

**DISCIPLINARY COMMITTEE OF FOOTBALL AUSTRALIA**

**DETERMINATION IN THE FOLLOWING MATTER:**

<b>Player and club</b>	Lewis Miller, Central Coast Mariners
<b>Alleged offence</b>	Offence No. 3, Serious Foul Play
<b>Date of alleged offence</b>	13 April 2022
<b>Occasion of alleged offence</b>	Match between Central Coast Mariners and Western Sydney Wanderers
<b>Date of Disciplinary Notice</b>	14 April 2022
<b>Basis the matter is before the Disciplinary Committee</b>	A referral: see clause 3.3(a) and 11.21(b)
<b>Date of Hearing</b>	21 April 2022
<b>Date of Determination</b>	21 April 2022 (oral pronouncement of determination) 22 April 2022 (written reasons for determination)
<b>Disciplinary Committee Members</b>	Lachlan Gyles SC (Chair) Anthony Lo Surdo SC David Barrett (Player)

**A. INTRODUCTION AND JURISDICTION**

1. The Committee has jurisdiction under clause 4.3 of the "A-League Disciplinary Regulations" applicable to the 2021-22 A League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is duly referred, clause 3.3(a) provides that the Committee must determine the matter and impose such sanctions as are authorised and appropriate to the determination.
2. In this matter there has been a referral under clause 11.21(b) of the Disciplinary Regulations. Prior to a referral under clause 11.21(b) the player will have been given a direct red card by the referee. The consequence is that the player will have an automatic Mandatory Match Suspension (**MMS**) (in this case 1 match). No part of the above process is able to be referred to the Committee and hence cannot be appealed.
3. Further, the Match Review Panel (**MRP**) have formed the view that, on the material available to it, an additional sanction of one match over and above the MMS is warranted. The Player has elected not to accept the proposed additional sanction.
4. The function of the Committee in such circumstances is solely to determine the question of whether an additional sanction should be imposed over and above the MMS, and if so, what that additional sanction should be. In doing so it is not

constrained by the recommendation of the MRP and can impose a greater sanction if it thinks fit, or a lesser one. Guilt or innocence is not up for review. That issue has been finally determined by the earlier process. The Committee has no jurisdiction to deal with that question and will not express any view on it.

5. The Committee is satisfied that it has jurisdiction to deal with this referral. Further, neither party contended to the contrary.

#### **B. THE HEARING**

6. On the evening of Monday, 21 April 2022, the Committee heard the referral of the matter, by AVL.
7. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of counsel, and Lewis Miller (**Player**) was represented by Mr Simon Philips, of counsel.
8. Disciplinary Counsel relied upon the following evidence:
  - (a) video footage of the incident;
  - (b) the referee's report;
  - (c) a disciplinary notice; and
  - (d) the Player's disciplinary record.
9. Mr Philips, for the Player, relied upon the following evidence:
  - (a) video footage of the incident;
  - (b) a written statement from the Player, and some short oral evidence;
  - (c) written letters of support from Shaun Mielenkamp, Nick Montgomery and Trevor Morgan; and
  - (d) video footage of three other on field incidents said to be comparable.
10. The Committee was also assisted by the written submissions of each of the parties to which they were afforded the opportunity of addressing orally. In those submissions, each of the parties referred the Committee to earlier decisions of the Committee involving Marcos Urena (10 May 2021), Nick Ansell (20 May 2021), Rhyan Grant (6 January 2020) and Jamie Young (14 February 2019).
11. At the conclusion of the hearing (following deliberations and pursuant to clause 22.4 of the Disciplinary Regulations) the Committee verbally announced the result, being that the Minimum one match suspension was a sufficient sanction for the offence. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 22.3(c) of the Disciplinary Regulations).

#### **C. FACTS**

12. In around the 48<sup>th</sup> minute of the game the Player took a throw in, and the ball was passed back to him. After a slightly heavy touch, the ball rolled away from him, and he moved to try and retain the ball and shield it from the opposing players. He did this in a way quite commonly seen, by trapping the ball and facing back towards his own goal line and thereby placing his body between the ball and the opposing players. In that way the aim is to protect and retain the ball, or as was said by the Player in his evidence, to try to draw a foul by the opposing player if he makes contact with the Player.

