



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

Player and Club	Steve Micevski, Warilla Wanderers FC
Decision appealed	Appeal from a decision of the Football South Coast Appeals Board
Date of Decision	21 September 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	19 April 2023
Date of Determination	25 May 2023
Appeals Tribunal Members	Judge Turnbull SC DCJ, Vice Chair Iain Todd, Member, Simon Philips, Member

INTRODUCTION AND JURISDICTION

1. The Football NSW 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 (relevantly) 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; and
 - e. severity, only where the decision imposed a sanction of at least 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).
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 4 October 2022, Steve Micevski (**Appellant**), a coach with the Warilla Wanderers FC (**Warilla or the Club**), appeals a determination of the Appeals Board of Football South Coast (**FSC**) dated 21 September 2022 (**FSC Decision**). In the FSC Decision, the FSC Appeals Board (**FSCAB**) dismissed the Appellant's appeal from a decision of the FSC Match Review Committee (**FSCMRC**) dated 24 August 2022 to suspend the Appellant for 8 matches as a result of his conduct at the conclusion of a match between the Club and Helensburgh Thistle FC on 30 July 2022.
5. The grounds for the appeal identified in the Notice of Appeal were:
- a. that the Appellant was not afforded a reasonable opportunity to present his case;
 - b. that the FSC Decision was not open which was reasonably open to it having regard to the evidence before it; and
 - c. severity, where the FSCAB imposed a suspension of more than 6 Fixtures;
6. The Appeal appears to have been brought within the time prescribed by section 10.6(b) of the Regulations, and no party raised any objection to the AT's jurisdiction. The AT is accordingly satisfied that it has jurisdiction to hear the appeal.

BACKGROUND FACTS

7. The following brief outline of the background facts is drawn from the documents available to the AT.
8. On 30 July 2022, the Appellant, participating as the First Grade Coach for Warilla during a District League First Grade match between Helensburgh Thistle and Warilla, was issued with a red card by the Referee for allegedly “physically handling and using offensive, abusive or insulting language towards the match official”.
9. On 24 August 2022, the FSCMRC considered reports as submitted by the Match Officials(s) for the match and decided to suspend the Appellant for eight (8) matches and issued a fine in the amount of \$75.00, payable to FSC by the Club (**FSCMRC Decision**).
10. The Appellant appealed the FSCMRC Decision to the FSCAB claiming:
 - a. the decision was one that was not reasonably open to a Body having regard to the evidence before the Body;
 - b. a party was not afforded a reasonable opportunity to present its case; and
 - c. severity.
11. On 15 September 2022, FSC sent correspondence to the President of the Club indicating that FSC would not accept the Appellant’s request for the hearing to be adjourned due to personal reasons.
12. On 15 September 2022, the FSC Appeals Board heard the matter ex parte.
13. On 21 September 2022, the FSC Appeals Board issued a Notice of Decision indicating that the appeal had been dismissed (**FSCAB Determination**) which noted that the decision to dismiss the appeal was formed unanimously on the basis that the Appellant had breached the following disciplinary regulations:
 - TRC5 – deliberately entering the field of play to confront an official at full time
 - TRC6 – physical and aggressive behaviour towards a match official, and
 - TRC7 – using offensive, insulting, or abusive language

THE APPEAL

14. The Appellant appeals the FSCAB Determination on the grounds set out in [5] above.

THE HEARING

15. The AT convened on the evening of 19 April 2023 to hear the appeal which proceeded by AVL. The Appellant apparently attended the hearing, although he did not present himself before the AT. He was represented at the hearing by Mr Mandicos, solicitor. FSC was represented at the hearing by Martin Rowney and Rex Leighton.
16. The AT received into evidence the video footage of the incident together with the other documents that the parties relied upon.
17. The parties provided the AT with helpful written submissions and various other documents by way of *aides memoires*. 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 uses 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.
19. On 26 April 2023, the AT announced (by email) its determination in the Appeal which was that:
 - The Appeal of Steve Micevski is dismissed.
 - No error having been established it does not fall to the Tribunal to exercise afresh the sentencing discretion and the sanction imposed stands.
 - We will publish our reasons shortly.
20. 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

21. What follows is a summary of the written and oral submissions made by the parties. 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 Appellant's Submissions

