the ball and wouldn't let go of the ball, so I ran over and while the goalkeeper hugged the ball, he fell to the ground protecting the ball with his back to the sky and I inadvertently brushed my fingers past his backside. The linesmen saw what had happened and spoke to the referee and had made the decision to send me off. The whole situation happened very quickly and it was never my intention to harm any player.”
10. **Mr Ed Pessego**, Dulwich Hill FC President & **Mr Paris Svilicich**, Dulwich Hill FC Technical Director, noted in their joint statement dated 26 July 2019:

“When we scored a goal I and Paris Svilicich our Technical Director were standing behind the fence about 5 metres behind the sideline directly adjacent to the linesman, so we were about 25 metres from the action and the linesman was about

20 metres away. After we had scored the Parramatta goalkeeper dived on the ball and wouldn't let go of it, as is the norm. Since this was a goal to make it 1-2 with about 10 minutes to go our players naturally wanted to get the ball and go back to halfway for the kickoff. Initially our number 4 attempted to grab the ball from the goalkeeper, at this point the referee approached and was with a metre or so of the action, then Emmanuel proceeded to also try to grab the ball with referee in attendance. As is shown in the video submitted."

"Neither I nor Paris could see anything from the distance we were standing yet the linesman who was 20 metres away has said that he saw the incident, even though he did not notify the referee until probably 20-30 seconds later after the referee had given Emmanuel a yellow card for what he saw as he was standing directly over the grabbing incident. This after a number of 20s' players from Parramatta FC had yelled out accusing Emmanuel of an indecent act, these players were about 10 metres away from us, their view was behind the goal line while we were standing directly in line with the accident. The linesman responded to all this "noise" by alerting the referee a considerable time later."

"While I didn't have a clear view of the incident and I don't know what happened and yes the Parramatta goalkeeper was clearly agitated, yet the only person who could have had a clear view of the incident (the referee) has claimed-I did not see Emmanuel Ponce sticking his finger up to the anal hole of Goalkeeper Giglio despite I was close."

"The video footage clearly shows how close he was, yet he didn't deem it to be any more serious than a yellow card. He continued by saying: "However, after speaking with my AR1 (who had actually seen it) I believe the fact happened, especially because I personally know Mr. Giglio after 6 seasons of refereeing him in various clubs and he never gets angry to that level."

This statement is an assumption by the referee because of his relationship with the player and the linesman."

11. The Referee noted in his witness statement dated 23 July:

"After the goal scored by Dulwich Hill, I was approaching the Goalkeeper of Parramatta who was holding the ball down on the ground. Emmanuel Ponce was there with another Dulwich Hill player and I was focusing on the upper body of the Goalkeeper in order to see any violent conduct."

"I did not see Emmanuel Ponce sticking his finger up to the anal hole of Goalkeeper Giglio despite I was close."

"However, after speaking with my AR1 (who had actually seen it) I believe the fact happened, especially because I personally know Mr. Giglio after 6 seasons of refereeing him in various clubs and he never gets angry to that level."

"Seeing him reacting in that way makes me believe that what Mr. Giglio and my AR1 were stating to me is true."

12. Assistant Referee 1 (AR1) noted in his witness statement dated 16 July:

"The individual player (Emmanuel) was trying to get the ball off the goalkeeper after his team had just scored a goal but were still behind, the keeper held onto possession of the ball so Emmanuel decided to try and stick his finger up the keepers ass (Hopoate) I had a clear view of this and the result of this caused a small exchange of words and a few players coming together. The referee issued the red card after I informed him of what happened and the player left the field of play."

13. Assistant Referee 2 (AR2) noted in his witness statement dated 16 July that from his position he could not see the relevant incident.

14. Mr Stefan Giglio, Parramatta FC NPL3 goalkeeper, noted in his witness statement dated 17 July:

"My team had just conceded a goal and I had collected the ball from the back of the net to resume play."

As this happened I was pushed to the ground by #4 and stomped on. As I was on the floor, Emmanuel Ponce had come over the top of me and inserted his finger into my backside, causing an extreme amount of pain and discomfort both physically and mentally. I was extremely upset and angry at the situation that occurred and pushed the player, which resulted in myself receiving a yellow card. As this was happening, Ponce proceeded to laugh and taunt me. The referee didn't see the incident (although standing over the top of me less than a meter away from the incident), however the linesman did see the incident occur, which resulted in the red card given."

