

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

Player and club	Isobela Nino, Newcastle Jets FC
Alleged offence	Offence No. 4, R2 Violent Conduct
Date of offence	23 March 2024
Occasion of offence	Match between Newcastle Jets FC v Melbourne Victory FC
Basis the matter is before the Disciplinary & Ethics Committee	A referral: see clause 3.3(a) and 11.23(b)(ii)
Date of Disciplinary Notice	25 March 2024
Date of Hearing	4 April 2024
Date of Determination	4 April 2024 (oral pronouncement of determination) 5 April 2024 (written reasons for determination)
Disciplinary Committee Members	Anthony Lo Surdo SC, Chair Deborah Healey David Barrett

**A. INTRODUCTION AND JURISDICTION**

1. The Committee has jurisdiction under clause 3.3 of the "A-League Disciplinary Regulations" applicable to the 2023-24 A-League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is 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 11.23(b)(ii) of the Disciplinary Regulations. Prior to a referral under clause 11.23(b)(ii) Isobela Nino (**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 11.23(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 26 March 2024, 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. 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**

8. A hearing was conducted by video-conference on 4 April 2024.
9. Disciplinary Counsel was Mr Ivan Griscti, of Counsel. The Player was represented by Mr Shane Mattiske, CEO of the Newcastle Jets. The Player also attended the hearing.
10. Disciplinary Counsel relied upon the following evidence:
  - (a) video footage of the incident;
  - (b) the referee's report and the report of assistant referee 1;
  - (c) a disciplinary notice; and
  - (d) the Player's disciplinary record.
11. The Player, relied upon the following evidence:
  - (a) a written statement from the Player, dated 2 April 2024 (**Player's Statement**); and
  - (b) a series of slides or stills from the video footage of the game.
12. The Committee was also assisted by written submissions provided by the parties and each was afforded an opportunity to speak to those submissions.

#### **C. FACTS**

13. In or around the 90<sup>th</sup> minute of the game, Newcastle Jets proposed to substitute Player Barbieri. Upon a request for the substitution being communicated to the referee, the referee stopped play and directed Player Barbieri who, at that time was on her knees untying her shoe laces, to leave the field. Rather than doing so as directed by the referee she continued to untie her shoe laces.
14. Player Gielnik from Melbourne Victory then came behind Player Barbieri and helped her to her feet by picking her up from under her arms which caused those players to grab each other around the necklines of their shirts. As the referee, who clearly had control of the situation started to pull out a yellow card, other Newcastle Jets players converged in an attempt to separate players Barbieri and Gielnik.
15. After players Barbieri and Gielnik were separated, Player Nino ran in and placed her hand on Player Gielnik's shoulder who responded by pulling Player Nino around the neckline of the back of her shirt in an attempt to separate herself from Player Nino. Player Nino reacted by extending her left arm and hand towards and making contact with the throat of Player Gielnik. Player Nino's right hand also makes contact with Player Gielnik's face using an open hand. Other players then joined to separate players Gielnik and Nino.

16. Player Nino was shown a direct red card for an R2, violent conduct and left the field of play.
17. So much is apparent from the referee's report, the report of the assistant referee and from the video footage of the incident, extracts of which appear below:



Image 1: Players Barbieri and Gielnik having separated and Player Nino running in and making initial contact with Player Gielnik.



Image 2: Player Gielnik grabbing Player Nino at the back of her shirt in an attempt to separate from her.



Image 3: Player Nino extending her left arm and hand towards and making contact with Player Gielnik's neck and face. Contact is also made by Player Nino's right hand with Player Gielnik's face.



Image 4: Player Nino's her left hand making contact with Player Gielnik's neck and face.



Image 5: Players Nino and Gielnik commencing to separate.

