

## DISCIPLINARY & ETHICS COMMITTEE OF FOOTBALL AUSTRALIA

### DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Tass Mourdoukoutas, Western Sydney Wanderers
Alleged offence	Offence No. 3, Serious Foul Play (eg when challenging for the ball)
Date of alleged offence	3 June 2021
Occasion of alleged offence	Match between Adelaide United and Western Sydney Wanderers
Date of Disciplinary Notice	7 June 2021
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 11.21(b)
Date of Hearing	16 June 2021
Date of Determination	17 June 2021
Disciplinary Committee Members	Anthony Lo Surdo SC, Chair Ben Jones David Barrett

#### A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.3 of the "A-League Disciplinary Regulations" applicable to the 2020-21 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**) formed the view that, on the material available to the MRP, an additional sanction of up to 1 match over and above the MMS was warranted. By notice dated 8 June 2021, the player has elected not to accept the proposed additional sanction and referring the question of any additional sanction to the Committee for determination.

4. It is clear that the function of the Committee in such a case is solely to determine the question of what additional sanction should be imposed over and above the MMS which must be served. Guilt or innocence is not up for review. That issue has been finally determined by earlier processes. The Committee has no jurisdiction to deal with that question and will not express any view on that topic.
5. Further, it is open to the Committee to upgrade or downgrade the offence; albeit not to eliminate the MMS.
6. The Committee is satisfied that it has jurisdiction to deal with this referral. Further, neither party contended to the contrary.

**B. THE HEARING**

7. On the evening of Wednesday, 16 June 2021, the Committee heard the referral of the matter.
8. At the hearing Disciplinary Counsel was Mr Ivan Griscti, of counsel. Mr Griscti appeared by AVL. Tass Mourdoukoutas (**Player**) also appeared by AVL together with the Club's CEO, John Tsatsimas and General Manager, Football Operations, Gavin Costello. Mr Tsatsimas spoke for the Player.
9. Disciplinary Counsel relied upon the following evidence:
  - (a) video footage of the incident from several different angles;
  - (b) the referee's send off report, dated 3 June 2021;
  - (c) a disciplinary notice issued to the Player, dated 7 June 2021; and
  - (d) the Player's disciplinary record.
10. The Player, relied upon the following evidence:
  - (a) video footage of the incident from several different angles; and
  - (b) video footage of previous incidents which have come before the Committee involving Rhyan Grant (6 January 2020), Adama Traore (5 May 2021), Marcos Urena (11 May 2021) and Nicholas Ansell (20 May 2021).
11. The Player also sought to rely upon the video footage and decisions of the MRP relating to the following incidents: Harrison Delbridge (2 April 2020); Craig Noone (11 August 2020); Moudi Najjar (4 June 2021); and Jordan O'Doherty (10 June 2021). The Committee did not permit the Player to rely upon those videos and the submissions made in reliance upon them for the following reason.
12. In the matter of *Steve Pandelidis, Gold Coast FC and FFA* (3 February 2011), the FFA Appeal Committee said the following (at [28]):

"There was no evidence before the Disciplinary Committee that would have enabled it to properly address the comparative severity of the conduct in those two cases and the conduct of the Appellant in the present. Even if there were, it is doubtful that any comparison of penalty would be a valid one. That is because the 2 match sanctions in each case were imposed by the Match Review Panel, and not by the Disciplinary Committee...as a result, in our view it would not be a valid

logical or jurisprudential exercise for the Disciplinary Committee to use sanctions imposed by the Match Review Panel as “comparative verdicts” for the purposes of its own power to impose a sanction. In the course of argument, it is apparent that this was the position of the chairman of the disciplinary committee and we respectfully agree with that position.” (emphasis added)

