

DISCIPLINARY COMMITTEE OF FOOTBALL AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Nikolai Topor-Stanley
Alleged offence	Offence No. 3, Serious Foul Play
Date of alleged offence	29 October 2022
Occasion of alleged offence	Match between Central Coast Mariners and Western United
Date of Disciplinary Notice	31 October 2022
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 11.21(b)
Date of Hearing	8 November 2022
Date of Determination	8 November 2022 (oral pronouncement of determination) 10 November 2022 (written reasons for determination)
Disciplinary Committee Members	Lachlan Gyles SC (Chair) Stephen Free 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 2022-23 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 two matches 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 8 November 2022, the Committee heard the referral of the matter, by AVL.
7. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of counsel, and Nikolai Topor-Stanley (**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 Ernie Merrick and Beau Busch; and
 - (d) evidence of 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. The Committee also heard evidence directly from Mr Topor-Stanley, who was asked questions by Disciplinary Counsel and the Committee members.
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 Sanction imposed should be the Minimum one match suspension plus one additional match, being a total of two matches. 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 48th minute of the game, Garang Kuol was in possession of the ball and dribbling towards the attacking goal. He had manoeuvred past one Western United defender and was advancing towards the goal.
13. The Player left the man he was marking and moved towards Kuol. He then lunged towards him and made contact with Kuol's calf, with the studs of his left boot. At the point of contact the player's left boot was about one foot above the ground and his leg was outstretched.
14. The Referee, Stephen Lucas, initially gave a yellow card, but subsequently changed that to a red card after a VAR review. In his report of 29 October 2022 he described the incident as follows:- "Speed, Intensity and excessive force were used in the challenge. The left leg was straight and full studs were made to the left calf of the opponent which endangered the safety of the opponent".

D. SUBMISSIONS

15. 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.
16. The matters submitted by Disciplinary Counsel included:
 - (1) That there was never a realistic possibility that the Player would win the ball, the challenge appearing to be like a cynical professional foul to stop the attacking movement;
 - (2) That at the level at which the Player's studs made contact with the opponent's leg, the contact could easily have been to the opponent's shin, carrying a far greater risk of injury;
 - (3) the challenge by the Player falls within the definition of "Serious foul play" as it was dangerous and reckless, and exposed the opponent to a risk of serious injury;
 - (4) intent is not a necessary element to serious foul play - the key issue is the risk to the safety of the opposition player;
 - (5) the sanction should recognise the potential for harm and, importantly, send a message of deterrence to players;
 - (6) that such deterrence should also send a message that creative players are to be protected.;
 - (7) the Player has a positive (though it was submitted not exemplary) disciplinary record, having played in 386 games and never having received a direct red card;
 - (8) the Player has expressed remorse and contrition for his actions;
 - (9) that his references indicate that the Player is a model professional who has made a substantial contribution to the benefit of players and the sport;

(10) that a three game suspension would be justified, but having regard to the favourable factors above, that two matches would be appropriate.

17. 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 or excessive speed in the challenge as was found by the Referee. Whilst he accepts that there could be a finding of "Serious foul play", it was at the lowest end of that and there is insufficient evidence to support a sanction going beyond the MMS;
- (2) that the Player was genuinely challenging for the ball, but miscalculated the timing and speed at which the opponent was moving. It was a split-second decision, and the Player acted instinctively;
- (3) the contact objectively occurred at low and moderate speed, reducing the level of risk of injury to the opponent, and the contact was not front on and did not involve sliding in at speed, or having both legs up;;
- (4) that the Referee had an unimpeded view of the Incident and had only initially issued a yellow card, and the Opponent resumed his feet quickly and was able to complete the game
- (5) the Player has a good disciplinary record, indeed an exemplary and remarkable one for a defender, which should be taken into account;
- (6) the Player has shown appropriate contrition and has apologised to the Opposing Player;
- (7) the Player's supporting references show him to be leader who has made a positive contribution to the game and the Club;
- (8) that the conduct was less serious and carried less risk than was dealt with in previous cases, and the sanction should accordingly be lower;
- (9) That the appropriate sanction is the MMS already served, that is, one match only.

18. No submission has been made by Disciplinary Counsel there are Exceptional Circumstances within clause 11.21(b)(ii) of the Disciplinary Regulations.

