

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

Player and Club	Marcelo Guedes, Western Sydney Wanderers
Alleged offence	Offence No. 3, Serious Foul Play
Date of offence	31 March 2023
Occasion of offence	Match between Western Sydney Wanderers and Adelaide United FC
Date of Disciplinary Notice	6 April 2023
Basis the matter is before the Committee	A referral: see clause 3.3(a) and 11.24(b)
Date of Hearing	12 April 2023
Date of Determination	12 April 2023 (oral pronouncement of determination) 17 April 2023 (written reasons for determination)
Place of Determination	Sydney
Committee Members	Anthony Lo Surdo SC (Chair) Ben Jones Peter Tsekenis (Former Player)

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.3 of the "A-League Men 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 11.24 of the Disciplinary Regulations because the Match Review Panel (**MRP**) has formed the view that, on the material available to it, a sanction of greater than four (4) matches inclusive of the MMS is warranted.
3. The Disciplinary Notice issued by the MRP refers to the referral as having been made under clause 11.23 of the Regulations. That is an obvious typographical error caused, it would appear, by the use of a template incorporating a previous iteration of the Disciplinary Regulations. The text of the Disciplinary Notice, in particular, paragraph 6 makes plain that the intent was to refer to clause 11.24 of the Regulations.
4. The MRP is required under clause 11.24(b) of the Disciplinary Regulations to issue a Disciplinary Notice that notifies the Participant of the MMS and refers the matter to the Committee for hearing and determination of the sole question of what

additional sanction should be imposed (above the MMS) applying the Range at the Table of Offences in accordance with the Disciplinary Regulations.

5. Prior to the referral under Clause 11.24(b) Marcelo Guedes (**the Player**) had been given a direct red card by the Referee. That red card was given for an R2 – Violent Conduct. However, the MRP not being bound by the categorisation of any offence by the Referee (Disciplinary Regulations, Clause 11.20), determined that the red card offence constituted “Offence No. 3 being Serious foul play (e.g. when challenging for the ball)”, the minimum sanction for which is the Mandatory Match Suspension (**MMS**) (in this case 1 match) (**Offence**).
6. The function of the Committee is solely to determine the question of what additional sanction should be imposed over and above the MMS, and if so, what that additional sanction should be (Clause 11.24(b)). 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.
7. The Committee is satisfied that it has jurisdiction to deal with this referral.

B. THE HEARING

8. On 12 April 2023, the Committee heard the referral of the matter by AVL.
9. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of Counsel, and the Player was represented by Mr Spiro Tzouganatos, of Counsel.
10. Disciplinary Counsel relied upon the following evidence:
 - (a) video footage of the incident;
 - (b) the Referee’s report;
 - (c) a disciplinary notice, dated 6 April 2023 (**Disciplinary Notice**); and
 - (d) the Player’s disciplinary record.
11. Mr Tzouganatos, for the Player, relied upon the following evidence:
 - (a) video footage of the incident;
 - (b) video footage of other games in which the Player has, it was submitted, engaged in conduct similar to that the subject of the Disciplinary Notice and for which he has received no warning, caution or other sanction;
 - (c) a written statement from the Player, dated 10 April 2023, together with short oral evidence provided by the Player in re-examination;
 - (d) a written character reference, dated 10 April 2023, from Mr Gavin Costello, the General Manager of Football Operations for the Western Sydney Wanderers; and
 - (e) the Player’s disciplinary record.
12. The Committee was also assisted by the written submissions provided by the parties and by their oral submissions.
13. At the conclusion of the hearing (following deliberations and pursuant to clause 22.4 of the Disciplinary Regulations) the Committee verbally announced the result. 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

