



FOOTBALL NSW

APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES

DETERMINATION IN THE FOLLOWING MATTER:

Player/Official/Member/Association Member/Participant/Club	Parties: Randwick City FC v Coogee United FC AT 20-02 Affected Parties: Eastern Suburbs Football Association and Football NSW
Decision Appealed	Appeal from the decision of the Appeal Committee of the Eastern Suburbs Football Association
Date of Decision	5 October 2020
The basis upon which the matter is before the Appeals Tribunal	Sections 10.1(d), 10.2(g) & 10.6(a) of the Football NSW Grievance and Disciplinary Regulations, 2020
Ground(s) of Appeal	Section 10.3(d) of the Football NSW Grievance and Disciplinary Regulations, 2020
Date of Hearing	16 December 2020
Date of Determination	18 December 2020
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair David Stanton, Member Ivan Griscti, Member

I. INTRODUCTION

1. Under section 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2020 (**FNSW Regulations**), the Appeals Tribunal (**AT**) is responsible for hearing appeals from the Executive of Football NSW (**Executive**), the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and the Member Appeals Committee (**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;
 - (c) the decision was affected by actual bias;
 - (d) the decision was one that was not reasonably open having regard to the evidence before the decision-maker;
 - (e) severity, but 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 3 or more months; or
 - iii. a fine of \$3,000 or more; or
 - iv. a bond to be of good behaviour of \$3,000 or more; or
 - v. a deduction, loss or ban on accruing of 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) any decision including any sanction or penalty, made by a Body or a MAC; and
- (b) subject to any applicable Minimum Suspension/Sanction and Maximum Suspension, impose any sanction, measure or make any order it thinks fit or a decision that either the DC, the GPT or the MAC could have imposed or made under these Regulations, or its regulations, as the case may be;
- (c) conduct a fresh hearing of the matter (hearing *de novo*), but only in exceptional circumstances (as determined by the Appeals Tribunal in its absolute discretion); 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)

II. ADMISSIBILITY AND JURISDICTION

- 4. This appeal arises from a determination of the Appeal Committee (**AC**) of the Eastern Suburbs Football Association (**ESFA**) issued on 5 October 2020 (**AC Determination**). It has been brought pursuant to section 10.2(g) of the FNSW Regulations.
- 5. Section 10.6(b) of the FNSW Regulations requires that such an appeal be brought within 7 working days of the issuing of the determination that is ultimately the subject of the appeal, that is, by 14 October 2020. The appeal was lodged on 9 October 2020. The appeal has accordingly been brought with time.

6. An appeal only lies to the AT from a decision of a MAC such as the AC where the matter has proceeded in accordance with, and exhausted, a Member's own disciplinary/grievance rules and regulations (FNSW Regulations, section 10.6(a)). Having regard to paragraph 18 of "Schedule D: Disciplinary Procedure" promulgated pursuant to clause 36 of the ESFA Constitution), the AT is satisfied that RCFC has exhausted all avenues of appeal available under that Member's own disciplinary rules.
7. The AT is accordingly satisfied that the appeal is both admissible and that it has jurisdiction to hear the appeal.
8. Further, neither party raised any objection to the admissibility of the appeal nor to the AT having the requisite jurisdiction to hear it.

III. BACKGROUND FACTS

9. The facts are not controversial. On 9 August 2020, CUFC AA4 Division Player John Cassidy (the **Player**) was issued a second caution and sent off for an "R7" red card offence. In the following week, ESFA did not notify the CUFC of the Player's suspension nor did his name appear on the suspended players' list which is distributed to clubs by ESFA.
10. On 16 August 2020, the Player participated in a fixture against RCFC which CUFC won by a score of 3-0. The match was officiated by the referee who had sent-off the Player the previous week. He submitted a report to the ESFA noting the Player's participation in the fixture notwithstanding that he had been sent off the week before.
11. ESFA subsequently suspended the Player for one match and awarded a forfeit to RCFC for the 16 August 2020 fixture because CUFC had fielded a suspended and thus ineligible player (**ESFA Decision**).
12. The ESFA Decision was appealed by CUFC to the ESFA Judiciary Committee (**JC**) which, on 31 August 2020, upheld the appeal and reversed the CUFC forfeit loss. It found, upon a consideration of pertinent ESFA rules, that a suspension occurs when notification of it is given to a club and as no such notification had been given by ESFA in this case, the Player was not suspended at the time that he participated in the subsequent fixture, was thus not an ineligible player and hence there was no foundation to award a forfeiture loss to CUFC.