22. The principal submissions made by the Appellant in the appeal can be summarised as follows.
23. Whilst it was acknowledged that this appeal is neither a merit review or a de novo hearing, there is clear video footage of the altercation between the Appellant and the Referee on 31 July 2022 which should be viewed as part of the appeal as it provides significant context.
24. The Appellant accepted he should not have approached the Referee in the manner that he did and a finding of guilt under offence code TRC5 is warranted. However, a suspension of 8 matches is disproportionately severe with respect to offence code TRC5 and in fact outside the suspension range for the offence code (although he noted that he had already served the 8 week suspension).
25. The Appellant pursues this appeal as he seeks to have findings of guilt under offence codes TRC6 and TRC7 removed from his disciplinary record. This is important to the Appellant as he views these findings of guilt as unreasonable in the circumstances and a blight on his time associated with football in the Illawarra, which exceeds 40 years.

Submissions regarding errors made by the FSCMRC

26. The Appellant made many submissions with respect to errors which he asserted had been made by the FSCMRC (as opposed to the FSCAB) in their conduct of the hearing attended by the Appellant. These submissions can be summarised as follows.

Key points regarding appeal ground of severity

27. Points made directly by the Match Review Committee (**MRC**) in their written findings:
- The MRC are not bound by the categorisation of the offence brought before it and therefore in addition to offence code TRC6 the MRC will also take into consideration TRC5 and TRC 7.
 - In the assessment of the MRC “the contact was not overly aggressive and was with minimal force, (however) nor could it be considered passive”.
 - The MRC found that the Appellant “handled” but did not push the Referee and agreed a suspension of 1 x Mandatory, plus 7 x Seriousness, 8 matches total plus \$75 fine.
28. The suspension ranges of the offences considered by the MRC are as follows:
- TRC5 – entering the field of play to confront a match official has a suspension range of 1 – 3 matches;
 - TRC6 – Physical or aggressive behaviour has a suspension range of 3 - 20 matches; and
 - TRC 7 – use of foul and abusive language has a suspension range of 3 - 16 matches when directed to a match official.
29. As the MRC noted the mandatory suspension to be 1 match it could not have found the charge to be made out under either TRC6 or TRC7 as each of these offences have a minimum mandatory suspension of 3 weeks. As such the MRC reached the conclusion that the Appellant was not guilty of aggressively pushing the Referee as alleged in the Match Report nor was he guilty of using foul or abusive language as alleged in the Match Report.
30. A penalty of 8 matches is disproportionately severe as the allowable suspension range for TRC5 is 1 – 3 matches. Further, where a penalty is deemed to incur a mandatory suspension of a single match, a severity escalation 7 times the underlying mandatory suspension is onerous and unreasonable.

Key points regarding procedural fairness: Appeal ground of reasonable opportunity to present case

31. On the day of the incident the Referee noted the following offence codes with respect to the Appellant:
- Y2 being dissent by action or word; and
 - R7 being 2 yellow cards.
32. It is the above offences that all officials signed-off per the Team Sheet and yet the Appellant was charged with an alternate offence being Expulsion Code TRC6. This is a significant procedural irregularity that was not later addressed in the Match Report or in any other materials provided by FSC.
33. It is a significant procedural error by the Referee who amended the indicated offences per the Team Sheet to alternate offences in the match report. Such alteration prevented the officials from the Appellant’s team raising the appropriateness of the alleged offence whilst still in the presence of the Referee and the officials from the opposing side.
34. On 9 August 2022 the Appellant’s representatives wrote to Mr Mazevski, the FSC Competition

Manager and requested a copy of all evidence pursuant to clauses 12.3(a), 12.3(b) and 12.3(d) of the Football South Coast Disciplinary and Dispute Regulations along with notice of all witnesses pursuant to clause 12.3(e) of the Regulations.

