



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

Member	Shannon Hall
Decision appealed	Decision of Central Coast Football Appeals Tribunal
Date of Decision	9 July 2018
The basis upon which the matter is before the Appeals Tribunal	Sections 10.1(d) and 10.6 of the Football NSW Grievance and Disciplinary Regulations, 2018
Ground(s) of Appeal	Sections 10.3(d) and (e)(ii) of the Football NSW Grievance and Disciplinary Regulations, 2018
Date of Hearing	20 September 2018
Date of Determination	21 September 2018
Appeals Tribunal Members	Graham Turnbull SC, Chair Julia Sorbara, Member David Stanton, Member

Introduction and Jurisdiction

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**). "Body" is defined in the Regulations to mean a body established under section 4 of the Regulations and relevantly includes the purposes of an appeal to the AT, the DC and the GPT.
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;
 - 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;
 - 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. This appeal is from a MAC pursuant to section 10.6 but only where the matter has proceeded in accordance with, and exhausted, that member's own disciplinary/grievance Rules and regulations.
4. 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, 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. refer 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)

5. The AT is satisfied that it has jurisdiction to hear the appeal. Further, neither party raised any objection to the AT's jurisdiction.

Background facts

6. This appeal arises from a series of escalating and violent events that occurred on Sunday 17 June 2018 at Pat Morley Oval on the Central Coast. On that occasion, a third-grade football match was being played between The Entrance Bateau Bay Football Club (**TEBBFC**) and Kanwal Warnervale Football Club (**Kanwal**).
7. Mr Hall was a player and captain of the TEBBFC side. During the course of the second half, a foul was committed by a TEBBFC player on a Kanwal player. As a result of this foul, Kyle Adams of TEBBFC and Andrew Halliwell from Kanwal, commenced to fight. Video footage of the fight reveals that it lasted a number of seconds however was significantly violent and resulted in Mr Halliwell leaving the field as he was bleeding profusely. Mr Adams was shown a red card by the referee and left the field. The referee intended to show Mr Halliwell a red card and ultimately approached the technical areas with the intention of confirming that decision.
8. Mr Hall ran to the area where the fight was occurring in order to extricate Mr Halliwell. He was successful in doing so and Mr Halliwell left the field to seek medical attention for his wounds.
9. Following this, Mr Hall says as follows: -

"After this had simmered down, I then went over to the referee to talk with him being the captain of The Entrance side. He said both players will be shown red cards for their part in the incident, Ryan Wilson who committed the original foul at the time would also to be shown a yellow card. I agreed entirely with the referee and went to get the two players from my side who would be shown cards".
10. At this stage, two members of the coaching staff of Kanwal had entered the field of play, namely Rob Walker and Ryan Walker. Mr Hall questioned why they were present, and they explained their presence on the basis that they were there to protect players who were fifteen years of age. It appears that a number of junior players were playing in the game with TEBBFC fielding three player where were fourteen, fifteen and sixteen years of age. A pointed argument occurred between Mr Hall and the coaching staff.
11. The referee then walked towards the Kanwal technical area and appears to issue the red card to the departed player. Mr Hall went with him, he says in his role as captain. A spectator then shouted abuse at TEBBFC players resulting in Mr Hall stating, *"Fuck off, the ref will sort it out, it has nothing to do with you"*.
12. Mr Hall described the events that followed in the following terms: -

"At this instance, Rob Walker took offence to this, pushing me chest on chest. I didn't move and stood my ground. Ryan Walker then commented "That's my fucking dad". Rob Walker then jabbed with his right fist under the ribs, at the same moment Ryan Walker threw a haymaker from over his father's left shoulder. It appeared to me that he jumped off the stainless-steel benches we had there and threw the haymaker all in the

same motion. I managed to duck out of the way before it connected with the side my head. Rob Walker and I then ended locked up with each other, both throwing short upper cuts at one another. It was at this time the entire Kanwal bench and a couple of supporters ran in, stomping on Rob Walker and myself who had now gone to ground with people also on top of us. This was all over within a minute as Troy Campbell managed to get in and pick me up off the ground and get me out safe”.