13. RCFC was not provided notice of, nor did it participate in the proceedings before the JC. Conscious of the fact that the JC's decision affected the RCFC, the Committee directed that a copy of its reasons be provided to the RCFC.
14. By notice of appeal dated 4 September 2020, the RCFC appealed the decision of the JC to the AC. The AC heard the appeal on 21 September 2020 and rendered its determination on 5 October 2020 (**AC Determination**).
15. In dismissing the appeal, the AC accepted the submissions made by both the ESFA and CUFC that the Review Committee decided to impose a one match suspension on the Player which, by reason of clause 10.1 of the ESFA Disciplinary Procedure, had to be notified to the CUFC before it could take effect. As the suspension was not notified by ESFA to the CUFC due to an administrative oversight prior to the 16 August 2020 fixture, it was open to the JC to find, as it did, that as clause 10.1 had not been complied with, CUFC had not been informed of the suspension, and therefore had not fielded an ineligible player.

IV. PROCEDURAL HISTORY

16. On 12 October 2020 and 2 November 2020, the AT made directions to facilitate the preparation of the appeal for hearing and, in particular, to ensure that RCFC and CUFC as parties and ESFA and Football NSW as affected parties were afforded every opportunity to make written submissions on matters the subject of the appeal.
17. At a directions hearing on 23 November 2020, the AT made further procedural orders concerning documents attached to the ESFA/CUFC written submissions which it appeared to the Tribunal had not been before either the JC or the AC. The AT addresses this issue further in paragraphs 24 and 25 below. The parties were also directed to and did liaise with a view to agreeing dates for an oral hearing which the parties agreed would take place remotely by audio-visual means.

V. GROUNDS OF APPEAL

18. By Notice of Appeal filed on 9 October 2020, RCFC appeals the AC Determination on the sole ground that it was a decision that was not reasonably open to the AC having regard to the evidence before it (s 10.3(d) of the FNSW Regulations).

VII. THE HEARING

19. The AT heard the appeal on the evening of 16 December 2020 by audio-visual means.
20. At the hearing, RCFC was represented by its President, Mr Richard Baldwin, ESFA was represented by Mr Michael Napoli, solicitor, CUFC was represented by its Vice-President, Amy Singh and FNSW was represented by Mr Lorenzo Crepaldi, Head of Legal and Governance. Also in attendance at the hearing were Mr Glen Overton, Director, ESFA, and Mr Michael Kantarovski from FNSW in his capacity as Tribunal Secretary.
21. The parties provided the AT with the following written submissions:
 - (a) RCFC, undated, lodged with the Notice of Appeal on 9 October 2020;
 - (b) RCFC (supplementary submissions), dated 15 October 2020;
 - (c) FNSW, dated 28 October 2020;
 - (d) CUFC and ESFA, dated 9 November 2020; and
 - (e) RCFC reply submissions, undated.
22. The parties were each afforded the opportunity to supplement their written submissions orally during the course of the hearing and the AT heard from each of them.
23. The parties relied upon the following documents each of which was referred to in the written submissions:
 - (a) Football Federation Australia (**FFA**) National Disciplinary Regulations (**NDRs**);
 - (b) The FNSW Constitution;
 - (c) The FNSW By-Laws;
 - (d) the FNSW Grievance and Disciplinary Regulations (**GDRs**);
 - (e) the ESFA Constitution;

- (f) "Schedule C – Winter Competition Rules 2020" (Regulation pursuant to clause 36 of the ESFA Constitution) (**ESFA Rules**);
 - (g) "Schedule D: Disciplinary Procedure" (Regulation pursuant to clause 36 of the ESFA Constitution) (**ESFA DP**);
 - (h) "Schedule H: Schedule of Penalties" (Regulation pursuant to clause 36 of the ESFA Constitution) (**ESFA Table of Offences**);
 - (i) *Kuringai District Football Referees Association v Northern Suburbs Football Association*, FNSWAT AT 16-36 (1 December 2016);
 - (j) Written submissions, undated, by ESFA to the AC;
 - (k) Written submissions, undated, by CUFC to the AC;
 - (l) Determination of the AC, dated 5 October 2020; and
 - (m) Determination of the JC, dated 31 August 2020.
24. ESFA and CUFC initially sought to rely upon the following documents which, it was common ground, were not in evidence before the AC:
- (a) a notice of suspension, dated 2 May 2017 from ESFA to CUFC;
 - (b) a notice of suspension, dated 29 July 2020 from ESFA to CUFC;
 - (c) a notice of suspension, dated 13 August 2020 from ESFA to CUFC; and
 - (d) a document headed, "ESFA Question" comprising an enquiry by the ESFA President of the presidents of other FNSW affiliated football associations which seeks to garner their views on FNSW's contention that the issue of a red card means a player automatically misses the following game and that the FNSW rules supercede those of ESFA and the responses from 5 of the associations approached.
25. However, prior to the hearing, ESFA and CUFC withdrew its reliance upon these documents and, accordingly, they have not been considered by the AT. Similarly, the AT has not considered those parts of the parties' written submissions which touch upon or concern the documents which ESFA and CUFC no longer pressed.

