

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

GPT 18/29

Date of Hearing	23 July 2018
Date of Final Determination	24 July 2018
Parties	Sydney United 58 FC
Attendees, Witnesses & Documents	As attached in the Schedule
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations Section 9.2, 16.4(d), FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Clubs vicariously liable for conduct and behaviour of their supporters, Damage to sports ground facilities, Dispute re quantum of repair costs, Unreasonable delay
General Purposes Tribunal Members	Mr David P. LEWIS (Chair) Ben JONES Robert IACONIS

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 2018 Regulations.

B. NOTICE OF CHARGE

2. During the FFA Cup match between Sydney United 58 FC (SUFC) and Rockdale City Suns on 16 May 2018 at Illinden Sports Centre, a Spectator from SUFC, while situated within the ground, ignited a flare.
3. The same Spectator from SUFC who ignited the flare then threw the flare on to the shade sail covering the seats causing a hole to be burned in the shade sail. Underneath the burnt shade sail, Spectators from SUFC also graffitied/damaged the seats in the spectator section with spray paint and stickers. Spectators from SUFC also graffitied a bathroom. In addition, Spectators from SUFC damaged the perimeter fence surrounding Illinden Sports Centre.
4. Under the Regulations, clubs are vicariously liable for the conduct and behaviour of their supporters. Relevantly, section 19(f) of the Regulations provides as follows:

“A Club is responsible, and liable, for the conduct and behaviour of its supporters, whether at home or away Matches.”
5. Football NSW was satisfied, on the balance of probabilities that the damage caused at Illinden Sports Centre was occasioned by supporters of SUFC.
6. On 18 June 2018, FNSW issued SUFC with a Notice of Charge pursuant to section 9.2 and 16.4(d) of the Regulations relating to incidents during the FFA Cup match.
7. SUFC was given until 10am on Monday, 25 June 2018 to either accept the charges and the proposed sanction or refer the matter to the General Purposes Tribunal (GPT) for hearing in accordance with section 9.2 of the Regulations.
8. Football NSW received no response by the due date. Accordingly, pursuant to section 9.2(k) of the Regulations, SUFC was deemed to have accepted the sanctions set out in the Notice of Charge, including the proposed sanctions, and forfeited its right to appeal this matter.
9. A Notice of Determination was issued to SUFC on 27 June 2018. In that Determination SUFC was required to pay certain fines as well as:

...pay for the costs of the following repair/replacement work to be conducted at Illinden Sports Centre:

 - (i) the shade sail over the spectator section burned by the flare;
 - (ii) the graffitied seats in the spectator section below the burnt shade sail;
 - (iii) the graffitied bathroom; and
 - (iv) the fence around the perimeter of Illinden Sports Centre.
10. After the Notice of Determination was issued, SUFC raised an issue in relation to the payment of the cost of the repairs. SUFC did not deny its responsibility to make these payments, however it did question the quotes tendered by Rockdale City Suns FC (Rockdale).
11. Rockdale provided a quote from Elite Shade and Sails dated 23 May 2018 for the replacement of the damaged part of the sail in the amount of \$12,903 (Annexure H) together with a quote from Steve’s Fencing dated 23 May 2018 for \$6,450 (Annexure I).
12. SUFC claimed that an officer of Rockdale had agreed that Rockdale would claim the cost of repairs under its insurance policy and SUFC would need to only pay any excess payable under that policy. Rockdale denied that any such agreement was made.

13. Given the dispute in relation to whether an agreement had been reached for dealing with the matter via insurance and given SUFC was now also disputing the quotes provided by Rockdale, Football NSW granted SUFC an extension of time to refer **only** the issue of the cost of the repairs to the shade sail and the perimeter fence to the GPT for hearing while the deemed pleas of guilty to Charge 1 and Charge 2 would remain in place.
14. On Tuesday, 10 July 2018, Football NSW advised SUFC that it had until 5pm on Thursday, 12 July 2018 to advise Football NSW that it wished to refer the issue of the cost of the repairs to the GPT for hearing.
15. On Thursday, 12 July 2018, SUFC advised Football NSW that it wished to do so.
16. On, 12 July 2018, Football NSW advised SUFC that it had until 10am on Friday, 20 July 2018 to formally refer the matter in accordance with section 9.2(g) of the Regulations. By the due date, SUFC was therefore required to:
 - a. pay to Football NSW the relevant Application Fee of \$410;
 - b. submit to Football NSW a completed and signed Notice of Response (Prescribed Form 10);
 - c. submit to Football NSW all supporting material (in this case, this will include quotes obtained by SUFC for the repair of the shade sail and perimeter fence); and
 - d. submit to Football NSW any written submissions SUFC intends to rely on at the hearing.
17. SUFC completed items 15(a) and (b) together with two short emails dated 19 and 20 July.
18. SUFC advised Football NSW that it would not be able to provide the quotes for the repairs to the shade sail and perimeter fence by the deadline. Football NSW granted SUFC an extension of time to 10am on Monday, 23 July 2018 to lodge any quotes it wished to rely on.
19. Football NSW advised Rockdale that had until 10am on Monday, 23 July 2018 to provide its submissions in reply and Rockdale filed its submissions in reply on Friday, 20 July 2018.
20. SUFC and Rockdale were advised that they would have the opportunity to supplement their written submissions with additional oral submissions at the GPT hearing.

