

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

Player and club	Chris Ikonomidis, Melbourne Victory FC
Alleged offence	Offence No. 4, R2 Violent Conduct
Date of offence	21 January 2023
Occasion of offence	Match between Perth Glory FC and Melbourne Victory FC
Basis the matter is before the Disciplinary & Ethics Committee	A referral: see clause 3.3(a) and 11.21(b)(ii)
Date of Disciplinary Notice	23 January 2023
Date of Hearing	Heard on the papers
Date of Determination	3 February 2023
Disciplinary Committee Member	Anthony Lo Surdo SC, Chair

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 11.22(b)(ii) of the Disciplinary Regulations. Prior to a referral under clause 11.22(b)(ii) Chris Ikonomidis (**the Player**) had 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. The Table of Offences describes the "Minimum Sanction" for an R2 offence as being "1 additional match plus the Mandatory Match Suspension." The Match Review Panel (**MRP**) is required by clause 3.5 to apply the Table of Offences. Where the Table of Offences prescribes minimum sanctions such as in the present case, the MRP has no power to propose a sanction that is lower than that minimum. It can, however, in appropriate circumstances propose sanctions over and above either the MMS or a minimum sanction (which includes the MMS).
4. Pursuant to clause 11.22(b)(ii), a Player may elect to refer to the Committee for hearing and determination whether Exceptional Circumstances apply and therefore a sanction outside the Range at the Table of Offences should be imposed, provided always that the MMS must be served.
5. By notice dated 24 January 2023, the Player elected to refer to the Committee, the question of whether Exceptional Circumstances justifying a reduction of the

Minimum Sanction from the MMS plus 1 additional match to the MMS (which has been served).

6. Guilt or innocence is not up for review. The Committee has no jurisdiction to deal with that question and will not express any view on it.
7. Clause 4.4 of the Regulations provides that in a hearing, the Committee must consist of three persons (including a Chair and at least one (1) former professional player).
8. Regrettably, it has not been possible to convene a panel of three persons in sufficient time to enable the referral to be determined expeditiously and, in particular, in sufficient time to enable the Player to participate in the next fixture on 3 February 2023, in the event that the procedure is determined in his favour.
9. Therefore, the parties agreed that notwithstanding the provisions of clause 4.4 of the Regulations, the Committee is to comprise of one person only and each has waived their right to have the referral determined by a committee consisting of three persons.
10. In all the circumstances, the Committee is satisfied that it has jurisdiction to deal with this referral. Further, neither party contended to the contrary.

B. THE HEARING

11. The parties requested that the Committee conduct a hearing "on the papers", that is, without an in-person hearing. Having considered the competing written submissions and documents upon which the parties relied, the Committee formed the view that it was sufficiently informed to conduct a hearing "on the papers" and proceeded to do so.
12. Disciplinary Counsel was Mr Ivan Griscti, of Counsel. The Player was represented by Mr John Didulica, Melbourne Victory FC, Director of Football (and lawyer).
13. 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 (derived from the website "transfermarkt.com").
14. Mr Didulica, for the Player, relied upon the following evidence:
 - (a) a written statement from the Player, dated 31 January 2023;
 - (b) the referee's report;
 - (c) a document headed, "Schedule B, Chris Ikonomidis – Match Summary"
 - (d) the Player's disciplinary record; and
 - (e) an article titled, "Global study of penalty cards in professional football" by Poli, Ravenel and Besson".
15. The Committee was also assisted by written submissions provided by each of the parties.

C. FACTS

16. In or around the 50th minute of the game, Perth Player Clisby and the Player were each in pursuit of a loose ball. Player Clisby got to the ball moments before the

Player and cleared it. In the course of doing so, the players collided and both went to ground. While still on the ground and in close proximity of Player Clisby, the Player lashed out with his right foot, studs showing and made contact with the upper body of Player Clisby. As the Player was getting to his feet, Player Clisby reacted by pushing the Player to the ground and placing his hands around the Player's neck and throat area.

17. Player Clisby was shown a red card for an R2, violent conduct. The Player was initially issued with a yellow card for his involvement in the incident. Upon a VAR review of the incident, the referee rescinded the yellow card and showed the Player a red card for an R2, violent conduct.
18. 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.

D. SUBMISSIONS

19. 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.
20. The Player submitted that there are "Exceptional Circumstances" enabling the Committee to step outside the minimum sanction of two matches and replace it with either the MMS or to suspend the 1 additional match over the MMS.
21. The Player further submitted that:
 - (1) his exemplary disciplinary playing record constitutes "Exceptional Circumstances" for the purposes of clause 11.22(b)(ii) of the Regulations;
 - (2) since his elite football debut in 2011/12 season, he has played in excess of an estimated 300 matches of competitive football, has never been issued with a red card or suspended for an accumulation of yellow cards, has never been issued with a code of conduct notice by a Club or a Competition for any breach of behavioural guidelines and never received a caution for any form of physicality;
 - (3) the definition of "Exceptional Circumstances" carves out of range of matters that are deemed not to constitute such circumstances. An exemplary disciplinary record is not among them. It is accordingly open to the Committee to consider whether or not an exemplary disciplinary record comprises "Exceptional Circumstances" for the purposes of the Regulations; and
 - (4) a player's exemplary disciplinary record should weigh in his favour should the overall circumstances of the matter deem it to be equitable. The Player has a demonstrated history of fair play and whose conduct in the totality of the incident, whilst deserving of a red card, remains consistent with the sort of player who is entitled to the discretion that the Regulations have expressly afforded the Committee.
22. Disciplinary Counsel submitted, in summary, that:
 - (1) significantly, "Exceptional Circumstances" means "*circumstances operating at the time of the Offence and relating to the commission of the Offence and not the impact a sanction may have.*" Attention is therefore drawn to

the circumstances surrounding the offence. Antecedent factors such as a player's disciplinary record (or, for example, good character and the like) are not matters that fit within the narrow definition of Exceptional Circumstances;