VIII. THE PARTIES' SUBMISSIONS

26. What follows is a summary of the parties' submissions. It does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the AT notes that it has carefully considered all of the evidence and arguments submitted by the parties, including those made orally at the hearing, even if there is no specific reference to those submissions in the following summary.

RCFC

27. RCFC contends that the determination was not reasonably open to the AC having regard to the evidence before it because:

- (a) clause 10.1 of the ESFA DP provides that the ESFA Executive must notify Club Secretaries of suspensions imposed by the Review Committee;
- (b) clause 17.6 of the GDRs provides that if a player receives an R7, they must serve a mandatory match suspension of one fixture, the club is responsible for ensuring the player is immediately stood down for their next fixture, and FNSW is not obliged to issue a Notice of Suspension when a player receives an R7;
- (c) clause 7.4(c) of the FNSW By-Laws provides that where there is any inconsistency between the Constitution, rules or regulations of a Member and the FNSW Rules and Regulations, then to the extent of such inconsistency, the FNSW Rules and Regulations are to apply; and
- (d) clause 17.6 of the GDRs is inconsistent with clause 10.1 of the ESFA DP and thus, by virtue of clause 7.4(c) of the FNSW By-Laws, clause 17.6 applies to the extent of any inconsistency with the effect that the Player was suspended for one fixture immediately upon receiving an R7 notwithstanding that CUFC was not notified of the suspension.

FNSW

28. FNSW, as an affected party, submitted that:

- (a) the FFA Constitution requires, relevantly, that the statutes and regulations of a "State Body" must not be inconsistent with the FFA Statutes (clause 6.9(a)). "State Body" includes FNSW;
- (b) the ESFA Constitution requires it to:
 - (i) affiliate and otherwise liaise with FNSW and adopt its rule and policy framework to further the objects of ESFA (clause 3(g));
 - (ii) abide by, promulgate, enforce and secure uniformity in the application of the rules of football as may be determined from time to time by FNSW of FFA or FIFA and, as may be necessary for the management and control of football related activities in the Eastern Suburbs Region (clause 3(k)); and
 - (iii) formulate, issue, adopt and amend regulations which are consistent with the ESFA Constitution, the FNSW and FFA Constitutions and any regulations made by FNSW or the FFA (clause 36.1)
- (c) therefore, ESFA is required, by its own constitution, to have regulations that are consistent with those of the FFA and FNSW;
- (d) where there is an inconsistency between the regulations of ESFA and those of FNSW, clause 7.4(c) of the FNSW By-Laws, provides that the FNSW rules and regulations apply to the extent of any inconsistency;
- (e) competition regulations must be consistent with the FFA Statutes which are defined in the FFA Constitution to include the NDRs. The NDRs apply to any infringement of the Laws of the Game (**LOTG**) by any participant during a match played in Australia (NDRs, clause 1.1). The NDRs are mandatory and are designed to ensure that appropriate standards of behaviour are upheld on the field of play in a consistent manner across Australia. They may be supplemented but not varied by competition rules (NDRs, clause 1.2). They apply to FNSW and to ESFA (NDRs, clause 1.3(a));
- (f) the NDRs provides that a player who receives a red card must serve at least a one match Mandatory Match Suspension (**MMS**) (clause 5.2). The

imposition of a MMS is immediate. A competition administrator is to send a disciplinary infringement notice notifying the participant through their club of the MMS, provided always that the MMS is effective regardless of whether or not such a notice is received (clause 9.1);

