

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

**GPT 15/19**

Respondent	Mr Ahmad Al Walei
Attendees	Ms Wendy Hunt (FC Gazy, Representing the Respondent) Mr Ali Al Waeli (FC Gazy, Player and Witness) Mr Chris Theodosiou (FC Gazy, Player and Witness) Mr Bulent Sevinc (FC Gazy, Head Coach) Mr Aydin Cetinay (FC Gazy, Technical Director)  Mr John Niyonsaba (Dunbar Rovers, Player and Witness) Mr Clive Delaney (Dunbar Rovers, Player and Witness) Mr Robbie Deasy (Dunbar Rovers, Player and Witness)
The basis upon which the matter is before the General Purposes Tribunal	Grievance and Disciplinary Regulations Sections 8.2 and 15.3
Key Words/Phrases	Racist comments, standard of proof, Briginshaw Test
Date of Hearing	19 August 2015
Date of Final Determination	24 August 2015
General Purposes Tribunal Members	Mr Chris Gardiner (Chair) Mr Mendo Cklamovski Mr Louis Fayd'herbe

## **A. INTRODUCTION**

1. Football NSW has established this General Purposes Tribunal pursuant to Section 5 of the Football NSW Grievance and Disciplinary Regulations 2014 ("Regulations").
2. A General Purposed Tribunal (GPT) is responsible for hearing and determining:
  - 2.1. Breaches of Misconduct and Disrepute as set out in Section 8.2 of the Regulations;
  - 2.2. Grievances between Members as set out in Section 8.3 of the Regulations;
  - 2.3. Matters referred by Football NSW's Disciplinary Committee as set out in Section 8.4 of the Regulations;
  - 2.4. Any other matter Football NSW considers important to the interests of football in the State, at its absolute discretion, as set out in Section 8.1 (a) (iii).
3. The GPT makes determinations as set out in Section 8.5 of the Regulations.

## **B. NOTICES OF CHARGES**

4. Football NSW issued a Notice of Charges against Mr Ahmad Al Waeli dated 24 July 2015, alleging breaches of:

*Sections 15.3 (e), (f), (g) and/or (h) of the Football NSW Regulations, and/or Clauses 2.1, 2.2(a), (c) and/or (d) of the FFA Code of Conduct.*

5. The conduct alleged in the Notice of Charges for the Respondent was as follows:

*During the Round 12 1<sup>st</sup> Grade Match of the Men's State League 2 (MSL2) between FC Gazy Lansvale and Dunbar Rovers FC on Sunday, 28 June 2015, the Participant, an FC Gazy Lansvale player, used offensive and/or racist language towards a Dunbar Rovers FC player by saying "Don't touch me you dirty black cunt" (Charge 1).*

*The Participant then allegedly made an offensive and/or racist comment by saying "Just because he's got different skin colour doesn't mean I have to respect him" (Charge 2).*

6. The Respondent pleaded Not Guilty to the Charges in a Notice of response dated 29 July 2015.

## **C. DECISIONS OF THE GPT**

7. The Tribunal determined that the Charges against the Respondent not be upheld.
8. The Tribunal determined that the costs of the Tribunal processes be met by by Football NSW.

## **D. THE HEARING**

9. The Hearing was held at Football NSW on 19 August 2015.
10. The Respondent was represented by Ms Wendy Hunt.
11. The Respondent was invited to make submissions on jurisdiction and competence. No submission was made.

12. Mr John Niyonsaba, whose complaint formed the basis of the Charges, attended and gave evidence with two team members.
13. The Tribunal advised the Respondent of his right to appeal.

