



**DETERMINATION OF THE APPEAL TRIBUNAL
OF FOOTBALL NEW SOUTH WALES
PURSUANT TO THE 2022 FOOTBALL NSW GRIEVANCE AND DISCIPLINARY
REGULATIONS**

The parties	DANIEL FARIAS v NORTHERN SUBURBS FOOTBALL ASSOCIATION (NSFA)
Decision appealed	Decision of the Member Appeals Committee decision
Date of decision appealed	2 November 2022
The basis upon which the matter is before the Appeals Tribunal	Paragraph 10.3(a), 10.3(c), 10.3(d) and 10.3 (e) of the 2022 Football NSW Grievance and Disciplinary Regulations 2022
Ground(s) of appeal	<ol style="list-style-type: none">1. A party was not afforded a reasonable opportunity to present its case;2. The decision of a Body or a Member Appeals Committee was affected by actual bias;3. The decision was one that was not reasonably open to a Body or a Member Appeals Committee having regard to the evidence before the Body or the Member Appeals Committee;4. Severity, only where the decision of a Body or a Member Appeals Committee imposed a sanction of at least a Time Suspension of three (3) or more months.
Date of hearing	10 May 2023
Date of determination	9 June 2023

Appeals Tribunal Members	Iain Todd, Chair Julia Sorbara, Member David Stanton, Member
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Introduction and Jurisdiction

1. The Appeals Tribunal (**AT**) has been established in accordance with sections 4, 9 and 10 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**).
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. This appeal is from a MAC pursuant to section 10.6 but only where the matter has proceeded in accordance with, and exhausted, that member's own disciplinary/grievance Rules and regulations.
4. 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. (s 10.4(b) of the FNSW Regulations)
5. The AT is satisfied that it has jurisdiction to hear the appeal. Further, neither party raised any objection to the AT's jurisdiction.
6. Finally, it should be noted that any decision by the AT is final and binding on the parties. There is no further right of appeal to any court of law or tribunal (s 11 of the FNSW Regulations).

Background facts

7. On 30 July 2022 a Senior Men's Over 35 Division 2 match took place at Cammeray Oval between North Sydney United and Prouille FC.
8. Daniel Farias was a playing member in the match for Prouille.
9. At approximately 5.40 pm during the match the referee stopped the match and awarded a free kick to Prouille as a result of a challenge by a North Sydney United player upon Mr Farias. Following the awarding of the free kick, the referee observed Mr Farias attempt to strike the North Sydney player by bringing his knees towards his chest whilst on the ground and kick out with some force and with his studs exposed towards the North Sydney player. As a result, Mr Farias was issued a red card by the referee and sent from the field of play.
10. Following this a fellow teammate from Prouille remonstrated with the referee regarding the decision to issue a red card to Mr Farias and was issued a yellow card. He then continued to remonstrate with the referee and pushed the referee with two hands in the middle of his chest. This Prouille player was then issued a red card and sent from the field of play.
11. After both Prouille players had been sent from the field of play, and whilst the referee was noting matters in his notebook, he then made the following observation: -

“I observed an altercation between Prouille player no. 31 (Mr Farias) and North Sydney United supporters on the side line. I observed Prouille no. 31 storm up the steps and come face to face with a North Sydney supporter. I observed Prouille no. 31 raise his arms towards the North Sydney supporter but could not see specifically what happened between Prouille no. 31 and the North Sydney supporter as I was thirty to forty meters away with an obstructed view due to several players standing between me and the incident on the field of play”.

12. Mr Morgan Loveday (from Hornsby RSL Football Club) was a witness to the events that took place. The description by Mr Loveday is in the following terms, with male no. 1 being Mr Farias:

“I observed Male #1 at the bottom of the grandstand collecting his belongings. At this stage an argument broke out between himself and an unknown male, who appeared to be a North Sydney United supporter. This North Sydney United supporter was a male of short/average height, larger build, balding or shaved head and of Caucasian appearance. This male will be referred to as Male #3 from this point on.

I was standing directly behind Male #3 when I observed Male #1 walk up the stairs of the grandstand and got into the face of Male #3 who was sitting at the top row of the grandstand and yelled something at Male #3. Male #1 was at the time holding a pair of shoes/sneakers in his right hand, which he used to strike Male #3 in the face while he was still sitting down.

I observed Male #3 get to his feet at this stage, with Male #1 and Male #3 arguing with each other. Male #1 then proceeded to strike Male #3 with a punch to the head, from memory this may have also been with his right hand.

