



## APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES

### DETERMINATION IN THE FOLLOWING MATTER:

<b>Player/Official/Member/Association Member/Participant/Club</b>	Ivan Bazina v Nepean Football Association
<b>Decision Appealed</b>	Appeal from the Appeal Tribunal of the Nepean Football Association
<b>Date of Decision</b>	17 September 2015
<b>The basis upon which the matter is before the Appeals Tribunal</b>	Sections 9.1 (iii) & 9.2(e) of the Football NSW Grievance and Disciplinary Regulations, 2014
<b>Ground(s) of Appeal</b>	Sections 9.2 (e) of the Football NSW Grievance and Disciplinary Regulations, 2014
<b>Date of Hearing</b>	21 September 2016
<b>Date of Determination</b>	22 September 2016
<b>Appeals Tribunal Members</b>	Anthony Lo Surdo SC, Chair David Stanton, Member Michael Holmes, Member

#### **A. INTRODUCTION AND JURISDICTION**

1. The Appeals Tribunal (**AT**) has been established in accordance with section 9.1 of the Football NSW Grievance and Disciplinary Regulations, 2014 (**FNSW Regulations**) to determine appeals from the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and the Association Appeals Committee (**AAC**) but subject to the limitations provided in that section.

2. The sole grounds of appeal prescribed by section 9.2 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;
- (c) the decision was affected by actual bias;
- (d) the decision was one that was not reasonably open having regard to the evidence before the decision-maker; and
- (e) severity, only where the decision imposed a sanction of at least:
  - i. a Fixture Suspension of 6 or more Fixtures; or
  - ii. a Time Suspension of 3 or more months; or
  - iii. a fine of \$3,000 or more; or
  - iv. a loss of 6 Competition points; or
  - v. expulsion from a competition.

3. 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) any decision including any sanction or penalty; and
- (b) impose any sanction, measure or make any order it thinks fit or a decision that either the DC or the GPT could have imposed or made under the Regulations.

(s 9.3(b) of the FNSW Regulations)

4. This appeal arises from a determination of the Appeal Tribunal of the Nepean Football Association (**NFA AT**) dated 17 September 2015. The NFA is the highest disciplinary or judicial body of the NFA and is accordingly an "Association Appeals Committee" for the purposes of section 9.1(iii) of the FNSW Regulations. In these circumstances, the AT is satisfied that it has jurisdiction to hear the appeal. Further,

neither party raised any objection to the AT's jurisdiction after being afforded an opportunity to do so at the commencement of the hearing.

**B. BACKGROUND FACTS**

5. On 31 July 2015, Ivan Bazina (**Player**), a member of the St Marys Band Club (**Club**) Premier League, First Grade team was sent from the field of play in the 85<sup>th</sup> minute of the game against St Marys Convent for using offensive, intimidating, insulting or abusive language and gestures to the referee (R6).
6. The circumstances that led to the Player being sent off and those which immediately followed the Player's dismissal (taken substantially from the referee's send-off and incident reports) are as follows:
  - (a) the Player had been issued with a yellow card in the 76<sup>th</sup> minute of play for dissent;
  - (b) in the 85<sup>th</sup> minute of play, a St Marys Convent player came into a tackle with studs showing. The referee deemed the tackle careless and awarded an indirect freekick to the opposing team. The opposing player stood up and immediately grabbed the throat of the player who had made the careless tackle. That player was sent off for violent conduct;
  - (c) the Player immediately remonstrated with the referee that the opposing player should have shown a yellow card. The referee provided an explanation for his decision. The Player continued to remonstrate. The referee told him to be quiet or he would be cautioned. The Player replied "*don't tell me to be quiet...I will say what I want.*" The Player also said, "*this is a joke...*", "*you have ruined this match...*" and "*hey guys, let's do the NRG 6-week referee course so we can all end up like [name of the referee].*" At this stage, the referee showed the Player a direct red card for insulting language and gestures;
  - (d) upon being shown the red card, the Player put his head down momentarily, then walked towards the referee aggressively and with his fist clenched. The referee raised his left hand and said, "*Ivan stop, leave the field.*" The referee

then jogged backwards away from the Player who was advancing upon him and said *"Ivan, stop it, do not make this worse, leave the field now and settle down, if you touch me, it will be a police matter"*;

