

FINAL NOTICE OF DETERMINATION
6 May 2022

Reference is made to the following Tribunal:

1. Date of the Tribunal	2nd May 2022
2. Tribunal that heard the case	General Purpose Tribunal (GPT)
3. Tribunal reference number	GPT 22-02
4. Tribunal Members	David LEWIS (Chair) Robert IACONIS Marcelo VALERIO
5. Venue of Tribunal	Football NSW
6. Time of Tribunal	6.30pm
7. Respondent	Mr Michael Cklamovski
8. Key Words	Serious Foul Play, Schedule 3, Table A, R1, Offence Code 05-01 - <i>“Conduct causing serious injury”</i> , no video evidence, Red Card not shown due to melee, Respondent cited under section 9.2(a) - Misconduct.
9. Finding & Sanction	Guilty Suspended for ten (10) Fixtures

This document constitutes a Final Notice of Determination resulting from the Tribunal hearing listed above.

Charges against the **Respondent** under Sections 9.2 and 16.4 of Football NSW Grievance and Disciplinary Regulations 2022 for alleged breaches of the Football NSW Regulations and the FFA Code of Conduct related to incidents during an Australia Cup match between LFC Sports (**LFC**) and Padstow Hornets FC (**PHFC**) on 12 March 2022 at 5 Sports Caringbah.

Summation of the Tribunal:

The Tribunal found that the evidence and submissions:

Supported the Charge brought against the Respondent.

Charges and Pleadings:

The Charge

During the Australia Cup match between LFC Sports (**LFC**) and Padstow Hornets FC (**PHFC**) on 12 March 2022 at 5 Sports Caringbah, a PHFC Player wearing jersey No. 17 (later identified to be **Michael Cklamovski** FFA No. 55831184) (the **Respondent**) attempted to challenge for the ball, at high speed, with excessive force and with feet pointing upwards (and studs showing) making contact with the left ankle of the LFC Player, Nimatullah Ali, resulting in the LFC Player sustaining a broken tibia and fibula.

This conduct was alleged to be in breach of Section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2022:

Schedule 3, Table A, Offence Code 05-01 – *“Serious Foul Play - Conduct causing serious injury”*

The Respondent was NOT shown a Red Card by the Referee during the above match as a melee formed immediately following the above incident and, coupled with the requirement to attend to the seriously injured player, the Referee was subsequently unable to identify the Respondent. Both ARs were also unable to identify the Respondent.

Pleadings & Evidence

The Respondent pleaded NOT GUILTY to the Charge in his Notice of Response to FNSW.

Football NSW Submissions

Football NSW did not propose a sanction and instead directly referred the matter to the General Purposes Tribunal for hearing.

In opening the proceedings, Football NSW made submissions to the GPT that whilst it considered that a Red Card had been issued to the Respondent, it relied upon section 9.2, and in particular 9.2(a) of the Regulations. Football NSW confirmed to the Tribunal that all of the requirements of section 9.2 had been complied with and that it had therefore acted within its authority.

The Tribunal advised the Respondent that it was of the opinion that Football NSW had a very wide discretion under section 9.2 and therefore, irrespective of any submissions relating to the issue of a Red Card, these proceedings were within the power of the Executive of Football NSW. It was therefore unnecessary to consider issues surrounding the alleged inability of the Referee to issue a Red Card to the Respondent.

Referee's Report

In the Referee's Send Off Report dated 13 March 2022, the day after the relevant match, the Referee noted the following:

"In the 63rd minute of the match, there was a successful challenge involving both a LFC and Padstow player that was fairly won by the LFC player - play continued. A couple seconds later, a Padstow player came in at a high speed, with excessive force and feet pointing upwards, over the ball and contact was made in the ankle. At the time the tackle occurred, I made the decision to send the player off for serious foul play. However, as the challenge occurred. I was immediately surrounded by 4 LFC players and a melee was forming. With the immediate need of attention for the injured player and the exponential escalation that was occurring, the offender escaped my attention and I was unable to later identify him and therefore could not be dismissed from the field of play. I checked with the Assistant Referees and they were also unable to identify the offender. This report is to confirm that the offender was to be sent off for serious foul play, if the offending player can be identified."

On 8 April 2022 the Referee provided an additional report:

"In addition to my original send-off report, this report is to state that in addition to not being able to identify the player in the red card challenge - myself and my team were uncomfortable in producing the red card as we wanted to ensure our safety during the melee. After the challenge occurred, I was confronted by four LFC Players about the challenge whilst behind them the melee was forming. Being quite confrontational I decided for my personal safety that moving further away from the players was the best chance that I could be from being caught up in the incident and ensuring I was able to observe any actions in the melee."

