



**APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES
DETERMINATION IN THE FOLLOWING MATTER:**

Player and Club	Paolo Manzoni, University of Technology Football Club
Decision appealed	Appeal from the Northern Suburbs Football Association Appeals Board by the Ku-ring-gai & District Football Referees Association
Date of Decision	8 December 2020
The basis upon which the matter is before the Appeals Tribunal	Sections 10.1(d) and 10.2(g) of the Football NSW Grievance and Disciplinary Regulations, 2020
Ground(s) of Appeal	Sections 10.3(b), 10.3(d) and 10.3(f) of the Football NSW Grievance and Disciplinary Regulations 2020
Date of Hearing	20 May 2021; Supplementary written submissions, 21 June 2021
Date of Determination	30 June 2021
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair Ivan Griscti, Member Simon Philips, Member

INTRODUCTION AND JURISDICTION

1. The Appeals Tribunal (**AT**) has been established in accordance with sections 4 and 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2020 (**FNSW Regulations**) to determine appeals from the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and Member Appeals Committees (**MAC**). “Body” is defined in the Regulations to mean a body established under section 4 of the Regulations and relevantly includes the AT.
2. Further, section 10.2(g) of FNSW Regulations provides that a match official who officiated in the match giving rise to the charge(s) or the relevant Referees Body, has standing to bring an appeal from a determination of a MAC if the FNSW Executive, in its absolute discretion, determines that it is in the interests of football in the State for the appeal to be heard by the AT.

3. The sole grounds of appeal prescribed by section 10.3 of the FNSW Regulations are as follows:
 - a. a party was not afforded a reasonable opportunity to present its case;
 - b. lack or excess of jurisdiction of a Body or a Member Appeals Committee;
 - c. the decision of a Body or Member Appeals Committee was affected by actual bias;
 - d. the decision was one that was not reasonably open to a Body or Member Appeals Committee having regard to the evidence before the decision-maker;
 - e. severity, only where the decision imposed a sanction of at least:
 - i. a Fixture/Match Suspension of 6 or more Fixtures/Matches (excluding Trial Matches, Tournaments, the NPL Pre-Season Competition, the FFA National titles or any Football NSW Representative Matches); or
 - ii. a Time Suspension of three (3) or more months; or
 - iii. a fine of three thousand dollars (\$3,000) or more; or
 - iv. a bond to be of good behaviour of three thousand dollars (\$3,000) or more;
 - v. a deduction, loss or ban on accruing six (6) or more competition points; or
 - vi. exclusion, suspension or expulsion of a Club or Team from a competition; or
 - vii. relegation to a lower division;
 - f. leniency, but only in the case of an appeal brought by Football NSW or an appeal allowed by the Executive pursuant to section 10.2(g) (Appeal from a MAC).
4. Pursuant to section 10.4(b) of the Regulations, upon the hearing of an appeal, the AT may:
 - a. dismiss, allow in whole or part, or vary (whether by way of reduction or increase) a Determination, including any sanction or penalty made by a Body or a MAC, as the case may be;
 - b. subject to any applicable Minimum Suspension, impose any sanction, measure or make any order it thinks fit or that a Body or MAC, as the case may be, could have imposed under the Regulations or its regulations, as the case may be;
 - c. conduct a fresh hearing of the matter (hearing de novo); or
 - d. refer the matter to the Body or the MAC from which the appeal originated, or to the Tribunal (or similar) that dealt with the matter at first instance for rehearing and issue any directions or orders in relation to the rehearing of the matter that the AT deems appropriate.

