

**GENERAL PURPOSES TRIBUNAL
OF FOOTBALL NEW SOUTH WALES
FINAL DETERMINATION
IN THE FOLLOWING MATTER:**

GPT 15/03

Date of Hearing	14 April 2015
Date of Final Determination	17 April 2015
Respondent	Mr Christian Pervan
Attendees & Witnesses	Mr Christian Pervan, Respondent, Spectator Sydney United 58 FC Mr Adam Rakvin, Support Person Mr Martin Misura, Support Person Mr Chris Young, Referee Mr Adam Vainauskas, Referee - 4 th Official Mr Nicholas Backo, Assistant Referee Mr Andrew Best, Assistant Referee (By Phone) Mr Robert Colombo, NSW State League Referee President
The basis upon which the matter is before the General Purposes Tribunal	Grievance and Disciplinary Regulations Section 8.2, FFA Code of Conduct.
Key Words/Phrases	Use of aggressive and offensive language towards a Match Official, Threatening or Intimidation of a Match Official by word or action, Spitting at a Match Official, Harassment, Club Officials responsibility, Duty of Care, Bringing the Game into Disrepute, Public Place.
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Mendo Cklamovski Mr Ray Lovat

A. INTRODUCTION

Football NSW has established the following Bodies pursuant to Section 5.1 of the Football NSW Grievance and Disciplinary Regulations (“Regulations”):

A Disciplinary Committee (DC) responsible for issuing Suspensions pursuant to section 7.2 of the Regulations and to rectify or review a disciplinary decision made by the Match Official pursuant to sections 7.3 to 7.4 of the Regulations. The DC shall only have jurisdiction to issue Suspensions that are no more than one (1) calendar year (section 7.1(b) of the Regulations). Suspensions that are greater than one (1) year shall only be issued by a Tribunal.

A General Purposed Tribunal (GPT) responsible for hearing and determining:

- I. Breaches of Misconduct and Disrepute as set out in Section 8.2 of the Regulations.
- II. Grievances between Members as set out in Section 8.3 of the regulations.
- III. Appeals against a decision of an Association Appeals Committee as set out in Section 8.4 of the Regulations only where that body has imposed a sanction of at least:
 - i. A suspension of six (6) or more Fixtures, or
 - ii. A suspension of three (3) or more months, or
 - iii. A fine of three thousand dollars (\$3,000), or
 - iv. A loss of six (6) or more competition points, or
 - v. Expulsion from a competition.
- IV. Any other matter the Executive considers important to the interests of football in the State to be referred to the GPT. Such a decision is to be at the absolute discretion of Football NSW.
- V. Any referral from the DC to the GPT pursuant to Section 8.5 of the Regulations.
- VI. Any other matter that the DC deems appropriate to be referred to the GPT as set out in Section 8.5 of the regulations.

An Appeals Tribunal (AT) responsible for hearing and determining appeals from the:

- II. DC pursuant to Section 7.5 of the Regulations but subject to Section 9.2 of the Regulations, and
- III. GPT pursuant to sections 8.6 and 15.2 of the Regulations but subject to Sections 9.2 and 9.4 of the Regulations.

The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICES OF CHARGES

FNSW issued a Notices of Charges to the **Respondent** on 20 March 2015.

The charges related to alleged incidents at the Football NSW State League 1st Grade match between Sydney United 58 FC and *Blacktown City Football Club at Lily's* Football Centre, Seven Hills on Sunday, 15 March 2015.

