

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



GPT 20/06

Date of Hearing	1st September 2020
Date of Final Determination	15th September 2020
Respondent	Mr Tony Hristovski, (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 2020 Sections 9.2, 16.4, FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Abuse of Match Official, Schedule 3, Table B, Offence Code 09-01 - <i>“Threatening or intimidating language towards a Match Official”</i> , video evidence. Schedule 3, Table B, Offence Code 10-01 - <i>“Threat of physical violence towards a Match Official or his/her property”</i> .
Finding & Sanction	Guilty Suspended for twelve (12) Fixtures
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Pouyan Afshar Mr Louis Fayd’herbe

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. NOTICE OF CHARGES

2. On 14 August 2020, Football NSW (FNSW) issued a Notice of Charge on the Respondent, **Mr Tony Hristovski**, a Participant as defined in Schedule 1 of the Regulations ("the Respondent") relating to his conduct during an U14 NPL 2 Youth match between Hurstville FC and Prospect United SC at Ilinden Sports Centre on 2 August 2020.

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

Charge 1 (as amended)

"Prior to being expelled from the technical area by a Match Official during an U14s NPL 2 Youth match between Hurstville FC and Prospect United SC (the **Club**) on the 2 August 2020 at Ilinden Sports Centre, Tony Hristovski (the **Respondent**) engaged in threatening or intimidating language or conduct towards a Match Official using words to the effect of "*watch what's gonna happen to you, I'm gonna make sure you get dealt with and lose your job*".

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 2020, namely Schedule 3, Table B, Offence Code 09-01 - "*Threatening or intimidating language towards a Match Official*".

Charge 2

5. Further to Charge One, the Participant engaged in a threat of physical violence towards a Match Official or his/her family or property using words to the effect of "*beat you up*".
6. In relation to Charge 2, 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 2020, namely Schedule 3, Table B, Offence Code 10-01 - "*Threat of physical violence towards a Match Official or his/her property*".

C. NOTICE OF RESPONSE AND EVIDENCE

7. The Respondent pleaded NOT GUILTY in his Notice of Response to both Charges.
8. The Respondent was represented by Mr Nicholas Spowles, who was also a witness to the relevant events, as well as Mr Brent Lord, a Club Representative from Prospect United SC. The tension between his participation as witness and representative was raised by the Tribunal and Mr Spowles. Given his desire to participate in both capacities with the Respondent's consent and approval, the Tribunal decided to allow Mr Spowles to do so.
9. Football NSW obtained video evidence of the full Match and this evidence was presented to the Tribunal.
10. The Referee, a 16 year-old boy, noted in his Incident Report:

"The coach for prospect united was sent off for abusive and threatening behaviour towards the referee (me) he threatened to beat me up, he kept repeating the phrases "Watch whats gonna happen to you, I'm gonna make sure you get dealt with and lose your job".

He kept yelling at me with an abusive tone during the first half, I had warned him to keep quiet or he will be dealt with accordingly, he than (sic.) approached me at

half time saying he doesn't give a shit what he's doing and kept saying watch what's gonna happen he kept getting close to me and telling me off, as I was about to start the second half I warned him I will send him off if he says one thing towards me he than (sic.) said I'm an idiot and have no control whatsoever and that he's gonna make sure I'm not a referee anymore, I than (sic.) sent him off and he than (sic.) complied with my order by leaving the field."

11. Assistant Referee 1 corroborated the evidence of the central referee.
12. The Respondent tendered a comprehensive statement dated 2 August, signed on 18 August, to Football NSW ("the Statement").
13. In the Statement the Respondent claimed that the Referee failed to stop dangerous contact:

"The game kicked off on time with no immediate issues. I soon became concerned about a number of obvious and dangerous fouls against my players, which I believed put them at risk of unnecessary injury. I was very concerned by the fact that the Centre Referee, nor his assistants were doing anything to stop the dangerous contact. I wish to highlight the following fouls, which can be seen by reviewing the video recording of the game:"

- i. *Foul on Awan LUAL (video timestamp 13:20 - shoulder charge)*
- ii. *Foul on Ankon DAM (video timestamp 21:25 - elbow to face)*
- iii. *Foul on Justin HRISTOVSKI (video timestamp 22:40- hacking)*
- iv. *Foul on Seth SAAGHY (video timestamp 29.20 - hacking)*

"The foul upon Awan LUAL (video timestamp reference 13:20- shoulder charge) caused me to yell out from the sideline challenging the referee to call fouls for dangerous play. I felt as a coach it was my responsibility to raise this with the Centre Referee and AR's as I have a duty of care for my players."