D. THE HEARING

15. The Respondent appeared before the Tribunal on 5 August 2019 with the following support personnel from Dulwich Hill FC
 - Mr Nicholas Canadas, Interpreter;
 - Mr Ed Pessego, President, Dulwich Hill FC;
 - Mr Paris Svlicich, Technical Director, Dulwich Hill FC;
 - Ms Alison Pineda, Assistant to the Interpreter attended the Hearing in this capacity yet played no role in the proceedings.
16. The Respondent did not speak English well enough to manage in the Hearing and therefore attended with the assistance of the Interpreter. Mr Marcelo Valerio, Tribunal Member, is fluent in Spanish and he assisted both the Respondent and the Tribunal by explaining certain matters to the Respondent in his native Spanish. After doing so, he translated these exchanges and these may be reviewed by the Respondent on the recording, if desired. The Interpreter did not challenge Mr Valerio's translation to the Tribunal.
17. The Respondent advised the Tribunal that he did not mean to harm the goalkeeper and that all he was doing was what was normally done by any team, that is he was attempting to get play restarted quickly as they were behind 2-1 with less than 10 minutes to play. He admitted that he "may have" or even "possibly" made contact with the backside of the goalkeeper however he denied sticking his finger up his anus.
18. The Respondent admitted that he "punched" at the underside of the goalkeeper in an attempt to get the ball. At first he said that he did that from the side but later contradicted himself by saying that he did this from behind the goalkeeper. He continued to stress that he did not intend to hurt the goalkeeper and was only doing what everyone else does.
19. The Tribunal warned the Respondent that he was admitting to an offence in that he was clearly acknowledging that he was striking at the goalkeeper on numerous occasions in an attempt to get the ball. The Respondent understood this warning and said that this can be seen on the video and acknowledged that the Tribunal would make a finding as it saw fit. He did however maintain that he did not stick his finger up the anus of the goalkeeper.

E. BACKGROUND, SUBMISSIONS & EVIDENCE

20. The Tribunal presented the video recording of the incident and asked the Respondent to explain to the Tribunal what he did and what happened. He once again maintained his innocence albeit that he agreed that he did strike out at the goalkeeper in an attempt to loosen the ball from his grasp. He was not aware that this was an offence.
21. The Tribunal asked the Respondent who takes the kick off after a goal is scored. He reluctantly acknowledged that his opposition was to restart play. The Tribunal then asked the Respondent why he was attempting to get the ball when his team would 'defend' the kick-off and play no active part in the actual restart of the game. The Respondent attempted to justify his action on the basis that all teams around the world do this.

22. The Tribunal noted to the Respondent that striking at the goalkeeper was a clear offence under the LOTG.

Mr Giglio, Parramatta FC Goalkeeper

23. The goalkeeper, Mr Giglio, gave verbal evidence that was consistent with his written statement. He was unshaken in his resolve that the Respondent had assaulted him by inserting his finger into his anus whilst he was on the ground and holding the ball.

Assistant Referee No 1 (AR1)

24. The Tribunal called Assistant Referee No 1 (AR1) to obtain his evidence relating to the alleged incident. AR1's written statement is set out in paragraph 12 above.

25. AR1 confirmed that as a minor melee formed after the scoring of the goal he moved into the field of play by about 5-10 metres and that he was then standing about level with the edge of the Penalty Area. He confirmed that the incident took place inside the Goal Area quite near where the goal was scored. This would place AR1 at least 40m from the incident.

26. AR1 was asked how he signalled to the referee that he wanted to report a matter to him and he stated that he did so by eye contact. He said that he did not raise his flag or signal with his flag.

27. AR1 gave verbal evidence that was initially consistent with his written statement to the effect that he had a clear view of the insertion of the Respondent's finger. He was asked by the Tribunal how he could see the actual insertion of a finger when the referee did not and the video showed the referee standing directly over the goalkeeper? AR1 stated that he had a clear view as the goalkeeper had his backside closest to and pointing towards him and therefore could see the finger go in.

28. The Tribunal put it to AR1 that this was incorrect as the video shows that the goalkeeper had his head towards the position of AR1 and his torso and legs pointing towards his goal. AR1 was then asked how he could have seen the insertion of the finger when this was obviously obscured by the position of the goalkeeper's body in relation to the position of the AR. He conceded at that point that he actually had NOT seen the alleged insertion of the finger.

29. The Tribunal suggested to AR1 that as he was positioned right in front of the Parramatta FC supporters that he might have heard them calling out that the Respondent had assaulted the goalkeeper by inserting his finger in his anus. AR1 agreed that this must have been what happened.