- (g) consistent with the NDRs, clause 17.6(d) of the GDRs provides that if a player receives an R7, they must serve a MMS of one fixture and the club is responsible for ensuring the player is immediately stood down for their next fixture. Clause 17.6(e) provides that FNSW is not obliged to issue a notice of suspension when a player receives an R7;
- (h) clause 3.2B of the ESFA Rules provides, consistently with the NDRs and GDRs, for a mandatory one match suspension for all red card offences;
- (i) clause 10.1 of the ESFA DP requires the ESFA Executive to notify club secretaries of suspensions imposed by the Review Committee;
- (j) clause 10.1 is inconsistent with the NDRs and GDRs because, when read together, they provide that where a player is issued with an R7 red card in a match, the imposition of an MMS is immediate, the player must serve an MMS in their next fixture and the MMS is effective regardless of whether or not, notice of the MMS is received by the club. Having regard to clause 6.9(a) of the FFA Constitution, clauses 1.1 and 1.2 of the NDRs, clause 7.4(c) of the FNSW By-Laws and the decision of this Tribunal in *Kuringai District Football Referees Association v Northern Suburbs Football Association*, FNSWAT AT 16-36, by being issued with an R7 red card, the Player immediately received an MMS and was required to serve that suspension in his next match irrespective of whether he received any notification of the suspension. He was thus ineligible to play on 16 August 2020 with the consequence that CUFC must forfeit that match; and
- (k) for these reasons, FNSW submitted that RCFC's appeal should be upheld, the decisions of the AC and JC be set aside, the original administrative decision of ESFA be reinstated, namely that the result of the 16 August 2020 match be a forfeit in favour of RCFC and that ESFA reimburse RCFC the application of \$500 paid to bring the appeal to the AT.

CUFC/ESFA

29. CUFC and ESFA jointly submitted that the determinations of the JC and the AC should be affirmed because:
- (a) the GDRs exclusively facilitate the expeditious and fair resolution of grievances, incidents, disciplinary, dispute and conduct matters in relation to "Competitions" conducted by FNSW (clause 3 and Schedule 1) and thus do not apply to ESFA;
 - (b) the FNSW Competition Regulations 2020 apply to participants in the National Premier League and National Premier League youth competitions (as well as various other competitions managed by FNSW) and thus do not apply to ESFA;
 - (c) the decision of the AT in *AT 16-36* is of no application because that determination provides that where a Member Associations' rules and regulations are silent on a particular issue, then the FNSW rules and regulations are to prevail and apply to the extent of any inconsistency. The ESFA DP is not silent on the procedure of notifying participants of red card offences. There is thus no inconsistency between the ESFA rules and regulations and those of FNSW;
 - (d) the ESFA Rules clearly state that all participants including teams and players submit exclusively to the jurisdiction of the ESFA Disciplinary Committee and agree to be bound by the rules of ESFA including its competition rules and disciplinary procedure (sections 2.4 and 2.5);
 - (e) it is an accepted practice for Member Associations to have local rules that do not align with those of FNSW or the FFA;
 - (f) it is normal and accepted ESFA practice for the ESFA Review Committee to waive a MMS for a red card offence pursuant to clause 4.2 of the DP and, for this reason, the Review Committee is required to review send-off reports including R7s and the Executive is, by clause 10.1 of the DP, required to notify Club Secretaries of suspensions, if any, imposed by the Review Committee before they take effect;

- (g) there is no practical operational mechanism available to Member Associations (that is, a unifying set of regulations in existence with respect to dealing with grievance and disciplinary matters) that ensures consistency between FNSW and ESFA rules and regulations and it is an impractical burden for participants to adhere to the rules and regulations of ESFA, FNSW and FFA, all at once. It would also likely result in administrative chaos as these regulations would not complement ESFA's resources or existing systems, greater operational costs and substantial delays; and
 - (h) section 13.2 of the ESFA Rules, which provides for the imposition of a MMS to all red card offences is consistent with the NDRs but they have been supplemented by the ESFA Rules and DP by requiring the Review Committee to review all red cards and then notify clubs of suspensions imposed by that committee.
30. In reply, RCFC contends that the only issue in this matter is the serving of a MMS and the need for the competition administrator to issue a notice for an R7 before that suspension takes effect. If club and team administrators are responsible for the enforcement of the R7 suspension, it actually lessens the work of the ESFA competition administrator because at least 50% of send-offs are for R7s. If club and team administrators are responsible for the enforcement of the R7 suspension, then it becomes consistent across all clubs and all matches.