14. The Respondent further admitted in the Statement that he called out to the Referee and dissented from his decision at the time of the second alleged foul and then midway through the first half:

"I called out to the referee something like, 'Ref, ref are you serious'. In hindsight, I probably should have discreetly raised it with the AR rather than yelling out to the Centre Referee. I know I could have managed that situation better, but as mentioned I was just concerned about the welfare of my players."

15. At Half Time the Respondent approached the three Match Officials. In the Statement he noted as follows:

"At half time I was very concerned about the dangerous play going uncalled by the referees. As the players and officials from both teams walked across the fields to the change rooms I decided to ask the referees to call the fouls and stop the dangerous contact."

"I walked across the field and approached the Centre Referee and at least one of the AR's. At the time the players from both teams were moving around us toward the dressing rooms. I am aware that my manager and team physio were also in the area. There were also a large number of spectators from both teams on either side of the field with eyes on us. I thought to myself it's good the referees are together, as I can sort this out."

I said, 'Look ref, we are recoding this game. I have concerns about some of the decisions you've made and duty of care. Just call what you see or I'll send the video to Football NSW'.

The Centre Referee said, 'Do what you want. If you want to do it, do it'

I said, 'What's your name?' The Centre Referee said, "Adam".

"I turned my back and started walking towards the change rooms. The Centre Referee said something else that I think was directed at me, but I couldn't really hear it."

16. After Half Time and before the second half commenced, the Respondent alleged that the Match Officials approached him in his Technical Area. He acknowledged that the following discussion took place:

"The Centre Referee said, 'If you say one more thing I'll send you from the field'.

I said, 'Whatever, just be fair or I'll make a complaint to Football NSW and send them the video'.

The Centre Referee said, 'Are you threatening me? Are you threatening my job? If you say anything else, I'll send you'

I said, 'Whatever, just do your job'.

He said, 'Okay, go, you're gone get off, get off'

17. The Respondent left the Field of Play and did not say or do anything during the Second Half.

18. The Respondent then noted the following:

"Immediately after the game I walked over to all three referees in the middle of the field. All the players were around fist pumping each other due to covid-19 restrictions. I walked up to the Centre Referee, who was with both AR's. I reached out to fist pump the Centre Referee to show there was no hard feelings from my end."

The Centre Referee said, 'No man, I have no respect for you, go away'.

19. After the end of the following match, the U15s, the Respondent stated:

"I walked into the referee's room and saw the Centre Referee with both AR's."

I said, 'Look I just want to apologies (sic.) for what happened out there today.'

The Centre Referee said, 'It's all good mate.'

I said, 'Thanks mate'.

"I reached out and we shook hands before walking away. I want it make it clear although I said the word 'apologies' I was not in fact apologising I just wanted to leave the field on a goodnote."

D. THE HEARING

20. The Respondent appeared before the Tribunal on 1 September 2020.
21. Mr Nicholas Sprowles, for the Respondent, at the commencement of the Hearing made lengthy submissions in relation to the content of Charge 1 in that the Charge specified that the relevant conduct took place *"After being expelled from the technical area..."*. The Tribunal accepted that the Charge - as it was then framed - was clearly inconsistent with the written evidence and that the word *"After"* should have read *"Prior to"*.
22. The Respondent, through Mr Sprowles, attempted to have the Charge dismissed and claimed that there was no case to answer on the basis that the evidence clearly did not support that Charge.
23. On the basis that the Respondent had prepared a defence based upon that inaccuracy and a perceived right to strike out that Charge without modification, the Tribunal offered the Respondent an adjournment.
24. The Tribunal noted that under the Regulations, section 13.11(f) the Tribunal may find the Respondent guilty of a different charge on the facts set out in the charge or on other available evidence, including the Respondent's own statement, if it is not satisfied that a charge before it has been proved to the required standard.

