



**APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES
DETERMINATION IN THE FOLLOWING MATTER:**

Participant and Club	George Kulcsar, Culburra Football Club
Decisions appealed	Appeal from decisions of the Shoalhaven District Football Association and Football NSW Southern Branch
Date of Decisions	6 September 2017 and 27 February 2018
The basis upon which the matter is before the Appeals Tribunal	Sections 10.6 of the Football NSW Grievance and Disciplinary Regulations, 2018
Grounds of Appeal	Sections 10.3(a), (c) & (d) of the Football NSW Grievance and Disciplinary Regulations 2018; Preliminary question of jurisdiction
Date of Hearing	Determined on the papers
Date of Determination	22 May 2018
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair Graham Turnbull SC, Deputy Chair Michael Holmes, Member

INTRODUCTION

1. The Appeals Tribunal (**AT**) has been established in accordance with sections 4 and 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2018 (**FNSW Regulations**) to determine appeals from the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and Member Appeals Committees (**MAC**).
2. The sole grounds of appeal prescribed by section 10.3 of the FNSW Regulations are as follows:
 - a. a party was not afforded a reasonable opportunity to present its case;
 - b. lack or excess of jurisdiction of a Body or a Member Appeals Committee;
 - c. the decision of a Body or Member Appeals Committee was affected by actual bias;

- d. the decision was one that was not reasonably open to a Body or Member Appeals Committee having regard to the evidence before the decision-maker;
 - e. severity, only where the decision imposed a sanction of at least:
 - i. a Fixture/Match Suspension of 6 or more Fixtures/Matches (excluding Trial Matches, Tournaments, the NPL Pre-Season Competition, the FFA National titles or any Football NSW Representative Matches); or
 - ii. a Time Suspension of three (3) or more months; or
 - iii. a fine of three thousand dollars (\$3,000) or more; or
 - iv. a bond to be of good behaviour of three thousand dollars (\$3,000) or more; or
 - v. a deduction, loss or ban on accruing six (6) or more competition points; or
 - vi. exclusion, suspension or expulsion of a Club or Team from a competition; or
 - vii. relegation to a lower division; or
 - f. leniency, but only in the case of an appeal brought by Football NSW or an appeal allowed by the Executive pursuant to section 10.2(g) (Appeal from a MAC).
3. Upon the hearing of an appeal, the AT may:
- a. dismiss, allow in whole or part, or vary (whether by way of reduction or increase) a Determination, including any sanction or penalty made by a Body or a MAC, as the case may be;
 - b. subject to any applicable Minimum Suspension/Sanction and Maximum Suspension, impose any sanction, measure or make any order it thinks fit or that a Body or MAC, as the case may be, could have imposed under the Regulations or its regulations, as the case may be;
 - c. conduct a fresh hearing of the matter (hearing de novo); or
 - d. remit the matter to the Body or the MAC from which the appeal originated, or to the tribunal (or similar) that dealt with the matter at first instance for rehearing and issue any directions or orders in relation to the rehearing of the matter that the AT deems appropriate.

(s 10.4(b) of the FNSW Regulations).

4. By Notice of Appeal submitted on 15 March 2018, George Kulcsar, the Coach of the Men's Amateur Division 1 of the Culburra Football Club (**Club**), appeals determinations of the Shoalhaven District Football Association (**SDFA**) of 6 September 2017 and of Southern NSW Football Incorporated trading as Southern Branch (**SNSWF**) of 27 February 2018. Mr Kulcsar contends that: the decision of the SDFA was affected by actual bias; and that he was not afforded a reasonable opportunity to present his case to SNSWF and that the decision of SNSWF was one that was not reasonably open to it.

JURISDICTION

5. Section 10.6(a) of the FNSW Regulations relevantly provides that the AT:

"...will only hear and determine a matter involving an appeal from a Member Appeals Committee where the matter has proceeded in accordance with, and exhausted, that Member's own disciplinary/grievance rules and regulations." (emphasis added)

6. On 5 April 2018, the Chair of the AT brought to the parties' attention via FNSW as the administrator of the appeal, the importance of the jurisdictional requirements of clause 10.6 of the FNSW Regulations, together with a concern that the decisions the subject of the appeals may have been made by the Executive of the SDFA and SNSWF and therefore not justiciable. Directions were made in accordance with section 13.11(n) of the FNSW Regulations to facilitate the preparation of the appeal for hearing, including the resolution of the issue of jurisdiction. One of those directions was as follows:

"4. Having regard to the jurisdictional issues outlined above, by 23 April 2018, Mr Kulcsar is to file with FNSW written submissions in support of the assertion that the Appeals Tribunal has jurisdiction to hear and determine this appeal, together with any further written submissions upon which it [sic] intends to rely."