#### **D. SUBMISSIONS**

18. 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.
19. The Player submitted that there were "Exceptional Circumstances" enabling the Committee to step outside the minimum sanction of two matches and replace it with the MMS. The Player contended those circumstances, in summary, to be as follows:
  - (1) the incident occurred as a result of the Player moving into an area to separate players and to try and settle down a scuffle that occurred where Player Gielnik had "manhandled" the smaller Player Barbieri;
  - (2) after placing her body between Player Gielnik and nearby Jets players and touching Player Gielnik's arm, the Player was suddenly and forcefully pulled off balance by Player Gielnik;
  - (3) this action by the Player led to her hands coming into contact with Player Gielnik. The Player's reaction to the sudden and forceful pulling was first to find her balance by attempting to place her hand on Player Gielnik's upper right shoulder and then as the forceful pulling continued by raising her right hand to push Player Gielnik away and break her grip;
  - (4) the Player did not intend to assault or even threaten Player Gielnik;
  - (5) the contact was unintentional; her pushing motion towards Player Gielnik was not an attempt to assault Player Gielnik but in reality, was an attempt by the Player to balance herself, release herself from Player Gielnik's grip

and from the aggressive pulling motion being imposed on her from Player Gielnik;

- (6) the Player submitted that she was wearing her keeper's gloves and that for most of this time she was still holding the ball, which indicated her lack of intention to harm anyone; and
  - (7) the Player is held in high regard by the Club, is a model A-League player and her behaviour has always been of the highest standard both on and off the field evidenced by the fact that until this incident the Player had never been issued with a yellow or red card.
20. The Player's Statement and evidence provided by her orally during the course of the hearing is consistent with the submissions made on her behalf. During her oral evidence the Player accepted that she should not have run in as she did which caused an escalation in hostilities rather than placating them as was her intent.
21. Disciplinary Counsel submitted, in summary, that:
- (1) "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.*" A number of matters are specified as not constituting "Exceptional Circumstances". Relevantly, one of these is the conduct, including actions, words or gestures of any Player or Team Official of the opposing team during or related to the A-Leagues Match;
  - (2) the video and screenshots submitted on behalf of the Player reveal that when she arrived at the scene, the initial fracas between Players Gielnik and Barbieri had largely resolved, when the Player first laid hands on Player Gielnik, Player Barbieri was some three players away from Player Gielnik and the Player's arrival and handling of Player Gielnik escalated the scuffle;
  - (3) the Player became involved in a scuffle with an opponent. In the course of the mutual grappling, she made contact with Player Gielnik's throat/neck with her left and right hand irrespective of whether she was at anytime "off balance", and all the contact which her actions initiated was unnecessary and excessive;
  - (4) the Player had no justification for getting involved as she did. It was not her role to police disputes between other players. The referee was in close proximity at all times;
  - (5) the Player intended to put her hands on Player Gielnik and contact with the throat/neck area was, at best, reckless and constitutes violent conduct as defined in the Laws of the Game;
  - (6) there are no "Exceptional Circumstances" in the present case; what occurred was the result of the Player becoming embroiled in a dispute which was not her concern. Further, to the extent that the Player relies on the actions of Player Gielnik, the definition of "Exceptional Circumstances" expressly excludes conduct including actions of any player of the opposing team;
  - (7) to the extent that the Player relies on a lack of intention to assault or threaten Player Gielnik, this is not an Exceptional Circumstance. Intent is not a prerequisite in respect of the use of excessive force or brutality against an opponent;
  - (8) the present case is to be contrasted with other cases where the committee found there to be "Exceptional Circumstances" such as *Akoto*, where the player's conduct was in circumstances where he was seeking to retrieve his

mouth guard, *Bojic*, where the player was seeking to free himself from a position where he was being held down and *Berisha* where the player's conduct was in circumstances where he was being treated for a potential injury; and

(9) the nature of the offence is such as to justify a 2-match suspension.

22. By way of reply, the Player made submissions consistent with those made in chief reiterating that there were "Exceptional Circumstances" justifying a reduction of the minimum sanction to the MMS.

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

23. The sole issue for the Committee is whether the circumstances comprise "Exceptional Circumstances" for the purposes of clause 11.23(b)(ii) of the Disciplinary Regulations such as to enliven the Committee's discretion to reduce the Player's suspension from the minimum of 2 matches to the MMS which the Player has served.

24. 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 and not to the impact a sanction may have. The following are not Exceptional Circumstances:

(a) the significance or importance to the Participant or their Club of the A-Leagues Match in which the Offence was committed;

(b) 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;

(c) the point in the A-Leagues Match at which the Offence was committed;

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

(e) any disciplinary decision taken or failure to take a disciplinary decision by a Match Official during the A-Leagues Match.