14. In or around the 90th + 3 minute of the match, Western Sydney Wanderers (**WSW**) Player No. 28 (Nieuwenhof) committed a professional foul on Adelaide Player No. 66 (Irankunda) comprising a holding offence which denied Player Irankunda from pursuing a promising attack and for which Player Nieuwenhof received a yellow card. Player Irankunda remonstrated strongly with Player Nieuwenhof both verbally and physically by pushing him.
15. As Player Irankunda was remonstrating with Player Nieuwenhof, WSW Player No. 4 (Schneiderlin) walked towards Players Irankunda and Nieuwenhof. The Referee was, at this stage, standing between two Adelaide United players including Player Irankunda and WSW Players Nieuwenhof and Schneiderlin. The Player approached Player Irankunda and, as the image below demonstrates, placed both arms tightly around Player Irankunda's head and neck. Though not seen in the image below, the video footage shows Player Irankunda struggling to be released from the Player's grip but pulling away from the Player in a matter of seconds.



16. Having witnessed the Player's actions towards Player Irankunda, other Adelaide United Players in the vicinity of the incident rushed towards the Player to remonstrate with him including Players No. 35 (Jovanic), No. 21 (Lopez) and No. 55 (Alagich). A fourth Adelaide United Player, No. 13 (Barr) can be seen in the video footage approaching the Player from some distance away. He appeared agitated and pushed one of his own team mates, Player Jovanic, out of the way to get to the Player. At the time that Player Barr and the Player made physical contact with one another, the video footage discloses that the Player was retreating from the scene of the earlier incident with Player Irankunda.
17. The series of images below depict the contact between Player Barr and the Player and, in particular, the Player with his arms tightly around the head and neck of Player Barr.





18. The incident between the Player and Player Barr lasted some 9 seconds. Once disengaged, the video footage shows the Player walking away from the scene of the incident with Player Barr and Adelaide Player Lopez walking towards the Player apparently remonstrating with the Player. The Player did not advance towards Player Lopez. As Player Lopez approached him, the image below depicts the Player placing his left arm tightly around the head and neck area of Player Lopez and pulling his head and face towards that of the Player. That contact lasts around 2 seconds.



19. Shortly after Player Lopez and the Player disengaged, the Player was shown the red card by the Referee and left the field without incident.

D. SUBMISSIONS

20. What follows is a summary of the parties' 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.
21. The matters submitted by Disciplinary Counsel included:
- (1) the MRP determined that the red card offence was Offence No. 3, "serious foul play (e.g. when challenging for the ball)". Serious foul play is generally understood to refer to an incident happening during the course of active

play. Whilst it is possible to describe the Player's behaviour as a "challenge", a more accurate categorisation of the offences committed by the Player is offence No. 4, "Assault on a player (e.g. Violent conduct when not challenging for the ball), or against any other person other than a Match Official, including attempted assault". This is also consistent with the Referee's report;

- (2) the Committee is not bound by the classification by the MRP (Disciplinary Regulations, Clause 13.1(e)) and should proceed to consider the incidents as assault on a player - violent conduct;
 - (3) in respect of his interactions with each of Players Irankunda, Barr and Lopez, the Player used excessive force against an opponent when not challenging for the ball;
 - (4) the explanations provided by the Player for his behaviour does not diminish his physical actions. He did not need to be involved in the situation concerning Player Irankunda especially as the Referee had it under control. The Player approached Player Irankunda from the side and aggressively put him in a headlock;
 - (5) on any view, putting a 17 year old player, such as Player Irankunda, in a headlock is a major escalation and it was no surprise that the Adelaide United players, including Player Barr, responded aggressively with a melee ensuing;
 - (6) the confrontation with Player Barr was an ugly one extending for approximately 9 seconds until Player Barr broke free;
 - (7) the Player put his arm around Player Lopez's neck when he was talking to him. There was no reason to raise his arms to Player Lopez;
 - (8) the Player committed three acts of intentional contact with another player and used excessive force in doing so. Those actions had the effect of substantially escalating the incident so that a relatively minor exchange involving some words and pushing became a full-blown melee;
 - (9) in 20 games for his club this season, this is the Player's second direct red card, the earlier card being for a dangerous challenge. His record is not the worst but it is not exemplary. At best, it is a neutral matter;
 - (10) the Player has expressed no remorse or contrition for his actions. Remarkably, he describes himself as not being the aggressor. The Player's failure to accept his wrongdoing and the portrayal of himself as the victim do him no favours;
 - (11) there are no extenuating circumstances relevant to the commission of the offences;
 - (12) if the Committee finds that three offences of assault on a player have been committed, then a cumulative total of a six-match suspension is warranted; and
 - (13) if the Committee determines that the incident is one continuous event, a suspension of not less than four matches is warranted.
22. The Player submitted, including by reference to the non-exhaustive list of relevant factors that the Committee may consider under clause 13.2 of the Disciplinary Regulations, that:

- (1) the Player had not been given an opportunity by the MRP to make submissions or advance any argument regarding whether he was guilty of the offence. Reasonable persons might have come to different views on whether his conduct constituted an offence for which any further citation was warranted. There is evidence of this possibility by reason of the fact that referees have not taken any action against the Player by way of caution or otherwise when he had deployed a similar approach (of placing his arms around the head and neck region of opposing players) in earlier matches;
- (2) the Player's conduct occurred over a few seconds in an incident which spanned not more than 30 seconds. It was a single course of conduct involving an intervention to prevent the escalation of an incident between Players Irankunda and Schneiderlin, followed thereafter by a defensive approach to aggression on the part of Players Barr and Lopez, each of whom ran more than 20 metres to attack the Player. Any contention that the Player's conduct should be treated as three separate incidents or offences is without foundation and unfair, not least because the Player was issued with one red card by the Referee who identified a single offence and the Disciplinary Notice issued by the MRP refers to a single offence;
- (3) throughout the incident, the Player is attempting in his own way and in a manner he has deployed in prior matches without caution or sanction to defuse an emotional situation. He was not the aggressor. Players Barr and Lopez were the aggressors; Player Barr had his fist in the Player's throat and Player Lopez had his right hand around the Player's throat;
- (4) had Players Barr and Lopez not run in, it is likely that there would have been no escalation. The conduct of Players Barr and Lopez escalated the initial incident into a melee. The Player was walking away from the incident until Players Barr and Lopez intervened;
- (5) despite the actions of Players Barr and Lopez, the MRP took no action against them;
- (6) there was no pre-meditated intention on the part of the Player to act violently towards any player nor was there any striking or overtly violent behaviour from him;
- (7) no player was injured as a result of the Player's conduct;
- (8) upon being shown the red card, the Player left the field of play without incident;
- (9) the Player has expressed remorse if his actions were "too strong". He did not intend to harm or injure anyone. He is distressed by the thought that the approach he had adopted in earlier matches might be considered violent or wrong. If he had been cautioned in earlier matches, he would not have engaged in this kind of attempt to subdue aggression;
- (10) the Player is a gentleman. Despite his imposing physique he is considered so by his teammates and by the Club. He is a husband and father and a deeply religious man. The Committee should be assured that this disciplinary process has had a profound effect on him and that the nature of the conduct which is being impugned will never happen again;
- (11) For an "old school" "hard" defender, the Player's disciplinary record is good. He has played nearly 600 professional matches in his career spanning some

15 years. In that time, he has received 7 red cards and none for violent conduct. He did receive a red card earlier in the current season in relation to an on the ball tackle. Prior to that time, his previous red card was in October 2017 when playing in France;

- (12) when compared to cases of violent conduct previously considered by the Committee including *Pantelidis*, *La Rocca* and *Muscat*, the Player's conduct is at the other end of the spectrum in terms of its seriousness, the character of any violence and its consequences; and
- (13) the appropriate sanction is the MMS (already served). Alternatively, if the Committee forms the view that a sanction of the severity submitted by Disciplinary Counsel is appropriate, a portion of it should be suspended.

