



**FOOTBALL
NSW**

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

GPT 19/13

Date of Hearing	16 & 23 July 2019
Date of Final Determination	15 August 2019
Respondent	Mr Thomas James, (the Respondent).
Attendees, Witnesses & Documents	As attached in Schedule 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	Alleged spitting on opposition player. Conflicting Evidence, standard of proof, balance of probabilities.
Finding & Sanction	Not guilty No sanction
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 27 June 2019, Football NSW (FNSW) issued a Notice of Charge on the Respondent, Mr Thomas James, a Participant as defined in Schedule 1 of the Regulations (“the Respondent”) relating to his conduct during the 1st Grade NPL match between Wollongong Wolves FC and Sydney United 58 FC on 9 June 2019 at WIN Stadium.

3. The Notice to the Participant specified the following charge:

Charge 1

“During the 1st Grade NPL match between Wollongong Wolves FC and Sydney United 58 FC on 9 June 2019 at WIN Stadium, Wollongong Wolves FC player, Thomas James (#9), (**Respondent**) spat on the face of Sydney United 58 FC player, Tomislav Uskok (#14).”

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 2017, namely Schedule 3, Table A, R3, Offence Code 02-01 *“Spitting on an opponent or any other person”*.

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 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 had tendered a statement dated 17 June 2019 to FNSW (the “First Statement”) in addition to the Prescribed Form 10 – Notice of Response. In that Notice the Respondent pleaded Not Guilty to the Charge. This statement also dealt with certain other allegations and incidents in the match that FNSW ultimately did not pursue for reasons that are not relevant to the present matter.
9. On 4 July 2019 the Respondent issued an Incident Witness Statement (Prescribed Form 14 – the “Second Statement”) to FNSW. In this Statement the Respondent offered additional evidence relating to the Charge.
10. The Respondent was represented by Mr David Campbell SC.

D. THE INITIAL HEARING – 16 July 2019

11. The Hearing did not commence until 8.30pm as GPT 19-13 also involved alleged offences by a Mr Sekulic, a coach from Sydney United 58 FC, arising from the same match. Mr Sekulic’s matter was heard first as a number of the witnesses in the Thomas James matter travelled from Wollongong and therefore needed more time to

arrive after work. As there were many witnesses in the Thomas James matter, the Tribunal foreshadowed the possibility of an adjournment with Mr Campbell SC if proceedings ran longer than was reasonable.

12. The Chairman took time at the start of the hearing to carefully explain the importance of truthful evidence and the nature of the offence of “deliberately mislead a Tribunal”, (Section 13.18 of the Regulations) and the procedures for the Hearing. After these initial introductory remarks all witnesses were asked to leave the Hearing and the Respondent commenced his defence through Mr Campbell SC.
13. At the Initial Hearing on 16 July the Tribunal heard evidence from the Sydney United 58 FC players, the Referee and Mr Luke Wilkshire, Coach of the Wollongong Wolves.
14. Video evidence was made available to the Tribunal. Unfortunately as the alleged incident happened in back-play the cameras did not pick up the exact moment when the alleged spitting took place. The video only shows some of the lead-up to the alleged incident and then the period of play when the referee is dealing with the allegations by Sydney United players.
15. **Mr Tomislav Uskok**, player and number 14 for Sydney United, was the principal complainant in this matter as he was the player who alleged that he had been spat on by the Respondent. He noted in his witness statement dated 11 June 2019:

On the 9th of June 2019 vs Wollongong Wolves at win Stadium I encountered the most vile disgusting act against me in my soccer career.

One of my teammates went down in the second half with an injury. We put the ball out to stop the play so the Wollongong players returned the ball to our goalkeeper.

Once the ball went back to our goalkeeper Thomas James pressured him which is unsportsmanlike behaviour and I asked him why he did that once he came closer to me.

Thomas James replied by saying “I’m playing the fucking game” and then spat directly in my face. This is the most disgusting thing I have encountered on a playing field.

I request the player provide medical clearance or I will formally make a police complaint.

