

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

GPT 20/04

Date of Hearing	20th August 2020
Date of Final Determination	31st August 2020
Respondent	Mr David D'Apuzzo, (the Respondent).
Attendees, Witnesses & Documents	As attached in Schedules 1 & 2
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	Serious Foul Play, Schedule 3, Table A, R1, Offence Code 05-01 - " <i>Conduct causing serious injury</i> ", video evidence, Meaning of Serious Foul Play.
Finding & Sanction	Guilty Suspended for seven (7) Fixtures
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Robert Iaconis Mr Mendo Cklamovski

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 2020 Regulations: The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICES OF CHARGES

2. On 9 August 2020, Football NSW (FNSW) issued a Notice of Charge on the Respondent, **Mr David D’Apuzzo**, a Participant as defined in Schedule 1 of the Regulations (“the Respondent”) relating to his conduct during an NPL 1st Grade match between APIA Leichhardt FC and Marconi Stallions on 31 July 2020 at Lambert Park.

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

Charge 1

“During an NPL 1 1st Grade match between APIA Leichhardt FC (the **Club**) and Marconi Stallions on 31 July 2020 at Lambert Park, David D’Apuzzo (the **Participant**) made contact with the face an opposition Player, Brandon Vella in the face.”

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, R1, Offence Code 05-01 – *“Conduct causing serious injury”*.

Football NSW Power to Investigate

5. Football NSW has a general power to investigate any incident that may constitute a breach of the Regulations. Under Section 1(e):

“Football NSW may in its absolute discretion determine the appropriate governing document under which to investigate, process, and penalise (if necessary) any matter.”

Further under Section 9.1:

(a) The General Purposes Tribunal has jurisdiction to hear and determine:

- i *charges of Misconduct and Disrepute and Offences disclosed in Match Official Reports (section 9.2);*
- ii *Grievances between Members (section 9.3); and*
- iii *any other matter which the Executive determines, in its absolute discretion, is important to the interests of football in the State (section 9.4).*

6. In this GPT 20-04 the Respondent was not issued with a Red Card by the Match Official as he noted in his report:

“There was a incident involving Apia 13 and Marconi 23 where the players collided in a challenge to which I didn't see it to be with any force / intent or recklessly from either player.”

7. Football NSW obtained video evidence of this incident and sought advice on the matter from the senior Football NSW and A-League referee Mr Kris Griffiths-Jones who gave evidence that:

“I believe the APIA number 13 used excessive force and showed complete disregard for his opponent's safety, as a result he should have been shown a red card by the Referee.”

8. After reviewing the reports and evidence provided, and based on reference to other similar matters dealt with by Football NSW, Football NSW issued the above-mentioned Notice of Charge and the Respondent was directed to issue a Notice of Response.
9. The Respondent was represented by Mr Alex Bourne, Solicitor. The Respondent pleaded NOT GUILTY and the matter proceeded to a hearing before the General Purposes Tribunal (GPT).

C. NOTICE OF RESPONSE AND EVIDENCE

10. In his defence the Respondent tendered an undated statement 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.

11. The Respondent submitted the following:

"In the Round 1 game against Marconi there was an accidental collision between myself and Brendan Vella. The ball was in the air following a clearance and I ran towards to ball. My eyes were firmly focused on where the ball was the entire time and I didn't realise where Brendan was until it was too late to avoid collision."

"As Brendan headed the ball he leant his head forward and as such he hit my right shoulder. Given his close proximity to me at the time he had headed the ball I had no opportunity to slow down and avoid contact."

"The line of sight from the video footage is from behind the incident and therefore it can't be clearly seen where my attention was focused. It is evident however that the referee had a clear view of the incident given he was no more than 10m away and during the game he said that my eyes were purely focused on the ball."

"I believe I was entitled to challenge for the ball whilst it was in the air and I don't believe I used excessive force. Whilst the injury sustained the (sic.) Brendan is unfortunate, injuries are a part of football."

12. **Mr Adam D'Apuzzo**, a former A-League player and member of the FFA Match Review Panel (MRP), and brother to the Respondent noted in his undated witness statement:

"This is a scenario where on the MRP, we slow the video down to help determine what really happened. I have performed this numerous times over and it can be seen that;

- i. *David maintains eye contact with the ball through the whole passage of play. Therefore clearly no visible intent to make contact with the opponent's face.*
- ii. *David was entitled to challenge for the ball, as it was in the air, and from viewing the video it is evident there is no excessive force.*
- iii. *David's elbow is lowered and only raises after the collision to gain his balance. Therefore, the injury is sustained via the collision of David's shoulder and the opponent's face, and is not deliberate or reckless.*

It's very unfortunate the Marconi player sustained an injury during the process. Unfortunately such things can occur in our high speed and physical game. Overall, for this incident, the charge should be dropped altogether."

13. **Mr Franco Parisi**, a teammate of the Respondent made unhelpful and highly subjective statements in his undated witness statement. It was withdrawn by counsel for the Respondent and the Tribunal gave no weight to its contents.