30. AR1 therefore gave verbal evidence that was completely inconsistent with his written statement. He therefore discredited his written evidence and the Tribunal could place no weight on his claim to have seen the alleged conduct of the Respondent as set out in the Charge.

The Referee

31. The Tribunal called the Referee to obtain his evidence relating to the alleged incident. The Referee's written statement is set out in paragraph 11 above.

32. The Referee gave verbal evidence that was consistent with his written statement. He did note that AR1 called him over by calling his name several times and it was at that time that AR1 reported the alleged actions of the Respondent to the Referee. The Referee acted upon that advice and issued a Red Card to the Respondent.

33. The Tribunal placed no weight on the opinion evidence offered by the Referee relating to his personal knowledge of the prior demeanour of the goalkeeper.

E. CONSIDERATION & DETERMINATIONS

34. The Tribunal was placed in a difficult position given AR1's admission that his written statement was incorrect and that he did NOT see the insertion of the finger at all and could not have given his position relative to the position of the goalkeeper. He was not asked to explain the material and fundamental difference in his evidence.

35. The goalkeeper can be seen in the video reacting immediately and angrily towards the Respondent at the moment that he alleged the Respondent assaulted him.
36. However, given the admission by AR1, there is some considerable doubt relating to the actions of the Respondent. Notwithstanding these doubts, the Respondent has admitted that he committed offences against the goalkeeper and he can be clearly seen in the video using force to attempt to retrieve the ball even though it was the Parramatta team that would take the ensuing kick-off.
37. The Tribunal remained satisfied that the Respondent had committed an offence.

F. FINDINGS

38. Given the admissions made by the Respondent, **Mr Emmanuel Ponce**, the Tribunal found the Respondent **GUILTY** of Charge 1 albeit under the lesser code of Schedule 3, Table A, Offence Code R2 Grading 02-01 - Violent Conduct.
39. The Tribunal found the Respondent Not Guilty of the specific conduct alleged in the Charge.
40. The retraction by AR1 of the claims made in his written statement to the Tribunal in his verbal evidence was material in making this determination.

G. SANCTIONS

41. In relation to Charge 1, the Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table A, Offence Code R2, Grading 02-02 - *Violent Conduct*".
42. Section 13.3(b) of the Regulations states:

*"Where a Member has been found guilty of an Offence and then commits the same Offence on a second or subsequent occasion within two (2) years of the expiration of the Suspension issued in respect of the previous Offence, the second or subsequent Offence will be considered a Second or subsequent Offence for the purposes of sanctioning under Schedule 3: Table of Offences and the Executive or Tribunal **must** impose no less than the applicable Minimum Suspension and should only impose more than the applicable Minimum Suspension if appropriate in all of the circumstances."*
43. The Respondent is suspended for **six (6) Fixtures for the offence under the Charge** from all Football related activities, including spectating and training.
44. Football NSW has advised the Tribunal that the Respondent had already commenced serving his Fixture suspension and had been stood down since the relevant incident equating to three (3) Fixtures. He therefore has to serve a further suspension of **three (3) Fixtures**.
45. The Respondent is to serve the Fixture suspension in accordance with section 15.6, in particular, sub-sections 15.6(j), but the Tribunal has, under sub-section 15.6(h), determined that the Fixture suspension will also extend to Spectating such that the Respondent is not entitled to attend any Fixtures that her club is participating in during the Fixture suspension. For clarity, the Respondent is free to train with her club during the Fixture suspension.
46. The Tribunal determined that the Respondent pay the costs of the Tribunal processes.

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 2019. 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

12 August 2019

Schedule 1
Index of Documents

FOOTBALL NSW RULES AND REGULATIONS	Football NSW Grievance and Disciplinary Regulations
	FNSW Notice of Charge 25 July 2019
ANNEXURE MO1	Send Off Offence – R Mattei (Referee) dated 23 July 2019
ANNEXURE MO2	Send Off Offence – B Merchant (AR1) dated 16 July 2019
ANNEXURE MO3	Send Off Offence – A Hosnani (AR2) dated 14 July 2019
ANNEXURE MO4	
ANNEXURE A	Witness Statement – Stefan Giglio 27 July 2019
ANNEXURE B	Match Video
ANNEXURE 1	Witness Statement – Emmanuel Ponce undated
ANNEXURE	Witness Statement – Dulwich Hill 26 July 2019