16. Under questioning by the Tribunal and counsel for the Respondent, Mr Uskok stated that Mr James was on his left when he spat on him on the Field of Play. He was tested several times on this claim and was adamant that this was the position from which Mr James committed his alleged offence.
17. **Mr Uskok** also agreed that he did not wash his face or use water to do so immediately after this incident. He also claimed that Mr James said, “go fuck yourself” to him rather than the words he attributed to him in his witness statement.
18. **Mr Anthony Tomelic**, player and number 5 for Sydney United, noted in his witness statement dated 12 June 2019:

On 9th June, during the second half of our match against Wollongong in an off the ball incident I saw Thomas James disgustingly spit on our centre back Tomislav Uskok. After the ball was played out by us with a player down injured, Wollongong sportingly threw the ball back to our goal keeper with Thomas James still decided to put pressure on our keeper. As he ran back toward our back line, I saw Tomislav questioning why Thomas James still put pressure on our keeper and following this I witnessed Thomas turn his head into the direction of Tomislav and disgustingly spit in his face as a response. As this was in back play the referees did not witness this, and myself and Tomislav immediately approached the referees in shock. In a game that was fairly played beforehand I felt that this act that I witnessed was a vile and disgusting.

19. **Mr Tomelic** could be seen on the video to the left of Mr Uskok and he also gave evidence that Mr James was to his right, between himself and Mr Uskok.

He did not hear what was said between the two players even though it was clear that he was not far away. He said that he saw the spit come out of Mr James's mouth even though he spat away from Mr Tomelic and towards Mr Uskok.

20. Under questioning from the Tribunal Mr Tomelic was evasive and effectively refused to elaborate. He repeatedly used the words *"That's what I saw and I can't say any more."* He was also evasive when asked what Mr Uskok said to him about the alleged incident and referred the Tribunal back to his written statement.
21. **Mr Thomas Manos**, goalkeeper for Sydney United, noted in his witness statement dated 9 June 2019:

During our game on the weekend, Wollongong Wolves v. Sydney United, I encountered one of the most disgusting acts I have ever seen on the football pitch. My centre back, Tomislav Uskok, was spat on by the Wollongong number 9. What looked like a general conversation unfolding between the two players escalated quite quickly when the Wolves number 9, Thomas James, told Tomislav to "go fuck himself", and then proceeded to spit on his face. As it happened in our defensive half, I saw it all happen in front of me, and was disgusted by such an act! I hope the correct punishment is handed down to the player, as actions like this are disgusting and should never happen on the pitch, or anywhere!

22. Mr Manos confirmed that there were words exchanged between Mr James and Mr Uskok as the Respondent walked back and that even though he was further away as the goalkeeper, it was very loud and he could easily hear the exchange. He confirmed that Mr James was on the left of Mr Uskok and that the Respondent spat on the face of Mr Uskok. He did not see Mr Uskok wipe any spit off his face.
23. **Mr Miro Vlastelica**, Coach for Sydney United, noted in his witness statement dated 13 June 2019:

Also after my post match interview with the FNSW reporter, i was approached by Luke Wilkshire and he apologised to me for James's abuse towards me and for also spitting at one of my players Tom Uskok. Luke said to me, that he had asked Thomas James in the change rooms if he spat at my player and his (Thomas James) reply, was that he did. Luke apologised to me for the actions of his player, and I accepted Lukes (sic.) apologies. I appreciated that Luke made the effort to nd (sic.) out what exactly happened. I hope that this does not happen again in our game and that it is stamped out and dealt with accordingly.

24. Mr Vlastelica gave further evidence in relation to another incident relating to water being sprayed at the Respondent from the Sydney United bench. This matter was not pursued by FNSW.
25. In addition, Mr Vlastelica gave verbal evidence that he had two (2) conversations with Mr Wilkshire not one (a claim that Mr Wilkshire denied). Mr Vlastelica was certain that Mr Wilkshire admitted to him that the Respondent had spat at Mr Uskok and used the exact words set out above in paragraph 23.
26. **Mr Luke Wilkshire**, Coach for Wollongong Wolves, noted in his witness statement dated 20 June 2019:
- a. He did not see the Respondent spit on anyone;
 - b. He did not enter the change room after the match as he was disappointed after his team conceded a goal in the 90th minute thereby losing the match;
 - c. After a loss he generally does not enter the change room.
27. In his witness statement Mr Wilkshire further noted:

After I finished one interview, I saw Miro Vlastelica outside of the away team tunnel. I walked over to him because I wanted to express my disgust with respect to the manner in which the game was played by Sydney United. I felt that Sydney United specifically targeted a number of our players, including TJ (the Respondent), in terms of over zealous physical and verbal abuse which

went beyond the spirit of the game. I was calm during our conversation.