I observed several people get in between Male #1 and Male #3, before Male #1 walked past the change rooms and left the area of the oval.

After this point I went into the change rooms to get ready for my match. When exiting the change rooms, I could see that the match had been abandoned”.

13. Following these events, the referee abandoned the match.
14. Video footage of the incident was available to the AT. This confirmed the referee’s observations and revealed Mr Farias walking up the steps to interact with the North Sydney supporter. The video footage also confirmed the observations of Morgan Loveday.
15. The red card decision of the referee sending Mr Farias from the field was subsequently challenged by Mr Farias and the challenge was successful.
16. Nevertheless, on 11 August 2022 NSFA cited Mr Farias to appear before the Protests, Disputes and Disciplinary Committee (**PD&DC**) constituted under Northern Suburbs Football Competition Regulations for Grievance and Discipline 2022 (**the NSFA Regulations**).
17. Mr Farias was charged with the following offences under the NSFA Regulations: -

- a. M13 - serious violent conduct on a player, spectator, club official, team official or NSFA employee or representative;
 - b. M20 - unauthorised entry onto the field of play;
 - c. M29 - assault/striking.
18. The PD&DC sat on 18 August 2022. A determination by the PD&DC on 15 September 2022 found Mr Farias guilty of each offence and imposed the following sanction: -
- a. M13 - six years suspension from all football activity;
 - b. M20 - four months suspension to be served consecutively;
 - c. M29 - six years suspension from all football activity (to be served concurrently with M13).
19. The effect of the sanction was to suspend Mr Farias from all football activity until 30 December 2028.
20. On 26 September 2022 Mr Farias lodged an appeal to the NSFA Appeal Board (**NSFA AB**). Following the hearing of the appeal on 25 October 2022, a determination of the NSFA AB was made on 2 November 2022 and found the cited offences proven, however, amended the sentence in the following respects: -
- a. M13 – one year suspension from all football related activity during which the Appellant must complete a reputable online anger management course as agreed with NSFA and provide details of the course completion to NSFA followed by:
 - One year suspension from playing football, where the Appellant may take a position or act as a coach only (not team official, or club official, or player) however, during the period should the Appellant be cited and sanctioned for any of the following offences as per NSFA Grievance and Discipline Regulations or FNSW equivalent sanctions, the sanction of five years suspension from all football related activity will be imposed.
 - The NSFA Grievance and Discipline Regulations offences mentioned were M12, M13, M16, M22, M23, M27 – M37 under Table C.
 - Followed by a suspended sentence of four years from all football related activity, where the Appellant may take to the field of play as a player and/or coach. However, should the Appellant be cited and sanctioned for any of the following offences under the NSFA Grievance and Discipline Regulations or FNSW equivalent sanctions, the sanction of four years suspension from all football related activity will be imposed. The offences identified were R2, R3 and R6 of the NSFA Grievance and Discipline Regulations Table A, M1/R6, M3/R6, M6/R6, M10/R2, M11/R3 of the NSFA Grievance and Discipline Regulations Table B and M12, M13, M16, M22, M23, M27-M37 of the NSFA Grievance and Discipline Regulations Table C.
 - b. M20 – two weeks suspension to be served concurrently;

- c. M29 – the same sanction as imposed in relation to the M13 offence to be served concurrently.
21. On 11 November 2022, Mr Farias appealed to the AT from the decision of the NSFA AB. The grounds of the appeal were: -
- a. A party was not afforded a reasonable opportunity to present its case;
 - b. The decision of a body or member appeals committee was affected by actual bias;
 - c. The decision was one that was not reasonably open to a body or a member appeal committee having regard to the evidence before the body or member appeal committee;
 - d. Severity.

Consideration

22. On 10 May 2023 the AT heard the appeal in the proceedings. Mr Farias appeared and was assisted ably by Antony Comanos and Edmond Lee from Prouille FC. Kevin Johnston appeared on behalf of NSFA, and the tribunal was assisted by the presence of Alan Clarke who was the chairman of the PD&DC. It should be noted that Mr Clarke was not appearing as an advocate for NSFA but rather to provide assistance to the AT in understanding the process that had occurred before the PD&DC. That assistance was greatly appreciated.
23. During the course of discussing the matter with the parties, Mr Farias indicated that there was no challenge to the M20 offence or its sanction, namely unauthorised entry onto the field of play. Rather, the challenge was to the M13 and M29 offences.
24. It is convenient to deal with each of the grounds of appeal advanced by Mr Farias. Before doing so, it is important to recognise that these grounds of appeal must relate to the actions of the NSFA AB as it is an appeal from that decision that is brought to the AT.