14. **Mr Alex Bourne**, Solicitor and counsel for the Respondent, tendered the following written submissions on behalf of the Respondent:

"2. A proper analysis (of the video) will reveal that this was a complete accident, and cannot even be said to have been reckless or involved the use of excessive force."

3. *Indeed the collision itself is rather innocuous. It is an accidental collision that is an inherent part of football, and occurs on a very frequent basis.*
4. *At all relevant times, Mr D'Apuzzo maintains eye contact solely with the ball.*
5. *He is entitled to go for the ball as he was in a position to win the ball.*
6. *The opponent leans forward, and unfortunately there is a slight coming together between Mr D'Apuzzo and the opponent.*
7. *Importantly, Mr D'Apuzzo's arms are lowered at the point of contact. His arm is only raised after the contact is made, in order to regain balance.*
8. *These types of comings together occur with great regularity in football.*
9. *The injury is of no relevance in the determination of guilt. Without some element of intent, recklessness or excessive force, Mr D'Apuzzo cannot be found guilty.*
10. *If Mr D'Apuzzo was found guilty, then every head-clash sustained in football would also require the same outcome.*

Mr Bourne also made submissions relating to the Respondent's good character and lengthy playing career.

15. **Mr Kris Griffiths-Jones**, the senior Football NSW and A-League referee, noted in his witness statement dated 7 August:

"After viewing the footage in the 70th minute of the match between APIA vs Marconi I have the following statement.

As the Marconi player went to head the ball, the APIA number 13 player runs with speed to try and challenge for the ball. The Marconi player clearly heads the ball first when the APIA player comes through and makes contact with his shoulder to the Marconi player's face. Instantly the Marconi player drops to the ground holding his face/jaw region. I believe the APIA number 13 used excessive force and showed complete disregard for his opponent's safety, as a result he should have been shown a red card by the Referee."

16. **Mr Brandon Vella**, the injured player for Marconi, noted in his witness statement dated 5 August:

"On Friday the 31st of July 2020 we played a game against Apia Leichhardt at Lambert Park kicking off at 7pm. During the second half of the game at approximately the 70th minute I jumped up and headed the ball away and as I landed I felt an elbow from the Apia player make contact to my left jaw. I feel as though this contact could have easily been avoided as I had already headed the ball away therefore giving the opposition player enough time to not engage the challenge. I immediately felt pain and went to the ground, as it was a head knock the ref quickly stopped the game and then allowed our physio onto the field to check on me. I felt my cheek was cut and then realised I had blood coming from my mouth."

"I then went to the doctors as I was still in discomfort and pain, from there I was then sent for CT scans and X-rays which confirmed I had a fractured jaw. I have now been advised to strictly follow a liquid/puree diet for 6 weeks and I am not allowed to participate in any contact sport for three months. I am continuing to consult with the specialist weekly to observe whether surgery is required."

17. Medical evidence was provided that substantiated that Mr Vella had sustained a non-displaced crack fracture across the left sided angle and lower ramus of the mandible. That is, a broken jaw.

D. THE HEARING

18. The Respondent, aged 31, appeared before the Tribunal on 20 August 2020.

19. Mr Bourne claimed, for the Respondent, that whilst the video evidence was unclear, the Tribunal should prefer the evidence of Mr Adam D'Apuzzo rather than Mr Kris Griffiths Jones.
20. The Respondent, through Mr Bourne, sought to challenge the evidence of Mr Griffiths-Jones claiming that he was incorrect in his conclusion that the challenge warranted the issue of a Red Card. They asserted, the video clearly demonstrated that the Respondent challenged fairly for the ball and that he was entitled to challenge for the ball in the manner he did. Further, they claimed that the injury to the Marconi player was simply an unfortunate result of a collision between the players.
21. Mr Bourne claimed that "*If Mr D'Apuzzo was found guilty, then every head-clash sustained in football would also require the same outcome*". When challenged by the Tribunal this submission was withdrawn.

E. BACKGROUND, SUBMISSIONS & EVIDENCE

22. The Tribunal referred to the video recording of the incident and asked Mr Bourne to explain to the Tribunal why the actions of the Respondent were permissible. He reiterated that it remained his submission that the challenge was not reckless or with excessive force and he confirmed the contents of his written statement. He claimed it was not an example of serious foul play.
23. Mr Bourne maintained that the evidence of Mr Adam D'Apuzzo should be accepted in preference to Mr Griffiths-Jones.
24. The Tribunal had asked Mr Adam D'Apuzzo what his role on the MRP was and he noted that it was as a "player representative". When asked if he had any referee qualifications he answered in the negative. Mr Adam D'Apuzzo noted that he had sat on 10 or 12 MRPs over quite a few years. He agreed that the opinion of the MRP could be overturned or ignored by the FFA if they saw fit.

Serious Foul Play

25. The Tribunal notes the definition of Serious Foul Play in the Laws of the Game (LOTG) on page 61 of the 2018-2019 Australian edition:

A tackle or challenge that endangers the safety of an opponent or uses excessive force or brutality must be sanctioned as serious foul play.