IX. THE APPLICABLE LAW

31. An appeal involves the consideration of whether the decision under consideration is affected by legal, factual or discretionary error (see, for example, *Allesch v Maunz* (2000) 203 CLR 172). The question as to whether there is any evidence of a particular fact is a question of law. Likewise, the question as to whether a particular inference can be drawn from facts found or agreed is also a question of law (see, for example, *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 355 per Mason CJ).
32. A decision is not reasonably open to a tribunal having regard to the evidence before it (and is thus affected by error) if that evidence in its totality preponderates so strongly against the conclusion found by the tribunal that it can be said that the conclusion was not one that a reasonable tribunal member could

reach (see, for example, *Calin v The Greater Union Organisation Pty Ltd* (1991) 173 CLR 33 and *Mainteck Services Pty Limited v Stein Heurtey SA* [2013] NSWSC 266).

33. Further, the AT will only intervene to set aside a determination on the ground that it is unreasonable if “*there was no information available to the tribunal on which reasonable and honest minds could possibly reach the conclusion* (see the decision of the Appeal Committee of the Football Federation of Australia in the *matter of Roy O’Donovan*, 25 January 2016 at [16] and the cases there referred to).
34. For the purposes of an appeal generally, it will be necessary to demonstrate legal error, not merely an erroneous ruling, and the error must be material to or likely to affect the outcome of the decision appealed from; that is, the decision must be one which is vitiated by error (see, for example, *Hamod v Suncorp Metway Insurance Ltd* [2006] NSWCA 243 at [11], *Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority* (1991) 24 NSWLR 156 at 177).

X. CONSIDERATION AND DETERMINATION

35. In reliance upon the terms of clauses 4.1 and 10.1 of the DP, the ESFA Review Committee reviews all reports, including R7 send-offs and the Executive notifies Club Secretaries of the suspensions, if any, imposed by the Review Committee. A practice has developed that a suspension including any MMS is ineffective until a Club has been notified by the Executive of the determination of the Review Committee.
36. The issue raised by this appeal is whether an R7 send-off which attracts a MMS requires notification to the Club or player concerned before it is effective. The resolution of this issue will turn primarily upon the construction of the relevant provisions of the ESFA Rules and ESFA DP.

37. Clause 13.2 of the ESFA Rules is in the following terms:

13.2 SENT-OFF PLAYERS

- (A) A Player sent off during a Match will have their penalty determined in accordance with the Disciplinary Procedure.
- (B) a mandatory 1 match suspension shall refer to ALL Red Cards in accordance with the Disciplinary Policy.
- (C) [of no present relevance]

38. Clause 13.2(B) of the ESFA Rules is also reflected in the ESFA Table of Offences.

39. Clause 4.1 of the ESFA DP provides that the *"Review Committee must review all Reports as they are received."*

40. Clause 4.2 of the ESFA DP provides, in part, that the Review Committee *"...may in its absolute discretion reduce or suspend a minimum suspension if the offending party has not previously been suspended by the Disciplinary Committee (or its predecessor)."*

41. Clause 10.1 of the ESFA DP provides that the *"Executive must notify Club Secretaries of suspensions imposed by the Review Committee or if any, player, official or other person is required to appear before the Judiciary Committee..."*

42. CUFC and EFSA contend that these provisions require that any sanction, including that relating to an R7 send-off which carries a MMS must be notified by the Executive to a Club Secretary before it is effective. They submit that notification is required because the Review Committee may determine in any given case to waive the MMS and has done so on previous occasions.

43. The aforementioned provisions of the ESFA Rules and DP must be construed objectively having regard to the language used and their objects or purpose. However, the provisions cannot be viewed in isolation. They must be read together with the NDRs which, as clause 1.1 of the NDRs makes plain, apply to any infringement of the LOTG by any participant during a match played in Australia. Further, clause 1.2 of the NDRs provides that they are mandatory and may be supplemented, but not varied by competition rules (emphasis added).