Towards the end of the conversation, I said to him that I was aware that there was an allegation that TJ had spat, that I would talk to him about it and if he did I apologised and that TJ would be dealt with by the club because I won't stand for that sort of behaviour.

I did not admit to Miro Vlastelica that TJ had spat on one of their players.

At the time of my discussion with Miro Vlastelica I had not been in our change room and I had not spoken to TJ.

I have since spoken to TJ and he denies he spat at the Sydney United player.

During the evening of Tuesday 11 June 2019 I called a meeting of our first team squad. The meeting was held at the Fraternity Club. The meeting was also attended by Chris Sheppard, director. Mr Sheppard asked the entire squad whether anyone had seen TJ spit at or on a Sydney United player. No player said that they saw TJ spit. Mr Sheppard told the players that they could tell him privately after the meeting if they did not feel comfortable speaking up in front of the group.

I have asked Mr Sheppard if any player has contacted him privately. He said that he has not been contacted by any player who had admitted seeing TJ spit.

28. The Tribunal tested Mr Wilkshire's evidence and he was unshaken in his resolve.
29. **The Referee** gave evidence to the Tribunal via telephone. He confirmed that he did not see the Respondent spit on Mr Uskok nor did he see any evidence of spit on Mr Uskok. He checked with his team of Match Officials and they all confirmed that they also did not see the Respondent spit on Mr Uskok. He noted that Mr Uskok was upset and angry when he made the allegation to him.
30. In his Incident report the Referee noted:

I then explained to Sydney United player No14 Uskok that neither I nor my referee team had seen anyone spit; therefore, we/I couldn't take any further action.
31. The Initial Hearing was then adjourned at 10.45pm on 16 July 2019 to 6.30pm Monday 23 July 2019.

D. THE SECOND HEARING – 23 July 2019

32. The Second Hearing took place on Wednesday 23 July 2019 as scheduled.
33. Messrs Harry Callahan (#14), Justin Pasfield (GK – Club Captain) and Lachlan Scott (#24), all players with Wollongong Wolves, submitted written statements all dated 20 June 2019. These statements were substantially identical in content. Each player noted that:
 - a. They did not see the respondent spit on Mr Uskok;
 - b. They did not see any spit on Mr Uskok;
 - c. The Respondent did not tell them that he spat on Mr Uskok;
 - d. No other player told them that they saw the Respondent spit on Mr Uskok
 - e. They did not remember seeing Mr Wilkshire in the change room after the match.
34. The verbal evidence of each of these players was consistent with their written statement. Each of them also agreed that Mr Sheppard, Director of Wollongong Wolves FC, prepared their written statement and they signed them.
35. The Tribunal asked Mr Pasfield to read his paragraph 25. That paragraph used the word “verily”, an old legal or 14th Century middle English term meaning “truthfully”. It was highly unlikely that anyone today would use such a term, especially a witness, and indeed it was clear that Mr Pasfield was unfamiliar with that word.

- He agreed that Mr Sheppard prepared his statement and he just signed it.
36. The Tribunal stressed that evidence to the Tribunal needed to be an accurate account of the events from THAT witness and not that of a third party.
 37. However, the above three witnesses were also unshaken in their version of events.
 38. **Mr Chris Sheppard**, Director of Wollongong Wolves FC, gave written evidence by way of an email exchange with Mr Crepaldi from FNSW. His evidence, unsurprisingly, was consistent with the evidence of the other three Wollongong players.
 39. The Respondent, **Mr Thomas James**, gave evidence in which he denied the Charge and maintained that he did not spit at or on Mr Uskok. He was asked if during his verbal exchange with Mr Uskok that some spit might have come out of his mouth and been projected towards Mr Uskok. He denied that this could have happened or did happen.
 40. He noted that he was to the RIGHT of Mr Uskok rather than to his left. The video of the match is inconclusive as to this fact as both Mr Uskok and the Respondent do not reappear until after the alleged event. He agreed that they verbally abused each other as they passed each other but could not recall the words. The Respondent noted that he had been targeted by the Sydney United defence throughout the match both verbally and physically.
 41. The Respondent denied admitting to anyone that he spat on Mr Uskok and he also denied saying that he did so to any of his teammates or to his coach, Mr Wilkshire. He did not recall seeing Mr Wilkshire in the change room after the match.