13. While the Player was executing this manoeuvre, opposing player Traore (**Opposing Player**) came in to challenge for the ball by way of a sliding motion leading with his right foot. The Player caught the top of the ball but then by way of a forceful downward motion, made contact with his studs to the right shin and foot of the Opposing Player. The Player in his statement says that the contact was an accident and that he did not intend to hurt the Opposing Player, but he accepts that his conduct did create a risk of injury to him. That must be correct, the forceful downward motion and contact could have had serious consequences for the Opposing Player.
14. So much is apparent from the referee's report and from the video footage of the incident which we have had the benefit of seeing from several different angles. The challenge is depicted in the following images taken from the video footage.



15. The referee initially dealt with the challenge by awarding a direct free kick. Following consultation with the assistant referee the referee also issued a yellow card. However, following an on-field VAR of the incident, the referee rescinded the yellow card and issued a direct red card for an R1 - Serious Foul Play.

The Opposing Player did not require on-field medical or other assistance. After a short time, during which the Opposing Player was able to regain his composure and adjust his shin-pads, he got to his feet and resumed the match and played for its duration. There is no evidence that the Opposing Player has suffered any injury from the incident.

**D. SUBMISSIONS**

16. What follows is a summary of the parties' written submissions. It does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the Committee notes that it has considered all of the evidence and arguments submitted by the parties, even if there is no specific reference to those submissions in the following summary.
17. The matters submitted by Disciplinary Counsel included:
  - (1) the challenge by the Player falls well within the definition of "Serious foul play" as it involved the use of excessive force or brutality against the Opposing Player and the Player had no regard for the safety of his opponent;
  - (2) intent is not necessary element to serious foul play-the key issue is the risk to the safety of the opposition player;
  - (3) the sanction should recognise the potential for harm and, importantly, send a message of deterrence to players;
  - (4) that the need to protect players in vulnerable positions has been recognised many times in decisions of this Committee;
  - (5) the Player did not have possession of the ball prior to the incident and the nature of the 50/50 challenge made it obvious that there was an undue risk of injury to the Opposing Player's leg;
  - (6) the Player has a decent disciplinary record, having played in 50 A-League games and received no red cards and nine yellow cards;
  - (7) the Player has expressed remorse and contrition for his actions;
  - (8) his references indicate that the Player is of good character, and eager learner, a role model for other players and an active participant in the Club and the Community, which stands in his favour;
  - (9) the prior case of Urena is most relevant, and the similarity to the present case would mandate that the same sanction be imposed, being one match above the MMS, comprising a total suspension of two matches, which is also consistent with the risk of serious injury brought about by the contact, and the need to protect the welfare of other players
18. The matters submitted on behalf of the Player included:
  - (1) there is no evidence of any intent or malice on his part, nor was there significant force. Whilst he accepts that there could be a finding of "Serious foul play", there is insufficient evidence to support a sanction going beyond the MMS;
  - (2) the challenge was a fair and legitimate one, and the contact occurred primarily as a result of the Opposing Player challenging to try to take the ball

from the Player, not because of the Player trying to retain the ball. It was a split-second decision by the Player to commit to retaining the ball;

- (3) the description of the incident as stamping with significant force is not objectively justified;
  - (4) that the Opposing Player was not in a position of vulnerability;
  - (5) it is significant that despite the referee and the assistant referee having a clear view of the incident, the referee initially only awarded a free kick, and issued no yellow card, nor did the assistant referee initially recommend that, let alone a red card;
  - (6) the Player has a good disciplinary record, which should be taken into account;
  - (7) the Player has shown appropriate contrition and has apologised to the Opposing Player;
  - (8) the Player's supporting references show him to be leader who has made a positive contribution to the game and the Club;
  - (9) unlike the case of *Young*, in which the Committee determined that a sanction of 2 matches including the MMS was appropriate, the Player withdrew his leg in a deliberate attempt to avoid heavy contact or excessive force and thereby mitigate the risk of injury to his opponent;
  - (10) the comparable cases of *Grant* and *Young* involve substantially higher levels of force, risk and culpability compared to the present case, and the sanction in this case should therefore be lower than the 2 matches imposed in those cases;
  - (11) the *Urena* case is the closest to the present, but on analysis supports a lower sanction being imposed in this case because Urena did not have the ball and was attempting to dispossess the opposing player and, in doing so, lunged in with substantial force, bringing about a far higher level of risk to the other player's welfare. Further, Urena made no contact with the ball, whereas the Player in this case did.
19. No submission has been made by Disciplinary Counsel or by the Player that there are Exceptional Circumstances within clause 11.21(b)(ii) of the Disciplinary Regulations.