SUFC Submissions

21. Mr Sam Krslovic, President of SUFC, represented SUFC. SUFC attended the GPT without any alternate quotes for the rectification of any of the damaged items listed in paragraph 9 above.
22. SUFC sought a Determination that notwithstanding the time delay it required another five (5) days to obtain alternative quotes as:
 - a. SUFC had not had sufficient time to obtain the quotes required;
 - b. Rockdale should have provided at least three (3) quotes for the damage;
 - c. Rockdale should claim on its insurance and allow SUFC to pay the excess;
 - d. Rockdale should only repair the damage as that was cheaper;
 - e. Rockdale should have provided quotes with greater detail including the material used in the sail as well as separate costs for labour and materials;
 - f. Although Rockdale have a long term lease on ground, the ground is actually a public facility owned by council, hence the council need to indemnify Sydney United against any future claim; and
 - g. The process adopted by Football NSW in this matter was flawed.

Rockdale City Suns FC Submissions

23. Rockdale was represented by telephone by its President Mr Dennis Loether. Rockdale tendered a written submission to the Tribunal dated 20 July 2018. In that document Rockdale made the following claims:
 - a. SUFC had ample time to obtain quotes and, prior to Tuesday 17 July, made no contact with Rockdale in relation to access to Illinden Sports Centre. Further, the damage to the perimeter fence could easily be assessed without access as the Illinden Sports Centre is located in a public park and no permission would be required.
 - b. Rockdale provided two subsequent quotes dated 19 and 20 July from Elite Shade and Sails in which the repair option was quoted at \$11,627. Rockdale submitted that this was an inferior option and as the aggrieved party there was no good reason why it should accept this as appropriate remediation;
 - c. Rockdale provided a letter dated 17 July 2018 from Elite in which it confirms its advice that repair was an inferior option as well as a statement to the effect that the warranty would be voided if another supplier was to remove, repair and reinstall the canopy cover;
 - d. Rockdale denied that any agreement was made to allow a claim on its insurance relating to the damage. In fact, Rockdale submitted that the Sail canopy was not covered under its current insurance as it was constructed after that policy was put in place and that this policy would need to be reviewed in light of these events;
 - e. Rockdale was perfectly within its rights to require the original supplier of the canopy cover to complete the work, as this was the only way that it could maintain its warranty.
 - f. As a Licensee of Illinden Sports Centre from the local Council, Rockdale was responsible for the maintenance and upkeep of the facility under its Licence and it was merely seeking to be reimbursed for the cost of repairing the damage caused by SUFC.

C. THE HEARING

24. The Chairman opened the proceedings by noting that the Hearing was to be restricted to the issue of the quantum of the quotes for the repair of the damage. He noted, and the parties agreed, that the Determination issued by Football NSW to SUFC on 27 June 2018 was in effect.
25. Therefore the only relevant submissions from the parties would be whether the quotes tendered by Rockdale would be accepted or if some other quote was to be preferred.
26. SUFC claimed that it simply did not have enough time to obtain other quotes and that its ability to do was hampered by Rockdale's failure to provide the specifics of the type of cloth used in the canopy. SUFC claimed that there are thousands of cloth types and the absence of this information meant that a simple visual inspection would be insufficient.
27. Contra, Rockdale asserted that SUFC had plenty of time since 18 June when the first quotes were made available to SUFC via Football NSW and SUFC had failed to take any reasonable steps to obtain any quotes at all. Further, Rockdale was entitled to require the original installer to fix the damage in the best means possible particularly given that its warranty would be voided by the engagement of a different supplier.
28. Football NSW made the following submissions:
 - a. SUFC was advised on 12 July that in order to take this matter to the GPT it would need to obtain and supply alternative quotes. This was not done;
 - b. A significant number of emails were sent by SUFC to Football NSW relating to procedural matters and this had the effect of further delaying SUFC obtaining a quote;