13. The approach of the Appeal Panel in *Pantelidis* was endorsed by the Appeal Panel in the matter of *Roy O’Donovan* (25 January 2016).
14. The Committee is bound by the each of these determinations of the Appeal Panel. Accordingly, it has not taken into consideration as submitted by the Player the determinations in each of the matters referred to in its submissions and identified at paragraph 11 of this determination as to do so would not be a valid or jurisprudential exercise for the purposes of its own power to impose a sanction.
15. The Player also gave the following oral evidence:
  - (a) he considered a 2 game suspension proposed by the MRP to be harsh and that consistency in approach is important;
  - (b) he had “complete eyes and body on the ball” in the lead up to and execution of the challenge and that he had no malice or intent to cause harm;
  - (c) he made contact with the ball as it passed between him and the Opposing Player;
  - (d) he did not leave the field of play immediately upon being shown the red card as he was “in shock” and he expected the red card decision to be the subject of a VAR;
  - (e) he made contact with the ball immediately prior to the challenge, he believed, with the side of his boot; and
  - (f) he was adamant that the challenge was not mis-timed. He claimed that the timing was fine but that the challenge lacked technique and that he should probably have engaged in a sweeping type movement. He did not consider that he could execute the challenge and win the ball in what he considered was a 50/50 contest other than sliding or lunging;
16. The Committee was also assisted by the written submissions of each of the parties which they were afforded the opportunity of addressing orally. In those submissions, each of the parties referred the Committee to earlier decisions of the Committee involving Rhyan Grant (6 January 2020), Marcos Urena (11 May 2021) and Nicholas Ansell (20 May 2021) to which we return later in this determination. Additionally, the Player referred us to the matter of Adama Traore (5 May 2021).
17. 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

18. In around the 36<sup>th</sup> minute of the game, the Player challenged Adelaide United player D’Arrigo for possession of the ball (**Opposing Player**). The Opposing Player was running onto a pass from his team mate Strain. The Player approached the

ball from the side and slightly to the rear of the Opposing Player. The Player performed a slide tackle on the Opposing Player with the studs of his right boot raised and making contact with the ankle of the Opposing Player. The challenge was mis-timed with little if any contact made with the ball.

19. 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. The challenge is depicted in the following images taken from the video footage.



Note: In this image, the Player wearing the predominantly white away strip to the right of screen can be seen commencing his challenge for the ball leading with his right foot raised.



Note: In this image the Player, wearing the wearing the predominantly white away strip is seen challenging for the ball leading with his outstretched right leg with

foot raised sliding in and making contact with his studs to the right ankle of the Opposing Player.



Note: This image depicts the mis-timing of the tackle. Little if any contact is made by the Player with the ball. The predominant impact is of the right outstretched leg and boot with studs showing to the ankle of the Opposing Player.

20. The referee did not hesitate in showing the Player a direct red card for an R1 - Serious Foul Play. Whilst the Player did not remonstrate with the referee he did not immediately leave the field of play either because he was waiting for what he believed would be a VAR review. Player Strain appears from the video footage to have provided the Player with some encouragement to leave the field of play and he eventually did so without incident.
21. The video footage also depicts the Player as bending down to the Opposing Player who at the time was in visible distress on the ground presumably in a gesture of asking after the welfare of the Opposing Player. The video does not otherwise depict any evident remorse or contrition exhibited by the Player in relation to his conduct.
22. The Opposing Player required on-field medical assistance. After that assistance, the Player was able to resume the match. There is no evidence that the Opposing Player has suffered any injury from the incident.

#### **D. SUBMISSIONS**

23. 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 carefully 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.
24. The matters submitted by Disciplinary Counsel included:

