

DISCIPLINARY AND ETHICS COMMITTEE OF FOOTBALL AUSTRALIA

DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Adama Traore, Melbourne Victory
Alleged offence	Unsporting Conduct toward a Match Official
Date of alleged offence	Saturday, 17 April 2021
Occasion of alleged offence	2021 A-League match between Melbourne Victory and Melbourne City
Date of Disciplinary Notice	19 April 2021
Basis the matter is before the Committee	A referral: see Clause 11.37
Date of Hearing	29 April 2021
Date of Determination	5 May 2021
Committee members	Lachlan Gyles SC, Chair Anthony Lo Surdo SC, Vice-Chair Rob Wheatley

A. INTRODUCTION

1. This matter arises from an incident that occurred in approximately the 30th minute of the A League match between Melbourne Victory and Melbourne City FC on 17 April 2021.
2. Melbourne Victory player, Adama Traore (**Player**), was issued with a direct red card by the referee. The initial trigger for the red card was that the Player was considered to have engaged in Serious Foul Play after a challenge causing contact with Melbourne City player, Andrew Nabbout. In the process of the Player being shown the red card, he made physical contact with the referee, grabbing him by the right hand/arm area in an apparent attempt to stop him from showing the red card, and/or remonstrating in relation to it.

B. FORMAL MATTERS AND JURISDICTION

3. The matter comes before the Disciplinary & Ethics Committee (**D & E Committee**) by reason of Disciplinary Notice, dated 19 April 2021.
4. The Disciplinary Notice states that the Match Review Panel (**MRP**), pursuant to clause 11.1(d) of the A-League Disciplinary Regulations (the **Regulations**) determined that

the red card incident is a Category 2 Offence, namely "Unsporting conduct toward a Match Official" (the **Offence**).

5. Clause 11.1(d) authorises the MRP to determine the proper categorisation of the offence (irrespective of any categorisation by the referee).
6. The process with a red card in respect of a Category 2 offence is dealt with at clauses 11.36 – 11.39 of the Regulations.
7. Relevantly, clause 11.37 provides the MRP will refer the incident to the D & E Committee for hearing to determine whether, having regard to all the circumstances, the offence is sufficiently proven to warrant the imposition of an additional sanction in addition to the Mandatory Match Suspension.
8. Clause 11.38 prescribes the course of action to be taken by the MRP, which is reflected in the Disciplinary Notice, in particular paragraph 2.
9. Clause 11.39 sets out what is to occur at a hearing following such a referral. It provides the D & E Committee:
 - a) must make a Determination as to whether an additional sanction over and above the Mandatory Match Suspension is warranted;
 - b) whilst limited to determining the question of any additional sanction, may have regard to, but is not bound by the Range at the Table of Offences;
 - c) if it determines that the imposition of an additional sanction over and above the Mandatory Match Suspension is not warranted must pronounce this Determination, which does not lead to the Player Red Card being expunged from the Player's record or the Team Official Red Card being expunged from the Team Official's record, as the case may be; and
 - d) may, but is not required under clause 22.4 to provide reasons for its Determination that a further sanction is not warranted.

C. THE HEARING

10. On the evening of Thursday, 29 April 2021, the Committee heard the referral of the matter. At the conclusion of the hearing the Committee reserved its decision. This Determination gives notice of the Committee's decision, and of the written reasons of the Committee, in the "*shortest form reasonably practicable*" (see clause 22.3(c)).
11. At the hearing Disciplinary Counsel was Mr Ivan Griscti and the player was represented by Mr Michael Thornell, solicitor.
12. The evidence at the hearing comprised video footage of the incident from several angles, the Disciplinary Notice, the referee incident reports, the Player's disciplinary record, the Player's statement and other documents collated in a spiral binder prepared by FA. In that spiral binder are the written submissions on behalf of the Player and of Disciplinary Counsel.

13. The Player read out a prepared written statement of apology at the hearing, and answered questions concerning the relevant events. Mr Trimboli, Director of Melbourne Victory, spoke to the Player's character from the perspective of the Club.

D. FACTS

(1) Evidence of the player

14. The Player accepts that:
 - a) he made physical contact with the referee during the game;
 - b) his actions were inappropriate, and the contact ought not to have occurred;
 - c) poor behaviour, especially when broadcast live on television, has the capacity to attract negative sentiment towards the game;
 - d) he must, particularly as a player of his calibre playing in the highest level of professional club football in Australia, set a standard for all other grades and be an example for aspiring players;
 - e) it is appropriate to categorise his physical contact with the referee as falling within the offence; and
 - f) he is liable to serve the minimum sanction, and does not seek suspension of any part of the minimum sanction.