(e) the Player kept advancing towards the referee and the following exchanges took place:

- Player: (shouting) *"come here cunt, I want to fucking talk to you"*
- Referee: *"Go away"*

The Player was then restrained by his own team mates. He broke free of their restraint and again came at the referee who was by this time running backwards. He shouted, *"...come here you fucking cunt show me a fucking red card I will bash you."* The referee replied, *"you won't catch me so stop being stupid and leave the field now."* At one stage the Player said to one of his own team mates, *"you can fuck off too."* The Player also admitted to pushing one of his team mates (see written submissions, 14 December 2015, p 2);

(f) the Player then started to walk from the field of play. Whilst he was making his way from the field he stopped and pointing at the referee said, *"I will kill you cunt. I will bash the fuck out of you", "start shitting yourself you fucking cunt because I am going to fucking get you", "...don't go to the dressing sheds mate because I will rip you out of there and fucking smash your head in", "I will see you in the car park cunt, you NRG refs are all fucked, I will fucking kill you", "...you know I will even bash the fuck out of you in front of your own fucking daughter cunt. I will come to every pub that you drink at cunt and I will smash you in front of everyone, you're a dead cunt mate", "see you in the car park cunt, you won't get out of here mate, fuck off...fuck off."*

7. The referee's account was supported by an incident report submitted by one of the two female assistant referees each of who were aged in their teens.

8. On 7 August 2015, the Player was charged by the NFA with 6 offences relating to the incidents in question:
- using offensive, intimidating, insulting and abusive language towards a match official, in breach of section 16.5 of the NFA Grievance and Disciplinary Regulations and section 2 of the FFA National Code of Conduct (Charge 1);
  - engaging in an on-field tirade of verbal abuse with threatening actions towards a match official resulting in the traumatising of match officials and spectators, in breach of section 2 of the FFA National Code of Conduct and sections 15.2(d), (e), (f) and (g) of the NFA Grievance and Disciplinary Regulations (Charge 2);
  - verbal abuse of rage of anger accompanied by threatening and intimidating actions, including that of threats of personal harm towards the match official and that these threats continued for an extended period of time both on the field and off the field, in breach of section 2 of the FFA National Code of Conduct and sections 15.2(d), (e), (f) and (g) of the NFA Grievance and Disciplinary Regulations (Charge 3);
  - verbal and physical abuse of the Player's own team mates by swearing at them and throwing one of them, who was attempting to restrain the Player, to the ground, in breach of section 2 of the FFA National Code of Conduct and sections 15.2(d), (e), (f) and (g) of the NFA Grievance and Disciplinary Regulations (Charge 4);
  - the continuation of offensive, intimidating, insulting and abusive language whilst the match officials and ground officials left the playing area, in breach of section 2 of the FFA National Code of Conduct and sections 15.2(d), (e), (f) and (g) of the NFA Grievance and Disciplinary Regulations (Charge 5), and
  - the Player's collective actions, behaviour and language are deemed to have brought the game into disrepute and contributed to creating an environment whereby the match officials, spectators and ground officials felt unsafe, in

breach of section 2 of the FFA National Code of Conduct and sections 15.2(d), (e), (f) and (g) of the NFA Grievance and Disciplinary Regulations (Charge 6).

8. The NFA GPT convened on 19 August 2015 to consider each of the charges.
9. The Player pleaded guilty to charges 1, 2, 3 & 6.
9. The Player pleaded not guilty to charges 4 & 5. He was found guilty of Charge 4 but not guilty of Charge 5.
10. The Player was suspended by the NFA GPT from all football related activities:
  - (a) for 2 years for each of charges 1, 2, 3 with those sanctions to be served concurrently; and
  - (b) for 3 years for Charge 6 with that suspension to be served consecutively with those for charges 1-3.

Consequently, the Player was suspended for a total of 5 years.

The Player also received a 2 fixture suspension for Charge 4 which sanction the Player does not appeal.

