



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

GPT 15/25

Date of Hearing	8 September 2015
Date of Final Determination	9 September 2015
Respondent	Mr Louis Duchesne
Attendees & Witnesses	The Respondent refused to attend the Hearing.
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations Section 8.2, FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Use of aggressive and offensive language towards a Match Official, Threatening or Intimidation of a Match Official by word or action, Club Officials responsibility, Duty of Care, Bringing the Game into Disrepute, Public Place, Breach of FNSW Competition Regulations, Contempt of the Tribunal, Failure to attend Hearing.
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Mendo Cklamovski Mr Ian Westray

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 12 August 2015.

The charges related to alleged incidents at the Football NSW National Premier League 2 (NPL2) match between Macarthur Rams FC and Central Coast FC at Plum Park, Lisarow on Sunday, 26 July 2015. The Respondent received a Red Card for a R2 offence (Violent Conduct)

The Notice to the Respondent specified the following charges:

Charge 1

Alleged breaches of Section 15.3(d) of the Football NSW Grievance and Disciplinary Regulations 2014, Schedule 3, Table A, Number R2 – Red Card for Violent Conduct.

Charge 2

Alleged breaches of sections 15.3 (b), (d), (e), (g), and/or (h) of the Football NSW Grievance and Disciplinary Regulations 2014 and Schedule 3, Table B, Number 7:

15.3 Misconduct

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

(b) constitutes a breach of the FFA Rules and Regulations;

(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;

(e) is unsportsmanlike or unprofessional;

(g) brings or may bring the game into Disrepute or damage the reputation and goodwill of the game; or

(h) in the opinion of Football NSW, is or may be prejudicial to the interests or reputation of either the game of football in the State, Football NSW or any of its sponsors.

Alleged breaches of Clauses 2.1, 2.2(a), (c), (d) 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(a) discriminatory behaviour, including public disparagement of, discrimination against, or vilification of, a person on account of an Attribute;

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 **Louis Duchesne** 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

The relevant conduct alleged exhibited by **Louis Duchesne** was as follows:

After being shown the Red Card, the Respondent used offensive, insulting and/or abusive language towards the Match Official (Roberto Mattei). The Respondent said to the Match Official, "You are a fucking cunt. You are a fucking monkey. You are a fucking idiot. Fuck you and your fucking family!"

The Respondent kept repeating that over and over again for up to 40 seconds without leaving the field of play.

Charge 3

Alleged breaches of sections 15.3 (b), (d), (e), (g) and/or (h) of the Football NSW Grievance and Disciplinary Regulations 2014:

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

The relevant conduct alleged exhibited by **Mr Louis Duchesne** 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

The Respondent is alleged to have said the following words to the Match Official (Roberto Mattei):

“You will die on the way home”.

C. THE HEARING

The Tribunal was scheduled to convene its hearing at Football NSW offices at 6.30pm on 8 September 2015 and invited all persons to attend initial briefings on the conduct of the proceedings. Requisite Notices were sent to the Respondent in a timely manner and he submitted his written Notice of Response to Football NSW on 18 August.

In that Notice of response the Respondent entered the following plea:

“I am pleading Guilty to the charge but I do not accept the report(s) attached to the Notice of Charge.”

At approximately 5.20pm on Tuesday 8 September FNSW received a telephone call from the Respondent noting that he would not attend the Hearing. An officer from FNSW called the Tribunal Chair and advised him that the Respondent stated that he was “over it” and as he was retiring from this level of Football he did not see the need to attend the Hearing.

The Tribunal convened and determined to consider this matter in the absence of the Respondent in accordance with section 12.7 of the Football NSW Grievance and Disciplinary Regulations:

12.7 Non-attendance

- If any party or witness who has been properly notified of a hearing fails to attend a Tribunal hearing without showing sufficient cause for such failure, the hearing can proceed ex parte and determined in that party’s absence, including as to Determination on the merits and/or sanction. An ex parte Determination of a Tribunal has the same force and effect as if it was made after a full hearing before that Tribunal.*
- If any party or witness that fails to attend a Tribunal hearing without reasonable excuse or sufficient cause, that Member shall be deemed to have committed Misconduct and may be subject to sanction under section 8.2 (Charges of Misconduct and Disrepute).*

D. BACKGROUND, SUBMISSIONS & EVIDENCE

In the absence of the Respondent, the Tribunal accepted the written evidence of the Match Officials as set out in the documents listed in the Index of Annexures attached in the Schedule to this Determination.