13. Mr Hall’s description misses one important fact. The referee, Stuart Golding, was in the middle of the melee when it commenced and was struck on the right side of his head and knocked unconscious. He later received medical attention from an attending ambulance officer. There is no video evidence which could be relied upon to determine the circumstances under which the side-line melee commenced. As a result of the referees condition he could not assist.
14. As may be anticipated, a number of individuals were charged with offences under the Central Coast Football Grievance and Disciplinary Regulations 2018.
15. On 21 June 2018, the General Purpose Tribunal (**the GPT**) found a number of the charges proven. Relevant to Mr Hall’s appeal the following findings were made by the GPT: -
 - a. Mr Hall was regarded as an aggressor rather than a peacemaker in the incident;
 - b. There was no deliberate assault upon the referee;
 - c. A number of individuals had engaged in violent conduct that incidentally led to the referee being injured.
16. The following penalties were handed down by the GPT: -
 - a. Kyle Adams was found guilty of violent conduct and suspended from all football activity until 31 December 2019;
 - b. Tyson Adams was found guilty of violent conduct and was suspended from all football related conduct until 30 June 2019;
 - c. Shannan Hall was considered to be the instigator of the violent melee and guilty of violent conduct. He was suspended from all football activities for ten years (until 17 June 2028);
 - d. Rob Walker was considered to be a participant in the violent melee and guilty of violent conduct. He was suspended from all football activity until 31 December 2020;
 - e. Ryan Walker was considered to be a participant in the violent melee and guilty of violent conduct. He was suspended from all football related activity until 31 December 2020;
 - f. Both The Entrance and Kanwal Football Clubs were found guilty of team misconduct and breaching the code of conduct and fined accordingly.
17. Mr Hall appealed the decision of the GPT. The appeal was limited to the issue of severity. The Central Coast Football Appeals Tribunal (**CCFAT**) heard the appeal on 6 July 2018 and dismissed the appeal.

18. Mr Hall now appeals the determination by the CCFAT to the Appeals Tribunal. He appeals on the basis that the decision of the GPT was not reasonably available to it on the evidence before it (10.3(d) FNSW Regulations) and on severity (10.3 (e) (ii) FNSW Regulations).

The nature of the appeal

10.3 (d) "The decision was not reasonably open to a body or a Member Appeals Committee having regard to the evidence before the body or Member Appeals Committee".

19. This was not a ground of appeal Mr Hall raised before the CCFAT. As such, he cannot now complain that the GPT should not have found that he solely "instigated the melee".
20. In any event, we do not think much turns upon the characterisation of Mr Hall's involvement in the melee as being the instigator. By his own statement as outlined above, he clearly was instrumental in the resulting altercation. As a captain of his team, it is the Tribunal's expectation that he would take whatever steps were necessary to avoid any action that would result in the exacerbation or inflammation of what was clearly a highly charged game. We consider it to be most unwise for a captain in the circumstances to approach the opposing teams technical area and wish to debate the circumstances of the on field actions of players or the referee. Further, it does appear that the GPT had evidence before it that it could rely upon in order to form the opinion that he was the instigator of the melee. A characterisation in those terms does not however mean that he is entirely responsible for the outcome and particularly, the injury to the referee. Indeed, the GPT found he did not assault the referee.
21. For these reasons, the AT does not find this ground of appeal made out.
- 10.3 (e) (ii). "Severity"*
22. The basis of this ground of appeal is stated by Mr Hall as follows: -
- "I am appealing on these grounds as I believe the GPT's punishment of ten years suspension was grossly excessive for the role I played in the incident. That is in isolation over the significance (of) my actions causing injury, the exact nature of my actions and also in comparison to both punishments handed out to others involved in this incident, to offenders in other cases heard before the CCF judiciary system and Football NSW judiciary system, and the "prescribed penalties" for various offences outlined in the "CCF Grievance and Disciplinary Regulation 2018".*
23. Mr Hall was charged with breaching the CCF Code of Conduct in that he: -
- a. failed to conduct himself in a manner that enhanced the reputation and good will of football on the Central Coast;
 - b. failed to respect the decisions of match officials and teach children to do the same;
 - c. used violence in any form against other spectators, team officials (including coaches), Match Officials and players.
24. Under the Schedule of Penalties applicable to Central Coast Football, a number of potential penalties were available to the GPT. They would include the following: -

- a. Violent conduct – maximum penalty – suspension two years;
 - b. using offensive, insulting or abusive language – maximum penalty – suspension twenty matches;
 - c. inciting the crowd – maximum penalty - suspension six years;
 - d. attacking or fighting with spectators – maximum penalty -suspension for life;
 - e. Bringing the game into disrepute – maximum penalty - suspension for life;
 - f. Breaching the CCF Code of Conduct – maximum penalty – suspension for life.
25. Obviously, the suspension of ten years given to Mr Hall falls within the range of penalties available to the GPT under the CCF Schedule of Penalties.
26. The real thrust of the appeal on severity is on the issue of parity. Mr Hall points out that other main participants in the melee received far more lenient sentences. Ryan Walker and Rob Walker were suspended from football activity until 31 December 2020 by the GPT.
27. Importantly, the CCFAT reduced these suspensions to:
- a. Rob Walker was suspended from coaching, managing, playing or refereeing until 31 December 2018;
 - b. Ryan Walker was suspended from all football related activity until 31 July 2018;
28. It is difficult to see how such a disparity in the penalties could be justified in the circumstances of this case. Whilst it might readily be said that a captain should not seek to inflame a heated situation, the same could be said regarding the coaching staff of a team. Mr Ryan Walker was the coach at the relevant time. His father, Mr Robert Walker was the manager.
29. Furthermore, it appears from the video footage that has been viewed, that Mr Hall and at least one of the Kanwal players were trading punches whilst others within the melee were attempting to separate them. Notwithstanding the equal and aggressive nature of the assaults being committed by each individual on the other, no other individual received treatment similar to Mr Hall.
30. The GPT embarked upon a fact-finding task of some difficulty and upon reviewing the available oral evidence and drawing appropriate inferences concluded that at the time Shannon Hall approached the side-line and engaged in foul and abusive language there was a confrontation between Mr Hall and Rob Walker. The GPT accepted Mr Walker “chose to engage in this confrontation”. In relation to Ryan Walker’s involvement, “he chose to intervene between the two, this was either a punch toward Hall or a violent intervention that further inflamed the situation. This rapidly **resulted in violence** including punches, headlocks and wrestling from the participants.

