



APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES

DETERMINATION IN THE FOLLOWING MATTER:

Player/Official/Member/Association Member/Participant/Club	Marayong Football Club v Blacktown & Districts Soccer Football Association
Decision Appealed	Appeal from the Appeals Tribunal of Blacktown & Districts Soccer Football Association
Date of Decision	30 June 2017
The basis upon which the matter is before the Appeals Tribunal	Regulations 10.1 (d), 10.3 (h), 10.6(a) of the Football NSW Grievance and Disciplinary Regulations, 2017
Ground(s) of Appeal	Regulation 10.3 (b) & (e) of the Football NSW Grievance and Disciplinary Regulations, 2017
Date of Hearing	2 August 2017
Date of Determination	3 August 2017
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair David Stanton, Member Michael Holmes, Member

A. INTRODUCTION AND JURISDICTION

1. The Appeals Tribunal (**AT**) has been established in accordance with Regulation 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2017 (**FNSW Regulations**) to determine appeals relevantly from a Member Appeals Committee (**MAC**).

2. Regulation 10.6(a) of the FNSW Regulations provides that the AT will only hear and determine a matter involving an appeal from a MAC where the matter has proceeded in accordance with, and exhausted, that Members own disciplinary/grievance rules and regulations.
3. The sole grounds of appeal prescribed by Regulation 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; and
 - (e) severity, only where the decision imposed a sanction of at least:
 - i. a Fixture Suspension of 6 or more Fixtures; or
 - ii. a Time Suspension of 3 or more months; or
 - iii. a fine of \$3,000 or more; or
 - iv. a loss of 6 Competition points; or
 - v. expulsion from a competition.
4. Upon the hearing of an appeal, the AT may, relevantly:
 - (a) dismiss, allow in whole or part, or vary (whether by way of reduction or increase) any decision including any sanction or penalty; and
 - (b) subject to any applicable Minimum Suspension, impose any sanction, measure or make any order it thinks fit or a decision that the MAC could have imposed or made under the Regulations.
 - (c) conduct a fresh hearing of the matter; or
 - (d) remit the matter to the MAC for rehearing and issue any directions or orders in relation to the re-hearing as considered appropriate.

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

5. This appeal arises from a determination of the Blacktown & Districts Soccer Football Association (**BDSFA**) Appeals Tribunal (**BDSFAAT**) dated 30 June 2017 involving the Marayong Football Club (**MFC**) and the BDSFA. The BDSFAAT is a MAC for the purposes of the FNSW Regulations.
6. We are satisfied, having regard to Regulations 8 & 9 of the BDSFA Grievance and Disciplinary Regulations (**BDSFA Regulations**) that the matter has proceeded in accordance with, and exhausted, the MFC's own disciplinary/grievance rules and regulations. The AT is accordingly of the view that it has jurisdiction to hear the appeal. Further, and in any event, neither party raised any objection to the AT's jurisdiction.

B. BACKGROUND FACTS

7. The facts are not substantially in dispute and can be shortly stated as follows.
8. Mr Nizam Anthony is a player member of the MFC (**Player**). He was registered for the 2016 eleven a side football season with FFA Number 78523230 (**2016 FFA No**) and played for the MFC Men's Premier League Firsts during that season.
9. At the conclusion of the 2016 season, the Player was suspended for 1 fixture pursuant to regulation 14.6 of the BDSFA Regulations for an incident that occurred in the BDSFA Men's Premier League Grand Final which resulted in him being shown a red card and dismissed from the field of play. The MFC was notified of that suspension by the BDSFA by email dated 2 September 2016.
10. Suspensions are recorded by the BDSFA in a competition management system known as "iCompman" which then generates a further record of that suspension on "iMatchSheet" against a player's FFA registration number.
11. The Player was required to serve his suspension at the commencement of the 2017 eleven a side football season. He did not do so.
12. The Player advised the MFC of having difficulties registering online at the commencement of the 2017 season. He provided the MFC Secretary with a copy of his driver's licence to enable the MFC Secretary to procure his registration. The MFC Secretary was successful in registering the Player for the 2017 eleven a side season.