A party was not afforded a reasonable opportunity to present its case

25. The AT understands that Mr Farias was not provided with witness statements that had been obtained by NSFA until shortly before the hearing of the PD&DC on 30 August 2022. If that is, in fact, the case then that is regrettable. Every person cited for an offence is entitled to the opportunity to receive the evidence in support of the charges and be provided a reasonable period of time to consider the evidence before the matter proceeds. This, of course, is a rule of fairness. However, whatever may have been the position prior to the PD&DC hearing, the AT notes the proceedings before the PD&DC were adjourned at the request of Mr Farias until 15 September 2022 to allow the PD&DC to deal with a related matter before proceeding to determine Mr Farias' matter. If it was the case that further evidence was to be relied upon by him, then the appropriate time to do so would have been before the PD&DC made its determination. No application was made to do so.
26. The AT also has difficulty understanding what further evidence may have had an impact upon the evidence that was available. A number of statements from relevant

witnesses had been obtained by both NSFA and Prouille FC and they were before the relevant decision makers. Further, video footage of the incident was available and corroborated as best as one can tell from viewing the footage, the evidence of Mr Loveday.

27. In these circumstances, the AT is not persuaded that Mr Farias did not have a reasonable opportunity to present his case. This ground of appeal is not made out.

The decision of NSFA AB was affected by actual bias

28. The NSFA AB consisted of the following members:

- Hilary Bingham – NSFA vice president (chair);
- Cathy Ruggero – Hornsby Heights Football Club president;
- Sarah Jenkins – Lindfield Football Club president;
- Brian Norton – Northbridge Football Club president;
- Lyle Hudson – St Ives Football Club president.

29. Before the NSFA AB Mr Lee, holding the position of Prouille Football Club president, made an application that Mr Hudson be removed from the appeal board due to perceived bias. The description from the NSFA AB of what occurred, is as follows: -

“At this point the PFC president approached the appeal board chair and requested for the St Ives Football Club president to be removed from the appeal board hearing, due to the handling of a mini-roos incident earlier in the season between St Ives FC and PFC. The PFC president was asked to put this in writing, which he did.

The appeal board chair requested that the PFC president present his case before the appeal board, excluding the St Ives Football Club president. The PFC president presented his case however, it was determined not to be a valid enough reason to exclude the St Ives Football Club president as an appeal board member and therefore the appeal board hearing was ordered to continue”.

30. Not every application for perceived bias will succeed. That appears to be the circumstances in this case. It must be remembered when approaching questions of bias that invariably members of disciplinary committees or appeal boards will have affiliation with particular clubs or football associations, and may well have had interactions with the clubs who appear before such bodies in disciplinary matters. That fact alone is not sufficient to establish bias in a decision maker. Something more is required.
31. In any event, the bias alleged seems to relate to the actions of Mr Alan Clarke, the chair of the PD&DC. Such bias, however, was not the subject of an appeal from the PD&DC to NSFA AB and accordingly, cannot be the basis of an appeal to the AT of bias by NSFA AB. For these reasons, we do not believe this ground of appeal is made out.

The decision was one that was not reasonably open to a body or member appeal committee having regard to the evidence before the body or the member appeals committee

32. During the course of the appeal, Mr Farias accepted that a viewing of the video footage would permit a body to make a finding that the M13 offence: serious violent conduct on a player, spectator, club official, team official or NSFA employee or representative, and the M29 offence: assault/striking were made out.
33. It should also be remembered that under the NSFA Competition Regulations 2022 – No. 4 – Grievance and Discipline, the onus of proof is put in the following terms: -