- (2) the occasions where the Committee has previously found there to be Exceptional Circumstances such as *Akoto*, *Bojic* and *Berisha* were cases where the circumstances were intrinsic to the commission of the offence or the immediate circumstances of the offence. The present case does not involve consideration of any matter "*operating at the time of the Offence and relating to the commission of the Offence.*"
- (3) the Player's disciplinary record is a positive one but it is not so exceptional as would warrant special consideration;
- (4) the nature of the offence is such as to justify a 2-match suspension; and
- (5) it is accepted the Player's actions were out of character and were the result of some provocation. However, the video footage shows him to kick Player Clisby in the chest with some force.

23. By way of reply, the Player submitted, in summary, that:

- (1) the previous determinations of the Committee to which reference was made by Disciplinary Counsel exhibit that the Committee is open to the existence of "Exceptional Circumstances" and does not require a threshold so high as to be beyond contemplation to reach the conclusion that a fact constituted *Exceptional Circumstances*;
- (2) there is no requirement that it must be a physical act that gives rise to Exceptional Circumstances; and
- (3) it is open to the Committee to form a view that any combination of circumstances could be regarded as 'exceptional' for the purposes of the Regulations. The Player's exemplary history, the nature of the offending and his conduct immediately after the offending reach the threshold of being 'exceptional'.

E. CONSIDERATION AND FINDINGS

24. The sole issue is whether the Player's disciplinary record which, the Player submits is exemplary, either taken alone or in combination with the nature of the offending and his conduct immediately after the offending, comprise "Exceptional Circumstances" for the purposes of clause 11.22 (b)(ii) of the Regulations.

25. The Regulations define "Exceptional Circumstances" as follows:

Exceptional Circumstances means circumstances operating at the time of the Offence and relating to the commission of the Offence (emphasis added) and not to the impact a sanction may have. The following are not Exceptional Circumstances:

(c) the significance or importance to the Participant or his or her Club of the A-League Men Match in which the Offence was committed;

(d) the significance or importance of any match or tournament in which the Participant will be ineligible to participate because of the imposition of a sanction within the Range at the Table of Offences;

(e) the point in the A-League Men Match at which the Offence was committed;

(f) the conduct, including actions, words or gestures of any Player or Team Official of the opposing team during or related to the A-League Men Match; and

(g) any disciplinary decision taken or failure to take a disciplinary decision by a Match Official during the A-League Men Match.

26. As the Committee in *Berisha* (2016) observed, the term "Exceptional Circumstances" is defined both positively and negatively. To comprise "Exceptional Circumstances", the circumstances must be "operating at the time of the Offence and relating to the commission of the Offence and not to the impact a sanction may have" and must not be one of the circumstances the Regulations have identified as not comprising Exceptional Circumstances.
27. As the Player has quite correctly observed, disciplinary record is not identified in the Regulations as a circumstance that does not comprise "Exceptional Circumstances." The Committee also accepts that the definition of "Exceptional Circumstances" does not, in terms, limit circumstances to a physical act.
28. The evident object and purpose of the definition of "Exceptional Circumstances" is to enable a participant charged with an offence to rely upon a potential array of circumstances other than those which are expressly excluded in support of a claim that the Committee should impose a sanction outside of the minimum prescribed by the Table of Offences.
29. However, the circumstances are expressly limited to those operating at the time of the offence and relating to the commission of the offence and not the impact a sanction may have and exclude particular circumstances.
30. The circumstances must therefore bear both a close temporal relationship to the offence and relate to its commission.
31. In other words, the circumstances must be exceptional or unusual and there must be a connection between those circumstances and the commission of the offence itself.
32. The Player's antecedence, disciplinary record, nature of the offending, conduct immediately after the offence and character more generally are not matters which either individually or collectively were "operating at the time of the Offence" nor are they matters which relate to or have the necessary nexus to the commission of the offence.
33. Such an approach is entirely consistent with situations in which the Committee has determined that "Exceptional Circumstances" existed for the purposes of the Regulations (see, for example, *Akoto* (2010), *Bojic* (2011) and *Berisha* (2016)). Common to each of those cases was the existence of facts and circumstances operating at the time of the commission of the offence which caused, contributed, explained, mitigated or otherwise related to the commission of the offence.
34. The Committee accordingly determines that the Player's disciplinary record, either taken alone or in combination with the nature of the offending and his conduct immediately after the offending, do not comprise "Exceptional Circumstances" for the purposes of clause 11.22 (b)(ii) of the Regulations.

F. RESULT

35. The sanction of the MMS plus one additional match is confirmed.

A handwritten signature in red ink, appearing to be 'A. Lo Surdo', written in a cursive style.

AP Lo Surdo SC, Disciplinary & Ethics Committee Chair
Friday, 3 February 2023