- (1) the challenge by the Player falls well within the definition of "Serious foul play" as it involved the Player lunging at an opponent in challenging for the ball from the side/behind, by sliding in at speed. The Player executed the tackle from a point very close to the ball and to his opponent and this meant that he came in at great force. The greater momentum caused by sliding in from a close distance and also being in the Opposing Player's blindspot rendered that player vulnerable, particularly as the Player's studs were up;
  - (2) intent is not a necessary element to serious foul play-the key issue is the risk to the safety of the opposition player;
  - (3) the sanction should recognise the potential for harm and, importantly, send a message of deterrence to players;
  - (4) the contact was flush on the Opposing Player's ankle or slightly above. There was an obvious risk of serious injury and it is fortunate that no such injury ensued;
  - (5) the prior cases of Rhyan Grant (6 January 2020), Marcos Urena (11 May 2021) and Nicholas Ansell (20 May 2021) are relevant. The present circumstances are factually similar to the Ansell case which also involved a sliding tackle;
  - (6) in Ansell, the Player received a one match suspension. However, in that case, the Committee found that Ansell had made contact with the ball in a sweeping action and was able to pass it to a teammate. The contact in that case was boot on boot and not considered to be particularly significant. Even with these matters, it was considered in Ansell that but for extraneous factors, including him being an experienced player with a good disciplinary record, along with his contrition and contribution to the club and broader community, he may have received a greater penalty;
  - (7) in Grant and Urena, the players each received two-game suspensions in respect of tackles that likely warranted three game suspensions. Both cases concerned experienced players with positive disciplinary records and who had made positive contributions to their clubs and the community;
  - (8) whilst the tackle in the Urena case is of a different nature to the present, they arguably posed similar risks of injury;
  - (9) the Player is reasonably inexperienced and does not have the benefit of having built-up "credit" so it is unlikely that his disciplinary record will be a significant factor; and
  - (10) the challenge was a dangerous one exposing the Opposing Player to risk of injury. The danger posed by the tackle was such that a sanction greater than the minimum match suspension is warranted. A total of two games including the MMS is the appropriate suspension for such a challenge.
25. The matters submitted on behalf of the Player included:
- (1) that he was attempting to intercept the pass and win the ball in what was a 50/50 contest;
  - (2) both players made contact with the ball at the same time;

- (3) his foot moved in a trajectory that made contact above the ankle of the Opposing Player after contacting the ball;
  - (4) the challenge was not malicious in nature; it was a genuine attempt to win the ball;
  - (5) the contact warranted a red card and a mandatory match suspension. When this challenge is compared to others and the sanctions imposed for them, an additional match suspension is not warranted;
  - (6) he has played in the A league since the 2017/18 season. In that time, he has received only four yellow cards, including not being booked this season, since Round 3, playing in a centre-back role where a traditionally high percentage of yellow and red cards are received. This is the first red card of his career;
  - (7) the challenge in question is less severe than Traore (5 May 2021), in which the player received the MMS for the challenge plus an additional 4 match suspension for "unsporting conduct towards a match official";
  - (8) there are no relevant similarities between the incident in question and Urena (5 May 2021) in which that player was given a 2 match suspension;
  - (9) the speed, force, lack of control and direct contact with the opposing player makes the Ansell challenge (20 May 2021) more serious than the subject incident in which Ansell received the MMS;
  - (10) the Grant incident (6 January 2020) cannot seriously be compared to the subject incident in which Grant potentially risked the opposing player's career.
26. No submission was made by Disciplinary Counsel or by the Player that there were Exceptional Circumstances within the meaning of clause 11.21(b)(ii) of the Disciplinary Regulations.

#### **E. CONSIDERATION AND FINDINGS**

27. The sole issue in this matter is what, if any, sanction should be imposed over the MMS of 1 match.
28. 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.
29. 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 whose play is too aggressive and dangerous."
30. Serious foul play is defined in the LOTG as:  
 "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."

31. 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."
32. 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.

#### The nature and severity of the offence

33. Having regard to the video footage, the submissions made by Disciplinary Counsel and those made on behalf of the Player, the Committee accepts that the Player did not act in a malicious or intentional manner.
34. However, as submitted by Disciplinary Counsel, notwithstanding the lack of intent, the nature and severity of the Offence was such that it posed serious risk to the safety of an opposing player.
35. As is evident from the video footage and the referee's report, the Player lunged at the Opposing Player with his outstretched foot with studs showing, at close-range and with some force.
36. The Player approached the ball from the side and slightly to the rear of the Opposing Player with the consequence that the Opposing Player was "blindsided" and thus unable to and did not take any action to avoid or minimise contact.
37. The Player committed to the challenge, at close-range and thus was unable to pull-out of the challenge so as to avoid or minimise contact with the Opposing Player. As a consequence, he made forceful contact with his studs to the ankle region of the Opposing Player.
38. Further, and notwithstanding the Player's suggestion to the contrary, the challenge was mis-timed with little if any contact made with the ball. It was not, in the view of the Committee, simply a case of technique being less than ideal. Any slide or lunge at close range is fraught with danger to an opponent.
39. Whilst, in this case, the challenge did not cause serious injury to the Opposing Player, it nevertheless had the potential to do so.
40. For these reasons, we consider the Player's actions to have been reckless.