7. SDFA and SNSWF were also directed to prepare written submissions upon which they intended to rely in relation to all issues, including the matter of jurisdiction, by 4 May 2018.
8. Mr Kulcsar through his legal representatives McNamara & Associates, Lawyers, filed written submissions under cover of a letter dated 20 April 2018 which specifically addressed the question of jurisdiction, having on 14 March 2018 filed submissions in support of the grounds of appeal generally.

9. On or about 4 May 2018, SDFA filed submissions dated 12 April 2018 and SNSWF filed undated submissions upon which they each intend to rely. Neither of these submissions directly address the question of jurisdiction but are limited to the substantive issues in dispute.
10. The threshold issue of jurisdiction is critical to enlivening the AT's powers to hear and determine any appeal. Accordingly, pursuant to section 13.11(n) of the FNSW Regulations, on 15 May 2018 the AT directed that jurisdiction be determined as a preliminary question. This approach is consistent with the general manner in which section 13.15(a) of the FNSW Regulations require that the AT should determine the question of jurisdiction when the subject of a challenge.
11. On 15 May 2018, the parties were informed by FNSW as the administrator of appeal that the AT was of the view that it had sufficient information to consider the issue of jurisdiction as a preliminary question and "on the papers" and without the need for an oral hearing. However, the parties were also informed that any of them could request an oral hearing in which case a panel would be convened in Sydney for that purpose.
12. On 17 May 2018, the parties informed FNSW as the administrator of the appeal that none desired an oral hearing and that they were each content for the question of jurisdiction to be determined on the papers.
13. An AT was convened and the question of jurisdiction alone was considered and determined on the papers in accordance with the consent of each of the parties.
14. For the reasons that follow, the AT has determined that it does not have jurisdiction to consider the appeals because the matters the subject of the appeals have not proceeded in accordance with, and exhausted, Mr Kulcsar's own Association's disciplinary/grievance rules and regulations.

The appeal from the decision of the SDFA

15. On 6 September 2017, a Disciplinary Tribunal of the SDFA (**SDFA DT**) was convened pursuant to section 6.3 of the SDFA Regulations and By-Laws (**SDFA Regulations**) to consider an alleged offence which had been committed on the field of play by Mr Kulcsar at the conclusion of a fixture between the Club's Men's Amateur League Division 1 team of which he was coach and the Milton Football Club on 26 August 2017, in which

he allegedly head-butted a player from the opposing team. It appears that he may have been charged with “violent conduct”. We say it “appears” because, despite the AT directing on 5 April 2018 that the SDFAs provide copies of all documents evidencing the charge(s) laid against Mr Kulcsar, no such documents have been produced.

16. Mr Kulcsar submitted that the hearing before the SDFAs DT was recognised as a disciplinary hearing and that he was informed by email dated 21 September 2017 (as to which see [19] below) that there was no appeal allowed to the finding of this hearing. Accordingly, he submitted that the DT *“is clearly the highest disciplinary body of the associate member, and thus satisfies the definition of a Members [sic] Appeals Committee...”* for the purposes of the FNSW Regulations.
17. The SDFAs DT found the offence proved and, according to the determination given under the name of Ray Tweedie, the Tribunal Chairman, Mr Kulcsar was suspended until “30th September 2017.” (The AT notes that the SDFAs asserts that the reference to “30th September 2017” was in error and should have read “30th September 2018”. The correctness or otherwise of this assertion is not the subject of these reasons.)
18. In an email dated 21 September 2017, Mr Tweedie informed Mr Kulcsar that, *“[y]ou may like to read section Right of Appeal in SDFAs by laws Parra (sic) 9-9 where it says there is no appeal allowed after a suspension from the suspension (sic) relating to the laws of the game.”*
19. Mr Tweedie’s observation was undoubtedly correct if the determination of the DT related to a sanction imposed for breach of the Laws of the Game (**LOTG**). According to Law 12 of the LOTG *“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.”* (emphasis added)
20. However, in the AT’s view, the DT’s determination could not, properly characterised have been a sanction imposed for breach of the LOTG as the offence of “violent conduct” does not extend to the actions of coaches. It is limited, in its terms, to the conduct of a player.