35. In response to this letter, the Appellant's representatives were provided the Match Report, the video of the incident and the team sheet prior to the MRC hearing. Notably, the Appellant's representatives were not provided with a list of witnesses or the report of the Linesman or any other documentation and hence were entitled to believe the MRC would rely on the video of the incident and no witnesses would provide a version of events.
36. At the time the Appellant attended the MRC on 24 August 2022 the Appellant and his representatives had not been provided the Linesman report. The report was first provided to the Appellant with the Notice of Suspension after the MRC hearing. The Report of the Linesman is dated 17 August 2022 and therefore was created 18 days after the alleged incident so cannot be viewed as having the same veracity of a contemporaneous report and was created after the Appellant submitted his evidence and written submissions to the MRC, which is procedurally unfair. The report of the Linesman clearly constitutes inadmissible evidence and despite it being the only evidence that purports to support the Referee's version of events it should have been disregarded by both the MRC and the Appeal Committee.
37. Shortly after the commencement of the Appellant's attendance upon the MRC on 24 August 2022 he was informed by a member of the MRC that it had reviewed the Referee's report and found it to be correct. This assertion was made to the Appellant prior to the Committee taking his verbal evidence and demonstrates a level of impermissible pre-judgement.
38. The notice of suspension issued by the MRC does not state what the Appellant had been found guilty of and the associated charge code. He is clearly entitled to be informed of both these points. Further the notice stated "the MRC considered reports as submitted by the Match Official(s)." It did not state any other evidence or submissions the Match Review Committee considered.
39. As a matter of natural justice, the Appellant is entitled to know the entirety of the evidence the Match Review Committee considered, any evidence or submission the Match Review Committee dismissed or found to lack credit and the basis for the MRC dismissing or finding evidence or submissions to lack credit. Taken as written in the Notice of Suspension, the Appellant is entitled to understand that the MRC only considered the reports as submitted by the Match Official(s) and if this is in fact the case it is a significant miscarriage of justice. The Appellant submitted four statements for the MRC's consideration and is entitled to know how the MRC considered these statements and why they were ultimately considered to be factually incorrect or lack credit.
40. Regarding the Appellant's appeal submissions to the FSCAB, the Appellant submitted his appeal and associated submissions on 2 September 2022 within the required timeframe. A document entitled "MRC Meeting – 24 October [sic] 2022, Steve Micevski MRC Hearing" was provided to the Appellant on 8 September 2022. This document outlines the findings of the MRC. Therefore, the Appellant had not received the MRC findings prior to submitting the Appeal within the timeframe required by Football South Coast. It constitutes significant procedural unfairness to provide the underlying reasons of the MRC after the final date required for the submission of the Appeal and all supporting information as required by the FSC Regulations.

Key points regarding the Appellant's attendance at MRC and Appeal Committee: Procedural

Fairness

41. The Appellant's representatives advised FSC on the morning of 17 August 2022 that due to carer's responsibilities he would not be in attendance at the scheduled MRC that evening. It was disclosed to FSC that the Appellant was the primary carer for his autistic son. It was not disclosed to Football South Coast at the time that the Appellant suffered from mental health issues for which he must take ongoing medication, including anxiety, however this later disclosed to Mr Mazevski. It was further noted to Football South Coast prior to the MRC hearing that the Appellant was content to have the matter dealt with ex parte as he is entitled to do under the FSC Regulations.
42. On 19 August 2022 FSC advised the Appellant that the MRC had determined that the Appellant would remain suspended until such time as he appeared before the committee. In making their determination that the Appellant would remain suspended until he attended the MRC, the MRC acted *ultra vires* because the MRC has no power under the FSC Regulations to compel attendance. The Regulations specifically allow for ex-parte hearings. Additionally, MRC has no power under the Regulations to impose an indefinite suspension. (These submissions were ultimately not pressed (at least with any vigour) at the final hearing of this Appeal).

Key points regarding appeal ground that the decision was one not reasonably open to a Body

43. Regarding the findings of the MRC, it was unreasonable to conduct a hearing on the basis of a particular allegation, being TRC6 - physical or aggressive behaviour and then alter the allegation through the process. If the case to answer was that the Appellant "handled" the Referee, he should have been advised of this prior to the hearing so he could make appropriate submissions.
44. Despite the Appellant providing detailed submissions at every stage of the process, it has been the Appellant's position throughout that the video speaks for itself and there was no physically aggressive conduct directed from the Appellant towards the Referee. The MRC reached the conclusion that the Referee was not pushed as they found that the Appellant "handled" but did not push the Referee.
45. There is a significant difference between the finding of the MRC and the allegation. The nature and extent of the discrepancy between the allegation contained in the Referee's report and the events that are clearly seen in the video and found to be the case by the MRC must call into question the credibility of all other allegations in the Referee's report including the allegation the Appellant used foul language directed towards the Referee. In a matter where the evidence of the Referee was considered so significant by both the MRC and the Appeal Committee, any question of credibility is highly relevant.