5. By Notice of Appeal submitted on or about 18 December 2020, the Ku-ring-gai & District Football Referees Association (**KDFRA**) appeals a determination of the Northern Suburbs Football Association Appeals Board (**NSFAAB**), dated 8 December 2020 and notified to the KDFRA on the following day concerning University of Technology Sydney Football Club (**UTSFC**) player Paolo Manzoni (**Player**). The NSFAAB is a MAC for the purposes of the section 10.1 of the Regulations. The appeal appears to have been brought within the time prescribed by section 10.6(b) of the Regulations.
6. An appeal only lies to the AT where the matter has proceeded in accordance with and exhausted a member's own disciplinary/grievance rules and regulations (section 10.6(a) of the Regulations). Having regard to the provisions of the Northern Suburbs Football Association competition regulations, the AT is satisfied that the KDFRA has exhausted all disciplinary/grievance avenues available to it within that association.
7. We understand that the FNSW Executive has, in accordance with section 10.2(g)(ii) of the FNSW Regulations determined that it is in the interests of football in the State for this appeal to be determined by the AT. As a consequence, the leniency ground of appeal (section 10.3(f) of the Regulations) upon which the KDFRA relies is also enlivened.
8. The AT is accordingly satisfied that it has jurisdiction to hear the appeal. Further, no party raised any objection to the AT's jurisdiction.

BACKGROUND FACTS

9. On 26 September 2020, the Player wearing the number 51 jersey, participated in an MAA2 1st Grade fixture between UTSFC and Asquith Football Club at Asquith Oval. In the 45th minute of the match there was an altercation between the Player and an opposing player which saw each of them dismissed from the field of play for violent conduct.
10. The match referee, Jared Katz, completed a match incident report, dated 28 September 2020, in the following terms: -

"in the 45 minute the score was 1-0 two Asquith. Number 17 from Asquith and number 51 from UTS was sent off for Violent conduct. Following the showing of the two red cards number 51 from UTS continued to argue with me about the send-off, where he insisted, he did not do anything wrong and why was in the wrong for sending him off. I insisted he left the field of play, by which he walked towards the sideline. He then started to walk at a fast pace towards number 17 from Asquith who was in the process of leaving the field of play. I saw this and I was concerned that UTS 51 was going to catch and confront Asquith N17. I blew my whistle loudly and screamed to him to stop. After a team-mate who was close to him and told him to, he decided to stop."

He then turned around and started approaching me getting within 1 metre of me with his index finger raised, pointed towards me and aggressively said to me in a loud voice 'we are going to the judge together. I am going to fuck you up.' He then continued to walk towards me as I walked backwards to maintain distance between myself and UTS 51 until UTS's coach entered the field of play to a distance of around 10 metres and told UTS 51 to walk away. UTS 51 then walked towards my AR 1 and stood about 1m away from my AR 1 for a couple seconds. I was situated about 15 metres and didn't hear anything unusual or see the details of the interaction between UTS 51 and AR 1. UTS 51 then left the field of play.

After leaving the field of play, I started to record the details of the incident when I heard a commotion on the sideline. I was approximately 10 metres from the touchline when I saw and heard the UTS number 51 yell abusively and aggressively towards me, whilst pointing at me, and saying 'you and me after this' whilst being restrained by about 5 officials and teammates. Whilst doing this my AR raised his flag and called me over to him. My AR1 then told me, in relation to his interaction with UTS number 51 that 'he spat on my arm'. I then looked down at his arm where the bloody saliva was still visible, and I could see this clearly on his arm.

I then blew half-time. I subsequently abandoned the match prior to the second half restarting as I felt concerned and in fear for the safety and well-being of the match officials due to the conduct of the UTS 51 and the UTS team."