21. Properly characterised, the DT could only have been exercising its powers under section 6.3 of the SDFA By-Laws to investigate and determine whether the conduct of Mr Kulcsar, as a “Participant”, was “violent” and accordingly contrary to section 11.5(c) of the SDFA By-Laws and relevantly, to impose any sanction provided for by those By-laws. In considering sanction, it was obliged to have regard to the guidelines set out in section 7-7 of the SDFA Handbook, 2017 (**SDFA Handbook**), although it was empowered by section 7-3 of the SDFA Handbook to set sanctions outside these guidelines where extenuating circumstances require either a higher or lesser suspension.
22. Understood in this way, the determination of the DT on 6 September 2017, was a “Determination at First Instance” in respect of which Mr Kulcsar did have a right of appeal to the Appeal Tribunal established by the SDFA for that purpose pursuant to section 9 of the SDFA Regulations. Mr Kulcsar has not brought an appeal, no doubt and at least in part, influenced by the contents of Mr Tweedie’s email of 21 September 2017 which, in our opinion, mischaracterised the nature of the proceedings before the DT and therefore, whether there was an available avenue of appeal from the decision of the DT.
23. The AT concludes that it does not have jurisdiction to hear the appeal from the decision of the SDFA DT because Mr Kulcsar has not exhausted his appeal rights under the SDFA Regulations.
24. We note that section 9.18 of the SDFA By-Laws prescribes time limits within which a notice of appeal is to be lodged with the SDFA Appeal Tribunal. Those time limits are not expressed as being strict. Given Mr Tweedie’s contribution to Mr Kulcsar’s failure to pursue his appeal rights, we strongly urge the SDFA to permit any notice of appeal lodged by Mr Kulcsar within seven days of the date of this determination to be filed notwithstanding the provisions of section 9.18. In addition, consideration ought to be given by the SDFA to the waiver of any fees that might be payable for the lodgement of any appeal. We also strongly urge that the SDFA Appeal Tribunal be convened expeditiously to consider any appeal lodged by Mr Kulcsar.

The appeal from the decision of SNSWF

25. Section 9.12 of the SDFA Regulations provides that an appeal from the determination of the SDFA Appeal Tribunal lies only to SNSWF then to this Tribunal.
26. It appears to be common ground that:
 - (a) Mr Kulcsar did not formally lodge a notice of appeal, articulating the relevant grounds of appeal, notwithstanding the requirements of section 9.14 of the SNSWF By-Laws;
 - (b) Mr Kulcsar did not pay the requisite \$500 non-refundable appeal fee;
 - (c) SNSWF did not convene an Appeal Tribunal; and
 - (d) On 27 February 2018, SNSWF advised Mr Kulcsar that “...*the Board of Directors of Southern NSW Football Inc Southern Branch met on Saturday, February 24th 2018 to discuss the matter. The decision made by the Board, was: they found that whilst there were anomalies of the processes by the Shoalhaven District Football Association and Southern Branch; there was insufficient evidence to overturn the ruling of the SDFA Tribunal. Should you wish to take this matter further you have the right of appeal to Football NSW Ltd.*”
27. Mr Kulcsar submitted that the determination of the SNSWF Board exhibits that the purpose of the meeting was to review the process, evidence and outcome in Mr Kulcsar’s “matter.” As a result, this was clearly conducted by an appellate review body with the letter from the Board setting out that the only avenue to appeal the finding of this body is through an appeal to FNSW. Mr Kulcsar accordingly contends that the Board is the highest judicial body of SNSWF for the purposes of engaging the jurisdiction of the AT.
28. Having regard to the conclusion in paragraph 23 of this determination, as no appeal has been lodged nor determined by the SDFA Appeal Tribunal, any determination purporting to be made by the SNSWF will suffer from a similar jurisdictional issue. However, no justiciable determination was made by SNSWF and herein lies a further fundamental difficulty with Mr Kulcsar’s case on jurisdiction.

29. The decision the subject of Mr Kulcsar's appeal from SNSWF was one undertaken by the Executive of SNSWF. The AT has no jurisdiction to review a determination of the Board of SNSWF. Its jurisdiction is relevantly limited to hearing and determining appeals from a "Member Appeals Committee." This term is defined in the FNSW Regulations as meaning "the highest disciplinary or judicial body of a Branch, Association Member, Centre or Referee's Body, as the case may be."
30. Section 9 of the SNSWF By-Laws makes plain that the SNSWF Appeal Tribunal is the highest disciplinary or judicial body of that Branch and that all appeals from a "Determination at First Instance" shall be made to the SNSWF Appeal Tribunal. Therefore, it is the SNSWF Appeal Tribunal which is the relevant Member Appeals Committee for the purposes of the FNSW Regulations.
31. The AT accordingly has no jurisdiction to determine the appeal from the decision of the SNSW Board. Having regard to the findings in paragraph 23 of this determination and the observations in paragraph 24, Mr Kulcsar should be at liberty to pursue any rights of appeal from any determination of the SDFFA Appeal Tribunal, if lodged, to the SNSWF Appeal Tribunal.

RELIEF

32. The Appeal is dismissed for want of jurisdiction.

A handwritten signature in dark ink, appearing to read 'A. Lo Surdo', with a stylized flourish at the end.

Anthony Lo Surdo SC
Chair
Appeals Tribunal
Football NSW