

DISCIPLINARY & ETHICS COMMITTEE OF FOOTBALL AUSTRALIA
DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Tolgay Arslan, Melbourne City
Alleged offence	Offence No. 9 "Use of offensive, insulting or abusive language and/or gestures against Match Official"
Date of offence	2 February 2024
Occasion of offence	Match between Perth Glory and Melbourne City
Date of Disciplinary Notice	5 February 2024
Basis the matter is before the Disciplinary Committee	A referral: see clause 11.25
Date of Hearing	14 February 2024
Date of Determination	16 February 2024
Disciplinary Committee Members	Lachlan Gyles SC (Chair) Peter Speed David Barrett (Player)

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of the "A-League Men Disciplinary Regulations" applicable to the 2023-24 A League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is 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 11.25 of the Disciplinary Regulations. Tolgay Arslan (**the Player**) was given a direct red card by the referee. The March Review Panel (**MRP**) issued a Disciplinary Notice advising that the Red Card Offence constituted an Offence No. 9 being "Use of offensive, insulting or abusive language and/or gestures against Match Official" (**the Offence**). The "Minimum Sanction for the Offence" under the Disciplinary Regulations for this offence is 1 match, being the Mandatory Match Suspension (**MMS**). The MRP formed the view that a sanction of greater than four matches (including the Mandatory Match Suspension) is warranted, and referred the matter to this Committee.
3. The sole question for determination by the Committee is what additional sanction be imposed (above the MMS).
4. The Committee is satisfied that it has jurisdiction to deal with this referral. Neither party contended to the contrary.

B. THE HEARING

5. On 14 February 2024, the Committee heard the referral of the matter in Sydney.

6. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of counsel, and the Player was represented by Mr Adrian Anderson, of counsel.
7. The relevant evidence was comprised of:
 - (a) video footage tendered by the Player;
 - (b) evidence given by the Player at the hearing;
 - (c) the referee's report;
 - (d) the assistant referee's report;
 - (e) the disciplinary notice;
 - (f) character evidence in support of the player;
 - (g) medical evidence tendered by the Player;
 - (h) a submission from the Referee's department;
 - (i) an apology letter from the Player; and
 - (j) the disciplinary record of the Player.
8. The Committee was also provided with written submissions of the parties, and further oral submissions were provided at the hearing by both parties.
9. At the conclusion of the hearing (following deliberations and pursuant to clause 22.4 of the Disciplinary Regulations) the Committee reserved its decision.
10. The Committee now makes its Determination of the referred matter, and provides these written reasons, noting the requirement in the Disciplinary Regulations that such reasons must be in the "shortest form reasonably practicable": clause 22.3(c).

C. FACTS

11. The evidence of the Player and the Referee on the critical conversation in the moments prior to the red card being issued, was to a certain extent not the subject of dispute. The undisputed part of the conversation was that the Player said "*For the first time in my career, I can't wait to smash a referee ...*". The disputed part of the conversation comprises the three words which followed on from that, the competing versions of which are quite different in meaning and effect. The Referee's report says that the Player said the Player "*in the face*", whilst the Player asserts that he said "*in the media*".
12. There was a degree of background noise at the time of the exchange and the Player had his hand over his mouth. The Assistant Referee was able to hear the first part of the conversation but not the disputed part. No audio was available and the video footage did not assist in interpreting what had been said.
13. If the Referee's version was accepted, the conduct would necessarily be more serious, the Player more culpable, and the sanction likely to be substantially greater. We would agree with the MRP that the sanction would likely to be greater than four matches if such words were used and the referee was threatened in that manner.
14. The Player's Counsel submitted that we should accept his version of events, but as events happened, and for reasons which do not matter for the purpose of this Determination, Judiciary Counsel did not submit that we should prefer the Referee's version. Rather it was accepted by Judiciary Counsel that the Committee should not make such a finding on the evidence in the case, and in all of the

circumstances. This meant that, in substance, the parties agreed that the Committee should base its considerations of sanction on the Player's version of events rather than that of the Referee. This course obviated the need to call the Referee to give evidence at the hearing.

15. The Committee had the benefit of hearing the Players evidence at the hearing, which was given frankly and in an impressive manner, but it should not be taken that the Committee has preferred that evidence over that of the Referee, or that it has rejected the Referee's evidence. That issue was not before it and the point did not need to be determined.
16. The relevant facts for the purpose of considering sanction are therefore that the Player, immediately after the final whistle, approached the Referee and said: "*For the first time in my career, I can't wait to smash a referee in the media*". He then received the red card while leaving the field.

D. SANCTION

17. The Committee is obliged to consider whether there should be a sanction above the MMS, and if so, the number of matches it should be.
18. Both Judiciary counsel and the Counsel for the Player submitted that the Player should receive a sanction of 4 matches (the MMS plus 3), two of which should be suspended, such suspension to be lifted if he received a red card for a similar offence during the balance of the season.
19. The fact that there is no issue between Judiciary Counsel and the Player in relation to sanction, and in effect an agreed position was put forward, is an important consideration for the Committee, but it is not determinative. The Committee is an Independent Body and is charged with forming its own view as to sanction, having regard to game wide considerations and other relevant matters.
20. It is required to consider the nature and severity of the offence, any extenuating circumstances, any remorse on the part of the Player, the Player's past record, and the Player's good character as established by references provided to it. In respect of these matters, the Player took the opportunity to provide evidence and we accept that he was not intending to physically threaten the Referee by the words used, was genuinely remorseful, had a reasonably good disciplinary record over a long career, and was supported by extremely impressive character references. We also accept that the Player's injury earlier in the game where he broke his nose, and possible heat exhaustion at the time of the exchange, may have contributed to the lack of judgement on his part and would also be mitigating factors.
21. Nevertheless, we regard any on field abuse, criticism or intimidation of a match official to be extremely serious and deserving of a heavy sanction by way of general deterrence. The Player is an extremely experienced professional player who is playing at the top professional level in Australia. By nature, the A League sets the example for players at all levels of football throughout the country and the highest levels of integrity, courtesy and fairness are required. If professional players are not able to control themselves appropriately in this respect, it is difficult to expect players at the lower levels to do so.
22. It is important to appreciate that referees are a necessary life blood of the game and are deserving of respect, courtesy and protection at all levels. The conduct of the Player was not acceptable. While the Player may not have been intending to

threaten physical violence, the referee may well have thought that he was being threatened, and may have been genuinely fearful for his safety.

23. We have read and considered the various authorities relied upon by the parties. None are particularly helpful as each of these cases are quite nuanced and dependent upon their own facts. To the extent that it matters, we regard the conduct in this case as carry a greater level of culpability than *Aloisi*, as this went further than a criticism of the performance of the Referee, and it would be consistent with that for the sanction in the present case to be greater.
24. We also do not favour a suspension of part of the sentence in the current circumstances as is contended for, as we believe that it is very unlikely that the Player would commit another similar offence. The suspended part of the sentence would therefore likely have no utility. We would for all of the reasons set out above, and having regard to the submissions made in favour of the Player, impose a total sanction of three (3) matches, being the MMS plus two matches.

E. RESULT

25. The Player is suspended for a total of three (3) matches, being the MMS plus two matches.



Lachlan Gyles SC, Disciplinary & Ethics Committee Chair

Peter Speed, Committee Member

David Barrett, Player

16 February 2024