“4.5.2 Onus of Proof, determination of any charge by the committee is not “beyond reasonable doubt” but rather a standard of proof that the committee is comfortable with, having regard to the seriousness of the matter before it”.
34. The AT is of the opinion that this test really represents being satisfied on the balance of probabilities that the evidence establishes the charge brought. Such an approach is consistent with the 2022 Football NSW Grievance and Disciplinary Regulations which provide that unless the circumstances of the matter require otherwise, a body must make a determination on the balance of probabilities (clause 13.16).
35. Given the concession of Mr Farias, and particularly in view of the video footage, there can be little doubt that the evidence did support the charges on the balance of probabilities.
36. It was however submitted on behalf of Mr Farias that the M13 and M30 offences were inappropriate charges as there were other offences under Schedule 1, Table A of the NSFA Regulations that applied to players, namely, R2 offences for violent conduct. There are a number of difficulties with this analysis. They are as follows: -
 - 1 At the time of the offences, Mr Farias was not on the playing field. He had been issued a red card and had left the field of play. Table A offences for players are intended to apply to offences that occur during the course of play;
 - 2 A Table C offence (which includes M13 and M30) is entitled “Other offences by members”. A member is defined by the Northern Suburbs Football Association Constitution (clause 2.1) to mean a member for the time being of the Association under clause 5. Clause 5 includes as members of the Association any clubs. A member of a club that participates in the NSFA is, therefore, a member of the NSFA. Accordingly, a Table C offence is available to members of a club.
 - 3 No part of the NSFA Regulations directs that in the circumstance of this case a disciplinary body cannot avail itself of the table C offences if, indeed, those offences or the penalties prescribed are more appropriate in the circumstances.
37. It follows that the PD&DC and NSFA AB acted in accordance with powers that were available to the bodies under the NSFA Regulations.
38. This ground of appeal is not made out.

Severity

39. It was submitted forcefully by Mr Farias that the combined sanction was excessive in light of the circumstances of the offence. In short, Mr Farias alleges that he was provoked by reason of offensive and racially based language and the action of the spectator in spitting at him.
40. It is unnecessary for the AT to determine if these matters by Mr Farias, in fact, took place. If they did, then they are matters of regret for the AT. The sport of football in this country is an inclusive one, that encourages people of all races, gender and ability to participate in. Racial vilification of any description has no part to play in the sport or, indeed, in Australian society. Likewise, violent conduct such as spitting or assaults.
41. There can be little doubt that the matters complained of by Mr Farias are matters that may be taken into account in respect of sentencing. The difficulty for Mr Farias is that his reaction was so out of proportion to the alleged hurt. This was not a case of self-defence, but rather as Mr Farias quite properly admitted before the AT, was a matter completely out of character and a reaction to the events that had occurred as he perceived them. Be that as it may, this may be an explanation rather than something that excuses his behaviour.
42. The issue of imposing an appropriate sanction involves competing considerations. First, one must have regard to the minimum and maximum penalties for the offences that have been proven. Those are as follows: -

“M13 serious violent conduct on a player, spectator, club official, team official or NSFA employee or representative. First offence minimum twelve months, maximum life.

M30 – violent conduct. First offence twelve fixtures/three months, maximum life”.
43. There clearly is a significant range of penalties available to a decision maker.
44. The second consideration is to consider the nature of the violence committed and what is described as the objective seriousness of the offence. There is no doubt that Mr Farias struck a spectator with a pair of boots. The evidence indicates that there may well have been more than one contact. Such an assault may well lead to dire consequences, although there is no evidence before the AT of significant injury to the victim. Nevertheless, the propensity for such violence to cause real harm is a relevant consideration.
45. The next relevant consideration is the concept of deterrence. It is important through imposing a sanction to send a message to all participants and spectators of the sport of football that behaviour such as Mr Farias’ will not be tolerated. The sanction must send this message to the community at large.
46. In the circumstances the effect of NSFA AB’s decision was to introduce a sanction that provided as follows: -
 - a. Twelve-month suspension from all football related activity, followed by;

- b. Twelve-month suspension from playing football only on the assumption that no further identified offences were committed in that period;
 - c. A further four-year period of suspension from all football related activity that in itself was suspended provided Mr Farias was not guilty of one of the listed offences in that period.
47. The other way to consider the sanction is that after a period of twenty-four months, Mr Farias may return to all football related activity (like any other member of NSFA) and will not face further sanction unless he commits a further offence as listed in the charge. In circumstances where the offences carried a maximum of life suspension from all football related activity, the AT do not believe that on the face of it, the sentence was too severe.
 48. There is, however, a further consideration in the circumstances of this case and a consideration that is not apparent as having been determined by NSFA AB. The subjective circumstances of Mr Farias must be taken into account to determine the appropriate penalty. There was no evidence before the AT that this had in fact occurred before NSFA AB.
 49. The AT was informed that Mr Farias had been a member of Prouille FC for a period of twelve years. Mr Lee confirmed that Mr Farias had, within the parameters of his work commitments, volunteered to assist coaches, particularly with the youth teams. Mr Farias is also the father of two children and his son and daughter are members of the Northern Tigers squad. He is understandably, like all parents in similar circumstances, involved in supporting and assisting his children in their pursuit of football.
 50. The AT was informed that Mr Farias had played abroad in the United Kingdom as a professional football player. In terms of his twelve-year career at Prouille FC, he has an unblemished disciplinary record, as confirmed by Mr Clarke from NSFA. Finally, Mr Lee spoke in his position as president of Prouille FC to provide a character reference for Mr Farias, who he had known for many years, and considered to be a valuable member of Prouille FC. He also confirmed that the actions of Mr Farias, to his mind, were completely out of character.
 51. These subjective matters are relevant to a consideration of the severity of the sanction that should be imposed in the circumstances of the case. Nevertheless, they do not appear to have been matters raised by the NSFA AB.
 52. The AT is empowered to determine its own sanction in the circumstances where an appeal ground is established. We find that the appeal ground in relation to severity has been established given the failure by the NSFA AB to consider these subjective matters.
 53. In exercising the discretion available to the AT, we remain of the opinion that the objective seriousness of the offences is significant and warrants a suspension from football related activities.
 54. Football related activities is defined by the 2022 Football NSW Grievance and Disciplinary Regulations in the following terms: -