Respondent's Statement

The Respondent was represented by Mr Greg Peddie, General Manager, Padstow Hornets FC and Mr Dimitri Hursalas, Chairman Bankstown District Amateur Football Association.

In his written submission dated 11 April 2022, the Respondent presented a substantially different set of facts to those provided by the Referee relating to the lead-up to the relevant challenge, the cause of the injury to the LFC player and subsequent discussions between the Referee and the Respondent.

The Respondent gave evidence that the following was an accurate description of the relevant event:

"We were attacking, Hornets player Neil - had the ball on the left side of the 18-yard box. He did a square pass into the D to me. I did a short burst to move to the ball at an angle, facing the goals. I went down slightly to get to the ball, because it was a half volley - bouncing ball, to take the shot at goal.

I connected with the ball kicking it towards the goal. The ball headed towards the goal, moving without force in a straight direction to the goal.

I was in motion running at the angle to get to the ball and I could not see my right-hand side, I was also looking down to make contact with the ball. I could not see LFC Sports player coming at me until he came sliding in to block the shot and collided with me.

He made contact with me, in what I would describe as a 50/50 challenge. He hit the low, inside of my left leg above my angle. I felt pain and went down. He went under me falling to the ground. I landed on the right side just outside the 18-yard box. I was on the ground in pain for 3-4 seconds. I was sure it would be my free kick.

The ref blew the whistle, he was a behind me. I turned around seeing that he pointed the other way, I got up and went to him and said "how was that not my free kick?" Which identified me as one of the players in the Challenge.

Immediately three to four LFC Sports players were on the field running at me. They were shouting and threatening right in my face.”

The Respondent gave further evidence relating to the absence of a record of the display of a Red Card to him by the Referee or indeed any mention of additional Red Cards by the referee during discussions with both the Respondent and members of his Club. For the reasons noted above, the Tribunal did not need to examine this issue.

As a melee formed there were other offences that took place and whilst evidence of these events was included in both Hornets and LFC witness statements, they were not relevant to the Charge and were therefore not considered by the Tribunal.

The Respondent was asked to explain the differences between his version of events and those of the Referee. In short, he claimed that the Referee was incorrect and that his version of events was correct. He gave no explanation why his version differed so markedly from that of the Referee.

To support his evidence, the Respondent tendered several witness statements from his team and Club all of which substantially supported his evidence whilst LFC team and Club officials offered written statements that, on the whole, supported the Referee’s version of events.

The Respondent had previously advised that LFC witnesses would not be required at the Tribunal and he only required the centre Referee to attend and give evidence. However, all of the Hornets witnesses attended the Tribunal hearing.

The Tribunal suggested to the Respondent that as the evidence of all the Hornets witnesses supported his evidence and would largely corroborate his evidence and that all the LFC statements exhibited a totally different view, it was unhelpful for the Tribunal to hear from his witnesses as all they would do was support his evidence. The Respondent agreed that his evidence and the Referee’s evidence were the only versions that should be tested.

The Tribunal noted that it accepted the evidence of the other witnesses from both sides albeit it would give such weight to these statements as it deemed fit.

The Proceedings

Mr Dimitri Hursalas led evidence on behalf of the Respondent. He sought to dismiss the accuracy of the LFC witness statements and claim that the Tribunal should accept both the Respondent’s and his Club’s written statements as the correct reasons for the injury to the LFC player, that is that the LFC player made an attempt to tackle the Respondent as he was shooting at goal and that his injury was an unfortunate accident.

The Tribunal again noted the almost total inconsistency of the evidence tendered by LFC on the one hand and the Respondent and his team on the other. In particular, the Tribunal drew Mr Dimitri Hursalas’s attention to the first paragraph of the Respondent’s brother’s statement, Mr Daniel Cklamovski, where he claimed:

“As the Hornet’s keeper I had perfect view of the play and I saw the challenge taking place. Hornets player Neil passed the ball across to Michael Cklamovski in the centre of the 18 yard box.”

Mr Daniel Cklamovski was the goalkeeper at the far end of the pitch. 5 Sports Caringbah is an international sized pitch, which means that it must have a minimum length of 100m, and therefore Mr Daniel Cklamovski was at least 70 metres from the tackle with many players between him and the incident. The claim that he had a “perfect view of the play” from that distance is clearly not credible.