(2) Disciplinary record of the player

15. The Committee was provided with the disciplinary record of the Player. He has been a professional footballer for thirteen years. He has received a fair number of yellow cards over his career, but only two red cards prior to this incident.
16. The Committee finds the Player's disciplinary record overall to be relatively good, given the number of games played, particularly as a defender. There is no suggestion of any prior contact with, or issues concerning, referees.

(3) Character evidence

17. Mr Trimbole spoke for the Player and attested to his good character, and the example he has set for the other players as one of the leadership group at Melbourne Victory. He said that the Club was thrilled to see his return after a very successful career overseas, and that his behaviour around the Club was a very good influence. The Committee accepts this evidence.

E. SUBMISSIONS

18. The matters submitted by Disciplinary Counsel included:
 - (1) The D & E Committee has had course over the years to deal with cases involving intentional contact with referees: *Vukovic* (2008), *Van Den Brink* (2009), *Calvano* (2013) and *Amor* (2016).

- (2) Each of these determinations emphasizes the importance that match officials are to be permitted to conduct their duties without physical interference from players and club officials. The observations in the Van Den Brink case are apposite:

If players make intentional contact with a referee they do so at their peril. Any intentional contact by a player with a referee during a game has the potential to undermine the authority of the referee and his/her control of the game. It can suggest that a player has some degree of authority or control over a referee or is attempting to assert some form of authority or control. Intentional contact with a referee is disrespectful. It is unnecessary and inappropriate.¹

- (3) Of the prior cases, *Vukovic* attracted the highest sanction, however, in this case the Committee found that the player intentionally struck the referee (as opposed to pushing or other lesser form of contact), albeit out of frustration and without the intention to cause harm or injury.
- (4) In *Van Den Brink* the contact involved the Player placing his hands on the referee's side, while approaching from behind, as if to be seeking to attract his attention. This was held to amount to offensive and insulting behaviour towards a match official and the sanction imposed was a total of two games, with the additional game suspended having regard to all the circumstances (including the player's previous record).
- (5) The *Calvano* case involved a player grabbing the referee by the arm as he was running past him. This was with sufficient force that the referee was said to spin around a little and the red card was knocked out of the referee's hand. It was accepted the player did not act with malice and he appears to have apologised to the referee and pick up the card from the ground.
- (6) The conduct was considered to amount to unsporting conduct towards a match official and against the background of a poor disciplinary record the player was suspended for 8 matches, with a non-pecuniary bond of four matches imposed in the event of a further red card throughout the duration of that season.
- (7) The *Amor* case arose in a different context as it involved contact between a coach and the fourth official.
- (8) Mr Amor made intentional contact with the fourth official. It was not established that he pushed the official. The contact was said not to have been necessary or

¹ At [25]

appropriate for the purpose of gaining the official's attention. It was held the conduct amounted to unsporting conduct towards a match official. Mr Amor was sanctioned with a four game suspension, including a two game suspended sentence.

Present Case

- (9) In the present case, the Player has committed a dangerous tackle on an opposition player – it can be seen that his studs have come into contact with the back of Nabbout's thigh. Despite this, the Player remonstrated with the referee in relation to the sanction for the tackle.
 - (10) Whilst there were three separate instances of contact with the referee the events occurred quickly and it is fair to consider the three instances all as part of a single occurrence.
 - (11) Throughout the event the Player is remonstrating with the referee and is assisted by opposition players who pull him away in an attempt to diffuse the situation. The Player did not immediately leave the field of play after being shown the red card. He confronted the referee again after getting free from the opposition players. When the referee then goes to attend to Nabbout the Player appears to follow him again.
 - (12) The nature of the contact is not as forceful as in the *Calvano* case but worse than that involved in the *Van Den Brink* and *Amor* cases. After the contact the Player continued to argue his case and showed no appreciation that he has overstepped and does not move to leave the field of play immediately. There is no evidence of any apology to the referee.
 - (13) The Player has a reasonable disciplinary record for someone in his position who has played for 13 seasons (including in Europe). There is one prior red card from the 2012/13 season which was arguably contentious. There was no additional sanction on top of the mandatory match suspension.
 - (14) The Player's conduct amounted to unsporting conduct towards a match official (noting that the lesser conduct in the *Amor* case fitted within this description), offence 10 in the Table of Offences.
 - (15) The minimum sanction prescribed for this offence is a total of 4 games, being 3 games in addition to the mandatory match suspension.
 - (16) The circumstances of the case justify that the D & E Committee determine in accordance with Clause 11.39 (a) and (b) of the Regulations that an additional sanction above the mandatory match suspension is warranted.
19. The matters *submitted* on behalf of the Player included:
- (1) That, based upon the evidence, the Committee should be satisfied that:
 - (a) the underlying contact made with Mr Nabbout was unintentional and inadvertent;

