



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

Player and Club	Player X, Hurstville Football Club
Decision appealed	Appeal from a decision of the Football NSW, General Purposes Tribunal
Date of Decision	5 July 2022
The basis upon which the matter is before the Appeals Tribunal	Sections 9.2, 10.1(c) and 10.2(d) of the Football NSW Grievance and Disciplinary Regulations, 2022
Ground of Appeal	Sections 10.3(f) of the Football NSW Grievance and Disciplinary Regulations, 2022
Date of Hearing	21 February 2023
Date of Determination	1 March 2023
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair Simon Philips, Member Michael Holmes, 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, 2022 (**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. 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).
3. 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.
4. By Notice of Appeal submitted on or about 13 July 2022, Football NSW (**FNSW**) appeals a determination of the FNSW GPT concerning Hurstville Football Club (**Club**) Player X (**Player**) on the sole ground of leniency (s 10.3(f) of the Regulations). The appeal appears to have been brought within the time prescribed by section 10.6(b) of the Regulations.
5. 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

6. The following outline of the background facts is drawn substantially from the findings of the GPT in its written reasons, dated 5 July 2022 which neither party has sought to challenge on appeal.
7. A Notice of Charge issued by FNSW as the administrator of the NPL Youth League 3, dated 1 June 2022 alleged that, in or around the 74th minute of the fixture between the Camden Tigers FC and Hurstville FC on 26 May 2022, the Player twice struck the referee, Joshua Logozzo (**Referee**) with a closed fist, making contact with the right-hand side and then the left-hand side of the Referee's neck/lower jaw (**Charge**). The Player's conduct was alleged to be in breach of section 16.4(d) of the FNSW Grievance and Disciplinary Regulations, namely Schedule 3, Table B, Offence Code 15-01, "*Punching, kicking, elbowing or striking a Match Official.*" (**Offence**)
8. The Player, who was aged 16 years at the time of the Offence, submitted a Notice of Response to the Charge together with appropriate supporting documents, in which he pleaded guilty to the Offence but disputed that he struck the Referee with a closed fist.
9. There was conflicting evidence between the Referee and other match officials and the Player as to whether the Player struck the Referee with a closed fist or an open-handed slap. The GPT found that the video footage of the incident was inconclusive and that the red marks evident on the right side of the Referee's neck, lower right jaw and behind the right ear depicted in a photograph taken immediately after the abandonment of the game, were more consistent with an open-handed slap than a closed fist punch or strike.
10. On balance, the GPT concluded that the first strike by the Player on the Referee was an open-handed slap and that the Player struck the Referee a second time, whether by an open-handed slap or a closed fist strike. Either way, the GPT found that he was guilty of the Offence.
11. The sanction prescribed by Schedule 3, Table B of the Regulations for the Offence is a minimum suspension of two years and a maximum suspension of life.
12. In considering the appropriate sanction, the GPT had regard to three previous decisions of differently constituted GPT's (GPT 15-52; GPT 16-12 and GPT 21-09) which it distinguished for the reasons set out in its determination.
13. The GPT determined to apply the minimum sanction of a two-year suspension having regard to:
 - (a) the seriousness of the Offence, comprising of an open-handed slap to the right side of the Referee's neck and lower right jaw and a second either open-handed slap or a closed fist strike;
 - (b) the Player's reasonable disciplinary record in NPL Youth Football, comprising of 11 yellow cards only between May 2018 and May 2021;

- (c) the Player's age;
- (d) the Player "lost control" when he was shown his second yellow card by the Referee and that his conduct was, on the available evidence, out of character;
- (e) the Player was emotionally affected by the recent death of his best friend's mother, the funeral of whom took place two days prior to the subject fixture;
- (f) the Player was seeking psychological counselling in respect of his emotional state;
- (g) the Player demonstrated genuine remorse including sending letters of apology to the Referee, his team, his opponents, the Club and FNSW; and
- (h) character references provided on behalf of the Player which variously described him as polite, respectful, a good sport, supportive, positive, passionate about football, intelligent, mature, considerate, caring, capable, dedicated, calm and responsible. They each also described the Player's significant remorse.