Notwithstanding the above, the Respondent provided a drawing of the incident and this drawing claimed that the ball was passed to him from the left of the field and that he was facing his opponent's goal on receipt and attempted to take a shot at goal.

The drawing claimed that the injured LFC player attempted to tackle him and it was that attempt that resulted in the injury to the LFC player.

The Referee

The Tribunal questioned the Referee at great length. Prior to the hearing he had not seen the written submissions of the Respondent. The Referee gave unshakable evidence that was consistent with his Send Off Report.

It was put to the Referee that the Respondent was taking a shot at goal when he was tackled by the LFC player. He did not agree with that claim. He said that he was "100% certain that the Respondent made an over the ball challenge with studs up on the LFC player."

The Referee noted that the Respondent had been dispossessed in an earlier fair challenge by the Respondent who then made the over the ball challenge with studs up on the LFC player. That challenge was made at speed, on a 45 degree angle to the play and was made in retaliation.

The Referee was adamant that it was a Red Card offence.

Determination of the Tribunal

The Evidence

The Referee was the only impartial witness to the incident and the Tribunal found him to be an excellent and credible witness. All members of the Tribunal tested his evidence at length and he was consistent and unshakable in all his responses.

The Referee emphatically denied that the Respondent was tackled by the injured LFC player and he made it perfectly clear to the Tribunal that it was in fact quite the reverse. For these reasons the Tribunal preferred the evidence of the Referee.

For these reasons the Tribunal found that the Respondent was **GUILTY** of the Charge.

Football NSW and Respondent's Submissions on Sanction

Football NSW suggested to the Tribunal that as the Respondent's actions were consistent with the Charge Code 05-01 under Table A, R1 and were made in retaliation and with excessive force, a sanction greater than the minimum of seven (7) Fixtures was appropriate.

The Respondent, via Mr Hursalas, noted that the Respondent was one of the last to leave the pitch and stayed a considerable period of time with the injured player. As a result, it was clear that the Respondent exhibited significant concern for that player and acted with contrition.

Further Mr Hursalas noted that the Respondent had an excellent prior disciplinary record which included a period of 11 years, much of it at NPL level. Football NSW confirmed that the Respondent had never received a straight Red Card, only 1 R7 and 21 Yellow Cards in that time. Football NSW conceded that this amounted to a "clean record".

Sanctions Imposed

The Charge

A Charge under Schedule 3, Table A, Offence Code 05-01 - *“Serious Foul Play - Conduct causing serious injury”* is a very serious R1 Charge and it carries a minimum Sanction of seven (7) Fixtures to a maximum of 24 months.

The Tribunal agreed with Football NSW that the minimum sanction was not appropriate however the good record of the Respondent coupled with his kind response after the incident must be taken into account. In the alternative, the fact that the Respondent failed to plead guilty was a concern and meant that further discounts on sanction could not be applied.

The Respondent was therefore suspended for **ten (10) Fixtures**.

Total Sanction

The Fixture Suspension applies to playing only and is to be served generally in accordance with section 15.6 of the Regulations (in particular, sub-sections 15.6(i) and (j)).

For clarity:

The Respondent is permitted to attend and participate in training sessions with his team but must otherwise comply with sub-sections 15.6(i) and (j);

The Fixture Suspension commences immediately and expires after his Team has completed Ten (10) Fixtures;

If the Respondent has already been stood down from any competition matches by his club as a result of this matter, the Respondent is to receive credit for those stand downs, subject to Football NSW being satisfied that those stand downs were genuine and

In order to satisfy Football NSW that this Fixture Suspension has been properly served in future competition matches, the Respondent’s club will need to record the Respondent as “stood down” on the team sheet for the relevant number of competition matches and the Respondent will be required to submit those team sheets to Football NSW prior to resuming playing.

Fines Imposed

NIL.

Bonds Imposed

NIL.

Additional Matters and Fees as per the Notice of Costs:

The Respondent is to pay the full costs of the Tribunal process as assessed by Football NSW.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with sections 9.8 and 10 of the FNSW Grievance and Disciplinary Regulations. Any appeal must be submitted on the Notice of Appeal form (Prescribed Form 12) to tribunal@footballnsw.com.au with the relevant Application Fee within 7 working days of the Final Determination of the GPT (where the GPT has indicated one will be issued) being sent to the Respondent.



David P. Lewis
Chairman
GENERAL PURPOSES TRIBUNAL