25. The Respondent declined the offer of an adjournment, said that he wished to proceed and confirmed his plea of NOT GUILTY to the Charges in his Notice of Response to Football NSW.
26. The Tribunal then heard verbal evidence from the Central Referee. The Referee was a 16 year-old boy. He gave verbal evidence consistent with his written Send Off Report. He alleged that the Respondent was “yelling out dissent four or five times from about the 20th minute of the first half”. He confirmed that the Respondent used the words contained in the Statement and that he threatened him that he would send the recording of the match to Football NSW as the Respondent claimed that he had no control of the match and had made decisions that were incorrect.
27. The Referee alleged that the Respondent called him a “*cheat*” and that he said “*I’m going to beat you up*” in the Half Time discussion on the Field of Play.
28. Mr Sprowles then commenced to question the Referee. He was advised of the procedures of the Tribunal in relation to the manner in which questions may be asked of witnesses. Regrettably, the Tribunal was forced to rebuke Mr Sprowles on several occasions that his questioning was aggressive, inappropriate and failed to recognise not only the procedures of the Tribunal but also the fact that the Referee was a 16 year-old. Mr Sprowles attempted to aggressively impeach this witness.
29. Notwithstanding the behaviour of Mr Sprowles, the Referee was unshaken in his evidence that his Send Off Report was accurate and that the Respondent made all the statements he alleged.
30. The Assistant Referee who was on the Technical Area side of the field, (AR1), gave evidence that was broadly consistent with the Central Referee. AR1 is also a 16 year-old boy. He also alleged that the Respondent threatened to “beat up” the Central Referee.
31. Mr Sprowles questioned AR1 and also attempted to find inconsistencies in his evidence based upon his position on the side-line and the time that he allegedly heard the words he attributed to the Respondent. AR1’s evidence was given with confidence and, as noted above, broadly consistent.
32. The Respondent maintained that the words he used were not abusive nor were they threatening. He claimed that he had a “*duty of care towards his players*” and that this duty entitled him to ensure that he did all he could to protect his players.
33. The Respondent further claimed that when he suggested that he would send a complaint to Football NSW by way of a copy of the video recording, this was not a threat as this was merely a complaint process managed by Football NSW. All he would be doing would be following through on a proper process.

Football NSW Submissions

34. Mr Kantarovski appeared for Football NSW. He apologised to the Tribunal for the error in wording in Charge 1 and noted that the Tribunal had the power to make a different finding under section 13.11(f) of the Regulations.
35. He noted that there was no video evidence of the discussion at Half Time between the Respondent and the Match Officials nor was there video evidence of the expulsion of the Respondent prior to the start of the second half. Mr Kantarovski submitted that the Respondent had made relevant admissions in the Statement and that there was significant similarity with the evidence of the Match Officials.
36. He submitted that the Match Officials had no motive to lie and their evidence was broadly consistent. Both stated that the Respondent had threatened to “beat up” the Referee.
37. There was, he submitted, a “power imbalance” between the Respondent and the Referee and that his comments were properly characterised as a threat to the Referee.

E. CONSIDERATION & DETERMINATIONS

38. The Respondent effectively claimed that:
- a. The Centre Referee performed poorly in the first half;
 - b. The four fouls set out in paragraph 13 above were examples of that poor level of performance and that these were “*dangerous fouls against my players, which I believed put them at risk of unnecessary injury*”;
 - c. The Centre Referee and his assistants were not doing anything to stop the dangerous contact;
 - d. Therefore, the Respondent claimed that he was justified in exercising his “duty of care” in relation to his players and was “informing” the Referee that he, the Respondent, was monitoring his performance and he would report him to Football NSW of his poor performance.
39. The Tribunal reviewed the video and notes that the four “*dangerous fouls*” were clearly seen by the Referee and dealt with. He gave Prospect United a free kick for three of the foul alleged fouls. The alleged shoulder charge was a coming together of two players fairly challenging for the ball and was not a foul. In any case, the Respondent was some 70m from this incident whilst the Referee was less than 15m with a clear and unobstructed view. The Referee clearly dealt with all these incidents.
40. Further, none of the fouls could be fairly described as “*dangerous fouls*”. The “elbow” is an unfortunate collision.
41. Notwithstanding any of the above, the Tribunal once again restates the principles adopted in **GPT 16-16** and applied by the Tribunal in many subsequent matters:
- “It remains absolutely unacceptable for players or club officials to challenge decisions of a referee or intimidate him. There is no difference between any allegation of incapacity or simply the fact that a player/team did not like or agree with a decision of a match official. Players may not take matters into their own hands and club officials have a duty to ensure that the Code of Conduct is observed. The skills of the referee are irrelevant to this determination as are the skills of the players. It is the process that must be protected and the observance of the laws of the game. All players and team officials understand that match officials will, from time to time at all levels of the game, make decisions with which they disagree. Players too are not infallible and have been known to make errors.”*
42. The Respondent by raising this as an issue in his Statement, failed to appreciate that the performance of the Match Official was not an appropriate issue to review at the Tribunal and that his allegation amounted to another example of dissent and abuse of that Match Official.