E. CONSIDERATION AND FINDINGS

19. The sole issue in this matter is what, if any, sanction should be imposed over the MMS of 1 match.
20. 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.
21. 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."
22. Serious foul play is defined in the LOTG as:
23. 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.

26. The main issue addressed at the hearing, and the main consideration in the mind of the Committee, is the consideration of the nature and severity of the offence.
27. 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.
28. 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.
29. Whilst, in this case, the challenge did not cause serious injury to the Opposing Player, the real issue is whether it had the potential to do so.
30. The Player explained in his evidence to the Committee that the awkward result of the challenge was the product of him having challenged with his natural foot, being his left. Had the challenge been made with his right foot, it is likely that he would have swept around the front of the Opposing Player, and if he had missed the ball likely would not have made the same kind of conduct with his studs or at such a height. As a result of making a lunging motion with his left foot, the boot became raised well above the ground and the studs of the boot drove into the Opposing Player's calf. The prospects of the Player winning the ball with his tackling motion were somewhat remote. The Committee would not describe the contact as particularly excessive in force or speed, but that does not mean the tackle was not negligent, reckless or capable of causing damage. While the Committee accepts the point made by the Player that decisions of this kind need to be made under pressure and on the spur of the moment, that really only serves to highlight the importance of players exercising care and refraining from careless or reckless attempted tackles.
31. There was debate as to whether the challenge was truly a mistimed challenge for the ball, or rather was simply intended to make contact with the player stop the player continuing what could have been a dangerous attack, the latter being in the nature of a professional foul. In the end we do not need to resolve that debate, because whichever it was, the incident did in our opinion bring about an unacceptable risk of injury to the Opposing Player illustrated by the high level at which the Players studs made contact with the Opponents calf.

32. This brought the conduct within the definition of serious foul play, but we find that the conduct was best described as careless or negligent, or at the lower end of recklessness, for the purpose of considering sanction.
33. 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 the other cases referred to as comparable, although we note that the use of comparable cases can be of limited benefit. Each case stands on its own merits, and it is open to the Tribunal to take the view for example that earlier determinations were too lenient, or too harsh, or to form different views about sanction having regard to other factors which they consider relevant. Earlier determinations are fact based and are not binding in any sense, and comity does not require that they be followed
34. As identified above, the Player has an excellent disciplinary record, and Disciplinary Counsel accepts this without reservation.
35. The Player has shown appropriate remorse and contrition and Disciplinary Counsel does not submit otherwise, and the Committee will take that into account in the Player's favour
36. The Committee notes that both parties treated the off-field character of the Player as a factor relevant to the determination of an appropriate sanction, on the basis that it is a favourable consideration as it was common ground that the Player is highly regarded in the football community and has made a substantial contribution to the game off the field. It is not clear, based on cl 13.2, that this is a matter that the Committee is entitled to consider, except to the extent that it may bear on the assessment of one of the specified matters (such as an inference as to the state of mind of the player at the time of the Offence). When this issue was raised at the hearing it was pointed out that previous decisions have taken such matters into account, apparently without objection. In circumstances where both parties in effect invited the Committee to take such matters into account the Committee has done so. That being said, the Committee gives much greater weight to consideration of the Player's past record on the field, which is appropriately described as exemplary, as a factor pointing towards a lower sanction.
37. The charter of the Committee in determining the appropriate sanction in this matter includes it seeking to protect players from being exposed to undue risk of serious injury. All players owe a duty of care to other Players and this needs to be emphasised in terms of general deterrence in fixing sanctions. In this regard a

player with Mr Toper-Stanley's experience and credentials would have a very clear responsibility to take that duty seriously. He has enjoyed a very successful career, and part of the role of this Committee is to seek to ensure that other players have that opportunity.

38. Weighing up these factors, the Committee considers an appropriate sanction for this offence to be the MMS, with one additional match. This recognises the particular importance of the duty of care which players owe to opposing players to not expose them to unnecessary risk of injury, but brings to account the Player's excellent disciplinary record. He gave his evidence before the Committee in an honest, articulate and contrite manner, and further has played the game in a hard but fair way throughout his career, and has been a worthy role model both on and off the field.

F. RESULT

39. The sanction we impose is the MMS, plus an additional one match



L V Gyles SC, Disciplinary Committee Chair
Thursday, 10 November 2022