It was at this point once the violence had commenced and the fighting parties lost balance and fell that the referee was knocked over and felt to the ground”. It is from this conclusion that the GPT reflected in their expression of view “there was no deliberate assault upon the referee.”

31. No issue was taken in the proceeding before us, or at any time, with the finding of facts and conclusions of the GPT.
32. It is these circumstances which mean it is far from apparent that Mr Hall's conduct, despite his movement to the side-line, was in any real way more egregious than the conduct of the Walkers in apparently initiating and engaging in the actual violence which resulted in a melee involving many others including spectators which led to the injury to the referee.
33. In these circumstances, we believe the GPT (and consequently the CCFAT) fell into error. We do not see any justification for the penalty imposed upon Mr Hall to be far in excess of that imposed upon others. Mr Hall received a penalty of ten years suspension whilst the other main participants received penalties of six weeks and slightly longer than six months. The disparity is so great that the error is manifest and discloses error. The inference is that the GPT (and CCFAT) assumed that Mr Hall was responsible for the blow to the referee that resulted in him being knocked unconscious. The GPT however after considering all the evidence including video evidence, did not make a finding that that was so and indeed, the statement taken from the referee does not implicate Mr Hall as being the person who struck him.
34. In these circumstances, we believe the ground of appeal by Mr Hall has been made out.

The appropriate sentence

35. There is clearly a wide discretion in the penalties available.
36. It is appropriate that the penalty reflects the serious nature of the incident that took place. It should also reflect the fact that captains and other officials (including coaches and managers) should at all times behave both on and off the field in a civilised manner towards competitors, match officials and spectators. As noted by Mr Hall in his submissions, this incident was widely reported in the media throughout Australia and certainly was an incident that brought the game into disrepute. The other significant matter to remember is that the incident took place in the presence of younger players and before the general public, who from the video, included children. It should also be noted that behaviour as found by the GPT if occurring in any place other than on a football pitch, may result in criminal charges being brought against persons involved and such charges may result in serious consequences. It goes without saying that such behaviour has no place in the sport of football, or indeed in the community.
37. We note that Mr Hall has an otherwise exemplary record through years of playing football. We also pay due regard to the fact that for the last eight years he has provided administrative services to TEBBFC and held the position of secretary of the TEBBFC until the events that brought him before the GPT. Indeed CCF stated without his efforts, the TEBBFC may not have survived some difficult economic times.
38. In the circumstances of this case, there should be parity between the sentence imposed upon the main protagonist that caused the melee to take place and Mr Hall. The parity principle is an aspect of the systemic objectives of consistency and equality before the law and is applicable here. The treatment of like cases alike, and different cases differently is the touchstone. Tribunals should strive to avoid unjustifiable disparity between the sentences imposed upon individuals involved in the same sanctionable conduct. It is clear that the violence erupted when three individuals came together and the consequences set out above then

flowed. The consistency of punishment is fundamental. An inconsistency of punishment can be seen as a badge of unfairness and is a matter of abiding importance and the administration of justice and to the community.¹ We must however take into account his unwise decision to approach the Kanwal technical area. This is the reason the GPT described his actions as resulting in the instigation of the melee.

39. In all the circumstances, we make the following orders:
- a. Mr Hall will be suspended from playing, managing or coaching football for a period of nine months from 17 June 2018 (i.e. until 17 March 2019);
 - b. Mr Hall be placed on a good behaviour bond of eighteen months, such bond to commence on 17 March 2019;
 - c. Any breach of the bond to result in a suspension from all football related activity for a period of twelve months from the date of the breach.
40. The penalty imposed at 39(a) above is one intended to permit Mr Hall to continue to provide administrative services to TEBBFC during the period of suspension described.



Graham Turnbull SC
Chair
Appeals Tribunal
Football NSW

¹ *Lowe v The Queen* (1984) 154 CLR 606, Mason J at 610