

**PRELIMINARY  
NOTICE OF DETERMINATION**



<b>Tribunal</b>	General Purposes Tribunal (GPT)
<b>Tribunal reference number</b>	GPT 23-02
<b>First Respondent</b>	Mr Marko Jesic
<b>Second Respondent</b>	Marconi Stallions FC
<b>Date of Hearing</b>	22 February 2023
<b>Venue</b>	Football NSW Judiciary Room, Valentine Sports Park
<b>GPT Members</b>	Mr Anthony Scarcella (Hearing Chair) Mr Robert Iaconis Mr Marcelo Valerio
<b>Date of Preliminary Notice of Determination</b>	27 February 2023

**BACKGROUND**

1. The First Respondent, Mr Marko Jesic, being a Marconi Stallions FC National Premier Leagues NSW Men's First Grade (NPL 1) player, was charged by Football NSW (FNSW) for Misconduct under section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2023 (the GDR) with an offence under Schedule 3, Table C, Offence Code 38-01, namely, an inappropriate goal celebration.
2. The Second Respondent, Marconi Stallions FC, was similarly charged under the deeming provision in section 16.6(a) of the GDR which states:

“A Club is deemed to have committed an offence(s) under section 16.4 (Misconduct) where one of its Participants has allegedly committed any Offence(s) outlined in section 16.4 (Misconduct) and the Executive may, in its absolute discretion, take any relevant action against the Club pursuant to section 9.2 (Charges of Misconduct).”

3. FNSW alleged that, in or around the 56th minute of the NPL 1 NSW Men’s match between Sydney United 58 FC and Marconi Stallions FC on 5 February 2023 at Sydney United Sports Centre (the Match), after scoring a goal, Mr Jesic (FFA No. 45550266), has made a hand gesture with his right hand (that is, the “three-finger salute” or “the Serbian salute”) in the direction of Sydney United 58 FC Spectators occupying the western end of the stadium and then, on his way to the centre circle for the resumption of the Match, has made a middle finger gesture with his right hand in the direction of the Sydney United 58 FC Spectators occupying the southern side of the stadium.
4. FNSW did not propose a sanction for the respective respondents’ offences and instead referred the matter directly to the GPT for hearing.
5. FNSW issued Mr Jesic with Notices of Charge dated 8 February 2023, 9 February 2023 and 14 February 2023 in respect of the alleged incident. FNSW relied on the Notice of Charge dated 14 February 2023 and the attachments referred to therein as well as the three pages of colour photographs tendered at the GPT hearing without objection.
6. Mr Jesic submitted a Notice of Response dated 17 February 2023 wherein he entered a not guilty plea to the charge laid against him and relied on the documents attached thereto, video footage and a photograph.
7. FNSW issued Marconi Stallions FC with Notices of Charge dated 8 February 2023 and 14 February 2023 in respect of the alleged incident. FNSW relied on the Notice of Charge dated 14 February 2023 and the attachments referred to therein.
8. Marconi Stallions FC submitted a response by way of letter dated 17 February 2023, pleaded not guilty and relied on the documents referred to therein.
9. The matter was heard by the GPT on 22 February 2023. Mr Lorenzo Crepaldi, Head of Legal & Governance FNSW and Mr Michael Kantarovski, Legal & Regulatory Officer FNSW appeared for FNSW. Mr Spiro Tzouganatos of counsel appeared for and with Mr Jesic and Mr Armando Gardiman, AM appeared for Marconi Stallions FC. Representatives from Marconi Stallions FC were in attendance and included Mr Terry Palapanis, Head of Football; Mr Peter Tsekenis, First Grade Head Coach NPL 1; and Mr Peter Palapanis, Assistant Coach NPL 1.
10. The GPT has issued this Preliminary Notice of Determination under section 9.7(g) of the Regulations in order to deliver a prompt outcome to the parties. **In view of the fact that the GPT delivered oral reasons at the hearing on 22 February 2023, a Final Notice of Determination with full reasons for the decision will not be issued unless one of the parties makes a request for the same within seven (7) working days of the issue of this Preliminary Notice of Determination for the purpose of lodging an appeal.**

## FINDINGS

11. Section 13.16 of the GDR provides that the GPT must make a determination on the balance of probabilities. The onus of proof of an assertion lies with the person or body making the assertion, in this case, FNSW.
12. After careful consideration of the documentary evidence, the oral evidence of the Match Official, Mr Nathan Shakespear, the video footage, colour photographs in evidence and the oral submissions made by the parties' representatives, the GPT found as follows:
  - (a) On the evidence it provided, FNSW failed to make out its case against Mr Jesic as charged. The GPT could not be satisfied on the balance of probabilities that Mr Jesic was guilty of an offence under Schedule 3, Table C, Offence Code 38-01, namely, an inappropriate goal celebration in respect of the hand gesture with his right hand, being the alleged "three-finger salute" or "the Serbian salute"). Accordingly, the charge is dismissed.
  - (b) It follows that the same charge against Marconi Stallions FC is dismissed.
  - (c) Mr Jesic's gesture with the middle finger of his right hand on two occasions was not a part of the goal celebration and was directed at Sydney United 58 FC spectators who, on Mr Jesic's evidence, were berating him. Nevertheless, Mr Jesic's conduct in this regard constituted an offence under Schedule 3, Table C, Offence Code 06-01, namely, the use of offensive, insulting or abusive language and/or gestures (isolated incident) and required a sanction, despite Mr Jesic's allegation of provocation. The GPT found that, in the circumstances, no charge was warranted against Marconi Stallions FC in respect of Mr Jesic's gestures in this regard.
  - (d) Under section 13.11 of the GDR, the GPT advised Mr Jesic that, in respect of the middle finger gestures, it intended charging him with an offence under Schedule 3, Table C, Offence Code 06-01 and gave him the opportunity to consider his position. Mr Jesic's counsel obtained instructions and entered a plea of guilty in respect of the charge and made submissions in mitigation.

## SANCTIONS

13. The GPT imposed the following sanctions on Mr Jesic:
  - (a) In respect of the offence under Schedule 3, Table C, Offence Code 06-01, Mr Jesic is suspended for two (2) Fixtures, being the minimum sanction for a first offence. In this regard, the GPT took into account Mr Jesic's good disciplinary record over many years.
  - (b) Under 15.6(j) of the GDR, the suspension will NOT extend to attending to spectate at any fixtures in which Marconi Stallions FC

participates during the suspension, albeit that he may not enter the Field of Play, the Technical Area, players' 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.

## **COSTS**

14. The GPT determined that the First Respondent pay the costs of the GPT process as assessed by Football NSW.

## **APPEAL PROVISIONS**

15. Aggrieved parties to a determination of the FNSW GPT may lodge an appeal to the FNSW Appeals Tribunal in accordance with sections 9.8 and 10 of the GDR. Any appeal must be submitted by completing the online Notice of Appeal form (Prescribed Form 12) to [tribunal@footballnsw.com.au](mailto:tribunal@footballnsw.com.au) with the relevant Application Fee within seven (7) working days of the issue of the Final Determination (if requested) to the First and Second Respondents.
16. The FNSW Appeals Tribunal may vary, by way of reduction or increase, any sanction, measure or order imposed by the FNSW GPT without the necessity to provide any prior notice to any party to the appeal of its intention to do so.



Anthony Scarcella

Hearing Chair

27 February 2023