Any player who lunges at an opponent in challenging for the ball from the front, from the side or from behind using one or both legs, with excessive force or endangers the safety of an opponent is guilty of serious foul play.

Under the LOTG a player, substitute or substituted player who commits the offence of Serious Foul Play must be sent off.

26. The extent of the injury to a player is NOT a factor in determining whether a foul has been committed. One of the most relevant tests is whether the tackle endangers the safety of an opponent and not the injury itself.

E. CONSIDERATION & DETERMINATIONS

27. The Tribunal has considered the meaning of Serious Foul Play in many matters and in particular refers the Respondent to GPT 19-27 - Brooke Miller. In that Determination the Tribunal set out in detail many considerations that are important in determining what constitutes Serious Foul Play.
28. Mr Adam D'Apuzzo's opinions on the interpretation of the LOTG without any claim to specialist or expert knowledge in the form of registration as a Referee was a concern to members of the Tribunal. Further, the fact that Mr Adam D'Apuzzo was the brother of the Respondent left the Tribunal in no doubt that his evidence was tainted and could not be relied upon, as well as wrong in law.

29. The Tribunal noted with considerable approval that the Respondent had been in contact with the Marconi player to apologise for the injury he caused.

F. FINDINGS

30. The Tribunal found that the evidence of the Mr Kris Griffiths-Jones was clearly to be preferred. The video evidence was clearly consistent with a finding that the Respondent had committed a foul that amounted to Serious Foul Play.
31. Whilst Mr Adam D'Apuzzo's evidence was not preferred, the submission by Mr Bourne that the video evidence was unclear and could not be confidently relied upon could not be accepted particularly as he relied on that video in championing Mr Adam D'Apuzzo's evidence.
32. The Tribunal found that the Respondent did not have a legitimate opportunity to play the ball as he was not in a position to win the ball. His contact with the Marconi player was unreasonable in the circumstances and was reckless with excessive force.
33. The Tribunal found the Respondent **Mr David D'Apuzzo** GUILTY of the Charge.

G. SANCTIONS

34. The Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table A, Offence Code R1 Grading 05-01 - Serious Foul Play - "*Conduct causing serious injury*".
35. The Respondent is suspended for **seven (7) Fixtures for the offence under the Charge** from all Football related activities, including spectating and training.
36. The Tribunal issued a **fifteen Fixture suspension** to the Respondent under GPT 20-03 and the Respondent has commenced serving that Fixture suspension. Once that has been completed the Respondent is then to serve the Fixture Suspension imposed under this GPT 20-04.
37. The Respondent is to serve the Fixture suspension in accordance with section 15.6, in particular, sub-sections 15.6(j). However, the Tribunal has, under sub-section 15.6(h), determined that the Fixture suspension will NOT extend to Spectating and for the avoidance of doubt notes that the Respondent is entitled to attend any Fixtures that his club is participating in during the Fixture suspension albeit that he may not enter the Field of Play.
38. 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 2020. 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

31 August 2020

Schedule 1

Index of Documents

1.	NOTICE OF CHARGE AND ANNEXURES
	Notice of Charge dated 9 August 2020
MO1	Match Official Report of Craig Fisher dated 7 August 2020
A	Statement of Brandon Vella dated 5 August 2020
B	Medical Progress Note of Dr Dinuska Da Silva dated 3 August 2020
C	Radiologist Report of Dr Vincent Lai dated 3 August 2020
D	Statement of Kris Griffiths-Jones dated 7 August 2020
E	Video of Incident - APIA v Marconi on 31 July 2020
2.	NOTICE OF RESPONSE AND ANNEXURES
	Notice of Response- GPT 20-04
A	Respondent's Submissions
B	Statement of Adam D'Apuzzo dated 14 August 2020
C	Statement of David D'Apuzzo undated
D	Statement of Franco Parisi dated 17 August 2020
3.	SUBMISSIONS AND EVIDENCE IN REBUTTAL FROM FNSW
	GPT 20-04 - Football NSW v David D'Apuzzo - Football NSW Submissions
F	Statement of Kris Griffiths-Jones dated 19 August 2020
	MISCELLANEOUS DOCUMENTS
	Final Determination GPT 19-27 Brooke Miller Final Determination GPT 18-46 (redacted)

Schedule 2
Attendee Register

<i>ATTENDEE</i>	<i>POSITION</i>	<i>SIGNATURE</i>
David Lewis	GPT Chairman	
Mendo Cklamovski	GPT Panel Member	
Robert Iaconis	GPT Panel Member	
Lorenzo Crepaldi	Head of Legal & Governance, FNSW	
Michael Kantarovski	Legal & Regulatory Officer, FNSW	
David D'Apuzzo	Respondent	
Alex Bourne	Respondent's Legal Representative	
Brandon Vella	Player, Marconi Stallions FC	
Peter Tsekenis	1st Grade Coach, Marconi Stallions FC	
Tony Zappia	CEO, Marconi Stallions FC	
Kris Griffiths-Jones	Referee Manager, FNSW	