- (b) although contact was made with the referee on three separate occasions, each was momentary, occurred in a very short space of time, and should be treated as a single event (as proposed by the FA);
 - (c) the force used by the Player was not sufficient to put the referee off balance or cause him to change course; and
 - (d) the Player's conduct was instinctual, occurred in the heat of the moment, was plainly not intended to harm the referee, and the referee was not injured.
- (2) As to sanction, in particular, the Player submitted that:
- (a) the conduct in question is objectively far less serious than that involved in *Calvano*, where Mr Calvano made physical contact with the referee over a sustained period, and with sufficient force to cause the referee to change direction;
 - (b) in *Calvano*, the Committee imposed a sanction of 8 matches, with a non-pecuniary bond of four matches imposed in the event of a further red card in the remainder of that season (noting the Regulations have been revised since);
 - (c) the current circumstances can also be distinguished from *Calvano* because the Player has an exemplary disciplinary record, whereas Mr Calvano had a poor disciplinary record;
 - (d) the conduct in question is more akin to that involved in the *Van De Brink* and *Amor* decisions, in that it involved the Player making contact with a match official for the (admittedly inappropriate) purpose of gaining the match official's attention;
 - (e) in *Van De Brink*, the Committee imposed a sanction of three games, with one game suspended;
 - (f) in *Amor*, the Committee imposed a sanction of four games, with two games suspended; and
 - (g) having regard to those precedents and the matters set out above, the Minimum Sanction (being the Mandatory Match Suspension plus three additional matches) is the appropriate sanction in all of the circumstances, and the Committee should decline to impose any additional sanction on the Player.
- (3) In the alternative, and in the event that the Committee considered that an additional sanction was warranted, the Player submitted that the Committee should exercise its discretion pursuant to Regulation 14.2 to suspend such part of the sanction that is in excess of the minimum sanction, on terms that the suspended matches will have to be served in the event that, in any future match in the next 6 months, the Player commits any infringement against a match

official which results in the issue of a red card (which is not overturned) or other infringement against a match official which results in the equivalent of a sending off offence.

F. CONSIDERATION AND FINDINGS.

20. As stated above, the referral by the MRP relates only to the Category 2 offence of "unsporting conduct towards a match official". That is an offence in which the minimum sanction under the Regulations is 4 A League matches (being the mandatory match suspension plus 3 additional A League matches.)
21. The unusual feature of the matter is that the conduct in question, being the contact made between the Player and the referee, followed on from the issuing of a separate red card by the Referee to the Player arising from the late and high challenge made on Andrew Nabbout, the Melbourne City player. That offence, on any view, was serious foul play carrying a minimum sanction of the mandatory match suspension, and possibly additional matches depending upon the view taken of the circumstances of the incident and the culpability of the player.
22. The MRP did not impose any separate penalty on the player in respect of that offence.
23. The previous matters dealt with by this Committee concerning unsporting conduct towards a match official, more specifically being the physical contact with the referee, has not included this second element, being the issue of a prior red card, itself deserving of sanction.
24. The Committee takes the view that the referral of the conduct of the Player in respect of the contact with the referee permits it to also take into account other relevant circumstances occurring in connection with that matter, which would include the conduct of the Player both immediately before and immediately after the particular offence the subject of the referral. This approach is consistent with the wording of Clause 11.37 where this Committee is to have regard to all the relevant circumstances and Rule 13.2 in which the Committee is permitted to consider "any extenuating circumstances relevant to the commission of the offence", which would in the view of the Committee include not only extenuating circumstances but also aggravating circumstances.
25. Mr Thornell on behalf of the Player did not take issue with the appropriateness of this Committee taking into account the conduct immediately before and immediately after the offence which has been referred into account in assessing the appropriate sanction for the Player, and as to the power of the Committee to be able to do that conformably with the Regulations.
26. It would also be against common sense for the Committee not to be able to take such conduct into account at all, with the effect that there would be no consequence arising from it. That could not have been the intention of the Regulations.
27. The whole of the circumstances can be neatly divided into three stages.