#### **E. EVIDENCE & SUBMISSIONS**

14. The Tribunal accepted as evidence the following statements:
  - 14.1. A statement from the Respondent (undated, attached in Respondent's evidence from FNSW as Annexure B)
  - 14.2. A statement from Mr Ali Al Waeli (undated, attached in Respondent's evidence from FNSW as Annexure C)
  - 14.3. A statement from Mr Christopher Theodosiou (undated, attached in Respondent's evidence from FNSW as Annexure D)
  - 14.4. A letter to FNSW from the President, Gazy Sydney FC, dated 2 July 2015
  - 14.5. A statement by Mr John Niyonsaba via email to FNSW dated 2 July 2015
  - 14.6. A statement from Mr Clive Delaney (undated, attached in Witness Statements from FNSW as Annexure B)
  - 14.7. A statement by Mr Robert Deasy via email to FNSW dated 30 June 2015
15. It was the Respondent's submission that:
  - 15.1. He had, with many other players in the game, used offensive language, but that he had not used or intended racist comments towards Mr Niyonsaba;
  - 15.2. The weight of the evidence from his witnesses, Messrs Al Waeli and Theodosiou suggested that Mr Niyonsaba had misheard his comments;
  - 15.3. The Referee was close enough to have heard any racist comments and would have acted if they had been made, and that the lack of reaction by players at the time of the incident, supported his account that no racist comments had been made;
  - 15.4. The interchange between him and Mr Deasy had occurred separately and later and had been misconstrued;
  - 15.5. The standard of proof in this matter, given the seriousness of the charge and potential damage to his reputation, was the *Briginshaw Test*.
16. The Respondent's representative stated that he, his team mates and the Club treated racism seriously, had themselves been subjected to racist comments in the past, and had treated the complaint, even though they did not accept its accuracy, as the opportunity to reinforce Club messages to players about racism.
17. Messrs Niyonsaba, Delaney and Deasy stood by their written statements in the oral testimony and answers to Tribunal questions they provided.

#### **F. CONSIDERATION & COMMENT**

18. The Respondent's representative argued that the standard of proof in a matter involving a charge of racism was the *Briginshaw Test* – the Tribunal Members needed to be 'comfortably satisfied' that the evidence supported a finding of guilt. She argued that damage to reputation, likely severity of sanction, and possible subsequent use of findings in anti-discrimination proceedings required that the Tribunal assess evidence before it using that standard of proof.

19. The 'Briginshaw Test' refers to the principle, or criteria, for such determinations, articulated in a famous case known as 'Briginshaw' by High Court Justice Dixon, who stated:

*The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer of the question whether the issue has been proven to the reasonable satisfaction of the tribunal.*

20. The concept of Tribunal members having to be 'comfortably satisfied' also came from this case, as articulated by Justice Rich:

*The nature of the allegation requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a **comfortable satisfaction** that the tribunal has reached both a correct and just conclusion.*

21. The Respondent's submission on the evidence relating to the first Charge was that two players in proximity to the interaction between Mr Al Waeli and Mr Niyonsaba corroborated Mr Al Waeli's account that the word he had used was not 'black' but 'bloody'. His representative argued, further, that the evidence of the single witness supporting Mr Niyonsaba's account was not reliable, as he had stated that he had heard the words he recounted repeated, and by more than one player, a recollection not supported by any other witness, including Mr Niyonsaba.
22. While one of the two corroborating witnesses for Mr Al Waeli was his brother and it could be argued that his evidence needed to be discounted, the Tribunal found him a credible witness, but more significantly found the second supporting witness, Mr Theodosiou, to be very credible in the account of the incident he gave at the hearing.
23. The weight of the evidence therefore did not allow the Tribunal to be comfortably satisfied that Mr Niyonsaba's recollection was accurate, comfortably satisfied that the Charge should be upheld.
24. With regard to the exchange alleged in the second Charge, the Tribunal was faced with two contradictory accounts and no other witnesses than the two individuals holding those contradictory accounts. The Respondent did not deny the exchange, but stated that his 'defence' of his interaction with Mr Niyonsaba to Mr Creasy after the incident was not as Mr Creasy had heard or recalled it. He denied he tried to justify racist comment or motivation.
25. The exchange between the Respondent and Mr Creasy was very brief. No-one else appeared to have heard the exchange. The Tribunal was not in a position to favor one account over the other, and certainly not able to be comfortably satisfied that the Charge should be upheld.
26. The Tribunal therefore determined that the two Charges against Mr Al Waeli not be upheld.
27. Given the decision in favor of the Respondent, the Tribunal determined that the costs of the Tribunal processes be met by Football NSW.

28. The Tribunal commended at the hearing, and does so again in this determination, the action by Mr Niyonsaba in lodging a complaint about what he believed had been an instance of racist behavior by a player against him. Notwithstanding that on this occasion the Tribunal did not believe evidence available allowed it to uphold the charges arising from the complaint, it believes it is important for players to always raise what they believe was racism in a game or event with the relevant football officials and authorities.

**Chris Gardiner**  
**Chairman**  
**24 August 2015**