The Notice to the Respondent specified the following charges:

Charge 1

Alleged breaches of sections 15.3 (d) of the Football NSW Grievance and Disciplinary Regulations 2014:

15.3 Misconduct

Misconduct shall mean any act or omission by a Member which:

(d) constitutes a breach of Football NSW Rules and regulations (including these regulations) unless a document contains a provision or provisions for dealing with any breach thereof;

Alleged breaches of Part (a), (d), (e) and/or (i) of the FFA Spectator Code of Behaviour; and/or

A spectator at a Match or otherwise involved in any activity sanctioned or staged by, or held under the auspices of, Football Federation Australia Limited or an affiliated Member Federation or Club must:

- . (a) respect the decisions of Match Officials and teach children to do the same;*
- . (d) not use violence in any form, whether it is against other spectators, Team Officials (including coaches), Match Officials or Players;*
- . (e) not engage in discrimination, harassment or abuse in any form, including the use of obscene or offensive language or gestures, the incitement of hatred or violence or partaking in indecent or racist chanting;*
- . (i) conduct themselves in a manner that enhances, rather than injures, the reputation and goodwill of FFA and football generally.*

Alleged breaches of Clauses 2.1, 2.2(b), (c), (d), (e) and/or (f) of the FFA Code of Conduct (effective from 1 January 2007).

2.1 A Member must not bring FFA or the game of football into Disrepute.

Without limiting the generality of clause 2.1, a Member will be taken as having brought football into Disrepute if any of the following occurs:

2.2(b) harassment, including sexual harassment or any unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances;

2.2(c) offensive behaviour, including offensive, obscene, provocative or insulting gestures, language or chanting;

2.2(d) provocation or incitement of hatred or violence;

2.2(e) spectator or crowd violence;

2.2(f) intimidation of Match Officials, which may take the form of (but is not restricted to) derogatory or abusive words or gestures toward a Match Official or the use of violence or threats to pressure a Match Official to take or omit to take certain action regardless of where such action is taken;

The relevant conduct alleged exhibited by **Christian Pervan** allegedly engaged in conduct that:

- was offensive, abusive, harassing and threatening;*
- was unsportsmanlike or unprofessional;*
- was violent and intimidating; and*
- brought or may have brought football and/or Football NSW into disrepute and/or damaged the reputation and goodwill of the game.*

Relevant Conduct

At the completion of the 1st Grade match between Sydney United 58 FC and Blacktown City Football Club on Sunday, 15 March 2015 at Lilys Football Centre, Seven Hills, **Christian Pervan** spat at or on a Match Official (Chris Young).

The Respondent pleaded NOT guilty to Charge number 1.

Charge 2

Alleged breaches of sections 15.3 (d) of the Football NSW Grievance and Disciplinary Regulations 2014:

15.3 Misconduct

Misconduct shall mean any act or omission by a Member which:

(d) constitutes a breach of Football NSW Rules and regulations (including these regulations) unless a document contains a provision or provisions for dealing with any breach thereof;

Alleged breaches of Part (a), (e) and/or (i) of the FFA Spectator Code of Behaviour; and/or

A spectator at a Match or otherwise involved in any activity sanctioned or staged by, or held under the auspices of, Football Federation Australia Limited or an affiliated Member Federation or Club must:

- . (a) respect the decisions of Match Officials and teach children to do the same;*
- . (e) not engage in discrimination, harassment or abuse in any form, including the use of obscene or offensive language or gestures, the incitement of hatred or violence or partaking in indecent or racist chanting;*
- . (i) conduct themselves in a manner that enhances, rather than injures, the reputation and goodwill of FFA and football generally.*

Alleged breaches of Clauses 2.1, 2.2(b), (c), (d), (e) and/or (f) of the FFA Code of Conduct (effective from 1 January 2007).

2.1 A Member must not bring FFA or the game of football into Disrepute.

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2.2(b) harassment, including sexual harassment or any unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances;

2.2(c) offensive behaviour, including offensive, obscene, provocative or insulting gestures, language or chanting;

2.2(d) provocation or incitement of hatred or violence;

2.2(f) intimidation of Match Officials, which may take the form of (but is not restricted to) derogatory or abusive words or gestures toward a Match Official or the use of violence or threats to pressure a Match Official to take or omit to take certain action regardless of where such action is taken;

The relevant conduct alleged exhibited by **Mr Christian Pervan** allegedly engaged in conduct that:

- was offensive, abusive, harassing and threatening;*
- was unsportsmanlike or unprofessional;*
- was violent and intimidating; and*
- brought or may have brought football and/or Football NSW into disrepute and/or damaged the reputation and goodwill of the game.*

Relevant Conduct

At the completion of the 1st Grade match between Sydney United 58 FC and Blacktown City Football Club on Sunday, 15 March 2015 at Lilys Football Centre, Seven Hills, **Christian Pervan** swore and used derogatory comments at the Match Officials using words such as “you’re a fucking disgrace” and calling a Match Official “retarded”.