13. The Player was registered for the 2017 eleven a side football season with FFA Number 59486621 (**2017 FFA No**). The suspension was recorded by the BDSFA in iCompman against the Player's 2016 FFA No. and not the 2017 FFA No. It had no choice but to have done so because the later registration number was not created until shortly before the commencement of the 2017 season and well after notice of the suspension had issued by the BDSFA to the MFC in September 2016.
14. There is no suggestion that either the Player or the MFC acted with any intent to deliberately avoid the suspension.
15. The "Personal Details" section of the Player's respective registrations on the FFA MyFootballClub system for the 2016 and 2017 seasons are identical with the exception that the Player's name appears as "Mr Niz Anthony" on the 2016 personal details section and as "Mr Nizam Anthony" on the 2017 personal details section, the "Parent Contact" details are different and the address on each is slightly different in that the 2016 registration refers to an address at "23... Avenue" whereas the 2017 registration refers to an address at "28... Avenue." Importantly, the main points of verification, being name and date of birth are relevantly identical.
16. It is not apparent how the MyFootballClub system enabled two relevantly identical registrations to be recorded.
17. The MFC contends that it first became aware that the suspension had not been served on 1 June 2017 after a BDSFA audit and that, upon doing so, immediately stood the Player down for the match on 3 June 2017.
18. The Player had by that time, however, participated in rounds 4, 5, 2, 6, 7, 10 and 1 of the Men's Premier League Firsts Competition. (Due to inclement weather at the commencement of the 2017 season, the first round played was, in fact, round 4. The Player participated in that game when he was ineligible to do so.)
19. On 5 June 2017, the MFC was charged by the BDSFA with breaches of Regulations 16.9(a) and 16.9(b) of the BDSFA Regulations, that is, with fielding an ineligible player. "Ineligible Player" is defined in the BDSFA Regulations as including a player who is subject to a "Suspension".

20. Regulation 16.9(b) of the BDSFA Regulations provides that any Club or Team which fields or lists Ineligible Players will be deemed to have committed Misconduct (section 15.4) and the Executive may, in its absolute discretion, charge the Club or Team. Accordingly, the BDSFA referred the matter to the BDSFA General Purposes Tribunal for determination pursuant to Regulation 8.2 (Charges of Misconduct and Disrepute).
21. The BDSFA GPT hearing took place on 8 June 2017, it rendered its determination on 9 June 2017 and that determination was communicated to the parties by electronic means on 15 June 2017. That determination records that there was no appearance for or on behalf of the MFC at the hearing. Though its reasoning process is somewhat elusive it appears that the GPT found that:
- (a) The Player was ineligible to play in round 4 (the first game of the season) due to the carry-over of the suspension from season 2016;
 - (b) applying Regulation 3(c) of the BDSFA Competition Regulations, 2017 (**Competition Regulations**) (“Eligibility and Ineligibility of Players General”), which provides that any Team that fields an ineligible player will automatically lose that Match on forfeit and be fined up to \$200, the round 4 match was forfeited;
 - (c) applying Regulation 3(c) of the Competition Regulations (“Eligibility and Ineligibility of Players General”), as the MFC fielded an ineligible player in each of rounds 4, 5, 2, 6, 7, 10 and 1, the maximum fine was found to be \$4,200 but because of the financial hardship such an impost could create, it was reduced to \$1,000. (The reasoning process for the imposition of a fine of \$4,200 appears to be that as there are 3 grades in the Men’s Premier League Division and there were 7 matches for which the Division fielded an ineligible player a fine of \$200 per match should be borne by each grade across the 7 matches); and
 - (d) applying Regulation 21.16 of the Competition Regulations which provides that where any match is forfeited then all squad matches are deemed to be forfeited, even if a match has been played; because the MFC Premier League

Firsts forfeited the first match (round 4), all squad matches for each of rounds 4, 5, 2, 6, 7, 10 and 1 in which the Player participated when he had not yet served his suspension, have also been forfeited.

22. The MFC appealed the determination of the BDSFA GPT to the BDSFAAT. That hearing proceeded on 29 June 2017. The BDSFAAT delivered its determination on 30 June 2017. The appeal was dismissed. The BDSFAAT held that the GPT had not erred in its application of the relevant rules and regulations. It found that it is the responsibility of a club to ensure that all rules, regulations and by-laws are upheld, and that records are properly maintained such as red/yellow card offences.
23. By notice of appeal dated 17 July 2017, the MFC appeals the determination of the BDSFAAT to this Tribunal.

C. GROUNDS OF APPEAL

24. The MFC originally advanced its case on the grounds set out in FNSW Regulations 10.3(a), (b), (c) and (e). However, the MFC abandoned grounds 10.3(a) and 10.3(c) at the hearing. Accordingly, the grounds of appeal were limited, to those set out in FNSW Regulations 10.3(b) and (e).
25. In short, the MFC contended that the sanction was either not justified when regard was had to the jurisdiction of the BDSFA GPT under the relevant BDSFA Regulations or that it was, in all the circumstances disproportionate to the charge.

D. THE HEARING

26. The hearing proceeded on the evening of 2 August 2017. The MFC was represented by Mr Hanna Ayoub, solicitor. Also in attendance from the MFC was Mr Tony Farag (President), Mr Naji El-Kazzi (Vice-President) and Mr Chris Bassili (Secretary). BDSFA was represented by Mr Glen Overton (Chairman) and Mr Bill Kostandis (CEO). Also present at the hearing were Mr Michael Napoli, FNSW Legal and Regulatory Officer and Mr Luke Margelis, FNSW Paralegal.