Submissions regarding the appeal to the FSCAB

46. The following is a summary of the principal submissions made by the Appellant with respect to the hearing of the appeal by the FSCAB.

Regarding the findings of the Appeal Committee

47. The Appeals Committee noted that their decision was formed unanimously on the basis that The Appellant breached disciplinary regulations TRC5, TRC6 and TRC7. It is apparent that the Appeal Committee conducted a de novo appeal and did not directly address the Appellant's appeal on the basis of severity for offence TRC 5.

48. The Appeals Committee made material findings of fact that are inconsistent with both the evidence apparent in the video and the findings of the MRC. The Appeal Committee called on the Referee as a witness and, again, the Appellant was not pre-advised of a witness being called. The Appellant was not advised that the Referee would have a support person present at the Appeal. This is contrary to the FSC Regulations and highly unusual when the Referee was not himself facing accusations. The need for a support person for a witness remains unexplained.
49. The Appeals Committee inadequately considered the Appellant's extensive submissions and failed to provide any detailed response to those submissions, or any explanation as to why they found MRC erred in finding the Appellant guilty of breaching TRC5 only.

Submissions of FSC

50. FSC submitted (in response to the Appellant's submissions) that:
 - (a) it is not agreed by FSC that the Appellant did not adopt an aggressive stance or posture towards the Referee during the subject incident. The video footage reveals that the Appellant approached the Referee, placed himself in the pathway of the Referee and the dressing rooms and touches him at least four times, one of which was to the chest and the last of which was designed to try to stop the Referee from walking away. This is inappropriate physical contact amounting to an aggressive posture in all of the circumstances;
 - (b) the Appellant pushed the Referee in the chest prior to the Referee moving away when he then again places his hand on the shoulder area of the referee to try to restrain him from walking away – all of which are inappropriate and constitute physical contact. There is precedent in the national competition of a goalkeeper (Vukovic) physically grabbing a referee by the arm during a match leading to a 15-month ban, nine of which were ultimately required to be served. That penalty is another example of the seriousness which making physical contact with a Referee has been considered by football bodies;
 - (c) FSC rejects that a claimed "cultural" approach provides any justification for physical contact with any referee, and it is clear from the Referees' actions that he wanted to move away and that the conversation with the Appellant was not conciliatory. Following the issuing of the Red Card, the Appellant does continue to argue/question before moving away and then subsequently returning to assist with the threatening behaviour towards the Referee by one of the Club's players;
 - (d) all Red Cards receive a Mandatory Match Suspension. The MRC makes a decision on the relative level of seriousness of the offence(s) from the guidance of the Regulations. In this case, where there is arguably evidence supporting three separate offences the two bodies have been consistent in their findings that the evidence justified the sanction imposed. It is certainly within the guidelines for combinations of the offences under consideration;
 - (e) the FSC Regulations provide for the Match Review Committee to call for a hearing on a matter and conventionally this is done when allegations are serious and those against whom serious allegations are made are required to appear. Failing to do so leads to the participant being suspended until they do. This has never previously been an issue for those involved.