The Respondent pleaded GUILTY to Charge number 2.

C. THE HEARING

The Tribunal convened its hearing at Football NSW offices on 14 April 2015.

The Tribunal confirmed with the Respondent that he had received and understood the Notice of Charges and had seen the relevant documents before the Tribunal.

The Tribunal cautioned those in attendance regarding conduct and evidence given at the Hearing in that they were obliged to provide accurate and honest testimony to the Tribunal and that any breach of that obligation could of itself be the subject of disciplinary action.

The Respondent was advised of his relevant appeal rights under the Regulations.

The Tribunal invited submissions on its jurisdiction and competence. The Chair noted that he was an inactive member of the NSW State League Referees' Branch and that he did not know any of the referees appearing as witnesses in this matter. No submissions were made.

D. BACKGROUND, SUBMISSIONS & EVIDENCE

The Tribunal accepted as evidence all of the documents listed in the Index of Annexures together with the Notice of Response and two character references for the Respondent.

Mr Christian Pervan gave brief evidence to the Tribunal and noted that he denied Charge 1 claiming that he did not spit at the referee. He did however plead Guilty to Charge 2. He conceded that he approached the Referee at the end of the match and abused him. He said that he was angry at losing the match and frustrated and agreed that he should not have done this to the referee.

Mr Christian Pervan said that his verbal abuse of the referee lasted "between 30 seconds to a minute" and that he said that he called the referee "a fucking disgrace" and "a dickhead" and that he yelled at him "why did you give that fucking offside".

When questioned in relation to the alleged spit, **Mr Christian Pervan** said: "I was yelling - it was possible that some saliva might have left my mouth but I did not intend it. I was yelling quite loudly at him and for 30 seconds to a minute. I just happened to see them as I was leaving the ground."

In his written submissions to the Tribunal **Mr Christian Pervan** noted:

Once I made these comments, I knew it was unnecessary and disrespectful and greatly regret it and I do apologise for any grief I may have caused. I am also willing to apologise to the officials I have offended. It was a stupid spur of the moment act, an act I do regret. I could see the officials were upset with what I had said; I then proceeded towards and out the front exit of Lily Stadium.

Mr Pervan did not offer any apology to the Match Officials and the above written statement was significantly inconsistent with his demeanour during the proceedings. He seemed detached from the proceedings and several times merely restated his position that he was innocent of Charge number 1.

The four Referees all submitted an Incident Report and in each of these alleged that the Respondent both spat at and abused the Referee.

Mr Backo, an Assistant Referee, said that he "Saw facial expressions by the Respondent consistent with spitting and heard and saw a projectile come out of his mouth in the direction of the referee." He also said that the respondent abused the referee for about 30 seconds.

Mr Best, the fourth Official, said that his attention was drawn to the Respondent when he heard him yelling at the Referee using words like "You're a fucking disgrace". After he finished with the abuse "he spat directly at the Referee". He tried to chase him but he ran off into the night. He also reported the matter immediately to the Match Commissioner and the Referee Assessor.

Mr Vainauskas, an Assistant Referee, noted that whilst he did not hear what the respondent said to the Referee he saw him “turn his head and spit directly at the Referee. He also reported the matter immediately to the Match Commissioner and the Referee Assessor.

The Referee, **Mr Young**, gave evidence and noted that whilst he did not see where the spit hit him, he was certain that the respondent spat at him. He reported the incident immediately to Mr Sam Krslovic, President of Sydney United, before entering the change rooms and also reported the matter to the Match Commissioner and the Referee Assessor. He showered early to wash himself and before the usual practice of the match debrief with the Assessor.