E. SUBMISSIONS

27. The AT received the following written submissions:

- (a) the MFC, undated, consisting of 51 paragraphs and annexing copies of emails between the BDSFA and the MFC dated 28 June 2017;
- (b) the BDSFA, undated, consisting of two documents; one, headed “BDSFA Response to Some Points in Marayong Football Club’s Submission for Appeal” and another headed “BDSFA Response to questions by FNSW Appeals Tribunal;” and
- (c) the MFC, undated, which purport in part to be submissions in reply to the written submissions of the BDSFA. However, those submissions do no more than summarise or reiterate submissions made by the MFC in chief. The document also elaborates what the MFC asserts to be a “proposed statement of agreed facts and issues”. As it is a “proposal” and does not represent a joint position of the parties, we have considered this document as submission only. Annexed and referred to in those submissions was an email from a Mr Ryan Talbot of Ponds FC to Mr Chris Bassili of the BDSFA dated 1 August 2017. The tender of that document was not pressed and it forms no part of the AT’s consideration.

28. Other documents before the AT and to which we have had regard are the following:

- (a) Match official send-off reports from the referee and an assistant referee each dated 27 August 2016;
- (b) Notice of suspension from the BDSFA to the MFC advising that the Player has been suspended for 4 matches;
- (c) Notice of Charge, dated 5 June 2017;
- (d) Email from the BDSFA to the MFC dated 2 September 2016, advising that the Player’s suspension has been reduced to 1 match;
- (e) the Player’s personal profile recorded in MyFootballClub system for the 2016 and 2017 seasons;
- (f) a letter from BDSFA to the MFC dated 29 May 2017 requesting information as to whether the Player has two FFA registration numbers or whether the

two registrations actually relate to two different players of the same name;
and

- (g) a document which sets out the results of rounds 4, 5, 2, 6, 7, 10, 1 across each of the Men's Premier League grades in which the MFC competed and in which the Player participated;
29. The parties were afforded an opportunity to and did supplement their written submissions orally during the course of the hearing.
30. Mr Ayoub for the MFC submitted, in summary, that:
- (a) a reasonable construction of Competition Regulations 3 ("Eligibility and Ineligibility of Players General") and 21.16 does not permit the imposition of the relevant sanction and that it was therefore beyond the power of the BDSFA GPT to have done so and that the BDSFAAT erred in upholding that determination; and
 - (b) the sanction is too severe when regard is had to all the circumstances including the fact that the MFC had not acted in a deliberate or intentional manner; at most, the conduct was negligent and stemmed from the fact that the Player had been assigned the 2017 FFA No. upon registration.
31. The BDSFA maintained that the BDSFA GPT was entitled, when due regard is had to Competition Regulations 3 ("Eligibility and Ineligibility of Players General") and 21.16, to impose the sanction and that it was, in fact, mandated by those regulations. When this submission was further explored with representatives of the BDSFA, Mr Overton accepted that notwithstanding the content of the competition regulations that Item 12 of Table C of the BDSFDA Regulations provided some discretion when considering sanction.

F. CONSIDERATION AND DETERMINATION

Relevant legal principles

32. 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 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).

33. A sanction should never exceed that which can be justified as appropriate or proportionate to the gravity of the offence considered in light of its objective circumstances (see, eg, *Hoare v The Queen* (1989) 167 CLR 348 at 354).
34. The manner in which an appeal against the exercise of discretion is to be determined is governed by established principles. In *House v The King* (1936) 55 CLR 499, the High Court of Australia said that:

“[i]t is not enough, the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion.

If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he is not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so.

It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts, it is unreasonable or plainly unjust, the appellate court may, infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.” (Dixon, Evatt and McTiernan JJ at 504).

Consideration

The nature of the Charge in issue

35. The MFC was charged with breaches of Regulations 16.9(a) and 16.9(b) of the BDSFA Regulations, that is, with fielding an ineligible player. Regulation 16.9(b) of the BDSFA Regulations provides that any Club or Team which fields or lists Ineligible Players will be deemed to have committed Misconduct (section 15.4).
36. The BDSFA Regulations do not prescribe any mandatory or other sanction for a breach of Regulations 16.9(a) and 16.9(b). Table C, Item 12, of the Regulations provides that a “Member” (which includes a Club) who breaches a “Suspension, Notice of Suspension or determination is liable for “Such penalty as BDSFA or the Tribunal may determine.”

37. In the absence of a prescribed minimum sanction for a breach of BDSFA Regulations 16.9(a) and 16.9(b), Item 12, Table C, provides that sanction is at the discretion of, relevantly, the BDSFA GPT, being the Tribunal to which the BDSFA referred the Charges for determination.
38. The BDSFA GPT proceeded upon the premise that once the Charges were proved that the Competition Regulations mandated the imposition of the sanction. For the reasons that follow, we are of the opinion that the GPT (and subsequently the BDSFAAT):
- (a) was in error in approaching the question of sanction in this manner;
 - (b) that in the proper exercise of its discretion, it should have taken into account all relevant circumstances; and
 - (c) that had in done so, it would not have imposed the sanction that it did.