- (f) FSC was very aware and very compassionate towards the Appellant's carer responsibilities. It was also responsive to advice of his necessitated attendance at the emergency department of the hospital for reasons not disclosed or known to FSC. The members of the Match Review Committee gave of their own time to volunteer to meet the Appellant's needs in holding the MRC hearing during business hours. The Appellant does have an obligation to comply with Regulations of FSC, FNSW and FA by way of his registration agreement. If requested to attend a hearing under those regulations, it would be considered that there is a responsibility to comply – a hearing was arranged at a time to suit him.
- (g) the timing of the provision of the MRC report does not involve a denial of procedural fairness. It is not normal practice to provide parties with MRC reports on Red Card offences as the vast majority of these offences are accepted without any further action following receipt of the Notice of Suspension. Where any party on receipt of the Notice of Suspension wishes to follow an Appeals process, such a report will be provided with the Notice of Appeal as it is generally the first opportunity to do so after receipt of an application for an appeal. The time and date of the appeal is generally at least a week following the notice which is considered sufficient time for the parties to consider submission in response to such a report;
- (h) the date and time of the hearing of the appeal was set for a time that the team of which the Appellant was coach would normally have been training, with a notice period of eight (8) days). As it eventuated, rescheduling had led to the team playing at that time. FSC considered that attendance at an Appeal Tribunal would take precedence over any football commitment. The FSCAB was very conscious of the carer needs but saw no conflict given the football responsibility and no explanation otherwise had been provided from the Appellant or his Club for his non-attendance. FSC was not aware of any issues relating to the Appellant's psychological health before reading the Appellant's submissions in this appeal;
- (i) while FSC understands and has substantial empathy with respect to the issues related to the Appellant's son, it considers that, having given eight days' notice of a hearing that necessitated the convening of volunteers to serve on a Tribunal Hearing, one day's notice of non-attendance by the Appellant was also a failure of understanding. FSC was genuinely trying to get the matter resolved. The FSCAB understood the written submissions to them were to be relied upon, particularly so when (late) advice was received that the Appellant would not be attending. Consequently, the Appeal Board considered the evidence and submissions made before reaching their decision;
- (j) the presence of a support person for the Referee at the hearing does not contravene the FSC regulations. FSC allows all parties to be accompanied in hearings by support persons. The correspondence from FSC to the Appellant clearly advises this. In the past, match officials have been subjected to inappropriate actions before and after hearings and on occasions, young inexperienced referees have been overawed by the processes. The support person is not there as a witness, but simply to provide moral support. They do not give evidence.
- (k) the fact that one of the members of the Appeals Board was legally qualified does not breach the requirements of procedural fairness. The Appeals Board consisted of three independent volunteers appointed in accordance with its Regulations. FSC seeks to ensure independent professional people without any conflicts of interest who can make balanced individual judgements. In this case, one of those people was a lawyer, which is not inappropriate given

that the task of the Appeal Board was to decide whether a person is guilty of a breach of the Laws of the Game and consequently a Regulation of FSC and if so, what is an appropriate decision and sanction, if appropriate. FSC does not allow legal representation to parties in Tribunal hearings. The relationship between that and the fact that an independent member of a Tribunal judging on a breach of the Laws of the Game who happens to be a lawyer does not constitute a breach of procedural fairness. The panel is independent;

(l) the Appellant has been provided with procedural fairness by FSC and its conduct has been both appropriately sensitive and responsible in balancing the Appellant's disclosed personal needs with his obligations as a registered member of the football community who has been charged with a significant breach of the Laws of the Game and relevant Codes of Conduct; and

(m) any deliberate physical contact by a participant with a match official without the match official's express permission is a very serious offence and one that should not be accepted in any circumstances. The behaviour of the Appellant in this matter was unacceptable and the sanctions applied were reasonable taking into account all of the circumstances.

CONSIDERATION AND DETERMINATION

51. 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).
52. 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 did not take into account some material consideration.
53. However, 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).
54. The course of this matter can be seen from the very helpful chronology prepared as aide memoir by the Appellant. The allegations against the Appellant are contained in the Referee's match report and in the (edited) video which was available to the AT.
55. As the Appellant was the coach of the Warilla first grade team, FSC seems to have taken a view (confirmed by the FSCMRC) that the Appellant's approach and verbal exchange with the Referee in all the circumstances was serious misconduct.