### **C. THE DECISION THE SUBJECT OF THE APPEAL**

11. The Player appealed the decision of the NFA GPT to the NFA AT as to severity alone.
12. On 17 September 2016, the NFA AT upheld the 5 year suspension but varied it as follows:
  - after the service of the 2 years of his 5 year suspension, the Player is to be permitted to hold the position of a registered coach or a manager (and he may attend accreditation courses in the meantime); and
  - in the remaining 3 years of his suspension, the Player's conduct as a coach or a manager shall be subject to a good behaviour bond which will be forfeited for the balance of his suspension should he be found guilty of any breaches of the Codes of Conduct or the NFA Grievance and Disciplinary Regulations in his capacity as a team official.

**D. THE GROUNDS OF APPEAL**

13. By Notice of Appeal filed on 29 September 2015, the Player appeals the decision of the NFA AT on severity alone.

**E. THE HEARING**

14. The AT heard the appeal on the evening of 21 September 2016.
15. At the hearing, the Player appeared in person and was assisted by the Club Chairman, Mr Craig Williams. The NFA was represented by its Operations Manager, Ms Linda Cerone and a Board Member, Ms Gail McLeod-Jones.

**F. SUBMISSIONS**

16. The AT received the following written submissions:
  - (a) from the Player in chief in an email dated 14 December 2015 from Mr Williams to Mr Merry of FNSW;
  - (b) from the NFA in an email dated 14 April 2016 from Ms Macleod-Jones to Mr Merry of FNSW; and
  - (c) from the Player in reply in an email dated 8 August 2016 from Mr Williams to Mr Crepaldi of FNSW.
17. The parties were each afforded an opportunity to and did supplement their written outlines orally at the hearing.
18. The Player submitted, in summary, that the sanction, especially in relation to the cumulative or consecutive nature of the sanction in relation to Charge 6, is excessive, especially in circumstances where he had not previously been sent off for abuse of a match official, and in circumstances where players can receive sentences of less than half that meted out to him for actually assaulting a referee, both verbally and physically. The Player referred the AT, in particular, to the decision of the FNSW GPT in the matter of Curic (which is addressed below).
19. The Player also made a full admission of guilt in relation to his conduct which he described as “stupid” and “regrettable” and that he could not be “more remorseful”

for what he did. Mr Williams said that he was supporting the Player because he had known the Player for a number of years and could attest to the fact that the conduct was wholly out of character and that he didn't want to see the Player be "wiped out of the game" especially when it was submitted that he had much to contribute.

20. The NFA submitted that:

- (a) based on the current table offences, each of the sanctions is within the range;
- (b) three sanctions, each of 24 months, were determined to be allowed to be served concurrently;
- (c) each charge is related to a particular incident which is supported by statements from match officials, ground officials and spectators. For there to have been one incident would indeed have been indefensible. Collectively, the several misdemeanours amount to a far, far more serious chain of events;
- (d) the NFA has an obligation to provide a safe environment for all participants including referees; and
- (e) the football community continues to work diligently at eradicating antisocial, violent behaviour within our game. The Player's claim of a "brain snap" does not excuse the extent or severity of events on the night of these incidents.

## **G. CONSIDERATION AND DETERMINATION**

### *Relevant legal principles*

21. An appeal involves the consideration of whether the decision under consideration is affected by legal, factual or discretionary error (see, for example, *Allesch v Maunz* (2000) 203 CLR 172). The error must be material to or likely to affect the outcome of the decision appealed from; that is, the decision must be one which is vitiated by error (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).

