



NOTICE OF DETERMINATION.
30th August 2021

Reference is made to the following Tribunal:

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| 1. Date of the Tribunal | 25th August 2021 |
| 2. Tribunal that heard the case | General Purpose Tribunal (GPT) |
| 3. Tribunal reference number | GPT 21-17 |
| 4. Tribunal Members | David P. LEWIS (Chair), Robert IACONIS Mendo CKLAMOVSKI |
| 5. Venue of Tribunal | By Zoom |
| 6. Time of Tribunal | 6pm |
| 7. Respondent | Player X |

This document constitutes the 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 2021 for alleged breaches of the Football NSW Regulations and the FFA Code of Conduct related to incidents during the U16's NPL2 Youth Match held at Cook Park No 1, between Nepean FC (NFC) and South Coast Flame FC (SCF) on 5 June 2021.

Summation of the Tribunal:

The Tribunal found that the evidence and submissions:

In part Supported the Charges brought against the Respondent.

Charges and Pleadings:

Charge 1

Following the conclusion of the U16's NPL 2 Youth match between Nepean FC (NFC) and South Coast Flame FC (SCF) on 5 June 2021 at Cook Park No.1, Player X a Player from SCF, uttered words to the effect of "*black cunt*" towards NFC player, Player Y.

This conduct was alleged to be in breach of Section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations – Schedule 3, Table A, R6, Offence Code 05-01 – "*Use of discriminatory, homophobic, racist, religious, ethnic or sexist language and/or gestures*".

Under the Regulations, Football NSW has a discretion to deal with matters of this type without taking the matter to a hearing, provided the Respondent agrees to plead guilty to the charge(s) and accepts the sanction(s) proposed. If the Respondent does not agree, then the matter proceeds to a hearing.

After reviewing the evidence provided, and based on reference to other similar matters dealt with by Football NSW and a plea of guilty, Football NSW proposed the following sanction in respect of the charge:

- Charge One – serve a Fixture Suspension of seven (7) Fixtures.

This is the minimum applicable sanction for this offence.

Pleadings & Evidence

The Respondent rejected this option and pled Not Guilty in his Notice of Response.

FNSW supplied a video of the relevant incidents to the Tribunal and that video made it perfectly clear that the Respondent approached NFC player, Player Y after the final whistle and "confronted" him.

At the commencement of the Tribunal hearing the Chairman noted to all parties that the sole issue that was to be addressed in this hearing was the specific charge against the Respondent. Past matches between these teams and any past actions by the players in those prior matches was irrelevant to the conduct of the Respondent in this matter.

The Chairman further reminded all parties that many of the witnesses were minors and therefore he would take a strict view of any questions asked of these minors.

The Chairman also noted that this was a very serious allegation against the Respondent.

The evidence tendered by both parties made it perfectly clear that there was an element of mistrust between the clubs. The Chairman noted that no matter what the result of these proceedings, it was critical that the senior representatives of both clubs made time to meet with each other to resolve any potential outstanding issues. The melee and other confrontational matters exhibited by players from both teams was unsatisfactory and, whilst this has been dealt with in other hearings, it is the responsibility of both clubs to ensure that such events do not recur.

Representatives of both clubs agreed to meet and resolve all matters.

All witnesses were then excluded from the hearing and the Tribunal then addressed the Respondent and his legal counsel. The Tribunal drew the Respondent's attention to section 13.11(f) of the FNSW Regulations. This section states:

“If a Tribunal is not satisfied to the required standard that a charge before it has been proven, but is satisfied that a different charge has been proved, then provided the Member has been given an opportunity to address the Tribunal in relation to the different charge, the Tribunal must find the Member guilty of the different charge and apply the appropriate sanction. A Tribunal may, in its absolute discretion, grant a Member an adjournment for the purposes of answering the different charge.”

The Tribunal discussed this section with the Respondent's legal representatives. After a brief adjournment the Respondent's counsel elected to proceed with the hearing and confirmed that they understood the application of this section.

The Respondent gave evidence to the Tribunal confirming that as he approached Player Y at the end of the match he heard an unknown player say “*your team is shit*”. The Respondent replied with the words “*you haven't beaten us yet*” as he approached Player Y.

The Respondent gave evidence that he walked towards Player Y with the intention to shake his hand and that Player Y, on hearing what he had said responded by saying “*Shut the fuck up*” and/or “*fuck off*”.

The Respondent in response said, “*fuck off cunt*”.

The Respondent then gave evidence that he pushed Player Y and Player Y pushed back. After that, other players became involved in a confrontation and a melee took place.

Under further questioning the Respondent said that he called Player Y a “*fucking shit*”, or words to that effect, and he agreed that he had verbally abused him with further words. He strongly denied using the racial slur attributed to him in the Notice of Charge.

He further agreed that he had committed an offence under Table A, Offence Code 03-01, *Offensive, insulting, abusive or intimidating language and/or gestures - using offensive, insulting or abusive language and/or gestures directed at or towards another person*.

The Tribunal warned the Respondent, through his legal representative, that this admission was in effect a Guilty plea to the above Offence and that the application of Section 13.11(f) could be applied by the Tribunal. The Respondent accepted that warning and understood the consequences.