E. CONSIDERATION AND FINDINGS

- 23. Prior to addressing the merits, it is necessary for the Committee to consider the following as preliminary issues:
 - (a) jurisdiction; having regard to the submissions made by Disciplinary Counsel concerning the Disciplinary Notice and, in particular, the contention that the Committee is not bound by the classification of an offence by the MRP with the consequence, it was submitted, that the Committee should proceed to consider the offences as comprising "Assault on a player" (R2) notwithstanding that the Disciplinary Notice contains a determination that the offences comprised "Serious Foul Play" (R1); and
 - (b) the Player's contention that he has been denied procedural fairness by not being afforded an opportunity to make submissions to the MRP on the issue of guilt or innocence.

Jurisdiction

- 24. Clause 13.1(e) of the Disciplinary Regulations provide that a Judicial Body, which includes the Committee, when imposing a sanction is not bound by the categorisation of an offence by the Referee, other Match Official or the MRP. However, that broad power must be read subject to any limitations that may apply to its exercise.
- 25. Relevantly, in the present circumstances, the jurisdiction of the Committee is both prescribed and proscribed by Clause 24 of the Disciplinary Regulations. It provides, in summary, that where the MRP has formed the view that a sanction of greater than four matches (inclusive of the MMS) is warranted, the MRP is to issue a Disciplinary Notice that notifies the Participant of the MMS and refers the matter to the Committee "*...for hearing and Determination of the **sole question** (emphasis added) of what additional sanction should be imposed (above the Mandatory Match Suspension...) applying the Range at the Table of Offences in accordance with these Regulations.*"
- 26. Hence, and as the Committee has remarked in prior cases too numerous to mention, it is no part of its function to determine guilt or innocence. By the time a matter has been referred to the Committee, the MRP has made a determination as to both the classification or categorisation of the relevant charge and whether it has been established.
- 27. Having regard to the language of Clause 24 of the Disciplinary Regulations, the Committee is of the view that the broad language of Clause 13.1(e) must be read

as subject to the import of Clause 24, which is to restrict the Committee's jurisdiction, in this instance, to a determination of the "sole question" of what additional sanction should be imposed above the MMS in circumstances where the MRP has already determined that a Participant has committed an offence specified in a Disciplinary Notice. It is no part of the Committee's role in this instance to re-classify or re-categorise the offence.

28. The Committee accordingly proceeds on the basis that the MRP has, in accordance with the terms of the Disciplinary Notice, determined that the Player has engaged in Serious Foul Play (R1) for which the minimum mandatory sanction is the MMS, and that the task for the Committee is to determine what additional sanction, if any, should be imposed above the MMS.
29. The Committee also proceeds on the premise that the MRP has, in accordance with the terms of paragraph 5 of the Disciplinary Notice, determined that the Player's conduct comprises three different or distinct instances of the Offence. For the avoidance of doubt, we construe paragraph 5 of the Disciplinary Notice to comprise a finding by the MRP that there was one R1 offence comprised of three separate instances and not that there were three separate R1 offences. That construction is both consistent with the words employed by the Disciplinary Notice itself and with the video footage which demonstrates the three incidents taking place over a period of less than 30 seconds and together comprising one continuous event following a breakdown in play.
30. The Committee notes, in passing, that the circumstances of each instance of the Offence does not fit neatly within the definition of "serious foul play" in the LOTG which ordinarily contemplate on the ball incidents. Rather, the circumstances are more consistent with either violent conduct (R2) or serious unsporting conduct (R 8). Nevertheless, for reasons referred to earlier, the MRP has made its findings and it is no part of the Committee's role to challenge those findings or the basis upon which they were arrived.

Denial of Procedural Fairness

31. The Player contends that he was not afforded an opportunity of making submissions to the MRP concerning his guilt or innocence and refers to the decision of the Committee in *Salley*.
32. The purpose and function of the MRP is set out in Clause 11 of the Disciplinary Regulations.
33. The "show cause" process to which reference was made by the Committee in *Salley* only applies in citation incidents which have escaped a referee's attention (Disciplinary Regulations, clauses 11.27 – 11.36). That process does not apply to direct player red cards (Disciplinary Regulations, clauses 11.19 – 11.26) such as the present.
34. Clause 11.20 of the Disciplinary Regulations makes plain that the MRP is not bound by the categorisation of any offence by the referee or other match official and may determine that there is more than one offence disclosed in the incident, in which case the sanctions for such offences will be cumulative.
35. In this case, although the Referee sent off the Player for violent conduct (R2), the MRP upon reviewing the evidence, in effect, downgraded the charge from an R2 (which carries a minimum sanction of 1 match plus the MMS) to an R1, serious foul play (which carries a minimum sanction of the MMS).