56. In short, the video shows the Appellant approaching the Referee the end of the game touching him and having a conversation. The conversation, as asserted by the Referee, commenced with an exchange where the Appellant complained about a yellow card given to him by the Referee during the game for dissent. When the referee demurred, the Appellant is said to have declared, "that's fucking bullshit, you're a fucking joke." It was at that point that the Appellant (first) touched the Referee. The Referee then claimed to have been pushed, "aggressively with one hand straight into his right shoulder pushing him back a step."
57. The FSCMRC in the written findings found that this contact was not overly aggressive and was with minimal force. Nor though could it be considered passive. The video shows a clear touching consistent with the MRC's finding. The video was available to the Appellant prior to the hearing of the appeal to the FSCAB, as was the Referee's report by way of a covering letter of 10 August 2022.
58. Thereafter was a further verbal exchange, the Appellant saying to the Referee, "you're a fucking joke, you've ruined our season." There is the asserted use of further epithets by the Appellant critical of the Referee and his handling of the game. This was after the issuing of straight red card following the touching.
59. Of significance, the Appellant was advised in advance of the hearing before the MRC that it would not be conducted ex parte as he requested. He was advised that it would not be dealt with until he actually appeared, and he would remain suspended until that occurred. The extravagant complaint (not ultimately pressed) by the Appellant that this was, in effect, an indefinite suspension and ultra vires had no merit.
60. Clearly the potential seriousness of the appellant's alleged conduct was conveyed by this notification and, in the event the appellant appeared before the MRC. At that meeting, the Chair of the MRC noted that the charge on the report was TRC 6 physical or aggressive behaviour but that the MRC was not bound, "by the categorisation of the offence." Accordingly, the Appellant was advised that the MRC would also take "into consideration TRC 5 entering the field of play to confront a match official, and TRC 7 use of foul and abusive language."
61. No issue has been taken that this course was not available to the MRC. The Appellant was, thus, on notice at the hearing of this context. He was also reminded that because of his leadership position under the regulations, "a greater level of accountability was expected."
62. The Tribunal notes that after this incident there was further discord directed at the referee by a Warilla player who was also then shown a red card. This is asserted to be that player reacting to his coach's red card. This seems to be a practical example of why the enhanced accountability flagged must be a consideration for the MRC or, indeed, any MRC.
63. The findings made by the FSCMRC were as follows:
 - The Appellant approached the Referee at the end of the game and the Referee was happy to engage with him;
 - Initially the Appellant positioned himself alongside the referee leaving a path open for the Referee to leave the conversation, but the Appellant then proceeded to position his body so the Referee no longer had a clearer path, moved closely within the referee's personal space and proceeded to touch the Referee and the ball with his finger as he spoke;
 - As the Referee looked to leave the discussion, the Appellant placed his hand on the Referee's upper arm to either check him or continue to hold his attention. The contact was

- not overly aggressive and was with minimal force, nor should it be considered passive.
 - The Referee stood by his comments in his report that the Appellant had used foul and abusive language towards him (which the Appellant adamantly denies);
 - The Appellant's appeal to the Referee after he received the red card was audible on the video;
 - While the Appellant's approach was initially welcomed by the Referee, the escalation of events led to one of his players subsequently threatening the referee (and being shown a red card);
 - The Appellant's leadership role as a coach and the expectations under the FSC Disciplinary Regulations that a greater responsibility is expected of his actions and that consequently led to the subsequent threatening and abuse of the Referee; and
 - A suspension of 8 matches comprising one mandatory plus 7 seriousness and a fine of \$75 should be imposed.
64. Those findings were appealed to the FSCAB. The decision of the FSCAB has now been appealed to the AT.
65. It is important for this Tribunal to emphasise that these determinations relate to sport played principally by amateurs and regulated principally by volunteers. Accordingly, the AT must be wary of undue legalism and technicality impeding a purposive and practical resolution of issues raised in what is a recreational enterprise played by thousands across the state for fun and fitness.
66. Sporting behaviour and fairness is expected and typically displayed on a daily basis. Whilst competitions are competitive and games not uncommonly hard fought, the fundamental principles underpinning enjoyment in a safe and respectful environment for football players, spectators, officials, and bystanders, relies principally upon the good sense and decency of those who support, coach, and play, as well as those who officiate, and those whose task it is to resolve on field disputes after the game.
67. As is evident from the principles outlined at the start of this determination, the role of this Tribunal is to ensure that processes and principles are adhered to by those whose task it is to resolve disputes and impose sanctions under the laws, by laws, and regulations. It is not the role of the Tribunal to conduct de novo hearings or substitute its own view or conclusions for conclusions reached, or discretionary decisions made, which do not manifest error.
68. In this matter, there has been a degree of imprecision in the imparting of information by the MRC and the FSCAB, and in the portrayal of the processes by the Appellant, but that is utterly consistent with the nature of the task, and reflective of the fact these matters are dealt with in people's spare time, and that the people who participated as decision makers in the hearings and determine the outcome are almost always doing so in a voluntary capacity. Whilst some may be lawyers, most are not.
69. It is commendable then that the Appellant, through his written submissions on this appeal, has taken responsibility for his conduct in accepting that he should not have approached Referee in the manner that he did.
70. It is clear that the Appellant has proceeded on the basis that the initial offence code breach asserted should have been TRC 5 rather than being TRC 6, of entering the field of play to confront a match official. That arises from a technical analysis of inferences said to arise from the Referee's report, prepared at the expectedly fraught time of the signing of the Team Sheet, and involving the Referee who has just been, on his account, approached, pushed and abused, and then