11. The match referee's account was largely corroborated by an incident report completed by James Conner who was AR 1. Mr Conner relevantly recorded the following:

"In the 45th minute the score was 1-0 to Asquith. UTS 51 and Asquith 17 were sent from the field of play by the referee for violent conduct. Following the showing of the two red cards 51 from UTS continued to argue with the referee. The referee continued to point towards the touchline. Shortly after this 51 from UTS walked towards the sideline. He then started to walk towards number 17 from Asquith who was in the process of leaving the field of play and screamed to him whilst walking towards him. I saw this and walked towards halfway to assist in maintaining separation between UTS 51 and Asquith 17. With the direction of a team-mate who was nearby he then stopped. I then saw him turn around and started approaching the referee with his index finger raised, pointed towards him and aggressively screamed to him. I heard him say 'I am going to fuck you up'. At the time of this I was 10-15 metres away and could clearly hear what was said. UTS 51 then continued to walk towards the referee where I saw the referee walking backwards at pace approximately 1 metre from the player until his coach entered the field of play about 10 metres and approached UTS 51 and told UTS 51 to walk away. UTS 51 then walked towards me and stood about 1 metre away from me for about 5 seconds, did not say anything and then spat on me. I saw the spit leave his mouth coming towards me and then I felt the spit on my arm and then I looked down and saw a number of drops of bloody saliva on my arm. He then left the field of play. On the other side of the fence he continued to yell abusively and aggressively towards the referee saying 'you and me after this' whilst being restrained by about 5 officials and teammates. I was situated on the touchline and saw the officials and teammates hold him back when I turned around after hearing the commotion behind me and at this point I saw UTS 51 pointing at the referee and heard UTS 51 yelling at the referee. The player was only 10-15 metres from me, been situated just on the other side of the fence. I then raised my flag and called the referee over to alert him to what had happened in regards to the spitting incident. I told him that regarding my interaction with UTS number 51 'he spat on my arm.' I then showed him my arm where the bloody saliva was still clearly visible. Following this, the referee blew half-time and abandoned the match before the resumption of the second half."

12. The Player was charged with and cited to appear before the Protests, Disputes and Disciplinary Committee (**P.D. & D.C.**) on 20 October 2020 in respect of the following offences:
- a. R2 – Violent Conduct;
 - b. M2 – Indecent Gestures;
 - c. M5 - Threatening or intimidating language or conduct towards a Match Official;
 - d. M6 - threat of physical violence towards a Match Official or his/her family or property;

- e. M11 - spitting at or on a Match Official.
13. The Player pleaded guilty to the charges of R2, M5 and M6 and not guilty to the charges of M2 and M11.
 14. The issue of guilt or innocence in relation to the offences of M2 and M11 together with the question of sanction for the charges under R2, M5 and M6 were heard by the P.D. & D.C under section 4.4 of the NSFA Regulations 2020.
 15. The P.D. & D.C found that the charge under M2 was not established. As to M11, the P.D. & D.C determined that the Player was guilty of the offence. It imposed the following sanctions:
 - a. R2 – MMS plus 3 fixtures;
 - b. M5 – 2 years suspension;
 - c. M6 – 2 years suspension;
 - d. M11 – 8 years suspension;
 with the suspension for offences M5, M6 and M11 to be served concurrently.
 16. The Player appealed to the NSFAAB against the sanction imposed by the P.D. & D.C for the M11 on the basis of a failure to afford procedural fairness, and in respect of severity. On 8 December 2020, the NSFAAB determined that the M11 offence was proven but that there was reasonable doubt that it was deliberate due to the nature of the Player's injury and reduced the sanction for the M11 from 8 years to 2 years to run concurrently with the M5 and M6 sanctions. In reaching this conclusion, the NSFAAB found that the blood from the Player's mouth definitely hit the AR 1, the blood transference was inadvertent and a result of the Player's injury and remonstrating with the officials, it was not proven that it was a deliberate attempt to spit on the AR, the Player had a responsibility and duty of care to protect Match Officials and other players and stay a safe distance away from them, given the nature of his injury and under the circumstances of the Covid-related pandemic.

THE APPEAL

17. The KDFRA appeals the determination of the NSFAAB in relation to the sanction for the M11 offence.

THE GROUNDS OF APPEAL

18. The Amended Notice of Appeal articulates the following grounds of appeal.
 - a. Lack or excess of jurisdiction of the MAC (10.3(b) of the FNSW Regulations);
 - b. the decision was one that was not reasonably open to the MAC having regard to the evidence before it (10.3(d) of the FNSW Regulations); and

- c. Leniency (section 10.3(f) of the FNSW Regulations).

