

FINAL NOTICE OF DETERMINATION
2nd December 2022

GPT 22/32

Date of Hearing	29th November 2022
Date of Final Determination	2nd December 2022
Respondent	Mr Lukman Ahmed-Shaibu
Attendees, Witnesses & Documents	As attached in Schedules 1 & 2
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations 2019 Sections 9.2, 16.4, FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Violent Conduct, Schedule 3, Table A, R2, Offence Code 04-01 - <i>“Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)”</i> , video evidence, meaning of Violent Conduct.
Finding & Sanction	Guilty Suspended for six (6) months, three (3) months suspended on Good Behaviour Bond for two (2) years.
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Marcelo Valerio Mr Louis Fayd’herbe

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 related to incidents during an NPL 1st Grade match between Sutherland Sharks FC (**SSFC**) and Northbridge Bulls FC (**NBFC**) on 23 July 2022 at Seymour Shaw.

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 2022 Regulations: The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICE OF CHARGE

2. On 7 November 2022, Football NSW (FNSW) issued a Notice of Charge on the Respondent, **Mr Lukman Ahmed-Shaibu**, a Participant as defined in Schedule 1 of the Regulations (“the Respondent”) relating to his conduct during an NPL 1st Grade match between Sutherland Sharks FC (SSFC) and Northbridge Bulls FC (NBFC) on 23 July 2022 at Seymour Shaw.

3. The Notice to the Participant specified the following charge:

Charge

“In or around the 45th minute of the NPL NSW Men’s 1st Grade match between Sutherland Sharks FC (SSFC) and Northbridge Bulls FC (NBFC) on 23 August 2022 (sic.) at Seymour Shaw, Lukman Ahmed-Shaibu (the **Respondent**) struck NBFC Player, Nathan Dimou with a closed fist, contacting the NBFC player’s right eye socket, causing a laceration to the right cheek.”

The correct date of this match was later confirmed to be 23 July 2022.

4. The Respondent was charged under section 9.2 of Football NSW Regulations (“the Regulations”) for alleged breaches by the Respondent of section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2022, namely Schedule 3, Table A, (R2 - Violent Conduct) Offence Code 04-01 - “*Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)*”.

Football NSW Power to Investigate

5. Football NSW has a general power to investigate any incident that may constitute a breach of the Regulations. Under Section 1(e):

“Football NSW may in its absolute discretion determine the appropriate governing document under which to investigate, process, and penalise (if necessary) any matter.”

Further under Section 9.1(a)(i):

(a) The General Purposes Tribunal has jurisdiction to hear and determine:

i charges of Misconduct, including for but not limited to serious infringements that escaped the Match Official’s attention and Offences disclosed in Match Official Reports (section 9.2);

.....

v any other matter which the Executive determines, in its absolute discretion, is important to the interests of football in the State (section 9.6).

6. In this GPT 22-32 the Respondent was issued with a Yellow Card by the Match Official. He noted in his report:

I was the referee on this match and in the 45+1 minute (stoppage time first half) watched from approximately 12 metres away SUS#12 Lukman Ahmed-Shaibu hold NTB#3 Nathan Dimou, off the ball, just outside the NTB penalty area. For this reason, I awarded a DFK for NTB & showed a Yellow Card for Y1 - Unsporting Behaviour to SUS#12 Lukman.

Following this incident, NTB#3 Nathan was bleeding heavily with a deep gash to his left cheek. He left the field of play to receive treatment for this injury, returning after half time.

Upon watching the match footage frame-by-frame it is clear to me that SUS#12 Lukman Ahmed-Shaibu actually swung his right arm to strike NTB#3 Nathan in the face, outside of my angle of view, being behind NTB#3 at the time of the strike. This is the only explanation for the deep gash facial injury that NTB#3 suffered following this incident.

Had I seen this angle of the incident, I would have shown a Red Card to SUS#12 for R2 - Violent Conduct, rather than the YC issued.

7. Football NSW obtained video evidence of this incident and this evidence was presented to the Tribunal.
8. After reviewing the reports and evidence provided, and based on reference to other similar matters dealt with by Football NSW, Football NSW issued the above-mentioned Notice of Charge and the Respondent was directed to issue a Notice of Response.
9. The Respondent pleaded NOT GUILTY in his Notice of Response and the matter proceeded to a hearing before the General Purposes Tribunal (GPT).

C. NOTICE OF RESPONSE AND EVIDENCE

10. The Respondent was represented by **Mr Darren Kane**, Solicitor.
11. The Respondent tendered a statement to Football NSW ("the Statement"). In that Statement The Respondent noted that the correct date of the Match was 23 July 2022 and not August and that his FFA Number was 10825128. This information was incorrectly set out in the Notice of Charge.
12. The Respondent also claimed that the delay in bringing the Charge by Football NSW materially disadvantaged the Respondent.