22. Where an offence, or charge, contains common elements arising out of the same or substantially the same facts, the offender should not be punished twice for the commission of elements of the respective offences that are common. The relevant tribunal should fix an appropriate sentence for each offence and then consider questions of cumulation or concurrence, as well as questions of totality (*Pearce v The Queen* (1998) 194 CLR 610 at 623-4).
23. The principle of totality requires a tribunal sentencing for multiple offences concurrently to review the aggregate of the sentences and consider whether their total effect is just and appropriate. The tribunal must look at the totality of the impugned behaviour and ask itself what is the appropriate sanction for all of the offences. An appropriate result, consistent with principle, may be achieved by making the sanctions wholly or partially concurrent or lowering the individual sanctions below that which would otherwise be appropriate to reflect the fact that a number of sanctions are being imposed. Where practicable, the former approach, that is, of making sanctions wholly or partially concurrent, is to be preferred (*Mill v The Queen* (1988) 166 CLR 59 at 62-63).
24. It is also important for a tribunal to consider and if thought appropriate to state in its reasons that a plea of guilty has been taken into account in setting an appropriate sanction. A plea of guilty should generally be assessed in the range of a 10%-25% discount on sentence. The primary consideration determining where in the range a particular case should fall is the utilitarian value of the plea and that, in turn, should be considered against the timing of the plea and the complexity of the issues. The earlier the plea and the greater the complexity of the issues, the more significant is the utilitarian value of a plea (*R v Thomson* [2000] NSWCCA 294 and *R v Houlton* [2000] NSWCCA 183).

*Consideration*

25. The conduct of the Player on the night in question is comprehensively recorded in the send-off and incident reports prepared by the referee and in the incident report prepared by one of the assistant referees. It was, to say the least, deplorable conduct. Players and, in particular those at the higher levels of the game, are expected to exhibit discipline and respect for the game, for match officials and for their opponents. The Player's conduct fell well short of the standards expected of him.
26. The Player referred us to the decision of the FNSW GPT in the matter of Curic. There, the Player received a 6 week suspension for abuse of a match official (calling the referee a "cunt") and a 1 year suspension for making contact with an assistant referee as he was leaving the field of play, having been sent off for receiving a second yellow card for dissent.
27. The AT is not, of course, bound by a decision of the FNSW GPT. In any event, we are of the opinion that Curic is distinguishable on the facts. Curic involved an isolated incident of abuse, that is, the one expletive used against the referee. That expletive was delivered at some distance from the referee, that is, it did not have any attendant element of threat or intimidation. It also involved a deliberate but inconsequential contact between the shoulder of the player and the assistant referee.
28. In the present case:
  - (a) The Player launched a very public tirade of repeated abuse towards the referee involving unseemly and disgusting language intended to threaten and intimidate that official;
  - (b) The conduct included the Player advancing upon the referee with a clenched fist and culminating in threats of physical harm to both the referee and to his family;
  - (c) The Player did not leave the field immediately when sent off but continued to remonstrate, more than once, with the referee;

- (d) So angered and incensed was the Player that he broke free of his own team mates who were sensibly seeking to restrain him and maintained a tirade of abuse towards the referee; and
  - (e) We do not accept that this was a “brain snap” by the Player. A “brain snap” may explain, though not condone, an isolated incident of abuse. It does not explain nor can it ever justify the conduct in question.
29. So concerned was the referee that he felt compelled to report the threats to the Police. We understand that so traumatised were the teenage female assistant referees that each had indicated that they did not intend to continue officiating. That is a great shame.
30. Amateur football relies for its very existence on the beneficence of its volunteers, including match officials, who often devote a significant part of their time to the sport. In most Associations there is a critical shortage of match officials. It is therefore incumbent upon the football family and, in particular players and coaches, to ensure that an environment is created where match officials are respected and participation is encouraged.
31. Referees are not “fair game”. There is no place in football for the conduct exhibited by the Player and especially from an experienced senior player who should have been a role model.

#### *Determination*

32. Under the NFA Grievance and Disciplinary Regulations, Charges 1-3 (R2) carry a minimum sanction of 12 fixtures and a maximum sanction of life. We find no error in the NFA AT’s decision to uphold the sanction of 24 months for each of these charges (which included an unspecified discount for a plea of guilty), with each of the sanctions to be served concurrently. In our opinion, those sanctions:
- (a) are proportionate to the conduct in issue;
  - (b) serve to deter such conduct; and

(c) are consistent with previous decisions of this Tribunal. In particular, we refer to the decision of the AT in Hugo de Jesus (10 September 2012) in which the AT suspended the player for 2 years for the offence of threatening or intimidating a referee by word. In that case, the player relevantly refused to leave the field when shown a red card by the referee and walked over to the referee when shown that card and, in a threatening manner said "You're the fucking reason why there are brawls in this game, because of decisions like this. You're fucked." In Bastic (5 September 2012), the AT imposed a 5 year sanction for threatening a referee by word or action. The reasons of the AT do not, however, disclose the nature of the conduct involved in that case.