What is a Threat?

43. In common parlance and ordinary usage, a threat is a communication, which seeks to foreshadow a risk that would follow if someone does not do what has been demanded.
44. The Respondent’s admitted communications, on balance, amounted to a threat, because they communicated a risk (“*I’ll send the video to Football NSW*” or “*I’ll make a complaint*”) if the Referee did not act in a particular way (“*...call what you see*” or “*just be fair*”). The communication does not need to foreshadow violence or physical harm for it to be “*threatening*”. Indeed, there is an entirely separate set of offences (10-1 and 10-2), which prohibit a “*threat of physical violence*” towards match officials. For the purposes of 09-01, it suffices that it communicates a risk to the recipient of the communication.
45. Further, and contrary to the arguments made by the Respondent, a communication does not cease to be “*threatening*” if the risk that is foreshadowed is otherwise the risk of involvement in an entirely lawful and appropriate process: a complaint process managed by Football NSW. By way of analogy, issuing a letter that states the recipient would be taken to Court if certain steps were not taken is threatening, notwithstanding that the commencement of legal proceedings might be an entirely appropriate or lawful process for the maker of the communication to commence.

46. The language of Offence Code 09-01 is clear, in that it prohibits any kind of threatening communication. If the authors of the Regulations had wanted to carve out a threat to make a complaint to Football NSW from the offence, they would have done so expressly. In its current form, the offence does not allow for such a carve out.
47. There is perhaps a good reason why they did not allow for such a carve out, namely that they foresaw and sought to forbid Referees' decisions being influenced by the threat of complaints to Football NSW. Such conduct is likely not only to undermine Referees' impartiality and lead to a veritable escalating feast of threats and counter threats by competing teams and officials, but it would, in all likelihood, make a mockery of the complaints process.

Charge 2

48. The Tribunal was not satisfied that, on the balance of probabilities, a threat to "beat up" the Referee was made out. The use of these words appears to be out of context and, the Tribunal agreed with the submission by the Respondent, that if such a threat was made in the Half Time discussion, the Referee would have issued a Red Card at that time.

F. FINDINGS

49. This was an Under 14s NPL game on a beautiful day in Sydney. Junior football is meant to be an enjoyable experience for all and the parents involved as officials are meant to be role models to the children. It is highly regrettable that an adult, who is a coach with considerable experience and who is in a position of authority over young players, did not display a more balanced approach under these circumstances. He abused and threatened a 16 year-old Referee.
50. Notwithstanding the submissions of the Respondent at the Hearing, the Tribunal found that the exchange of words, to which he had admitted in the Statement, constituted, at the very least, "*threatening*" language to the Referee and therefore the Tribunal found the Respondent **GUILTY** of Charge 1.
51. The Respondent threatened the Referee that he would report him to Football NSW if he failed to make decisions that met the approval of the Respondent. Such conduct was an offence under Offence Code 09-01. Further, asking the Referee's name was, likely also an act of intimidation by an adult man of a 16 year-old boy (the Centre Referee).
52. The words used by the Respondent just before the second half included an allegation that the Referee had been "unfair". This was another example of not only dissent but coupled with the following threat to report him to Football NSW, made it perfectly clear to the Tribunal that the Respondent "*engaged in threatening and intimidating language and conduct towards a Match Official.*"
53. The Tribunal found the Respondent **Mr Tony Hristovski** **GUILTY** of **Charge 1**. In relation to **Charge 2**, the Tribunal found the Respondent Not Guilty.