THE HEARING

19. The AT convened on the evening of 20 May 2021 to hear the appeal. The KDFRA was represented by Mr Alex Rusten, Protests and Disputes Officer. Also in attendance on behalf of the KDFRA was Mr Alan Woods, President and Mr Adrian Thearle, Protests and Disputes Officer. The Player did not appear at the hearing. He was represented at the hearing by Mr Julian Cartwright, the Vice-President of the UTSFC.
20. The parties provided the AT with helpful written submissions. The parties were each provided with the opportunity to speak to their written submissions during the course of the hearing and did so. At the conclusion of the hearing, the parties were each afforded the opportunity to provide supplementary submissions. The KDFRA lodged supplementary written submissions on 1 June 2021 but did not provide them to the UTSFC as directed. The AT accordingly extended the time within which the UTSFC was required to lodge any written supplementary submissions to 21 June 2021. UTSFC did not lodge any supplementary written submissions. The hearing was accordingly concluded on 21 June 2021.
21. Section 10.4(e) of the FNSW Regulations requires that the AT use its reasonable endeavours to issue a short oral or written summary of its determination (preliminary determination) within 5 working days of the completion of the hearing with a formal written determination, with reasons given for the decision (final determination) to be provided within 21 working days of the completion of any hearing. These are the written reasons of the AT's determination provided in accordance with s 10.4(e) of the FNSW Regulations.

SUMMARY OF THE PARTIES SUBMISSIONS

22. What follows is a summary of the parties' written submissions. It does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the AT notes that it has carefully considered all of the evidence and arguments submitted by the parties, even if there is no specific reference to those submissions in the following summary.

The KDFRA's submissions

23. The offence of spitting on or at a match official is one of the most serious offences that can be committed by a player on a football field. Spitting on a match official is reprehensible conduct that has no place in football and is deserving of a lengthy suspension in its own right. This is reflected in the sentencing guidelines for this offence, which provides for a minimum suspension of 12 months and a maximum suspension of life. The FNSW Regulations provide for two separate offences, with the offence of spitting on a match official, having a minimum suspension of 2 years and a maximum suspension of life. It is submitted that to the extent of any inconsistency between the NSFA Regulations and the FNSW Regulations, the FNSW Regulations are to prevail.

24. The Player has been found guilty of the offence of spitting on a match official. Accordingly, the range of appropriate suspensions for the offence is between 2 years and life.
25. The suspension applied by the NSFAAB of 2 years is the minimum that can be applied for that offence. There are two aggravating factors to the M11 offence committed by the Player which disqualified it from being considered in the lowest category of seriousness for offences of that type. First, the Player spat blood at the AR1, landing on his arm. This potentially exposed the match official to any number of blood borne illnesses. Secondly, the match was played under Football NSW's Covid-19 return to play guidelines in the middle of the pandemic. These guidelines were put in place to protect the health of all participants, including match officials and specifically banned spitting for any reason.
26. By his conduct, the Player has shown, at best, callous disregard and, at worst, outright contempt for the health and well-being of the match official. The NSFA has a zero tolerance policy for offences committed against match officials, the rationale for which is clear; poor behaviour by players towards match officials is the leading cause of poor referee retention.
27. In these circumstances, the KDFRA submitted that the offence committed by the Player falls into the highest category of seriousness for spitting offences against a match official and that the suspension applied by the NSFAAB is entirely inappropriate and inadequate. Furthermore, a determination that the sentence be served concurrently was not justified in circumstances where, as in this case, the offence, or charge does not contain common elements arising out of substantially the same facts. The Player's spitting offence had no common elements with his M5 and M6 offences, and thus it is appropriate that the suspension for the M11 spitting offence should be served consecutively with his suspension for his M5 and M6 offence.
28. In coming to the decision to uphold the Player's appeal on severity, the NSFAAB had the following evidence available to it: the send-off reports and incident reports of the match officials, a transcript of the oral evidence given to the P.D. & D.C and, further evidence given by the Player at the hearing of the appeal. In reaching its determination, the NSFAAB placed emphasis on its findings that the blood transference was inadvertent resulting from the Player's injury and remonstrating with the match officials and that it was not proven to be a deliberate attempt to spit on the referee. These findings, it is submitted, were contrary to the evidence before the NSFAAB which had before it the clear, concise and credible evidence of the assistant referee.
29. Significantly, the match officials were not requested to appear before the NSFAAB and it was therefore not able to assess the reliability or credibility of the evidence.
30. In supplementary submissions, the KDFRA placed before the AT a letter dated 23 November 2020 which was tendered at the hearing before the NSFAAB and to which it refers in its decision (**Manzoni Letter**). The KDFRA submitted that the Manzoni Letter disputes the account of events given by the assistant referee by asserting that the transfer of blood from the Player's mouth to the arm of the assistant referee was