15. Football NSW's delay of three-and-a-half months, in laying the charge, has caused me material prejudice and disadvantage in defending this Charge. The football season is now over. My contract with SSFC ended at the end of the season, and I am now living in the Australian Capital Territory.

16. Had the Charge been laid by Football NSW in a timely manner, in early August 2022, I would have had a proper opportunity to obtain witness statements from my fellow players at the Club, as to the circumstances of the incident pleaded in the Charge.

17. Football NSW's unexplained delay has meant that I am now less able to defend the Charge through adducing evidence from teammate player witnesses.

13. The Tribunal noted that in the absence the availability of a video of the relevant incident, it would have been far more concerned in relation to procedural fairness to the Respondent. However, given that a video was available and that evidence from the Respondent's teammates would do no more than corroborate his evidence, the Tribunal was able to fairly consider the evidence of all parties.
14. Football NSW submitted that as its investigation into this matter commenced after the end of the season and as it had many other matters to review, it was delayed in its ability to progress this matter.

The Respondent's Version of Events

15. The Respondent denied that he struck the opposition Player Nathan Dimou with a closed fist. He further stated that the video clearly shows that Dimou had hold of him first and whilst he "made contact" with Mr Dimou, he did so only in an attempt to try to get Mr Dimou to let go so he could "properly compete for the ball."

16. The Respondent further denied that he pulled Mr Dimo's hair or had him in a headlock or was in any way responsible for placing him in a vulnerable position prior to "making contact" with Mr Dimou's face.
17. The thrust of the Respondent's argument was that he was first the subject of a foul by Mr Dimou and his only "intent" was to gain release from Mr Dimou. In effect, although the Respondent did not explicitly refer to it, the Respondent was claiming that he was justified in his attempt to extricate himself from Mr Dimou's grip by swinging his right arm at what he claimed was Mr Dimou's arm in that attempt. As the Respondent claimed he had no intent to hit or hurt Mr Dimou he was therefore not guilty of the Charge.
18. **Mr Nathan Dimou**, the injured player for NBFC, noted in his witness statement dated 23 July:
 - "Essentially I was assaulted. Pretty much on the 45th minute the striker from Sutherland Sharks, Ahmed (the Respondent), has punched me in the head which really wasn't provoked he full just wanted to hurt me."*
 - "Basically we are both about to run into the box me to defend the cross and him to attack it and just as we are beginning to run in I've put slight body contact on him which you can see in the footage and he's decided to grab me by the hair in almost a head lock and uppercut me to the head. Essentially I'm lucky it actually got me just below the eye and not directly to it as the hospital was saying I was close to having permanent damage any closer because of the actual force he has punched me with."*
 - "As soon as it's happened bloody (sic.) has just started pissing out everywhere and this massive egg just below my right eye basically not allowing me to see out of it. The referee pretty much only gave Ahmed a yellow because of my reaction of what's just happened as no one properly saw as it was so of (sic.) the ball which just confirms the intent behind the punch and the referee was blind sided by it so I don't blame the referee, just in the moment I was angry with what has happened to me."*
 - "Essentially after the game I have gone straight to hospital and had 4 stitches put in as the split in my face was so big that it was required."*
19. The Respondent had requested that Mr Dimou attend the Hearing. A brief recess was called as Football NSW had not arranged for Mr Dimou to attend. When he was made available to give evidence the hearing resumed.

D. THE HEARING

20. The Respondent, aged 30, appeared before the Tribunal by Zoom on 29 November 2022.
21. Mr Kane, for the Respondent, maintained his insistence that the Respondent was Not Guilty as he had no intent to either harm Mr Dimou or indeed hit him. He did not wish to plead guilty to a lesser offence as he stated that he was following the rules as he understood it from his 20+ years of experience in Sports Law.
22. Mr Kane questioned Mr Dimou in some detail and suggested to Mr Dimou that the Respondent did not pull his hair, did not pull his head down and have him in a headlock and did not punch him. Mr Dimou disagreed with all of these suggestions and maintained that all of the above happened.
23. Mr Dimou noted that he had attended hospital immediately after the match and had four (4) stiches inserted into the wound. This later became infected and he still had a scar on his face from this event.
24. The Referee then gave evidence to the Tribunal. Under questioning from Mr Kane, the referee confirmed the contents of his written statement. He stressed that it was his practice to view the video recording of each match in which he had officiated as soon as possible after that match. This is a common practice for professional development and review of key decisions.

He confirmed that his positioning at the time of the alleged punch by the Respondent did not allow him to see that incident clearly. On the subsequent review of the video the referee noted that this was Violent Conduct on the part of the Respondent and he should have issued a Red Card for that conduct.