(Determination)

THE APPEAL

14. FNSW appeals the Determination on the sole ground of leniency (s 10.3(f) of the Regulations).

THE HEARING

15. The AT convened on the evening of 21 February 2022 to hear the appeal which proceeded by AVL. FNSW was represented by Mr Michael Kantarovski, Legal Counsel, FNSW. The Player attended the hearing and was represented by Mr Del Din, Solicitor. The Player was also supported at the hearing by his father.
16. The AT received into evidence the video footage of the incident together with the other documents that the parties relied upon in the hearing before the GPT. In summary, those documents comprised the reports of the match officials, a photo of the neck and head area of the Referee taken immediately after the incident, a written statement by the Player in which he admits to using expletive language towards the referee and then slapping the referee twice, written statements from team mates who witnessed the incident, letters of apology by the Player (to the Referee, FNSW, his team mates and to the coaches of the opposing team), character references and other letters provided in support of the Player.
17. 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.
18. 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

19. 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.

FNSW's Submissions

20. FNSW submitted, in summary, that the sanction imposed by the GPT was lenient and that having regard to the objective seriousness of the Offence and the aggravating factors which follow, the sanction should be increased to be in the range of 5 to 10 years. In support of this (overarching) submission, FNSW made further submissions which can be summarised as follows.
21. The objective seriousness of the Offence is greater than considered by the GPT having regard to the fact that the Player struck the Referee more than once and that while the Referee retreated, the Player continued to advance towards him with the clear intent of inflicting further harm on the Referee. Had it not been for the Player's teammates intervening and restraining him, the Player would have likely inflicted further harm on the Referee. Further, the Referee was struck in areas of the body that could have caused significant injury and potential disfigurement.
22. The objective seriousness of the offending is aggravated by the fact that the Player, whilst only 16 years of age at the time of the Offence, had been competing in NPL Youth football for several years and was aware of the standard of behaviour and level of professionalism expected by FNSW of players at this level of football. Further, the Player was an association referee himself and should accordingly have been aware of the standard of conduct required of a player at his level of football.
23. FNSW referred to previous decisions of the GPT including:
- (a) GPT 15-52, where the player struck the match official several times and received a life suspension. The player in that case failed to appear at the GPT hearing, had not accepted the seriousness of his conduct and nor had he shown any remorse;
 - (b) GPT 16-12, where the player struck the match official with a closed fist, pleaded guilty, but refused to attend to the GPT hearing and was issued with a life suspension; and
 - (c) GPT 21-09, where the player punched a match official in the face, causing him to fall to the ground and bleed from the nose and mouth. The player pleaded guilty to the charge and demonstrated remorse and contrition. The GPT in that case

imposed a suspension of three years. FNSW submitted that this decision is a unique and unusual case and cannot be relied upon for the purposes of determining the appropriate sanction for like offences.

24. FNSW also referred to two previous decisions of the AT, *Ashton* (AT 12/10A) and *Karim* (AT 16-36). It submitted that *Ashton* is distinguishable on the basis that the player in that case was an eight-year-old Association youth player who punched a match official. In relation to *Karim*, FNSW submitted that the player in that case received a suspension of four years for attempting to strike a match official and that the present circumstances which involved the Player twice striking the Referee justified a suspension of more than the four years imposed in *Karim*.

Submissions of the Player

25. The Player submitted, in summary, that the sanction imposed by the GPT should be confirmed because:
- (a) the GPT determined that the first strike was, on the balance of probabilities, an openhanded slap but could not determine as to whether the second strike was an openhanded slap or a closed fist strike. Objectively, an openhanded slap is less serious than a closed fist strike;
 - (b) little weight can be placed on the submission that the conduct of the Player could have caused significant injury and potential disfigurement to the Referee;
 - (c) no findings were made by the GPT that the Player advanced towards the Referee after the second strike with the intention of inflicting further harm;
 - (d) the Player entered an early guilty plea at first opportunity, but gave notice that he disputed some of the alleged facts;
 - (e) the Player is a young man of 16 years. It is conceded that he should have known better. However, his age is a relevant fact that the AT must consider in these proceedings and it is also relevant when considering the weight to be given to prior decisions of the GPT and AT said to be comparable;
 - (f) the Player was found by the GPT to have demonstrated genuine remorse which is consistent with his early guilty plea and with the evidence tendered at the GPT hearing, including character references and letters of apology;
 - (g) the GPT found that the Player was emotionally affected by the recent death of his best friend's mother and the funeral that took place just two days prior to the fixture and was receiving counselling in respect of his emotional state;
 - (h) the fact that the Player was also an association referee should not be considered an aggravating factor;