E. CONSIDERATION & DETERMINATIONS

42. The Tribunal was faced with evidence from Sydney United and Wollongong Wolves players and coaches that was wholly inconsistent. Each group was convinced that its version of events was accurate and neither “set” of witnesses gave any ground whatsoever in relation to the veracity of their evidence.
43. Unfortunately the Match Officials could not assist the Tribunal as they did not see the alleged incident nor could they identify any evidence of that alleged incident having taken place.
44. The match video was inconclusive and there was no other independent evidence that could be relied upon.
45. The Tribunal formed the view that Mr Vlastelica’s recollection of his discussion with Mr Wilkshire was unreliable and the Tribunal preferred the evidence of Mr Wilkshire. It was highly unlikely that Mr Wilkshire would have made the overt admission suggested by Mr Vlastelica and the Tribunal therefore placed little weight on Mr Vlastelica’s evidence.
46. Clearly, one set of witnesses was presenting evidence to the Tribunal that was untrue or mistaken.
47. The Tribunal considered all of the evidence and the demeanour of the witnesses and, in the absence of any independent evidence, preferred the evidence of the Wollongong Wolves players and coaches.

F. FINDINGS

48. The Tribunal found the Respondent **Mr. Thomas James** NOT GUILTY of the Charge.

G. SANCTIONS

49. In view of the Not Guilty finding, no sanctions were imposed on the Respondent.

50. The Tribunal determined that Football NSW 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

19 August 2019

The Schedule

Index of Documents

FOOTBALL NSW RULES AND REGULATIONS	Football NSW Grievance and Disciplinary Regulations
ANNEXURE MO 1	Report of Kurt Ams (Referee)
ANNEXURE A	Statement of Tomislav Uskok dated 11 June 2019
ANNEXURE B	Statement of Anthony Tomelic dated 12 June 2019
ANNEXURE C	Statement of Miro Vlastelica dated 13 June 2019
ANNEXURE D	Statement of Thomas Manos dated 12 June 2019
ANNEXURE E	Video footage
ANNEXURE 1	Statement of Harry Callahan dated 20 June 2019
ANNEXURE 2	Statement of Justin Pasfield dated 20 June 2019
ANNEXURE 3	Statement of Lachlan Scott dated 20 June 2019
ANNEXURE 4	Statement of Luke Wilkshire dated 20 June 2019
ANNEXURE 5	Statement of Thomas James dated 17 June 2019
ANNEXURE	Notice of Response by Thomas James dated 2 July 2019
ANNEXURE	Thomas James Annexure dated 2 July 2019
ANNEXURE	Thomas James Statement dated 4 July 2019
ANNEXURE	Seven (7) page email chain between Chris Sheppard and FNSW dated 12 June 2019
ANNEXURE	Chris Sheppard email to FNSW dated 12 June 2019

<i>ATTENDEE</i>	<i>POSITION</i>	<i>ATTENDANCE DATE</i>
David Lewis	GPT Chairman	16 July 2019
		23 July 2019
Robert Iaconis	GPT Member	16 July 2019
		23 July 2019
Marcelo Valerio	GPT Member	16 July 2019
		23 July 2019
Lorenzo Crepaldi	Football NSW	16 July 2019
Yianni Mavromoustakos	Football NSW	16 July 2019
		23 July 2019
Tomislav Uskok	Sydney United 58 FC	16 July 2019
Anthony Tomelic	Sydney United 58 FC	16 July 2019
Miro Vlastelica	Sydney United 58 FC	16 July 2019
Thomas Manos	Sydney United 58 FC	16 July 2019
Mark Ivancic	Sydney United 58 FC	16 July 2019
Thomas James	Wollongong Wolves FC	16 July 2019
		23 July 2019
Luke Wilkshire	Wollongong Wolves FC	16 July 2019
Justin Pasfield	Wollongong Wolves FC	16 July 2019
		23 July 2019
Lachlan Scott	Wollongong Wolves FC	16 July 2019
		23 July 2019
Harry Callahan	Wollongong Wolves FC	16 July 2019
		23 July 2019
Chris Sheppard	Wollongong Wolves FC	16 July 2019
		23 July 2019
David Campbell SC	Wollongong Wolves FC	16 July 2019
		23 July 2019