- c. SUFC made contact with several contractors on Wednesday 18 July however no quotes were obtained;
- d. SUFC advised Football NSW that it was to attend the Illinden Sports Centre on Friday 20 July to obtain quotes;
- e. Football NSW gave SUFC a further extension to supply quotes to it by 10am Monday 23 July. No quotes were provided;
- f. SUFC had more than sufficient time to provide alternate quotes and have not done so; and
- g. The claim by SUFC that Rockdale should provide three quotes is onerous and should be rejected and that Rockdale should be entitled to use the original supplier;

D. CONSIDERATION & DETERMINATIONS

- 29. The Tribunal asked SUFC why it had not provided any evidence as to why the Rockdale quotes should not be accepted save for the fact that they did not have enough time. SUFC maintained that they did not have access to the Illinden Sports Centre and that they could not obtain any quotes without that access.
- 30. The Tribunal further asked SUFC why it had not provided an alternative quote in relation to the perimeter fence given that access was not required. SUFC maintained that it had no right to approach that fence and make an assessment without permission from either the local Council or Rockdale.
- 31. However, when pressed by the Tribunal for evidence on what steps SUFC had taken to obtain any permission from either Rockdale or the Council the SUFC representative was unable or unwilling to provide any evidence on this matter.
- 32. SUFC was in effect seeking equitable relief from the Tribunal on the basis that it had been denied a reasonable opportunity to consider the quotes or obtain alternate quotes and that Rockdale had failed to provide information that it ought to have done leading to SUFC's failure to obtain these quotes.
- 33. Notwithstanding this claim, as SUFC admitted that it caused the relevant damage and it made a claim that the quoted rectification costs were excessive, it had an obligation to take some action, any action, and present some evidence that the Rockdale quotes were in some way flawed. SUFC manifestly failed to provide any credible evidence that the quoted rectification costs were excessive. The claim by SUFC could only be characterised as time wasting to damage the Rockdale Club.
- 34. Finally, it was clear to the Tribunal that a substantial wrong has plainly not occurred and therefore, the Tribunal cannot uphold the SUFC claim.

E. FINDINGS

- 35. The Tribunal found that the SUFC claim should be dismissed.
- 36. SUFC did not provide any credible evidence that the Rockdale quotes were tainted in any way.
- 37. SUFC had ample time to obtain other quotes and failed to do so.
- 38. The Tribunal found that Rockdale was perfectly within its rights to require the original supplier to do the relevant work particularly given that this was the only way it could protect and extend its current warranty over that work. Even if alternate quotes were available in evidence this would not change this finding of the Tribunal.
- 39. The Tribunal agreed that there was no requirement to provide additional quotes and that full replacement was to be preferred.
- 40. There was no agreement to proceed with an insurance claim as alleged by SUFC and in any event it was clear that the Rockdale insurance policy would in any event not cover such a claim;

41. Whilst there were no further submissions on the submission that the Council was required to indemnify SUFC, this claim was also rejected by the Tribunal, as clearly there could be no relationship between SUFC and the Council that could possibly give rise to such an obligation.

F. SANCTIONS AND COSTS

42. No further Sanctions were imposed by the Tribunal and the SUFC claim was dismissed.
43. SUFC is to pay \$12,903 for the replacement of the Sail Canopy and \$6,450 for the perimeter fence to Football NSW within seven (7) working days of the date of this Final Determination.
44. The Tribunal determined that Sydney United 58 FC should pay the costs of the Tribunal processes as determined by FNSW.

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 2018. 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
24 July 2018

The Schedule

Index of Documents

FOOTBALL NSW RULES AND REGULATIONS	Football NSW Grievance and Disciplinary Regulations
ANNEXURE A	Photos
ANNEXURE B	Witness Statement – Dennis Loether
ANNEXURE C	Witness Statement – Lou Tasevski
ANNEXURE D	Witness Statement – Jovan Ckorovski
ANNEXURE E	Witness Statement – Oliver Mickoski
ANNEXURE F	Video of Damaged Fence
ANNEXURE G	Video of Flare Incident
ANNEXURE H	Invoice – Shade Sail
ANNEXURE I	Invoice – Perimeter Fence
ANNEXURE MO1	Match Official Report – Kurt Ams (Referee)
ANNEXURE MO2	Match Official Report – Raymond Osborne (AR1)
ANNEXURE MO3	Match Official Report – Matthew McOrist (AR2)
ANNEXURE MO4	Match Official Report – Loui Fayd’Herbe (Match Commissioner)
ANNEXURE S1	Witness Statement - Pedro Gonzalez
ANNEXURE S2	Witness Statement - Matthew Sabo
ANNEXURE S3	Witness Statement - Bruno Jelic
ANNEXURE S4	Witness Statement - Steven Puskaric