- (i) the decisions in GPT 15-52, GPT 16-12 and GPT 21-09 should be distinguished from the present case because in each of those the offending players were adults and but for GPT 21-09, the players failed to attend the hearing and the offending conduct was punching a match official and, in one case, multiple times; and
- (j) GPT 21-09 is likely to provide greater guidance to the AT. It was a case in which an adult State league player punched a Match Official in the face causing him to fall to the ground and bleed from the nose and mouth. He was suspended for three years. That player was also ultimately charged and convicted in the Local Court of NSW. It is submitted that this behaviour is objectively more serious than that involving the Player.

CONSIDERATION AND DETERMINATION

The Applicable Legal Principles

- 26. As the AT has observed in a number of previous determinations, an appeal involves the consideration of whether the decision in question is affected by legal, factual or discretionary error. Further, any demonstrated legal error must be material to or likely to affect the outcome of the decision appealed from (see, for example, *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).
- 27. Where a decision involves the exercise of a discretion, as is usually the case with the imposition of a sanction within a range specified in a Table of Offences, a tribunal can fall into error and its decision reviewed on appeal if it can be shown that the tribunal has acted upon a wrong principle, if extraneous or irrelevant matters have affected the decision, if a mistake has been made in relation to the facts or if the tribunal does not take into account some material consideration.
- 28. It is not enough that a tribunal reviewing a decision, considers that, if it had been the position of the decision-maker, it would have taken a different course. It must appear that some error has been made in exercising the discretion. Sometimes, it may not be apparent how the decision-maker has reached the determination the subject of an appeal. If, upon the facts, it is unreasonable or plainly unjust, a reviewing body may infer that in some way there has been a failure properly to exercise the discretion. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred (see *House v The King* (1936) 55 CLR 499 at 504-5).
- 29. The Regulations provide no guidance as to the matters that the AT is to take into consideration in determining issues as to leniency.
- 30. The Football Australia National Disciplinary Regulations (**NDR**) which are designed to ensure that appropriate standards of behaviour are upheld on the field of play in a consistent manner across Australia apply mandatorily to all participants. The NDR may be supplemented but not varied by local competition rules.

31. Relevantly, clause 10.4 prescribes matters which a disciplinary committee may consider when determining an appeal as to sanction. These matters are not described as exhaustive nor as mandatory. They are:
- (a) the nature and severity of the infringement;
 - (b) the Participant's past record and whether or not that the Offence committed is a repeat Offence;
 - (c) the culpability of the Participant (including whether or not the infringement was intentional, negligent or reckless);
 - (d) any reasons prompting the Participant to commit the infringement;
 - (e) the remorse of the Participant; and
 - (f) any extenuating circumstances relevant to the commission of the Offence.
32. These matters are relevantly identical to those considered by the AT in the matter of *Manzoni* (AT 20-03), albeit in that case by analogy with the A-League Disciplinary Regulations.
33. The AT notes that whilst the parties have not made specific reference to either the provisions of the NDR nor to *Manzoni* in their respective submissions, nevertheless, those submissions are, in substance, directed to such of those matters as may be relevant.
34. The AT alerted the parties to the NDR at the hearing and provided each of them with the opportunity to supplement their submissions, either orally or in writing, if they chose to do so.
35. In addition, it is appropriate to have regard to the objectives of specific and general deterrence to be served by the imposition of any sanction.