25. As the Committee noted in *Bojic* (2010), "Exceptional Circumstances" comprise those that are not "a common thing on the football field". A similar approach was taken by the Committee in *Akoto* (2010), *Berisha* (2016) and *Burgess* (2023).

26. In *Berisha*, the Committee observed that 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 Disciplinary Regulations have identified as not comprising Exceptional Circumstances.

27. As the Committee commented in *Ikonomidis* (2023), 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. Those circumstances, however, must be "exceptional", that is extraordinary or unusual or uncommon in football.

28. The circumstances must bear both a close temporal relationship to the offence and relate to its commission.
29. A 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 (see *Ikonomidis*).
30. Such an approach is entirely consistent with situations in which the Committee has determined that "Exceptional Circumstances" existed for the purposes of the Disciplinary Regulations (see, for example, *Akoto*, *Bojic* and *Berisha*). Common to each of those cases was the existence of facts and circumstances operating at the time of the commission of the offence which were extraordinary or unusual and which caused, contributed, explained, mitigated or otherwise related to the commission of the offence.
31. In *Berisha*, for example, the Committee found it "extraordinary" that an opposing player would put a hand up below Player Berisha's chin and against his throat whilst he was on the ground being assessed by a physiotherapist for a possible concussion following a head knock which caused Player Berisha to lash out and kick his opponent in the leg. It therefore determined that these were "Exceptional Circumstances".
32. In *Bojic*, a decision relied upon by both parties in the present case, the Committee found that an opponent holding a player down in an arm lock following a challenge for the ball which caused Player Bojic to make an effort to extricate himself from the hold was not a common occurrence in football and therefore comprised an "Exceptional Circumstance".
33. Therefore, to be "exceptional" the circumstances must be extraordinary or unusual or not common in the game of football and there must be a connection between those circumstances and the commission of the offence itself.
34. The Player contended that the incident occurred as a result of the Player moving into an area to separate Player Gielnik from Player Barbieri after a scuffle broke out between those players following Player Gielnik attempting to lift Player Barbieri.
35. The Player also submitted that it was after placing her body between Player Gielnik and nearby Jets player and touching Player Gielnik's arm, that she was suddenly and forcefully pulled off balance by Player Gielnik and that this action by the Player led to her hands coming into contact with Player Gielnik.
36. According to the Player, her reaction to the sudden and forceful pulling was first to find her balance by attempting to place her hand on Player Gielnik's upper right shoulder and then as the forceful pulling continued by raising her right hand to push Player Gielnik away and break her grip.
37. The facts for which the Player contends are not, in the opinion of the Committee, "Exceptional Circumstances", that is, in the sense of being exceptional or extraordinary or unusual in the game of football. Unfortunately, it is all too common for players to run in and confront opposing players arising from an incident in respect of which they take issue. Such conduct usually, and as was the case here, leads to an escalation of hostilities. These are matters always best left to the match officials to manage.

38. The Player had no business involving herself as she did which, far from placating circumstances, served only to inflame them resulting in her being shown a red card and being dismissed from the field of play.
39. Further, and whilst the Committee accepts without reservation that the Player is held in high regard by the Club, is a model A-League player and her behaviour has always been of the highest standard both on and off the field evidenced by the fact that until this incident the Player had never been issued with a yellow or red card, a player's antecedence, disciplinary record, and character 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. Therefore, they cannot comprise "Exceptional Circumstances" for the purposes of the Disciplinary Regulations.
40. Having regard to the conclusion that the Committee has reached in relation to the existence or otherwise of "Exceptional Circumstances", the issue as to whether the exception in paragraph (d) of the definition of "Exceptional Circumstances" applies does not arise for consideration.
41. The Committee is of the view that the circumstances, which were regrettable and thankfully rare in the Liberty A-League, clearly warranted the imposition of at least the minimum sanction of the MMS plus one additional match.

**F. RESULT**

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



AP Lo Surdo SC, Disciplinary & Ethics Committee Chair

Friday, 5 April 2024