28. First, there is the contact between the Player and Nabbout. That contact was late, that is, at a time after Nabbout had challenged for the ball, and involved the Player making contact with the back of Nabbout's thigh. Further the contact was with the studs of his boots and plainly could have caused serious injury to Nabbout. The Player's evidence in respect of that incident was that it was not his intention to make contact with Nabbout, but rather it was a misjudgement and his foot was in that position to seek to intercept the ball which was bouncing at about that height. He says that he did not expect Nabbout to leap towards the ball in the way that he did, and that he had no intention of making contact with him, and certainly no intention to injure him.
29. The Committee accepts that the Player did not intend to make contact with Nabbout or to injure him, however, it finds that for a player of that experience and skill, he could and should have avoided such contact and thereby that his actions were reckless and did not have proper regard for the safety of the opposing player. The Committee expects that if the MRP had dealt with the matter specifically, it is likely that it would have involved at least 1 additional match on top of the mandatory 1 match suspension for the offence of serious foul play.
30. The second phase was the touching of the referee. In that respect, the Player's evidence was that he was shocked and distressed when he realised that the referee was going to issue a red card to him for reasons including that the Melbourne Victory Football Club were having a very poor season, and the fact that he was one of the senior players was weighing upon him. He also made reference to the pressure of the match, being a derby against Melbourne City and frustration in leaving his team one man down, when he had hoped to be providing leadership for them. He said that his intention was to gain the match official's attention to plead with him to refer the incident to the VAR, and in doing so by way of an instinctual movement, done in the heat of the moment, he made contact with the referee. He says that it was without malice or without the intention of intimidating or threatening him in any way, nor was it intended to be insulting. He says that he didn't even realise what he had done until after the match when he saw the footage.
31. It is the view of the Committee that none of these factors justify what occurred. It has been made clear in a number of decisions of the Committee going back over a period in excess of ten years that there is zero tolerance for a player making contact with the referee. It cannot be permitted in any circumstances. The A League is the highest level of the game in Australia and involves professional footballers of great skill and discipline. Players in the A League, particularly senior players, must recognise that they are at the apex of the game in Australia and are required to conduct themselves professionally, ethically and appropriately. Match officials refereeing any match, amateur or professional, are reasonably entitled to expect that there will be no physical contact permitted between them and players. It is obvious that these standards must be adhered to by the senior players in Australia and it is therefore necessary that a substantial sanction be imposed to emphasise the importance of this.

32. In relation to the contact made between the Player and the match official on this occasion, we accept that it is at a low level in terms of the force that was used, and we accept that it was not intended to intimidate, threaten or cause any harm to the referee. We also accept that it was something done in the heat of the moment without mature reflection. The force that was used was less than in other cases which have been referred in respect of similar conduct.
33. The Committee therefore would find without more that a 4 match suspension would be appropriate in respect of that conduct alone.
34. The third phase might be described as the dissent phase. The behaviour of the Player after the red card had been issued reflects poorly on him. He did not leave the field once he understood that a red card had been issued, but rather continued to argue with the referee and needed to be physically restrained from doing so. This is an unacceptable show of dissent by a leading player in the A League who should have been able to have the discipline to control his emotions and we do not regard the excuses which he has made to be valid. We regard the conduct during that phase as an aggravating circumstance itself deserving of an additional 1 match suspension, leaving aside the conduct in phases one and two.
35. Therefore, the Committee would find that there would be justification for a 6 match suspension, the mandatory 1 match, plus 3 for the unsporting conduct towards the referee, 1 for the serious foul play for which the red card was received, and 1 for the aggravating circumstances being the dissent after the red card had been issued.
36. The Committee however, recognises that the Player has unreservedly apologised for the conduct and has accepted that it was inappropriate. He is ashamed and embarrassed by what occurred, and has conveyed that to the match officials in question. We also have had regard to the evidence of Mr Trimboli who spoke very favourably of the Player in terms of his leadership around the Club and the example he sets, and as to his contrition and embarrassment arising from what occurred. We also have had regard to the Player's disciplinary record which we have already described as relatively good.
37. In those circumstances, we find that the Player is entitled to a reduction of 1 match from the 6 matches which would otherwise have been justified, meaning that the Committee imposes a suspension of 5 A League matches for the matter as referred. This is one additional match in addition to the minimum 4 match sanction.

G. RESULT

38. The sanction the Committee imposes is a suspension for a total of 5 A- League matches, which includes the mandatory match suspension.

A handwritten signature in black ink, appearing to read "Lachlan Gyles", with a horizontal line drawn underneath the signature.

Lachlan Gyles SC, Disciplinary & Ethics Committee Chair

Wednesday 05.05.2021