Consideration

36. Prior to the incident, the Player was afforded the privilege of playing football at a relatively elite level.

The nature and severity of the Offence and culpability

37. There is no place in football for the behaviour displayed by the Player towards the Referee.
38. The nature and severity of the infringement, in general, is reflected by the range of sanctions prescribed by the Regulations for such an offence, being a minimum suspension of two years for a first offence and a maximum of life.
39. The AT is of the view that the nature and severity of the offence in this case is serious or significant because:

- (a) immediately prior to the incident, the Player had been shown a second yellow card by the Referee;
- (b) in a completely ill-tempered and disproportionate response, the Player approached the Referee, hurled expletives at him, struck the Referee, first, with an open-handed slap to the right side of the Referee's neck, lower right jaw and behind the right ear. Approximately four seconds later, the Player delivered a second strike to the Referee's neck area. It was either an open-handed slap or a closed fist strike;
- (c) the Player continued to advance on the Referee and only stopped when the Referee, in self-defence, slapped the Player and his team mates intervened to restrain him; and
- (d) the contact with the Referee's neck and head area, more generally, had the potential to cause serious injury to the Referee.

40. The conduct of the Player was intentional and in wanton disregard for the welfare of the Referee.

The Player's disciplinary record

- 41. The GPT found that the Player had a reasonable record in the NPL Youth football, comprising of 11 yellow cards in the period between May 2018 in May 2021 and, significantly, no red cards, apart from that the subject of the Offence.
- 42. The Player's disciplinary record clearly stands in his favour.

Remorse and contrition

- 43. The GPT found that the Player demonstrated genuine remorse and contrition. He sent letters of apology for his actions to the Referee, his team, his opponents, the Club and FNSW.
- 44. Consistent with his demonstrated remorse and contrition, the GPT also accepted the evidence of the Player's character referees who variously described him as polite, respectful, a good sport, supportive, positive, passionate of our football, intelligent, mature, considerate, caring, capable, dedicated, calm, responsible and his conduct as being out of character.
- 45. These are all matters that stand in the Player's favour.

Extenuating circumstances

- 46. The GPT found that the Player was emotionally affected by the recent death of his best friend's mother and the funeral that took place just two days prior to the fixture and that he had sought and was receiving counselling in respect of his emotional state, including, it would appear, in relation to anger management issues.
- 47. These are matters which, whilst not in any way excusing the Player's conduct, provide some context to his actions. There is, however, no explanation as to how the Player's

emotional or “psychological state” following the death and funeral of his best friend’s mother is relevant to the commission of the offence (cf. NDR 10.4(f)). It does not, in our view, therefore comprise an extenuating circumstance for the purposes of NDR 10.4(f). It is not apparent from the Determination what weight the GPT afforded to the Player’s emotional or psychological state in arriving at the sanction. However, and to the extent that the GPT afforded any or any significant weight to it as an extenuating circumstance, we consider the GPT to have erred.

48. That said, the fact that the Player has sought counselling on matters affecting his emotional state, including as to anger management issues, stands in the Player’s favour.

“Comparable Cases”

49. The parties have each referred the AT to previous decisions of the GPT and AT which it is said may provide guidance to the AT in considering the appropriate sanction in this case and in respect of which the AT makes the following observations.
50. First, each case turns on its own merits and circumstances. Comparing incidents and sanctions without being cognisant of all of the circumstances that informed a tribunal’s reasoning process is of little assistance in achieving the objective of consistency in decision making.
51. Secondly, the decisions of the GPT, being a first instance body, generally provide little assistance or guidance on issues that usually arise on an appeal such as here where the AT’s primarily role is to determine whether there has been any error demonstrated by the GPT in its approach to sanction.
52. Thirdly, apart from *Karim*, none of the decisions to which reference is made are particularly analogous to the present circumstances except to the extent that each involved instances of violence towards a match official.

Age

53. The Player was 16 years of age at the time of the offence.
54. FNSW submits that age is not a mitigating factor but an aggravating one in circumstances where it contends that the Player had been competing in the elite NPL Youth football competition for several years and was well aware of the standard of behaviour and the level of professionalism expected by FNSW and its NPL clubs at this level of football.
55. The Player submits that whilst he should have known better, his age is relevant, in particular, when considering comparable cases. He further submits that FNSW’s contention that he ought to be given no discount for his youth because he is an NPL Youth player should be rejected.
56. No logical or coherent reason was advanced by FNSW as to why being a 16 year old NPL Youth player is an aggravating factor and we do not accept that submission.