36. Further and for the reasons articulated earlier in this determination, the MRP's finding of serious foul play cannot be the subject of challenge before the Committee.

Factors Relevant to the Assessment of Sanction

37. Clause 13.2 of the Disciplinary Regulations provides the following non-exhaustive matters which the Committee may consider when determining any appropriate sanction in accordance with the Range at the Table of Offences:
- (a) the nature and severity of the offence, including whether it was intentional, negligent or reckless;
 - (b) a player's past record and whether or not this is a repeated offence;
 - (c) the remorse of a player; and
 - (d) any extenuating circumstances relevant to the commission of the Offence.
38. 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.
39. 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."

The nature and severity of the Offence

40. 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 finds that the Player did not act in manner which is consistent with an intention to engage in serious foul play.
41. Intent, however, is not a necessary element to serious foul play. The primary issue is the risk of safety to an opposing player, although the presence or absence of intent is a matter that may be relevant to the assessment of nature and severity of the offence.
42. The Committee accepts the evidence of the Player that in each of the three instances to which reference has been made and which are considered below, it was his intent to calm or placate circumstances using a technique of placing his arms around the head and neck of opposing players and pulling the head of those players close to his. In doing so, it was the Player's desire to immobilise the opposing player in a safe manner, thereby protecting his team mates and himself from what he considered to be an attack from opposing players.
43. The Committee is of the strong view that such a technique is not appropriate and should be discouraged. It has the potential to cause injury, including serious injury to an opposing player. The fact that the Player may have used a similar technique for many years, including more recently in the A-League, without sanction does not excuse the conduct nor mitigate its severity.
44. In engaging in the conduct, the Player has, in the opinion of the Committee acted recklessly. The LOTG and the Disciplinary Regulations define "reckless" as "*any action (usually a tackle or challenge) by a player which disregards (ignores) the danger to, or consequences for, the opponent.*" In the Player's quest to protect his teammates and himself and in a misguided attempt to placate the situation, the

Player was not alert to the danger to, or consequences for, the safety of his opponents.

45. Further and as the present circumstances sadly illustrate, far from placating circumstances, the practice has the effect of inflaming them.
46. The resulting fracas reflects poorly on the Player, his Club and the game. More is expected of players especially senior players such as the Player who also occupy a leadership role and are privileged to play sport at an elite level.

Instance 1: The Player and Player Irankunda

47. The first instance which provided the catalyst for the two that followed, comprised the Player approaching Player Irankunda and placing his left arm around the neck and head of that player. In the Player's own words, *"I am a tall man, 193 cm. I regard myself as a strong man...on many occasions, I have used my height and strength to control players..."*
48. Player Irankunda is much shorter than the Player.
49. As the video footage and the image above demonstrate, the Player exercised his considerable height advantage and strength to effect what appears to have been a "headlock" or "choke hold" on Player Irankunda. Although Player Irankunda managed to escape the Player's grasp, it is to be expected that such conduct would first, incite remonstrations from Player Irankunda and lead to his team mates rushing to his defence.
50. Though there was no apparent injury to Player Irankunda, any contact with force to the head or neck region of a player provides an unacceptable risk of injury to a player and is to be avoided.
51. Further, and as the Player correctly concedes, there was no apparent need for him to be involved in the situation as between Players Irankunda and Schneiderlin. There was no obvious risk of danger to Player Schneiderlin and, in any event, the Referee had the matter well under control.