Whilst there was no independent witnesses of the alleged spit, it is relevant to note that the Match Commissioner, **Mr Louis Fayd’Herbe**, the Referee Assessor, **Mr Sandro Perticarini**, and a number of the jacketed officials tendered written evidence that they were made aware of the alleged spitting incident on the night and in the first two instances, immediately after the conclusion of the match. In fact there was significant corroboration of the claim by the referees of the alleged spit within minutes of that alleged action taking place.

In the absence of a witness to the action independent of the Referee team, this coupled with the unshakable evidence offered by the Referees as well as the other matters noted above, was compelling.

Mr Pervan was invited to ask questions of all of the Referees after completion of their evidence and declined to do so. He was advised by the Chair that he may ask question through the Chair and that it might assist his submissions to the Tribunal. He declined on the basis that he had said that he “didn’t spit at the referee and that’s all he had to say about it.”

E. CONSIDERATION & DETERMINATIONS

All four referees gave independent and consistent evidence that they saw and heard the Respondent spit at the referee. Each was independently cross-examined by the Tribunal members in the absence of each other to verify exactly what they saw and they were unshakable in their evidence.

The four referees were credible, confident witnesses and the Tribunal found them to be reliable witnesses.

The Tribunal noted that several Annexures tendered as evidence corroborated the evidence of the Referees in that these reports confirmed that the Referees made the allegations in relation to both Charges to several people immediately and at the first opportunity after the events.

The Respondent did not seek to challenge any of this evidence save for his denial that he spat at the Referee.

In all other respects the evidence offered was consistent with the account offered by the Referees.

The Tribunal on balance preferred the evidence of the referees and found that **Mr Pervan** had spat at the Referee as alleged.

F. FINDINGS

The Tribunal found that **Mr Christian Pervan** was GUILTY of all Charges related to the relevant incidents.

Spitting at a Match Official is a particularly serious and disgusting offence. It is demeaning in the extreme, constitutes an assault on the Match Official whilst also representing serious risk of infection from the exchange of bodily fluids.

The Tribunal found that **Mr Pervan** positioned himself so that he could gain close proximity to the Referee and, on his own admission, fired a volley of abusive comments at the Referee for between 30 seconds and a minute. This is a quite a long time. At the end of that tirade **Mr Pervan** then was found to have spat at the Referee. His actions were deliberate and calculated to demean the Referee. The Tribunal formed the opinion from the demeanour of the Referee that he was still somewhat shaken by these events.

The seriousness of the Charges required a lengthy Suspension for all the above reasons.

The Tribunal took into account **Mr Pervan's** character as evidenced in two character references. However, it felt that the seriousness of the action overshadowed **Mr Pervan's** record of good character. It is reasonable to expect that any person with the experience of involvement with his club as a volunteer would be aware of the consequences of his actions.

G. SANCTIONS

Mr Pervan is suspended for five (5) years from ALL football related activity. For the avoidance of doubt this includes playing, coaching, refereeing, spectating as well as the holding of any role with a Member, as defined in the Regulations, for the full period of that Suspension.

A Bond is imposed on Sydney United 58 FC to ensure that **Mr Christian Pervan** is prevented from attending ANY Sydney United Fixtures for the duration of his Suspension. If Sydney United 58 FC fail to exclude **Mr Christian Pervan** from ANY and all Fixtures during his Suspension, Sydney United 58 FC may be charged with Contempt of the Tribunal in accordance with the Regulations.

The Tribunal determined that the Respondent also pay the costs of the Tribunal processes as determined by FNSW.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with articles 8.6 and 9.2 of the FNSW Grievance and Disciplinary Regulations. Any appeal must be submitted on the Notice of Appeal form (Prescribed Form 13) to tribunal@footballnsw.com.au with the relevant Application Fee (\$750) within seven (7) working days of the Final Determination of the GPT being sent to the Club.



David P. Lewis

Chairman

15 April 2015