

NOTICE OF DETERMINATION

Proceeding under section 9.2 of the
FNSW Grievance and Disciplinary Regulations

Proceeding Details:

Tribunal reference	MGPT 22-10
Date of hearing	23 August 2022
Time of hearing	4.30pm
Venue of hearing	Football NSW Headquarters
Tribunal Member(s)	David P. Lewis, Chairman, FNSW GPT
Respondent	Kristian Santich
Fixture	NPL NSW Men's match between Manly United FC (MUFC) and Blacktown City FC (BCFC) on 7th August 2022 at Cromer Park (Match)

Charge(s) and Determination(s):

Charge(s)	Tribunal Pleadings
<p>1. The Respondent was issued with a Red Card (Code R7 – Offence One) for committing a second bookable offence - breach of Section 16.4(d) of the Regulations, specifically, Schedule 3 Table A, Red Card Code R7 Offence Code 01-01: “<i>Second Yellow Card in a Match</i>”.</p> <p>2. Following Offence One, the Respondent has re-entered the Field of Play during the Match and a second time following the conclusion of the Match. The player was observed on the Field of Play. breach of Section 16.4(d) of the Regulations, specifically, Schedule 3: Table C, Offence Code 37-01: “<i>Failure to comply with section 17.6(g) of these Regulations (restrictions imposed on Participants after receiving a Red Card or being Expelled during a Match). Any sanction applied is in addition to the sanction issued in respect of the Red Card Offence or the Expulsion Offence.</i>”</p>	<p>1. <u><i>Plea to both Charges:</i></u> Guilty. <u><i>Finding:</i></u> Guilty</p> <p><u><i>Evidence & Pleadings:</i></u></p> <p>The Respondent believed that the Match had finished when he ran onto the Field of Play to celebrate with his teammates when the second goal was scored. He quickly left when he realised that the Match was not finished.</p> <p>After the final whistle, the Respondent again entered the Field of Play to celebrate with his teammates. He noted that on both occasions he did not make any contact with either the Match Officials or any opposition players.</p> <p>He was not aware that he was not permitted to enter the Field of Play after receiving a Red Card after the conclusion of the Match.</p> <p>Mr David Mason, CEO Manly United FC, on behalf of the Respondent, made the following submissions:</p> <p><i>“Whilst Kristian did enter the field of play, it is clear that his actions can not in anyway be considered to have broken the intent for which the Regulations have been written and applied. They appear to be written to ensure there is no conflict, to protect the match officials, stop any comment that could enflame (sic.) the situation or stop any actions that could bring the game into disrepute.”</i></p>

Mr Mason further noted in his written submissions:

“Manly United would like to think that the spirit and intent of the Regulations, and the unbelievably unusual circumstances can be considered. For a young player to miss out on a Grand Final under the circumstances would be grossly unfair.”

During the Hearing, Mr Mason conceded that the fact that the Respondent would be suspended for the Grand Final could have no bearing on the proceedings and this was not a matter that should or could be taken into consideration.

FNSW Submissions

Mr Lorenzo Crepaldi for FNSW stated that failure to comply with section 17.6(g) of the FNSW Regulations was a separate offence and that the Regulations made it clear that an additional sanction was applicable for this offence.

He further submitted that the Tribunal was bound by section 9.7(c) of the Regulations in that it could not apply a sanction below the minimum for Charge 2. That sanction is one (1) Match Suspension. The result therefore had to be a two (2) Match suspension, one for the R7 offence and one for the section 17.6(g) offence.

Examination of the Powers of the Tribunal

In light of the above submissions by FNSW, Mr Mason was asked if he could point to any power of the Tribunal that enabled it to make a determination in favour of the Respondent.

Mr Mason referred to section 13.11(l) of the Regulations:

A Tribunal may, in the case where a Member has been found guilty of multiple Offences, impose entirely cumulative or partly or wholly concurrent Suspensions. However, the overall Suspension must not be less than the Minimum Suspension applicable to the most serious Offence but may be greater than the Maximum Suspension applicable to that Offence.

Mr Mason contended that the tests set out in this section had been satisfied in that the Respondent was guilty of “multiple Offences” and that it was his submission that the Tribunal had a discretion to find that the Respondent could serve the suspensions for both Offences concurrently as *the overall Suspension was not less than the Minimum Suspension applicable to the most serious Offence.*

Mr Crepaldi initially argued against the application of this interpretation as, he claimed, its application was more properly to be applied to situations where one Offence carried a far higher sanction than the other.

Determination

Given that the Respondent pleaded Guilty to Charge 2 and, based on the submissions of the FNSW, the Tribunal agreed that it was bound by section 9.7(c) of the Regulations in that it could not apply a sanction below the minimum for Charge 2. That sanction is one (1) Match Suspension.