(e) Football Related Activities include, but are not limited to:

- i. taking to the Field of Play (or court) as a Player or Match Official in any match or competition sanctioned or administered by Football NSW, Clubs, Centres, Summer Football Competition Administrators, Association Members, Branches, Regional Associations or their clubs;*
- ii. taking a position or acting as a coach, Team Official or Club Official in any match or competition sanctioned or administered by Football NSW, Clubs, Centres, Summer Football Competition Administrators, Association Members, Branches, Regional Associations or their clubs (in the case of a coach, this includes providing or attempting to provide coaching instructions or engaging or attempting to engage a third party to relay coaching instructions);*
- iii. entering the Field of Play (or court), its surrounds, the Technical Area, players' race, dressing rooms or any other place within a venue on a match day where players, coaches or Officials are likely to assemble to prepare for a match;*
- iv. taking part as a player, coach, Team Official or Club Official in any training session conducted by or for a team or club participating in any matches or competitions sanctioned or administered by Football NSW, Clubs, Centres, Summer Football Competition Administrators, Association Members, Branches, Regional Associations or their clubs;*
- v. acting in any way as a Team Official, Club Official or Association Member Official, including, but not limited to, participating in or carrying on any function as a member of a committee, sub-committee or board of directors (whether paid, voluntary or honorary) at any level (to the extent such a restraint is permissible by law);*
- vi. having any contact with the Broadcast Partner or any other media where the purpose of such contact is for it to be electronically broadcast to the public, including (but not limited to) participating in any post-match press conference and participating in television or radio interviews;*
- vii. attending any function or event coordinated, conducted or sanctioned by Football NSW; and/or*
- viii. entering a stadium, venue, ground or Centre during any match, competition or training session sanctioned or administered by Football NSW, Clubs, Centres, Summer Football Competition Administrators, Association Members, Branches, Regional Associations or their clubs.*

- 55. There can be little doubt that the definition is a broad one. It includes by operation of (viii) observing any match administered by Football NSW, clubs, centres, summer football club administrators, association members, branches, regional associations, or their clubs. This is broad enough to include any football in any circumstance within NSW.
- 56. It is the opinion of the AT that such an exclusion is too broad in the circumstances of this case and particularly so when Mr Farias has been a long-time member of Prouille FC and has encouraged his children to pursue football at a high junior level. Taking

into account the subjective matters we have referred to above, we believe that the definition of football related activities should be limited to exclude (viii). This will permit Mr Farias to attend any football match as a spectator and supporter whether it be of his children, a match Prouille FC participates in or any other football match within the state of New South Wales.

57. The effect of the determination by the AT is that excluding (viii), Mr Farias is suspended from all football related activities for a period of twelve-months followed by a suspension of a further twelve-months from being a player only, with the balance of his sanction being suspended and subject to no further offences as listed during the suspension period.

Determination

58. The appeal is upheld in respect of ground 10.3(e), namely on the basis of severity.
59. The determination of the AT is to amend the determination of NSFA AB dated 2 November 2022 to insert after the words “*football related activity*” the following: -
- “As defined by clause 15.5(e) of the 2022 Football NSW Grievance and Disciplinary Regulations (excluding (viii))”.
60. Pursuant to clause 13.17 and noting that no party has made an application for costs (including Football NSW) each party shall bear his and its own costs of the appeal.

Appeals Tribunal Football NSW

Signed by David Stanton

On behalf of



Iain Todd

Chairperson

Julia Sorbara, Member

David Stanton, Member