confronted by a player. The Appellant is preoccupied with this as a starting point when it was TRC 6 which the MRC identified as, inter alia, the focus arising from the match report. The identification of the proper identification of a breach as akin to the process involved in charging on indictment by use of the term, "indicted offences". Referring to the team sheet in the Appellant's submissions confirms the misapprehension that comparison with the procedures and due processes underpinning the criminal law and identifying a misalignment identifies a ground of appeal in a sporting regulatory context.

71. The very high standards of procedural fairness and expectations of strict adherence to processes and laws in determinations commonly involving restrictions on liberty and where the state is the enforcing and accountable authority cannot mandate the requirements for a sport. Of course, they may and often do provide a guide, but they cannot impose a template. The requirements are set out principally in the disciplinary and dispute regulations, in this case, of FSC. Those run for some 73 pages.
72. Indeed, the Appellant submitted it was TRC 5 which was and should have remained the only focus for the match review committee and that all penalties imposed ought to have reflected that offence, which had a suspension range of 1 to 3 matches. The Tribunal notes that the appellant was in fact suspended for eight matches.
73. It seems to be accepted, and the Tribunal so finds, that the MRC is not bound by the categorisation of the offence brought before it, and that they can proceed to consider other offences, if in the committee's view, they arise on the facts. As already noted, that was what the match review committee indicated at the start of the hearing. The Tribunal finds that they were entitled to do so, accordingly, that was not an error.
74. As is clear from the narrative set out above, the Appellant did enter the field to confront the referee, there was physical behaviour, and, on the Referee's account, used foul and abusive language.
75. There are a number of asserted inferences as to the mechanism by which the MRC reached the conclusion impugned by the Appellant. These inferences are said to vitiate in some procedurally unfair way the ultimate finding. However, whilst a number of arguments were raised, and close analysis given in written submissions, it is clear that the Appellant accepts he should not have approached the Referee "in the manner that he did." He approached him, he touched him, and he abused him. In an effectively uncorroborated rebuttal, the Appellant asserted he did not use foul language.
76. In all the circumstances and noting that it was the Appellant who had received the yellow card, and was aggrieved enough to approach the referee to raise it, the MRC was clearly entitled to rely upon the Referee's account, and prefer it, noting that the match report is, presumptively, a correct account.
77. There can be no question, then, that the two additional charges could arise, and did arise, for consideration. Indeed, it might be thought that it was inevitable upon a proper understanding of the MRC's powers and obligations, and access to the evidence before it. There is nothing in the material which reveals any error in the MRC's approach. Indeed, it reflects a practical reality confronting match officials in circumstances like this where they are often exposed with little support at a practical level, to issues that require disciplinary action.
78. It is therefore entirely understandable once the dust has settled that reconsideration or further

consideration is given to the appropriate offence codes and offences. That can occur during the hearing. Any unfairness, like fresh evidence or unexpected charges can be usually dealt with by, for example, an adjournment. That was not the case here.