The only way the Tribunal could divert from that requirement would be if Exceptional Circumstances existed or if it had some other discretion. However, the

The FFA National Disciplinary Regulations (NDRs) in its definitions makes it clear that:

“Without limitation, the following are deemed not to be Exceptional Circumstances:

(b) the significance or importance of any match or tournament in which the Participant will be ineligible to participate because of the imposition of a sanction within the Range at the Table of Offences”.

The Tribunal therefore cannot, in making its determination, consider any representation relating to the nature of the Match in which the Respondent will be unable to participate as a relevant matter.

Application of Discretion

The Tribunal agrees that it has the power to exercise its discretion in this matter in the manner set out in section 13.11(l). That is, the Tribunal could find the Respondent guilty of both Offences, sanction him to serve a one (1) Match suspension for each of the Offences yet direct that these suspensions be served concurrently.

Whilst the Tribunal intends to exercise this discretion in this matter, the Tribunal wishes to clearly identify the reasons for doing so and the criteria the Tribunal has applied in the exercise of that discretion.

In this matter there was clear evidence that the Respondent re-entered the Field of Play in the 123rd minute, prior to the end of the Match, and after the final whistle. Most importantly, he did so for the sole purpose of celebrating with his teammates and had no contact, verbal or physical, with any Match Official, opposition player or opposition spectator.

If the Respondent had ANY interaction with a Match Official, opposition player or opposition spectator the Tribunal would not have exercised this discretion.

Both Law 12 of the Laws of the Game (LOTG) together with the FNSW Regulations make it perfectly clear that a Player or Participant must *“leave the vicinity of the Field of Play”* after they have been issued with a Red Card. Many previous Determinations have defined this as a requirement to either “go home” or totally remove oneself from ANY proximity to the Field of Play and its surrounds as well as with ANY other Participant.

The reasons for this requirement should be perfectly apparent – a Participant who has received a Red Card could either be the instigator of further breaches of the LOTG or the target of abuse or violence from other Participants. The complete removal of such a person from *“the vicinity of the Field of Play”* is best practice and a requirement under the LOTG and FNSW Regulations.

Clubs should be aware of this well understood requirement and must have procedures in place to manage players who have Participants who have been issued with a Red Card.

If there were additional incidents resulting from the actions of the Respondent in entering the Field of Play, undoubtedly, he would have been charged with additional misconduct.

If a Participant was found guilty of all three such charges, in such a case this Tribunal would not have exercised a discretion and would, most likely, have determined that all sanctions be served consecutively.

Consistent with this approach, in **MGPT 18-109** the Respondent was issued with a Red Card (R7) and subsequently "*confronted a Match Official*". He received a one Match Suspension for his Red Card and a further one Match Suspension for his breach of section 17.6(g). These sanctions were to be served **consecutively**.

Whilst there is no more information available, the failure of FNSW to charge that Respondent with a more serious charge relating to his interaction with the referee is significant and it is therefore reasonable to conclude that in the absence of such a charge, his only other offence was relating to section 17.6(g).

In **MGPT 19-53** the Respondent was issued with a Red Card (R6 – Charge 1), failed to comply with section 17.6(g) – Charge 2, failed to abide or comply with a direction of a Match Official – Charge 4, and then disputed a decision of a Match Official and/or exhibited dissent – Charge 5. Charge 1 carried a 3 Match Suspension whilst each of the others carried a 1 Match suspension. The MGPT imposed a total of 5 Matches – served **partly concurrently**.

In **MGPT 19-61** the Respondent was issued with a Red Card (R6 – Charge 1), and then failed to comply with section 17.6(g) – Charge 2. Once again, Charge 1 carried a 3 Match Suspension whilst Charge 2 a one Match suspension. The MGPT imposed a total of 3 Matches and directed that the sanctions be served **concurrently**.

In each of the above MGPTs no hearing was conducted as the respective Respondents all pleaded guilty and accepted the Suspensions proposed by Football NSW. Therefore, no reasons for these Determinations were prepared. In **MGPT 18-109** the adjudicator saw fit to apply the additional sanction under section 17.6(g) for aggravating circumstances, whilst in **MGPT 19-61** he did not. In **MGPT 19-53** as there is no additional information it is difficult to identify which Charge has been discounted.

Conclusion

The Tribunal exercises its discretion in this matter in the manner set out in section 13.11(l) of the Regulations. The Respondent is therefore found Guilty of both Charge 1 and 2 and suspended for one (1) Match for each Charge. The Respondent is to serve those suspensions **concurrently**.

Serving of Suspension:

As the Respondent has already served the Suspension in accordance with section 15.6 of the Regulations, he may resume his playing career.

Costs:

The Tribunal determined that the Respondent pay the costs of the Tribunal process.