Failure by the GPT/BDSFAAT to exercise its discretion/Sanction

39. We are of the opinion that upon a proper construction of BDSFA Regulation 16.9 and Item 12, Table C, that in the absence of a mandated minimum sanction, the question of sanction was wholly at the discretion of, relevantly, the GPT to which the Charges were referred for consideration.
40. Having regard to the primacy of the discretion prescribed by Item 12 Table C, the Competition Regulations provide guidance only to a Tribunal as to the sanction that may flow from a club fielding an ineligible player. In circumstances where an unfettered discretion is preserved by the BDSFA Regulations, the Competition Regulations cannot be considered a rule of strict application.
41. The GPT erred in elevating the Competition Regulations to a mandatory code of sanction where an ineligible player has been fielded by a Club and, in doing so, failed to have regard to or exercise the jurisdiction conferred upon it under the BDSFA Regulations. It also, therefore, failed to pay due regard to questions of proportionality. In doing so, it fell into further error.

How should the discretion have been exercised?

42. The GPT/BDSFAAT should have taken into consideration, at least, the following facts relevant to the Charges and sanction for breach:
- (a) the sanction was for 1 match only;
 - (b) there was no evidence, nor was it contended, that the MFC (or the Player) had intended to breach the Suspension;
 - (c) the Player's MyFootballClub registration profiles for 2016 and 2017 (see paragraph 13) show no attempt to conceal the nature of his identity, for example, with the intent of avoiding the sanction. It is not known why or how the system permitted the player to acquire two FFA registration numbers in the circumstances;
 - (d) It is also not known why the issue was not discovered until early June 2017 when the BDSFA undertook a compliance audit;
 - (e) the MFC failed, either carelessly or negligently, to ensure that the suspension was recorded against the Player's 2017 FFA No. It bore the primary responsibility to ensure that the Player served his suspension regardless of any issues with the manner in which the suspension was recorded in "iCompman";
 - (f) as soon as the MFC became aware that the Player had not served his suspension, it immediately stood down the Player for a week; and
 - (g) whether the imposition of a 7-week forfeiture across all 3 grades was proportionate to the MFC's failure to ensure that the Player served a 1 match suspension.
43. Had the GPT taken into account these circumstances, it would have found:
- (a) the Charges proven;
 - (b) that the MFC had fielded an Ineligible Player in the Men's Premier Division Firsts, round 4 of season 2017, in which it had prevailed over Riverstone FC 10-1;

- (c) consistent with the guidance provided by the Competition Regulations, and having regard to the fact that the MFC bore the primary responsibility for ensuring that the Player served his suspension, that the Men's Premier League Division Firsts team had forfeited that round;
- (d) having regard to the "squad nature" of the Premier League Division (as articulated in Competition Regulation 21), and the fact that the MFC bore the primary responsibility for ensuring that the Player served his suspension, that each of the Men's Premier League Reserve and Men's Premier League Under 20's teams were to forfeit one match; and
- (e) as the MFC bore the primary responsibility for ensuring that the Player served his suspension that it should pay a fine of \$500.

Cautionary Note

44. The determination in this case turned very much on a consideration of its particular and peculiar facts. In most circumstances, we would expect that a failure by a player or a club to strictly comply with its obligations concerning the serving of sanctions would be dealt with in accordance with the rules laid down in the relevant competition regulations.

G. RELIEF

45. The AT determines as follows:
- (a) That the sanctions imposed by the BDSFA GPT and upheld by BDSFAAT each be set aside;
 - (b) That the MFC had fielded the Player for round 4 of season 2017 in the Men's Premier Division Firsts when he was an Ineligible Player because he had not served the 1 match suspension imposed upon him at the conclusion of the season 2016;
 - (c) That the Men's Premier League Division 1 fixture between the MFC and Riverstone FC, being round 4, in which MFC won 10-1 be recorded as forfeited by the MFC;

- (d) That the Men's Premier League Reserves fixture between the MFC and Riverstone FC, being round 4, in which MFC won 4-0 be recorded as forfeited by the MFC;
- (e) That the Men's Premier League Under 20's fixture between the MFC and Ropes Crossing FC, being round 1, in which MFC tied 1-1 be recorded as a forfeit by the MFC; and
- (f) The MFC pay a fine of \$500.

A handwritten signature in dark ink, appearing to read 'A. P. Lo Surdo'. The signature is fluid and cursive, with the first letter 'A' being particularly large and stylized.

A P Lo Surdo SC
Chair
Appeals Tribunal
Football NSW