

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

GPT 15/28

Respondent	Ms Sarah Yatim
Attendees	Mr James Brackenrig (Witness) Mrs Karen Brackenrig (Witness) Ms Mel McCauley (Witness) Ms Michelle Giovenali (Witness) Mr Paul Jones (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	Offensive Language, Reasonable Self-Defence
Date of Hearing	7 September 2015
Date of Final Determination	14 September 2015
General Purposes Tribunal Members	Mr Chris Gardiner (Chair) Mr Louis Fayd'herbe Mr Ben Jones

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:
3. Breaches of Misconduct and Disrepute as set out in Section 8.2 of the Regulations;
4. Grievances between Members as set out in Section 8.3 of the Regulations;
5. Matters referred by Football NSW's Disciplinary Committee as set out in Section 8.4 of the Regulations;
6. 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).
7. The GPT makes determinations as set out in Section 8.5 of the Regulations.

B. NOTICES OF CHARGES

8. Football NSW issued a Notice of Charges against the Respondent dated 27 August 2015, alleging breaches of:

Sections 15.3 (b), (d) Schedule 3 Table C Numbers 2 & 3, (e), (f), (g) and/or (h) of the Football NSW Regulations, and/or parts (d), (e), and/or (i) of the FFA Spectator Code of Behavior.

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

CHARGE 1: *During the Men's F-League Grand Final between East Coast Heat and Dural Warriors on Sunday, 26 July 2015 at Valentine Sports Park, Glenwood, the Participant (Sarah Yatim) used offensive, intimidating and/or abusive language against another Spectator (Kara Brackenrig), by calling Ms Brackenrig a "Fucken idiot", "Fucking stupid slut" and by telling Ms Brackenrig to "Fuck off"*

CHARGE 2: *After Ms Brackenrig allegedly threw coffee on the Participant, the Participant punched Ms Brackenrig to the face a number of times*

10. Ms Yatim pleaded not guilty to the charges.

C. DECISIONS OF THE GPT

11. The Tribunal determined that Ms Yatim receive within this Determination a warning with regard to the use of offensive language as a spectator.

D. THE HEARING

12. The Hearing was held at Football NSW on 7 September 2015.

13. The Chairman declared that he knew two of the witnesses, Ms McCauley and Mr Maoriana, as a previous President of a Futsal Club in which they had participated several years ago. He stated that he did not believe that past association with witnesses would affect his judgment of their evidence, and noted that he was one of three persons involved in the Tribunal.
14. The Respondent was invited to make a submission as to the jurisdiction or competence of the Tribunal. No submission was made.
15. The Respondent was able to make opening and closing submissions.
16. Mr Mariorana was available to the Tribunal by phone but was not called by the Tribunal.
17. The Respondent was advised of her rights to appeal.

E. EVIDENCE & SUBMISSIONS

18. The Tribunal accepted statements from Football NSW relating to the Charges from Ms Kara Brackenrig, Ms Christine Brackenrig, Ms Michelle Giovenali, Ms Mel McCauley, Mr Matteo Mariorana, and Mr Paul Jones.
19. The Tribunal also accepted as evidence a photo relating to the incident submitted by Football NSW from its official photographer, Mr Damian Briggs.
20. Ms Yatim read an opening statement.
21. Ms Yatim acknowledged that she had used swear words in an exchange with Ms Brackenrig, but stated that they had not been aggressive or excessive, used instead to dismiss insulting comments first made by Ms Brackenrig to another spectator.
22. Ms Yatim's submission was that she had been confronted by Ms Brackenrig in an agitated state, had feared for herself in that confrontation, Ms Brackenrig had positioned herself over her, that she had first pushed and then, when her push had not had affect, had punched Ms Brackenrig in order to defend herself from what she apprehended to be a real threat. She claimed that in the physical contact, Ms Brackenrig had grabbed her, the two had fallen, and the two had then been separated by a Club official, Ms Mariorana.
23. She stated her regret to the Tribunal for the incident. She stated that she had not previously faced charges as a player, that the game of Futsal was very important to her as a relief from otherwise difficult personal circumstances, and that she hoped that she would not be prevented from participating in the game as a result of this incident.

F. CONSIDERATION & COMMENT

24. The Tribunal determined in a separate determination arising from an earlier stage in the hearing that the primary responsibility for this incident rested with Ms Brackenrig. Ms Brackenrig had initiated the exchange of insulting and offensive language, and had escalated the exchange into a physical altercation by throwing coffee at and onto Ms Yatim.

25. Ms Yatim did not deny that she had pushed and then punched Ms Brackenrig. The questions for the Tribunal were whether Ms Yatim's action had been in self-defence and were reasonable in the circumstances, and whether this altercation was to be characterized in terms of the Regulations as 'fighting' by spectators.
26. The Tribunal concluded that Ms Brackenrig had been in an agitated state. She had acted aggressively in throwing coffee at and in moving towards Ms Yatim. A photo presented as evidence suggested that Ms Yatim's claim that Ms Brackenrig had positioned herself over her was credible.
27. Ms McCauley's evidence at the hearing corroborated Ms Yatim's account and characterization.
28. In such a situation, the Tribunal concluded that action to push and then punch away a person who appeared to pose a real threat of violence was reasonable.
29. With regard to the second Charge, the Tribunal accepted that this physical altercation was brief. It closely questioned Ms Yatim on the details of the physical contact. It was satisfied that her actions consisted of single actions of pushing and punching to break off the perceived aggression by Ms Brackenrig. The actions appeared proportionate and were not continued once the threat abated. It did not accept that it was accurate or fair to characterize these actions as 'fighting'.
30. With regard to the first Charge, the Tribunal determined that Ms Yatim use of offensive language had been at the very lowest end of the offence range and, noting Ms Yatim's regret for the conduct, determined that a warning against such conduct into the future was sufficient sanction.
31. The Tribunal heard the charges against Ms Yatim in the same hearing as those against Ms Brackenrig. Having assessed the relative responsibilities in the incident, the Tribunal awarded the costs of the Tribunal processes against Ms Brackenrig.

Chris Gardiner
Chairman
14 September 2015