33. The sanctions on the Player could well have been more severe had it not been for the Player's early guilty plea in relation to charges 1-3 and his otherwise relatively unblemished record (having only been sent off on a previous occasion for an R7 [two yellow cards]).
34. Neither the NFA Grievance and Disciplinary Regulations nor the FFA Code of Conduct prescribes minimum or maximum sanctions for breaches in the nature of Charge 6. That is therefore a matter wholly in the discretion of the tribunal considering the matter.
35. The conduct in issue was played out in public and may be such as to bring the game of football into disrepute; that is, the conduct had the potential to diminish public opinion of the sport of football (see section 15.2(f) of the NFA Disciplinary and Grievance Regulations). Therefore, in our opinion, the conduct warranted a sanction over and above that imposed in relation to Charges 1-3. Having regard to the nature of the conduct, we find no error in the sanction imposed by the NFA AT in relation to this charge.
36. However, we are of the view that the NFA AT erred in upholding the decision of the NFA GPT that the sanction for Charge 6 be served consecutively with the sanctions for Charges 1-3 for the following reasons:
  - (a) Each of the charges arise from the same incident or series of incidents;

(b) Where an offence, or charge, contains common elements arising out of the same or substantially the same facts, the offender should not be punished more than once for the commission of elements of the respective offences that are common. The sanction imposed by the NFA GPT and upheld by the NFA AT involved the Player being, in effect, punished more than once for common elements of each set of charges; and

(c) The decision of the NFA AT offended the principle of totality because, in our view, the effect of the consecutive nature of the sanction in relation to Charge 6 when viewed as part of the overall sanctions imposed for the conduct rendered that sanction disproportionate to the conduct.

37. The NFA AT accordingly erred in upholding that part of the NFA GPT determination that required the 3 year sanction for Charge 6 to be served by the Player consecutively with the sanctions for Charges 1-3.

**G. RELIEF**

38. The appeal should be upheld as to part and dismissed as to part.

39. The AT:

(a) upholds the determination of the NFA GPT that in respect of Charges 1-3, the Player be suspended from all football related activities including playing, coaching, training, marshalling, managing, team official and being a member of a committee (with the exception of spectating) for a period of 2 years in relation to each offence with each sanction to be served concurrently so that the total maximum suspension is 2 years;

(b) upholds the determination of the NFA GPT in respect of Charge 6 that the Player be suspended from all football related activities including playing, coaching, training, marshalling, managing, team official and being a member of a committee (with the exception of spectating) for a period of 3 years;

(c) sets aside the determination of the NFA GPT in respect of Charge 6 that the sanction be served consecutively with the sanctions for Charges 1-3 and instead

determines that the sanction for Charge 6 is to be served concurrently with the sanctions for Charges 1-3;

- (d) sets aside the determination of the NFA GPT that the Player be suspended from all football related activities including playing, coaching, training, marshalling, managing, team official and being a member of a committee (with the exception of spectating) for a period of 5 years and instead determines that such suspension shall be for a period of 3 years, that is, from 19 August 2015 to 19 August 2018; and
- (e) confirms in part and varies in part the determination of the NFA AT with the following effect:
  - (i) after the service of 2 years of his suspension (that is, on or after 19 August 2017), the Player be permitted to hold the position of registered coach or manager of an NFA team;
  - (ii) the Player be permitted to undertake accreditation to the appropriate level of the team he wishes to coach (with the Player being permitted to undertake the desired level of accreditation whilst otherwise serving his suspension); and
  - (iii) in the remaining 1 year of his suspension, the Player's conduct as a coach or manager (should he choose to undertake either of those roles) will be subject to a good behaviour bond which will be forfeited for the balance of his suspension should he be found guilty of any breaches of the Code of Conduct or the NFA Grievance and Disciplinary Regulations.

40. Each party is to pay his or its own costs of the appeal.



A P Lo Surdo SC  
Chair  
Appeals Tribunal  
Football NSW