25. The referee further noted that in his opinion the video clearly showed a punch to the face of Mr Dimou by the Respondent.
26. Mr Kane then led evidence from the Respondent.
27. The Respondent stated that he had played football since the age of 4 or 5. He had never been sanctioned for violence on the field and had never received a Red Card for Violent Conduct. He denied punching Mr Dimou in the head and stated that all he intended was to try to get away from Mr Dimou and that he swung his right arm in an attempt to do so.
28. The Respondent noted that he felt sad that he had been charged with such an offence as it was not in his nature to behave in such a way. He was in Australia to play football and that this is his source of income. He would never such a thing as hit another player.
29. Under questioning by the Tribunal the Respondent agreed that he had tried to spin Mr Dimou around in trying to “get rid of him” and in the course of falling backwards he made contact with his head. However, he still denied punching Mr Dimou.
30. Mr Kane submitted that this was not Violent Conduct by the Respondent and was not “brutality” as set out in the definition of Violent Conduct.

Football NSW Submissions

31. In relation to the delay in the proceedings, Football NSW noted that it had the power to bring these proceedings “as it sees fit” and “at any time” pursuant to sections 9.2 (b) and (d) of the Regulations.
32. Football NSW acknowledged that there was delay and that this was caused by other urgent matters at the end of the season coupled with the requirement to gather relevant information in circumstances where a Red Card had not been issued. This meant that the incident was not immediately brought to the attention of Football NSW.
33. Football NSW accepted “that the delay is wholly inappropriate and will work harder to avoid it repeating in future matters”. However, Football NSW submitted that this delay did not impact the Respondent’s football activity prior to the issue of the Notice of Charge nor did it impact his ability to adequately respond to that Charge.
34. Football NSW submitted that the video clearly showed the following:
 - a. In or around the 45th minute of the match, both the Respondent and Mr Dimou began to grab each other’s jerseys and jostle for better position;
 - b. At 00.03 in Annexure A- The Respondent has then used both of his hands to push Mr Dimou in a downward position, while still holding onto Mr Dimou’s hair;
 - c. Mr Dimou at this moment this moment arched over and looking at the ground;
 - d. Football NSW conceded that at that moment Mr Dimou is still holding on to the Respondent;
 - e. while Mr Dimou was still holding on to the Respondent and, with Mr Dimou still in a vulnerable position, the Respondent engaged in the following motion:
 - i. motioned his right arm backwards (clearly visible in the footage); and
 - ii. motioned his arm down and up in the direction of Mr Dimou’s head, striking Mr Dimou in the face (similar to an uppercut motion) with a closed fist;

- f. Mr Dimou is then observed covering his face with both his hands and moving around in obvious discomfort towards the edge of the penalty box; and
 - g. the incident caused bodily harm to Mr Dimou in the nature of a 2cm laceration to the right cheek – requiring four sutures.
35. The correct Charge was Violent Conduct.
36. The ball was nowhere near the Respondent at the time his fist made contact with Mr Dimou.
37. With respect to intention, Football NSW referred to GPT 20-12 para 103(c) where it finds that intention is not a factor under Schedule 3, Table A, R2 offence Code 04-01 of the Regulations.
38. This was an extremely dangerous act that occasioned bodily harm that was at the higher end of the scale and therefore a significant sanction was warranted. Football NSW referred to GPT 20-03 and recommended that a sanction of 15 Fixtures was appropriate.

E. CONSIDERATION & DETERMINATIONS

39. In relation to the delay in bringing these proceedings, the Tribunal did not find that the Respondent was materially impaired in his preparation of his defence and no extension of time was sought by his counsel in that regard. The fact that there was good video evidence materially assisted and it was clear that any evidence in support of the Respondent from his former teammates would only be in the form of either written or verbal corroboration of his characterisation of the events that are the subject of this Charge.
40. The availability of an independent witness in the form of an NPL 1 referee and a video meant that the Tribunal could review the actual events.
41. The extent of the injury to a player is NOT a factor in determining whether a foul has been committed. One of the most relevant tests is whether the action of the Respondent endangers the safety of an opponent and not the injury itself.
42. The Tribunal has considered the definitions of both Violent Conduct and Serious Foul Play in prior matters and in particular refers the Respondent to GPT 18-46, GPT 19-27 and GPT 20-03. In those Determinations the Tribunal set out in detail considerations that are important in determining what constitutes Serious Foul Play, Violent Conduct and Playing Distance.
43. Mr Kane asserted that the conduct of the Respondent did not amount to Violent Conduct and that he was not guilty of that offence. He did not offer a credible alternative explanation for the injuries suffered by Mr Dimou.