The Referee reported as follows:

“After a normal foul and whilst the game was off, the player n. 7 Duchesne Louis (MacArthur) used a moderate level of strength to shove player n. 4 Verity Nathan (Central Coast) who responded to Duchesne in the same way. As a result, both players started to roughly grab and tug on each other's jerseys for up to 30 seconds, only stopping when team mates from both sides divided them. After the situation calmed down, I sent both players off simultaneously.

The player Duchesne then proceeded to shout at me, yelling out the following offensive statements: "You are a fucking cunt. You are a fucking monkey. You are a fucking idiot. You will die on the way back home. Fuck you and your fucking family!" He kept repeating that over and over again for up to 40 seconds without leaving the ground of the game.

He only left when 2 team mates forced him to leave by pushing him away and covering his mouth so that he would not say anything else. Unsatisfied with being forced to leave the grounds, he marched straight to the Central Coast's coach to verbally abuse him as well. After one minute of trying to send him away by his team mates, he finally left the ground of the game.

The game restarted after an overall of 3 minutes delay. “

E. CONSIDERATION & DETERMINATIONS

The Tribunal considered the non-attendance of the Respondent and the effect this may have both as a precedent for the GPT and the sanctions available to it.

Whilst section 12.7 of the Football NSW Grievance and Disciplinary Regulations clearly enabled the Tribunal to make a Determination ex parte in these circumstances, certain other matters were relevant and required consideration.

The non-attendance of the Respondent in clear contempt of the GPT and Football NSW necessarily resulted in a finding of guilt on all charges. Given this Determination the Tribunal considered the sanctions available to it.

One of the options available to the Tribunal was a sanction under which the Respondent would be suspended from ALL Football Related activities until he appeared before a GPT. Such a sanction would or could amount to a Life ban if the Respondent failed to make himself available to a subsequent Hearing.

The Tribunal did not believe that past precedent supported a Life ban for the actions of the Respondent in the event of a present or future finding of guilt on all charges. Further, such an open Determination could prejudice a future Hearing if the Respondent made himself available in 12 months time or more as the memory of witnesses would inevitably fade and thereby both inconveniencing those witnesses and delivering a potential 'benefit' to the Respondent.

As a result the Tribunal determined that an actual time based significant sanction would be most appropriate as it would crystallise a sanction on the Respondent and place the onus on him to either appeal on severity or accept a more comprehensive ban based on a finding of guilt on all charges as well as a finding of contempt of the GPT.

Liability of Macarthur Rams

The Tribunal also discussed the potential liability of the Respondent's Club (Macarthur Rams) to take steps to assist the GPT and its responsibility to FNSW to facilitate the attendance of the Respondent.

Member Clubs are principally responsible for the management and conduct of its players. They lay a most important role in the preservation of their own reputation as well as the reputation of the game. As such they must assume a role that ensures that the policies of FNSW and the FFA are upheld and observed by their members.

The Tribunal recommended that FNSW writes to Macarthur Rams to request advice on what steps they took internally to review and perhaps discipline the Respondent in relation to these charges and what steps they took to ensure that the Respondent attended the GPT.

The failure of Macarthur Rams to give notice of their intention to appear in the matter were noted and the Tribunal recommends that in all future matters the Member Protection Officer of all Clubs be required to attend Hearings.

F. FINDINGS

The Tribunal found that **Mr Louis Duchesne** was GUILTY of all Charges.

The Tribunal also found that **Mr Louis Duchesne** was GUILTY of Contempt of the GPT and of FNSW in that he deliberately and without justification absented himself from the Hearing.

G. SANCTIONS

Mr Duchesne is suspended for five (5) years from ALL Football Related Activity (including Futsal). 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. He may not be registered or participate in any way with any organisation affiliated with FNSW or FFA.

The Tribunal requests that FNSW make all Association Members aware of this sanction on **Mr Duchesne** so as to ensure that his sanction is observed.

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

9 September 2015

The Schedule

Index of Documents

ANNEXURE – MATCH OFFICIAL INCIDENT REPORTS

ANNEXURE MO1 – Match Official Incident Report, Roberto Mattei (Referee)

ANNEXURE MO2 – Match Official Incident Report, Roberto Mattei (Referee)

ANNEXURE MO3 – Match Official Incident Report, Matthew Cassidy (Assistant Referee)

ANNEXURE MO4 – Match Official Incident Report, Christian Layland-Greenaway (Assistant Referee)

ANNEXURE – NOTICE OF RESPONSE

Notice of Response (Prescribed Form 12) – Louis Duchesne (2 pages)

Annexure A – Peter Preston, 1st team coach, Central Coast FC (1 page)

NOTICE OF CHARGE 12 Aug 2015 – Louis Duchesne

NOTICE OF SUSPENSION 12 Sept 2015 – Louis Duchesne