inadvertent and a result of the injury that he had sustained after being head-butted by the opposing player. In circumstances where there was a contest of fact between the assistant referee and the Player, the NSFAAB should not have accepted the Player's evidence because:

- (a) it did not have the benefit of receiving, and did not request, any evidence from the Assistant Referee;
 - (b) the Player was not an independent witness and had a vested interest in downplaying the seriousness of his offending and the reduction in his suspension; and
 - (c) the Player did not provide any explanation as to why he did not present his further evidence before the P.D. & D.C.
31. The NSFAAB was required to consider and give appropriate weight to the assistant referee's clear, concise and credible first-hand account of the events and, had it done so, it would not have found that the blood transference was inadvertent and that there was no deliberate attempt to spit on the referee.
 32. For these reasons, the KDFRA submits that the decision of the NSFAAB was not reasonably open to it on the evidence.
 33. The NSFAAB proceeded on the premise that the Players appeal was effectively one against the severity of suspension imposed by the P.D. & D.C. on the hearing of the appeal and it was not open to the NSFAAB to make findings of fact, contrary to those made at first instance. In considering the severity appeal, the NSFAAB was bound to accept the findings of fact made by the P.D. & D.C. and, in purporting to make further and additional findings on appeal, exceeded its jurisdiction.

Submissions of the Player

34. The potential for transmission, in this particular incident, of blood-borne diseases is practically non-existent. In regards to the pandemic, blood and saliva droplets on a match official's arm are less risky than players yelling at each other in close proximity.
35. The sanction for the M11 should be served concurrently with the sanctions for the M5, M6 and M11 as all three offences essentially occurred within the one incident as found by the P.D. & D.C.
36. The M11 offence and the circumstances giving rise to it are less severe than those leading to the suspension of Mr Karim (NSWAT 16.36) who, on appeal, received a 6 year suspension.
37. The Player is 31 years of age and will be 33 years old when the current sanctions expire. He is a massive football fan having grown up playing in Italy. If he were to be banned for the next 8 years or longer, he would not be able to participate in any football activities until the age of 39.

CONSIDERATION AND DETERMINATION

Ground 1: Lack or excess of jurisdiction of the MAC (10.3(b) of the FNSW Regulations)