#### **E. CONSIDERATION AND FINDINGS**

20. The sole issue in this matter is what, if any, sanction should be imposed over the MMS of 1 match.
21. The Committee has made plain on many occasions that an important consideration is the safety of all players and, relevant to these circumstances, the safety of an opposing player.
22. The Laws of the Game (**LOTG**) state, "[a]lthough accidents occur, the Laws should make the game as safe as possible. This requires players to show respect for their opponents and referees should create a safe environment by dealing strongly with those who whose play is too aggressive and dangerous."

23. Serious foul play is defined in the LOTG as:

A tackle or challenge that endangers the safety of an opponent or uses excessive force or brutality...Any player who lunges at an opponent in challenging for the ball from the front, from the side or from behind, using one or both legs, with excessive force or endangers the safety of an opponent is guilty of serious foul play.

24. Further, the LOTG and the Disciplinary Regulations defines "reckless" as "*any action (usually a tackle or challenge) by a player which disregards (ignores) the danger to, or consequences for, the opponent.*"

25. Clause 13.2 of the Disciplinary Regulations requires that when determining any appropriate sanction in accordance with the Range at the Table of Offences, a Judicial Body, which includes the Committee, may consider:

- (a) the nature and severity of the Offence, including whether it was intentional, negligent or reckless;
- (b) the Player's past record and whether or not this is a repeated Offence;
- (c) the remorse of the Player; and
- (d) any extenuating circumstances relevant to the commission of the Offence.

*The nature and severity of the offence*

26. Having regard to the video footage, the submissions made by Disciplinary Counsel and those made on behalf of the Player, and the Player's written and oral evidence, the Committee accepts that the Player did not act in an intentional manner.
27. However, as submitted by Disciplinary Counsel, intent is not a necessary element to serious foul play and the primary issue is the risk of safety to an opposing player.
28. Whilst, in this case, the challenge did not cause serious injury to the Opposing Player, it nevertheless had the potential to do so.
29. The incident did bring about an unacceptable risk of injury to the Opposing Player, most clearly illustrated by the studs on his boot making forceful downward contact with the Opposing Player's shin. This brought the conduct within the definition of serious foul play, but we find that the conduct was best described as careless or at the lower end of recklessness for the purpose of considering sanction. We accept that the challenge of the opposing player for the ball was a contributing factor, and lead in part to his vulnerability.
30. We also accept Mr Philip's submission that risk to the Opposing Player and the level culpability of the Player in this case is lower than in Urena and the other cases referred to as comparable.

*The Player's Disciplinary Record*

31. As identified above, the Player has a good playing record, and Disciplinary Counsel accepts this.

*Player's Remorse*

32. The Player has shown appropriate remorse and contrition and Disciplinary Counsel does not submit otherwise, and the Committee will take into account in the Player's favour.

*Character evidence*

33. Disciplinary Counsel accepts that the Player's strong character references stand in his favour, and the Committee accepts the character evidence tendered on behalf of the Player which has been taken into account in its determination.

Conclusion

34. The charter of the Committee in determining the appropriate sanction in this matter involves it seeking to protect players from being exposed to undue risk of serious injury, but also to do so in a which is consistent with previous decisions and is proportionate.
35. Weighing up these factors, the Committee considers an appropriate sanction for this offence to be the MMS, with no additional matches. This is consistent with the fact that the conduct is of less culpability, and carried less risk, than the cases referred to as comparable and, in particular, Urena which, in the view of the Committee is the case which is most comparable to the present. It also brings to account the Player's relatively good disciplinary record and the impressive character evidence adduced on his behalf. Absent his contrition, his record and his good character, a heavier sanction would likely have been imposed.

**F. RESULT**

36. The sanction we impose is the MMS, which has already been served.



L V Gyles SC, Disciplinary Committee Chair  
Friday, 22 April 2022