G. SANCTIONS

54. The Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table B, Offence Code 09-01 - *“Threatening or intimidating language towards a Match Official”*.
55. The minimum sanction for this Offence Code is **twelve (12) Fixtures**. As the actions of the Respondent were in the lower end of the scale, and given the unblemished disciplinary record of the Respondent, the Tribunal determined that the Respondent should be suspended for **twelve (12) Fixtures** from all Football related activities, including coaching.
56. After the Hearing and prior to the issue of this Final Determination, the Respondent wrote to Football NSW as follows:
- “Although the respondent accepts the findings of the tribunal, he would like to plead to Football NSW to consider suspending part of his fixture suspension upon him entering a good behaviour bond for a term of 2 years. The respondent understands that if he is subject to any future disciplinary action that he would need to serve the balance of the sentence that was imposed.”*
- “In making this submission it is hoped that Football NSW could give consideration to the fact charge 1 could have been dealt with by a conviction under table B offence 02-01 (Disputing a decision of a match official, dissent or unsportsmanlike/unprofessional behaviour) which carries a minimum suspension of 1 fixture (MMS). As mentioned, the respondent is not challenging the findings of the GPT, but rather pleading to the discretion of Football NSW to suspend a portion of his sentence. When considering natural justice and procedural fairness, it's the respondents' humble submission that his conduct on the day fell somewhere in between the one and twelve fixture range, opposed to both the aforementioned upper and lower limits.”*
57. The Tribunal considered these representations and notes the following:
- Section 13.12 of the Regulations prevents the Tribunal from suspending part of the Sanction, as the suspension imposed is not for less than six (6) Fixtures.
 - The Respondent was charged with an offence under Schedule 3, Table B, Offence Code 09-01 of the Regulations and the Tribunal found the Respondent guilty of that offence. The Tribunal imposed the minimum sanction under that Offence Code. Given the Tribunal's findings it has no discretion to reduce the sanction on the Respondent below that minimum sanction.
 - The Tribunal does not agree that Schedule 3, Table B, Offence Code 02-01 is appropriate as an alternative to the Charge Code preferred by Football NSW. To suggest so would be *“challenging the findings of the GPT”*.
58. The Respondent advised that he had already effectively served a three (3) Fixture suspension as he was stood down by his club prior to the Hearing. The Tribunal agrees that these fixtures be counted towards his suspension. The Respondent is therefore suspended for a further nine (9) Fixtures from the date of the issue of the Preliminary Determination.
59. 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 NOT entitled to enter the Field of Play during the Fixture suspension
60. 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

15 September 2020

Schedule 1

Index of Documents

1.	NOTICE OF CHARGE AND ANNEXURES
	Notice of Charge dated 14 August 2020
MO1	Match Official Report of Adam Chalak dated 2 August 2020
MO2	Match Official Report of Nicholas Filocouridis dated 4 August 2020
MO3	Match Official Report of Alexander Lechner dated 4 August 2020
A	Supplementary Document of Adam Chalak dated 11 August 2020
B	Supplementary Document of Nicholas Filocouridis dated 11 August 2020
2.	NOTICE OF RESPONSE AND ANNEXURES
	Notice of Response- GPT 20-06
	Brief Contents List
1.	Notice of Charge and Annexures
2.	Statement of Tony Hristovski dated 18 August 2020
3.	Statement of Nicholas Sprowles dated 18 August 2020
4.	Statement of Jackson Wright dated 18 August 2020
5.	Prospect United Injury Report from U14's Fixture on 2 August 2020
6.	U14's Team Sheet dated 2 August 2020
7.	U16's Team Sheet dated 2 August 2020
8.	Character Reference by Robert Vrtkovski undated
9.	Video Footage of the U14's Fixture on 2 August 2020

10.	Alternative Video Footage of the U14's Fixture on 2 August 2020
11.	Video Footage of Send-Off on 2 August 2020

Schedule 2

Attendee Register

GENERAL PURPOSES TRIBUNAL

GPT 20-06

Tuesday, 1 September 2020 at 6.30pm

via Zoom and at 88 Pitt Street, Redfern

<i>ATTENDEE</i>	<i>POSITION</i>	<i>SIGNATURE</i>
David Lewis	GPT Chairman	
Louis Fayd'herbe	GPT Panel Member	
Pouyan Afshar	GPT Panel Member	
Michael Kantarovski	Legal & Regulatory Officer, FNSW	
Tony Hristovski	Respondent	
Nicholas Sprowles	Respondent's witness	
Brent Lord	Club Representative, Prospect United SC	
Adam Chalak	Centre Referee	
Nicholas Filicouridis	Match Official	