79. The Appellant's concern seems to be that the most benign factual findings, a restricted reliance upon a single lenient charge, ought to have been afforded to the Appellant. That that was not the case does not itself indicate appealable error in this case. None was demonstrated here or indeed identified or accepted by the FSCAB.
80. At the FSCAB hearing, the Appellant did not appear, but the Referee did, again. The decision of the FSCAB is succinct and endorses the findings of the MRC. Whilst it is true that the decision was conveyed in a manner that was somewhat unclear, the Tribunal rejects the Appellant's assertion that the FSCAB contrived a substituted array of charges to vindicate the term of suspension imposed by the MRC. As is clear they confirmed what in fact had been the findings of the MRC in relation to the three charges, and by reference to the mandatory and ultimate suspension range for all. This is simply because the MRC decision related to TRC 6 as the focus, and reflected their foreshadowed approach in considering TRC 5 and 7.
81. It should be noted that there seems to be in this case also some disengagement by the Appellant from time to time as a result of his own understandable priorities. It seems that the statements provided on his behalf were character references. In light of his acceptance of responsibility the Tribunal accepts this conduct was an aberration.
82. The determination of the FSCAB by way of correspondence dated 21 September 2022 makes abundantly clear (albeit shortly and sharply) the process and reasoning underpinning their decision. They also touch upon the evidence to which they have regard and the regulations which they found had been breached.
83. Whilst it is undoubtedly preferable to indicate from the start, so in advance of any hearing, the specific three offence codes relied upon, it is always best practice to ensure that an individual is assisted to understand exactly what it is he\she\they are facing including the sanctions. The Tribunal though does not consider that imprecision in this area displays procedural unfairness here.
84. In the Tribunal's view, the course of conduct which it seems the Appellant now accepts he was to an extent involved in was capable, at the outset, of raising all three offence code breaches. The Tribunal notes the evidence of the video and the referee match report in particular.
85. It would have been preferable to have the reasons of the MRC available before the appeal committee hearing, and we understand that that will be attended to by FSC in future matters. The Tribunal notes that nonetheless, the Appellant was content to have the appeal hearing dealt with ex parte by the FSCAB. Whilst the Appellant had a number of family responsibilities and at the time, health issues, the Tribunal notes he was in a senior coaching role, and no doubt that required flexibility in balancing competing personal matters.
86. The Appellant complains that the FSCAB did not directly address the Appellant's appeal on the basis of severity with respect to offence TRC 5. We reject that. It is apparent that all three offence codes were addressed and a penalty for all three combined imposed.
87. The Appellant asserts that the FSCAB made material findings which were inconsistent with the evidence. That is not apparent and is rejected.

88. The Appellant asserts that the FSCAB took fresh evidence and conducted a de novo hearing. Again, that is not apparent, and in the Tribunal's view, the appeals committee undertook a fair and considered review of the available evidence.
89. The Appellant complains that the Referee had a support person present with him during the hearing of the appeal by the FSCAB and that this somehow amounted to procedural unfairness. That argument is of no substance and is rejected.
90. The Appellant asserts the FSCAB inadequately considered the extensive submissions on behalf the Appellant. There is no doubt that before the FSCAB, as was the case before this Tribunal, the Appellant's submissions were extensive, but there is no basis for that submission which is apparent to this Tribunal. While tribunals are always assisted by submissions there is no requirement that every nuance and categorisation be addressed, just the fundamental issues relevant to the determination, and a correct and fair application of the rules and regulations to the relevant evidence.
91. Ultimately, this Tribunal has no grounds to consider the penalty afresh in light of our decision as to the validity of the processes and decisions of the MRC and the FSCAB. Whilst it is conceivable that the members of this Tribunal may have come to a different decision were they to consider the matter afresh, this Tribunal considers the penalty imposed does not fall so far outside the range of match suspensions provided for by the three offence codes for the evident and concluded misconduct of the Appellant so as to manifest error.
92. Thus, there is no basis on which this Tribunal should review the penalty imposed by the FSCAB (and the MRC). In any event the penalty has now been served.
93. In effect and substance, this appeal really was a severity appeal (brought after the suspension had been served) and that was the concern of the appeal committee of the local football Association.
94. Stripping the procedural analysis from the legal analysis leads to the inevitable conclusion that there has been no denial of natural justice or any procedural unfairness as procedural unfairness is not to be equated with criminal law practice and procedure. Any administrative imprecision is reflective of the vicissitudes of amateur sport and its participants.
95. For the reasons set out above, the Appeal must be dismissed.

Graham Turnbull SC DCJ
Vice Chair
Appeals Tribunal
Football NSW