57. Age is a relevant consideration. It is, as the Player submits, at the very least relevant to a consideration of “comparable cases”. The Player was clearly of an age and level of maturity to appreciate that his conduct was unacceptable and that, as he concedes, “he should have known better.”
58. However, it should also be accepted that, as a 16 year old, the Player’s level of maturity, and therefore appreciation of the consequences of his conduct is likely to be less than an adult player.
59. The period of suspension imposed on a 16 year old should be cognisant of the fact that it is likely to prove more effective in terms of both specific and general deterrence, and in assisting rehabilitation than it may in relation to an adult player.
60. In our view, the GPT did not err in taking age into consideration as part of its determination.

Is the fact that the Player was also a Referee an aggravating factor?

61. FNSW submitted both in writing and orally that, as a referee, the Player knew that he was expected to maintain his composure and professionalism and it was better placed than someone with no referee training or experience to understand and appreciate the pressures that Match Officials are placed under and the vulnerability of those officials when exposed to sudden physical violence. It is submitted that the very fact that the Player was also a referee is an aggravating factor.
62. In response, the Player submitted that he had limited training and experience as a referee, in any event, he was aware of the standard of behaviour and level of professionalism expected of him and he should not be held to a higher standard than any other player simply because he also held referee qualifications.
63. There is no logical or coherent reason why a player who is also a referee should be held to a higher standard than a player who is not a referee. We accordingly reject the submission advanced by FNSW.
64. There was accordingly, in our opinion, no error demonstrated by the GPT in affording no weight to such a submission.

Determination

65. The GPT found at [93] that:

“...the offence against a match official with which the Respondent has been charged is a serious one and carries a significant and wide-ranging period of suspension. The GPT considered the Respondent’s youth, psychological status, early plea of guilty, disciplinary record and his genuine expression of contrition as relevant factors to take into account when determining appropriate sanction.”

66. The GPT therefore determined to apply the minimum sanction of a suspension for two years.

67. In our opinion, in reaching this conclusion, the GPT failed to give adequate and proper weight to the objective seriousness of the Offence and its potential to have caused significant harm to the Referee. In doing so, the GPT's decision which involved the exercise of a discretion was affected by reviewable error.
68. The Player struck the Referee, not once but twice with sufficient force to leave red marks on the right side of the Referee's neck, lower right jaw and behind the right ear.
69. Having struck the Referee for a second time, the Player continued to advance towards the Referee and only stopped doing so after the Referee slapped him in self-defence and the intervention of the Player's team mates to restrain him. In doing so, the Player acted intentionally and in wanton disregard for the welfare of the Referee.
70. In *Karim*, which relevantly involved a player attempting to strike the Referee, the AT found that the appropriate sanction was a suspension of four years. In that case, the AT took into consideration Mr Karim's age (early 20's), prior good disciplinary record and character references. The objective circumstances and gravity of the offending in *Karim* was less serious than the present.
71. However, while viewed objectively, the offending by the Player was more serious than what occurred in *Karim*, the subjective circumstances pertaining to the Player which are referred to above, and in particular his age, each tell in his favour and also serve to distinguish the present from *Karim*.
72. Further, and for the reasons outlined in paragraph 47 of this determination, in our opinion, the GPT erred in affording any weight to the Player's psychological state.
73. In all the circumstances, the AT considers the appropriate suspension to be a period of four (4) years from 27 May 2022 to 27 May 2026. In coming to this conclusion, the AT has taken into consideration the Player's early guilty plea, reasonable disciplinary record (including the fact that this is his first offence and only red card in the 3 years prior to the offence), genuine expression of remorse and contrition, his character evidence, the fact that the Player has sought out and is receiving counselling for anger management and, significantly, the Player's age at the time of the offence. But for these matters, the period of suspension would have been far longer.
74. During the course of argument, the Tribunal raised with the parties whether Order 2 of the Determination was unduly onerous or excessive in the circumstances especially as its impact is to prohibit the Player from spectating at any FNSW administered fixture other than those in which the Player's Club is participating. The Tribunal expressed the tentative view that there was no apparent logical or coherent reason why the Player's entitlement to spectate should be so restricted. The Tribunal invited the parties to confer on this issue with a view to providing the Tribunal with a joint position.
75. The Tribunal was subsequently notified by the parties that they were unable to reach an agreed position. The parties exchanged short written submissions on the point in accordance with the Tribunal's directions.