44. CUFC/ESFA submitted that the NDRs have been supplemented by the ESFA Rules and DP by requiring the ESFA Review Committee to first review all red cards and then ESFA notifying Clubs of suspensions imposed by the Review Committee.
45. Clause 1.2 of the NDRs permits the competition rules to supplement the NDRs. "Supplement" connotes adding to the NDRs. However, that which is supplemented cannot seek to derogate or detract from the NDRs. In this case, that part of clause 4.2 of the DP which clothes the DP with a discretion to reduce or suspend a MMS is inconsistent with and derogates from clause 11.2(e) of the NDRs which provides that no part of a sanction for an offence may be suspended which results in a participant serving less than the minimum sanction prescribed under the Table of Offences. The ESFA Table of Offences prescribes a MMS for an R7 offence.
46. Consistent with clause 13.2 of the Rules, clause 5.2 of the NDRs provides, relevantly, that a player who receives a red card must serve at least a MMS, subject only to the outcome of any determination on an application for mistaken identity or obvious error (in the latter case only where the relevant competition rules make specific provision for a competition administrator to refer what they believe to be an Obvious Error incident to a disciplinary committee for hearing and determination).
47. Clause 9.1 of the NDRs provides that the imposition of a MMS *"is immediate. A Competition Administrator will send a Disciplinary Infringement Notice notifying the Participant (through his or her Club) of the Mandatory Match Suspension within the timeframes specified by the Competition Rules, provided always that the Mandatory Match Suspension is effective regardless of whether or not such notice is received."*
48. Clause 11.6 of the NDRs provides that a participant who receives a suspension for an offence in a match must serve that suspension in the next following match.
49. Relevantly, and consistent with clause 9.1 of the NDRs, there is no express provision in clause 10.1 of the ESFA DP or elsewhere which mandates that a MMS only becomes effective upon notification by the Executive to the relevant club secretary.

50. Read in the context of clauses 5.2, 9.1, 11.2(e) and 11.6 of the NDRs, the effect of clause 13.2 of the ESFA Rules, clauses 4.1 and 10.1 of the ESFA DP and the ESFA Table of Offences, is as follows:
- (a) a player sent off for a red card offence must serve at least a MMS (subject only to the outcome of any determination made in relation to mistaken identity and obvious error, if applicable);
 - (b) the imposition of a MMS is immediate. It is thus the responsibility of a club to ensure that a player is stood down from the next fixture;
 - (c) a competition administrator is to send a disciplinary infringement notice notifying the participant (through their club) of the MMS; and
 - (d) the MMS is effective regardless of whether or not a disciplinary infringement notice is received.
51. It is a construction which is consistent with the position under clause 17.6(d) of the GDRs and ensures that ESFA complies with its obligations under clause 3(k) of its constitution to secure uniformity in the application of the rules of football as may be determined from time to time by FNSW or FFA.
52. The construction is also in keeping with what has long been regarded as the general position in football and reflected in Article 62(3) of the FIFA Disciplinary Code (2019 Edition) that a sending off, subject only to a proven case of mistaken identity or obvious error (if applicable), automatically incurs suspension from the subsequent match which the person sent-off must serve.
53. The AT notes that clause 4.1 of the DP requires the Review Committee to review all reports that are received, including R7 send-off reports. CUFC and ESFA submitted that the reason the Review Committee considers R7 send-off reports is so that it can make a determination as to whether the MMS should be waived in any particular case. Whilst this submission may reflect a practice which has developed at ESFA, it is inconsistent with the NDRs which provides that a player who receives a red card must serve a MMS, the imposition of that suspension is immediate and the only basis upon which a MMS can be avoided is in the case of mistaken identity or obvious error.

54. Further, clause 11.12(e) of the NDRs makes plain that no part of a sanction for an offence may be suspended which results in a participant serving less than the minimum sanction prescribed for that offence. In other words, it is not open to a relevant judicial body, such as the Review Committee, to suspend any part of a minimum sanction prescribed for an offence. Having regard to these provisions, ESFA's justification for reviewing R7 send-off reports and informing Club Secretaries of the outcome of such review falls away.
55. The AT is of the view that, from a practical perspective, such a determination will not, as CUFC/ESFA submitted, increase the administrative burden on ESFA but rather, it will alleviate that burden, especially the necessity of notifying clubs of the MMS in the week immediately following the fixture in which a player has been sent from the field for a red card offence. Further, clubs will not have to wait to be notified by ESFA that a player has been suspended as any player who has been sent off for an R7 (or any other offence) will be required to be stood down for at least the MMS in the following fixture.
56. In the result, the AT determines that the decision of the AC was not reasonably open to it. In reaching this conclusion, no criticism is levelled at either the AC or the JC for the determinations that each of those bodies made. The AT had the benefit of submissions which the bodies below did not have.

XI. RELIEF

57. The appeal is allowed.
58. The determinations of the JC, dated 31 August 2020 and of the AC, dated 5 October 2020, each be set aside.
59. The original administrative decision of ESFA be reinstated, namely, that the result of the 16 August 2020 fixture between RCFC and CUFC is a forfeit in favour of RCFC.

60. ESFA reimburse RCFC the FNSWAT application fee of \$500.

A handwritten signature in red ink, appearing to read 'A. P. Lo Surdo'.

A P Lo Surdo SC
Chair
Appeals Tribunal
Football NSW