#### The Player's Disciplinary Record

41. The Player debuted in the 2017/18 A-League season and has played 34 matches since that time. This is the Player's first red card. He has otherwise received 4 yellow cards in his A-League career. The Player has a good disciplinary history albeit in a relatively nascent professional career. It is a matter that we take into account in the Player's favour.



### Player's Remorse

42. The video footage depicts the Player bending down to the Opposing Player immediately after the incident whilst that player was in visible distress on the ground presumably in a gesture of asking after the welfare of the Opposing Player. The video does not otherwise depict any evident remorse or contrition exhibited by the Player in relation to his conduct.
43. Of particular concern to the Committee is that the Player was adamant in his evidence that the challenge was a 50/50 challenge, not mis-timed and that, if anything, it lacked technique. That view is not supported by the objective evidence. The Player's reluctance to "own" or take responsibility for his conduct is not consistent with exhibiting true remorse.
44. The Player did not remonstrate with the referee after being shown the red card, but neither did he immediately leave the field of play. He left the field of play after being encouraged by Player Strain to do so. He then left without incident.

### Character evidence

45. Mr Tsatsimas gave evidence that the Player is a "good lad" who he has known since "academy days." We accept this evidence without reservation.

### "Comparable" Incidents

46. The conduct of the Player in this case is similar to *Grant* in that they both involved lunging type challenges using one or both legs with excessive force and/or endangering the safety of the opponent. The tackle by Mr Grant had, however, a significantly greater potential to cause injury. Primarily for that reason, the Committee in *Grant* considered the appropriate sanction to be a 3 game suspension but because of the various mitigating factors referred to in the determination including his long and relatively unblemished playing career and the positive contribution made by him to the Club and to the community more generally over many years, a 2 game suspension was imposed.
47. The conduct of the Player is not factually similar to *Urena*, except to the extent that both incidents involved serious foul play. The Committee in that case was of the view that the challenge warranted a 3 game suspension but because of the various mitigating factors referred to in the determination including his long and distinguished playing career, the positive contribution made by him to the Club and to the community, more generally over many years, a 2 game suspension was imposed.
48. In *Traore*, the Committee expressed the view that had the MRP dealt with the issue of serious foul play specifically and separately to the charge of unsporting conduct towards a match official, it is likely that it would have imposed at least one additional match on top of the MMS. As the Committee in that case was required to deal with the totality of the charges and the fact that those charges arose from the same or substantially the same facts, it determined, that only the MMS was warranted in relation to the serious foul play charge.
49. The present circumstances most closely align with *Ansell* in which the Committee found that the conduct warranted a 2 game suspension which was, in effect,

reduced to the MMS only having regard to the mitigating circumstances referred to in its determination. The Player's circumstances are not analogous to Ansell.

50. The Player has a relatively good playing record, although he has only been playing professionally for three full seasons. He is of good character and showed concern for the Opposing Player immediately after the incident. These are matters that favour the Player.
51. However, and of particular concern to the Committee, is the fact that the Player has not exhibited remorse or contrition in relation to his conduct. He steadfastly maintained that the tackle was not mis-timed when the objective evidence was very much to the contrary. He attempted to explain the conduct by saying that it lacked technique. It did lack technique but it was also mis-timed and had the potential to cause serious injury to an opponent. The Player has not, in the opinion of the Committee, taken appropriate responsibility for his actions. The mitigating factors of a short term good disciplinary record and good character are, in these circumstances, outweighed by the recklessness of the tackle and the Player's lack of remorse or acceptance regarding the nature of the tackle.

#### Conclusion

52. Weighing all of these factors, the Committee considers an appropriate sanction to be 1 match over and above the MMS.

#### **F. RESULT**

53. The sanction we impose is 1 match over and above the MMS.



A P Lo Surdo SC  
Disciplinary & Ethics Committee Chair  
Thursday, 17 June 2021