38. Section 4.17 of the NSFA Competition Regulations confers jurisdiction on the NSFAAB to hear appeals against determinations of the P.D. & D.C. In the exercise of its functions, section 4.17(e) makes plain that the NSFAAB may dismiss, allow in whole or part, or vary (whether by way of reduction or increase) any determination by the P.D. & D.C. and impose any sanction or make any order or determination that the P.D. & D.C could have imposed or made.
39. Section 4.19 of the NSFA Competition Regulations, sets out the grounds upon which a party may appeal against a decision of the P.D. & D.C.
40. Section 4.20 of the NSFA Competition Regulations permits a party on appeal to present any new evidence that was unable to be presented, or was not permitted to be presented, at the P.D. & D.C. hearing.
41. The KDFRA submitted that as the NSFAAB proceeded on the premise that the Players appeal was effectively one against the severity of suspension imposed by the P.D. & D.C, it was not open to the NSFAAB to make findings of fact, contrary to those made at first instance. In considering the severity appeal, the NSFAAB was bound to accept the findings of fact made by the P.D. & D.C and, in purporting to make further and additional findings on appeal, exceeded its jurisdiction.
42. However, the submission proceeds on the premise that the NSFAAB was not entitled to take into account new evidence on the hearing of the appeal which could be relevant to sanction. Clearly, section 4.20 of the NSFA Competition Regulations permits a party on appeal to present any new evidence that was unable to be presented, or was not permitted to be presented, at a hearing before P.D. & D.C.
43. The Manzoni Letter does not appear to have been relied upon in the hearing before the P.D. & D.C. It was, however, in evidence before the NSFAAB. We are not aware of the circumstances pursuant to which it was admitted. We presume that it was admitted pursuant to section 4.20 of the NSFA Competition Rules, although the reasons of the NSFAAB does not disclose the basis upon which the Manzoni Letter was permitted to be presented. Nevertheless, it was in evidence before the NSFAAB and it was relied upon by it.
44. Having regard to the provisions of section 4.20 of the NSFA Competition Regulations, the NSFAAB was entitled to rely upon the Manzoni Letter in its deliberations as to the appropriate sanction and, in doing so, did not exceed its jurisdiction.

Ground 2: the decision was one that was not reasonably open to the MAC having regard to the evidence before it (10.3(d) of the FNSW Regulations)

45. A decision is not reasonably open to a tribunal having regard to the evidence before it if that evidence in its totality preponderates so strongly against the conclusion found by

the tribunal that it can be said that the conclusion was not one that a reasonable tribunal member could reach: *Calin v The Greater Union Organisation Pty Ltd (1991) 173 CLR 33*; *Mainteck Services Pty Limited v Stein Heurtey SA* [2013] NSWSC 266.

46. For the purposes of an appeal generally, it will be necessary to demonstrate legal error, not merely an erroneous ruling, and the error must be material to or likely to affect the outcome of the decision appealed from; that is, the decision must be one which is vitiated by error: *Hamod v Suncorp Metway Insurance Ltd* [2006] NSWCA 243 at [11], *Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority (1991) 24 NSWLR 156* at 177.
47. Further, the AT will only intervene to set aside a determination on the ground that it is unreasonable if “*there was no information available to the tribunal on which reasonable and honest minds could possibly reach the conclusion*”: Appeal Committee of the Football Federation of Australia in the *matter of Roy O’Donovan*, 25 January 2016 at [16] and the cases there referred to.
48. The issue which this ground of appeal raises for consideration is whether the evidence before the NSFAAB preponderated so strongly against the conclusion found by it that it was not one that a reasonable tribunal could have found or, put another way, that there was no information available to the NSFAAB on which reasonable and honest minds could possibly reach the conclusion. The evidence before the NSFAAB relevantly, consisted of the report of the assistant referee and the Manzoni Letter.
49. The assistant referee’s account of the incident is set out in full in paragraph 11 of these reasons. Relevantly, the assistant referee recorded, “*I saw the spit leave his mouth coming towards me and then I felt the spit on my arm and then I looked down and saw a number of drops of bloody saliva on my arm... I then raised my flag and called the referee over to alert him to what had happened in regards to the spitting incident. I told him that regarding my interaction with UTS number 51 ‘he spat on my arm.’*”
50. The Manzoni Letter provides an account or explanation concerning the circumstances in which blood and saliva landed on the arm of the assistant referee. The account in the Manzoni Letter is not necessarily inconsistent with that of the assistant referee. It provides context. Relevantly, the Player records that he had blood emitting from his mouth after having had a front tooth knocked out from the head-butting incident, that he was complaining to the assistant referee about that fact and that in the course of doing so, spittle and blood landed on the assistant referee’s arm. As guilt or innocence was not in issue in the proceedings before the NSFAAB, this evidence was only relevant to mitigation of sanction.
51. Having regard to the report of the assistant referee and the Manzoni Letter, the NSFAAB was entitled to find, as it did, that whilst the M11 offence was established, there was “*reasonable doubt that it was deliberate due to the nature of [the Player’s] injury.*” In our view, that conclusion was available to the NSFAAB on the evidence before it and not against the weight of the evidence.