The Referee’s Evidence

The Referee gave written evidence that he did not hear anything said by the Respondent during his interaction with Player Y. The Referee was not required to attend the hearing.

Player Y Evidence

Player Y gave evidence to the Tribunal that he had his hands on his knees when the Respondent walked up to him at the end of the match and said “*you’re a black cunt*” as the Respondent walked towards him and that these words were uttered BEFORE the Respondent pushed him. Player Y said “*I said ‘fuck off - he (the Respondent) then pushed me and I pushed him back*”.

Player Y also added that the Respondent also said “*you’re a gang member from OneFour*” and “*go back to where you came from*” I just said “*fuck off*”.

Player Y was positive that these words were used. Under questioning he also asserted that whilst the Respondent said this loudly the Respondent was not yelling when he said all of the above words.

Player Y was asked why he didn’t respond when the Respondent made all of these offensive statements. He noted that he “*did not want to get a card*”.

Player Z Evidence

Player Z, a teammate of Player Y's, gave evidence that he heard the alleged racial slur uttered by the Respondent and that he ran to confront the Respondent in support of his teammate. He said that he heard the racial slur, "You're a Black C..." and that this was said to Player Y as the Respondent clashed chests with Player Y. When he heard that he "took off" and ran towards the Respondent and pushed him to the ground.

Player Z originally stated that he did not hear Player Y say anything in response. He then changed his evidence and said that Player Y responded with the words "Fuck off". He did not hear anything else said.

Player Z was the player in the video who ran from the edge of the 6-yard-box to push the Respondent to the ground.

Determination of the Tribunal

The Tribunal was troubled by the lack of corroboration of the use of a racial slur by the Respondent and critical inconsistencies in the evidence.

In the video of the events at the end of the match the following is clear:

1. The Referee did not hear anything said between the Respondent and Player Y and did not react in any way prior to or at the point of initial contact between the Respondent and Player Y. At the point of contact, the Referee was less than 10 metres away from the Respondent and Player Y and the Respondent was facing in the direction of the Referee at the moment he is alleged to have made both a racial and other abusive remarks to Player Y.
2. Both Player Y and Player Z gave evidence that the Respondent abused Player Y loudly although not shouting.
3. Player Z said that he heard everything that the Respondent said that this was the catalyst for him running to support Player Y and the push on the Respondent. However, he made no mention of the additional words attributed to the Respondent in Player Y's verbal evidence to the Tribunal.
4. Player Z was at least 14 metres from the Respondent when he abused Player Y. He did not, as he claimed in his verbal evidence, run in on the first contact between the Respondent and Player Y and it is clear that the second contact was the moment he chose to run towards the Respondent.

5. Player Y did not react in any physical way to the verbal abuse directed at him by the Respondent.
6. Player Y gave verbal evidence to the Tribunal that was significantly different from his written statement. He alleged that significant additional abuse was directed towards him by the Respondent. This seems inconsistent with the video.

Given the above, the Tribunal held that it would be an unsafe finding to make a determination that the Respondent made a racial slur directed towards Player Y. The Tribunal was not satisfied that Player Z had heard the exact words used by the Respondent given the distance between him and the relevant parties at the moment the Respondent is alleged to have abused Player Y.

Further, the complete absence of any physical response by Player Y to the alleged racial slur is, in the Tribunal's experience, inconsistent with the allegation.

However, the Respondent admitted abusing Player Y by way of swearing at him at the end of the match. There can be no doubt that the Respondent's actions were the catalyst for the melee that took place at the end of the match and, contrary to his verbal evidence, he did not approach Player Y hand out-stretched in an attempt to shake his hand at the conclusion of the match.

The Respondent's actions were provocative, aggressive and completely unsatisfactory and Player Y was blameless at the end of the match for any of the actions exhibited by the Respondent.

The evidence offered by all three players appeared to be embellished and self-serving and at the very least in part unreliable.

The Tribunal found the Respondent **GUILTY** of an offence under Table A, Offence Code 03-01, Using offensive, insulting or abusive language and/or gestures directed at or towards another person.

The Tribunal found the Respondent **NOT GUILTY** of an offence under Table A, Offence Code 05-01 "*Use of discriminatory, homophobic, racist, religious, ethnic or sexist language and/or gestures*".

Sanctions Imposed

Charge 1

Given the Respondent's age and absence of any prior breach of the Disciplinary regulations, the Respondent is suspended for a period of **four (4) Fixtures**.

The Respondent is to serve the Fixture Suspension generally in accordance with section 15.6 of the FNSW Regulations.

For clarity, the Respondent may train with any club during the Fixture Suspension and play in Trial and pre-season matches. He may not spectate during the Fixture Suspension nor do any of the other activities set out in section 15.6.

Fines Imposed

NIL.

Bonds Imposed

Additional Matters and Fees as per the Notice of Costs:

The Respondent is to pay the costs of the Tribunal process as assessed by Football NSW. A full written Determination will not be produced.

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 Preliminary Determination of the GPT (or the Final Determination, where the GPT has indicated one will be issued) being sent to the Respondent.



David P. Lewis
Chairman
GENERAL PURPOSES TRIBUNAL

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