F. FINDINGS

44. This was a clear case of Violent Conduct. The video evidence clearly shows that the ball was not within playing distance and there is clear video evidence of the Respondent swinging his arm in the direction of Mr Dimou's face when he is held by the Respondent and facing the ground and an immediate upward and backwards motion of Mr Dimou's head consistent with significant contact with his head/face.
45. Mr Dimou is then seen to hold his face, move away and squat down in considerable discomfort.
46. Photographic evidence of the injury to Mr Dimou was supplied along with a report from the hospital consistent with the above submissions from Mr Dimou, the referee and Football NSW.
47. The Tribunal therefore found that it could not support the Respondent's submissions.
48. The Respondent used excessive force against an opponent and deliberately struck that opponent.

49. The Tribunal notes however that it is Mr Dimou who commits the initial foul on the Respondent by holding him and restricting his movement and the Tribunal accepts that the Respondent was attempting to escape from the grasp of Mr Dimou albeit that he used excessive force in attempting to do so.
50. To avoid confusion, the Tribunal notes that the LOTG makes it clear that in circumstances where fouls are committed by opposing players the correct procedure is to penalise the more serious offence. In this matter the more serious offence was committed by the Respondent.
51. The Tribunal found the Respondent **Mr Lukman Ahmed-Shaibu** GUILTY of the Charge.

G. SANCTIONS

52. The Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table A, Offence Code 04-01 - *“Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)”*.
53. The minimum sanction for this Offence Code is **thirteen (13) Fixtures or a maximum of 24 months**. The Tribunal determined that the Respondent should be suspended for **six (6) months** from all Football Related Activity, including training.
54. The Respondent played in the ACT NPL in 2020 and played in Football NSW NPL in 2021 and 2022. Football NSW advised the Tribunal that the Respondent had no Red Cards during that time and only 7 YCs. The Tribunal has therefore recognised that this incident is out of character and inconsistent with the Respondent’s football behaviour over the past three years in Australia.
55. The Tribunal recognises that the Respondent was attempting to get away from Mr Dimou albeit he was reckless and used excessive force in that attempt. However, intent is not a defence to a charge of Violent Conduct.
56. In accordance with section 13.12 of the Regulations, the Tribunal suspends **three (3) months** of the Respondent’s suspension subject to a good behaviour bond of two (2) years so that if he is found guilty of a Violent Conduct charge within that two years, an additional **three (3) months** suspension will be added to any sanction imposed by any later Tribunal.
57. While the commencement date of the Time Suspension commences on the date of this determination, as that Time Suspension coincides with a non-playing period, as set out in section 15.5(c) of the Regulations, this non-playing period cannot count towards this suspension.
58. Therefore, time will effectively not commence to run on the Time Suspension (and on the good behaviour bond) until on or about 4 February 2023, being the commencement of the 2023 football season. The Respondent must therefore advise Football NSW when he registers with a Club for the 2023 season so that Football NSW may advise the Respondent when the non-playing period terminates.
59. The Respondent is to serve the Time Suspension in accordance with section 15.5, in particular, sub-sections 15.5(e).
60. The Respondent has advised that he is now residing in the ACT and therefore Football NSW will advise Capital Football of this Determination so that it may be observed in that jurisdiction (in accordance with section 15.9(b) of the Regulations).
61. The Tribunal determined that the Respondent pay the costs of the Tribunal processes.

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
2 December 2022

Schedule 1

Index of Documents

GPT 22-32 DOCUMENTS INDEX

1.	NOTICE OF CHARGE AND ANNEXURES
	Notice of Charge dated 7 November 2022
A	Video of Incident
B	Video of Incident (25% playback speed and zoom)
C	Statement of Jake Rose dated 28 July 2022
D	Statement of Nathan Dimou dated 30 July 2022
E	Photo of Page 1 of the Hospital Discharge Summary prepared by Rebecca Sadler dated 23 July 2022
F	Photo of Injury sustained by Nathan Dimou
2.	NOTICE OF RESPONSE AND SUPPORTING DOCUMENTS
	Notice of Response- GPT 22-12 dated 21 November 2022
	Statement of Lukman Ahmed-Shaibu signed and undated
	Statement of Paul Smith signed and undated
	Video of Footage edited by Respondent titled "Slow Video 45+14 to 45+23"
3	GPT PRECEDENTS
	Final Determination GPT 20-03 David D'Apuzzo
	Final Determination GPT 20-12 Thomas James

Schedule 2
Attendee Register

<i>ATTENDEE</i>	<i>POSITION</i>	<i>SIGNATURE</i>
David Lewis	GPT Chair	
Marcelo Valerio	GPT Panel Member	
Louis Fayd'Herbe	GPT Panel Member	
<i><u>Football NSW</u></i>		
Michael Kantarovski	Legal & Regulatory Officer, Football NSW	
<i><u>Respondent</u></i>		
Lukman Ahmed-Shaibu	Respondent	
Darren Kane	Respondent's legal representative	
Jake Rose	Referee	
<i><u>Complainant</u></i>		
Nathan Dimou	Complainant	