Instance 2: The Player and Player Barr

52. Having witnessed the Player's actions towards Player Irankunda, other Adelaide United Players in the vicinity of the incident rushed towards the Player to remonstrate with him including Players Jovanic, Lopez and Alagich. A fourth Adelaide United Player, Player Barr can be seen in the video footage approaching the Player from some distance away. He appeared agitated and pushed one of his own team mates, Player Jovanic, out of the way to get to the Player. At the time that Player Barr and the Player make physical contact with one another, the video footage shows that the Player is retreating from the scene of the incident and responding defensively to the approach of Player Barr.
53. The series of images of this incident extracted above depict the contact between Player Barr and the Player and, in particular, the Player with his arms tightly around the head and neck of Player Barr. This "embrace" lasted for around 9 seconds.
54. Whilst the Committee accepts that there was an element of self-defence, it is not persuaded that the Player placing his arms around Player Barr's head and neck region was a proportionate response to any perceived risk of harm to him. That conduct itself, for reasons previously articulated, carried the not inconsiderable risk of harm to Player Barr. Again, as is evident from the footage, it did nothing to placate the circumstances.

Instance 3: The Player and Player Lopez

55. Once disengaged from Player Barr, the video footage shows the Player walking away from the site of the incident with Player Barr and what appears to be a verbal exchange between the Player and Player Lopez. Player Lopez walks towards the Player whilst remonstrating with him. The Player did not advance towards Player Lopez. As Player Lopez approaches him, the Player places his left arm tightly around the head and neck area of Player Lopez and pulls his head and face towards that of the Player. He does so in an evidently agitated and aggressive manner. That contact lasted for around 2 seconds.
56. Contrary to the Player's protestations, the video footage does not disclose any obvious or apparent risk of harm to the Player. In any event, as we have already found, the conduct of placing the arms around the head and neck area of a player is not an appropriate or proportionate response to a perceived risk of harm. That conduct, for reasons previously articulated, carried the not inconsiderable risk of harm to Player Lopez. Further, it had the very real potential to inflame and incite.

The Player's Past Record

57. The Player is very experienced. He has played professionally since 2007 both overseas and more recently in Australia. The current season is his first in Australia. He has played approximately 600 games. The present red card is his seventh direct red card. It is his second direct red card this season for serious foul play. He has otherwise received one indirect red card and 107 yellow cards.
58. The Player has a reasonable record but not an exemplary or impeccable one. In the view of the Committee, and especially having regard to the fact that this is the Player's second red card for the season, his record is neutral for the purposes of the assessment of sanction; that is, it is not a factor that points towards either a higher or lower sanction.

The Player's Remorse

59. The Player has shown no remorse or contrition for his actions. His expression of sorrow was summed up, in the Player's own words, "*I am sorry if my attempt to protect myself and calm the situation was too strong.*" He maintained that his actions were appropriate and proportionate in circumstances where he was attempting to protect himself and his teammates. There was no acknowledgement of the recklessness of his actions.

Character evidence

60. The written character reference of Mr Costello stands in the Player's favour and has been taken into account in the Committee's determination.

F. RESULT

61. Weighing up these factors, the Committee considers an appropriate sanction for this offence to be the MMS plus three additional matches, a total of four (4) matches.
62. However, we have also taken into consideration the fact that the Player's actions were actuated by an intent to placate an already intense situation, an ultimately misguided belief that the technique which was deployed by him on this and previous occasions without sanction was a legitimate means of achieving that outcome and his assertion that he does not intend to repeat that conduct.

63. In these circumstances, the Committee has determined to exercise its discretion under Clause 14.2 of the Disciplinary Regulations to suspend part of the sanction.
64. The sanctions we impose are:
- (1) the MMS plus three additional matches, a total of four (4) matches;
 - (2) the MMS plus one additional match is to be served immediately and two (2) additional matches are to be suspended. The suspended part of the sanction will be activated if the Player commits any red card offence in the period up to and including mid-night on 31 December 2023.

A handwritten signature in dark ink, appearing to read 'A. Lo Surdo', with a stylized flourish at the end.

AP Lo Surdo SC, Disciplinary & Ethics Committee Chair
Monday, 17 April 2023