52. Before we leave this ground of appeal, we do wish to express our concern that the NSFAAB did not notify the KDFRA of the appeal hearing and nor did it provide the KDFRA an opportunity to attend and be heard. Whilst the KDFRA does not pursue any ground of appeal based upon these circumstances, it clearly had a right, entitlement and expectation to be heard on any appeal.
53. Whilst the NSFAAB did have before it the submissions made by the KDFRA to the hearing before P.D. & D.C, the KDFRA should have been afforded the opportunity to attend the appeal hearing especially if the NSFAAB was proposing, as it did, to permit the Player to rely upon evidence that was not before the P.D. & D.C. We direct that a copy of these reasons and, in particular, these observations be provided to the Chair of the NSFAAB.

Ground 3: Leniency

54. There is no place in football for the behaviour displayed by the Player towards the match officials in this case. It is disgusting and reprehensible as, we should add, was the head-butting incident involving players from each of the Clubs which immediately preceded it. The NSFA rightly has a zero-tolerance policy in relation to the conduct exhibited in this case towards the match officials.
55. Section 4.26.2 of the NSFA Competition Regulations provides that the offence of "M11/R2" is comprised of "Spitting at or on a Match Official" and carries a minimum sanction of 12 months and a maximum of life. The Football NSW Regulations (Table B), by comparison, distinguishes between "spitting at or towards a Match Official" which carries a minimum sanction for a first offence of 12 months, 2 years for a second and subsequent offence and a maximum of life and "spitting on a Match Official" which carries a minimum sanction for a first offence of 2 years, 4 years for a second and subsequent offence and a maximum of life. The Player was found guilty of "spitting at or on a Match Official".
56. The KDFRA submitted that there is an inconsistency between the Football NSW Regulations and the NSFA Competition Rules in relation to the applicable sanction for the "M11" offence and that, having regard to section 7.4(c) of the Football NSW By-Laws, the Football NSW Regulations apply, and thus the minimum sanction for the M11 offence is two years. We reject that submission. The NSFA Competition Regulations in relation to the M11 offence and the Football NSW Regulations are different but not inconsistent. The NSFA Competition Regulations do not distinguish between "spitting at" and "spitting on". The Player in this case was charged and found guilty of the offence of "spitting at or on a Match Official". There is no such offence under the Football NSW Regulations and, accordingly, there is no inconsistency. Therefore, the appropriate sanction in this case, is to be considered under the NSFA Competition Regulations.
57. Neither the NSFA Competition Regulations nor the Football NSW Regulations provide any guidance as to the factors to be taken into account in the exercise of the discretion to determine an appropriate sanction beyond any minimum that may be prescribed for an offence. Accordingly, in considering this issue we have had regard to the following matters derived from the A-League Disciplinary Regulations which, though not binding on the AT nevertheless provide helpful guidance in the exercise of the AT's discretion:

- (a) the nature and severity of the offence, including whether it was intentional, negligent or reckless;
 - (b) the participant's past record and whether or not this is a repeated offence;
 - (c) the remorse of the participant; and
 - (d) any extenuating circumstances relevant to the commission of the offence.
58. We also propose to have regard to the objectives of specific and general deterrence to be served by the imposition of any sanction.
59. As to the nature and severity of the offence, we agree with the submissions made by the KDFRA that the offence of spitting at or on a match official is one of the most serious offences that can be committed by a player on a football field, it is reprehensible conduct that has no place in football and is deserving of a lengthy suspension in its own right.
60. However, the NSFAAB found that the spitting in this case was not intentional, the blood transference was inadvertent and resulted from the Player having lost a front tooth in a head-butting incident and remonstrating with the officials and that given the circumstances of the pandemic, the Player had a responsibility and a duty of care to protect the Match Officials and other players and stay a safe distance away from them.
61. The Player's disciplinary record was not in evidence. We accordingly assume, in favour of the Player, that this was the Player's first M11 offence for which the minimum sanction under the NSFA Competition Regulations is 12 months.
62. There was no evidence of remorse from the Player. However, in his oral submissions, Mr Cartwright rightly acknowledged on behalf of the Club that the Player was "in the wrong."
63. The Player was sanctioned by the P.D. & D.C with a suspension of 8 years to be served concurrently with the sanctions in respect of the other charges. The NSFAAB reduced that suspension to 2 years to be served concurrently. The KDFRA does not assert that 8 years is the appropriate sanction. It however, submitted that 2 years is too lenient. Neither party was able to assist the AT with a reference to other sanctions imposed by any appropriately constituted tribunals in relation to similar circumstances.
64. We agree with the submission made on behalf of the Player that the M11 offence in this case, and especially having regard to the circumstances in which it occurred are less serious than the matter of Karim in which this Tribunal suspended Mr Karim for 6 years. That case involved a number of charges, the most serious of which were threatening or intimidating an official by word or action, for which Mr Karim was suspended for 2 years and an attempt to strike a match official for which Mr Karim was suspended for 4 years.
65. The NSFAAB imposed a sanction on the Player of 2 years which is twice as long as the minimum suspension for an M11 offence. In our opinion, a 2 year suspension is within an acceptable range having regard to the circumstances to which we have referred

including the sanction in Karim. It also serves the objectives of specific and general deterrence.

66. The KDFRA also submitted that the NSFAAB erred in finding that the sanction for the M11 offence should be served concurrently with the other offences. We reject that submission.
67. Where an offence, or charge, contains common elements arising out of the same or substantially the same facts, the offender should not be punished twice for the commission of elements of the respective offences that are common. The relevant tribunal should fix an appropriate sentence for each offence and then consider questions of cumulation or concurrence, as well as questions of totality: *Pearce v The Queen* (1998) 194 CLR 610 at 623-4.
68. The principle of totality requires a tribunal sentencing for multiple offences concurrently to review the aggregate of the sentences and consider whether their total effect is just and appropriate. The tribunal must look at the totality of the impugned behaviour and ask itself what is the appropriate sanction for all of the offences. An appropriate result, consistent with principle, may be achieved by making the sanctions wholly or partially concurrent or lowering the individual sanctions below that which would otherwise be appropriate to reflect the fact that a number of sanctions are being imposed. Where practicable, the former approach, that is, of making sanctions wholly or partially concurrent, is to be preferred: *Mill v The Queen* (1988) 166 CLR 59 at 62-63.
69. The Player was sent from the field of play following an incident of violent conduct as a consequence of which the Player lost a front tooth. He reacted in an aggressive manner towards the referee and continued to remonstrate as he approached the assistant referee. During the course of remonstrating with the assistant referee, droplets of blood and saliva emitted from the Player's mouth and landed on the arm of the assistant referee. Accordingly, in our view, the charges on which the Player was found guilty arose out of the same or substantially the same facts warranting that they be served concurrently.

RELIEF

70. The appeal is dismissed.
71. The decision of the NSFAAB of 24 November 2020 is affirmed.
72. A copy of this determination and, in particular, the observations made at paragraphs 52 and 53 should be brought to the attention of the NSFAAB Chair.



Anthony Lo Surdo SC
Chair
Appeals Tribunal
Football NSW