76. FNSW submitted, in summary, that in circumstances where it has filed a leniency appeal, the Player has not filed a severity appeal and it does not know the position that the Tribunal intends to take in respect of the substance of its appeal (that is, the length of the Player's suspension), it is not reasonable for FNSW to be asked to agree to a variation of Order 2 of the Determination, where the variation would (subject to the Tribunal's position in respect of Order 1 of the Determination) result in the Player receiving a sanction that is more lenient than that originally imposed by the GPT.
77. FNSW further submitted that if the Tribunal was minded to advise the parties of the position it intends to take in respect of the length of the Player's Time Suspension, it would then be able to properly and reasonably consider its position further.
78. The Player submitted, in summary, that given the nature of the conduct that led to the Player's suspension, that is, striking the referee during play and not related to any incident as a spectator, an order that prohibits the Player from spectating at any fixtures during the suspension period is onerous and excessive. It further submitted that given the mitigating features (eg, age, prior disciplinary record, genuine remorse and psychological status) an order that prevents the Player from spectating at any FNSW fixtures (not involving his club) is detrimental.
79. The Tribunal notes that the Player has not filed an appeal as to severity. It was, of course, not open to the Player to have filed such an appeal in relation to Order 1 of the Determination given that the suspension imposed by the GPT was the minimum for the Offence.
80. The issue with respect to the breadth and impact of Order 2 only arose during the course of argument. Whilst it was clearly open to the Player to have lodged an appeal as to severity limited to Order 2, the Tribunal does not consider the Player to have acted unreasonably in not lodging a severity appeal limited to Order 2. Each of the parties has been afforded an opportunity to and did address this point, both orally and in writing.
81. In considering an appeal, the Tribunal has the power, inter alia, to vary a determination and, subject to any applicable minimum suspension, to impose any sanction, measure or make any order it thinks fit or that a "Body" such as the GPT in this case, could have imposed (Regulations 10.4(b)).
82. Having found that the GPT had erred in the exercise of its discretion by imposing the minimum suspension, it is open to the Tribunal, to re-exercise the discretion as to appropriate suspension, which necessarily includes a consideration of the appropriate conditions or limitations to be imposed with respect to the suspension such as those the subject of Order 2.
83. In the opinion of the Tribunal, the nature of the offending, taken together with the mitigating features referred to in our determination, does not support a sanction which prohibits the Player from spectating at any FNSW administered fixture. FNSW has advanced no reason to support such a position and none is otherwise apparent.
84. To the extent that it may be required to do so:

- (a) in the exercise of its powers under Regulation 13.11, the Tribunal grants leave to the Player to lodge a severity appeal pursuant to Regulation 10.3(e) limited to Order 2 of the Determination and dispenses with the formal requirements including in relation to the payment of any application fee; and
- (b) the Tribunal determines that the GPT erred in the exercise of its discretion in respect of Order 2 in circumstances where the nature of the offending, taken together with the mitigating features does not support a sanction which prohibits the Player from spectating at any FNSW administered fixture.

85. Accordingly, the Tribunal proposes to vary Order 2 to provide that the suspension will not extend to the Player attending to spectate at any fixtures (including any fixtures in which the Club participates) albeit he may not enter the field of play, the technical area, the player's dressing rooms or any other place within a venue on a match day where players, coaches and officials are likely to assemble to prepare for a match.

RELIEF

- 86. The FNSW appeal is upheld.
- 87. To the extent required, the Player's appeal as to severity limited to Order 2 of the Determination is upheld.
- 88. The decision of the GPT of 5 July 2022 as to sanction is set aside.
- 89. In respect of the offence under Schedule 3, Table B, Offence Code 15-01 in the Regulations, the Player is suspended from all Football Related Activities under section 15.5 of the Regulations for a period of four (4) years from 27 May 2022 to 27 May 2026 inclusive.
- 90. Under 15.5(d) of the Regulations, the suspension will not extend to attending to spectate at any fixtures (including any fixtures in which the Club participates) during the suspension, albeit the Player may not enter the field of play, the technical area, the player's dressing rooms or any other place within a venue on a match day where players, coaches and officials are likely to assemble to prepare for a match.



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Chair
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