

## **Football Federation Victoria Grievance and Disciplinary Tribunal**

**Matter: TA19015 – Club Misconduct – Altona Magic SC v Dandenong Thunder FC**

### **Parties:**

- Party 1:** Altona Magic SC  
**Party 2:** Dandenong Thunder FC  
**Party 3:** North Sunshine Eagles SC  
**Party 4:** Besnik Kutleshi (FFA ID: 71340053) /  
North Sunshine Eagles SC  
**Party 5:** Arsim Kutleshi (FFA ID: 85091098) /  
North Sunshine Eagles SC  
**Party 6:** George Briskovic (FFA ID: 74202961)  
/ North Sunshine Eagles SC

**Date of Hearing:** 26 June 2019

**Date of Fixture:** 15 June 2019

### ***Reasons for Decision***

#### **Introduction**

This matter was brought before the Tribunal due to a violent melee that occurred between spectators at the above-mentioned fixture that was played between Altona Magic and Dandenong Thunder.

Being an NPL game, the game was videoed, and we were provided with the relevant 5 minute extract of what occurred.

The point of difference in this Match was that we have had to determine charges brought against a club that was not participating in the Match, North Sunshine Eagles, and three people alleged to be their Associates.

We were given statements from the referee, the assistant referee, the fourth official, and second assistant referee. We received written documentation from both Altona Magic and Dandenong Thunder, together with a letter dated 21 June 2019 from GPZ Legal, lawyers for North Sunshine Eagles. After the hearing we received submissions from GPZ Lawyers dated 3 July 2019 pursuant to a direction given during the hearing.

Each of Altona Magic, Dandenong Thunder, North Sunshine Eagles, Besnik Kutleshi, Arsim Kutleshi and George Briskovic were charged with a misconduct penalty, MP10.

### **The Relevant Rules**

The charges in this proceeding are brought pursuant to MP10. That rule provides for other conduct which is defined as follows:

*“bringing the game into disrepute*

*Misconduct including, but not limited to, conduct that has brought, ... FV... into disrepute ...*

Clause 2.25 defines Misconduct as including any act by a Club Associate that is in breach of the GDT.

Rule 2 of the GDT provides for the following definitions:

The term Club Associate is defined as:

“ ...

(b) *...a coach...of a Club...*

...

(e) *Supporter(s) of a Club.*

...”

Match is defined as:

*“...any game of Football played under the auspices of FV...”*

Rule 3.2 of the GDT provides:

**“3.2. Strict Liability of Clubs**

(a) *All Clubs are responsible and liable for the conduct of their Club Associate(s) at or in the vicinity of any Match.*

- (b) *The strict liability obligations of a Club within Clause 3.2(a) above apply regardless of the responsibilities attached to any other person or entity in respect of a Match or event.*

Rule 7.8 of the GDT provides for penalties and sanctions that the Tribunal can impose. Rule 7.8(c) provides as follows:

- “(c) *Where a Club is found guilty of any charge which arises either wholly or partly out of the conduct of a Club Associate(s), the Tribunal must, when considering the question of penalty, take into account any steps taken by the Club to:*
- (i) *identify such Club Associate(s); and/or*
  - (ii) *minimise the risk of a repetition of such behaviour by the relevant Club Associate(s).”*

## **Analysis**

### **Altona Magic and Dandenong Thunder**

In our opinion, the charges against Altona Magic and Dandenong Thunder were not proven. Pursuant to Rule 7.7(a)(ii) of the GDT, we are required to make a decision “on the balance of probabilities”.

The High Court has provided guidance in respect of the meaning of this expression.<sup>1</sup> In substance we are required to reach a comfortable level of satisfaction in respect of the evidence having regard to the severity of the allegations made.

An allegation of MP10, bringing the game disrepute, is a serious allegation. We did not reach the comfortable level of satisfaction required having regard to:

1. The statements from the referee, the assistant referee, the fourth official and the second assistant referee all asserted that the spectators involved in the incident were from the North Sunshine Eagles; and
2. The statements by the independent people being verified by Altona Magic and Dandenong Thunder.

Having regard to the evidence, we find the charges not proven.

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<sup>1</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

## **North Sunshine Eagles**

At the hearing, North Sunshine Eagles were represented by Mr Galatas of GPZ Legal. Prior to the hearing, Mr Galatas had provided a letter dated 21 June 2019. In the letter, he referred to the cooperation that North Sunshine Eagles had provided to the investigation by the FV. The cooperation involved North Sunshine Eagles identifying three individuals from North Sunshine Eagles who had been involved in the incident being respectively, Besnik Kutleshi, Arsim Kutleshi and George Briskovic.

To support this information, Mr Galatas provided two screenshots identifying Besnik Kutleshi, Arsim Kutleshi and George Briskovic committing the violent acts. In our opinion, having viewed the 5 minute video tape, without the cooperation of North Sunshine Eagles, it would have been difficult to identify parties 4, 5 and 6 to this proceeding.

By email dated 24 June 2019, Mr Galatas complained that FV had not complied with Clauses 7.3(a)(v) and 7.3(a)(ii) of the GDT and sought an adjournment of the hearing to take place on 26 June 2019. The first provision provides that where FV has referred a matter to the independent tribunal, it is obliged to recommend the penalty or sanction to the Tribunal. The second provision provides that where a matter is referred to the independent tribunal, FV is required to provide details of the allegations against the party.

In response to the first complaint, at the hearing, after the position of Altona Magic and Dandenong Thunder had been determined, Mr Carrington for the FV, referred to the wording of MP10 and stated that in his opinion, the wording of MP10 provides for “such penalty as... the Tribunal... determines”. He contended that by recommending a penalty, he would be circumventing the jurisdiction of the Tribunal as set out in the express wording of an MP10.

In respect of the second complaint, one must have regard to the reality of FV, the GDT, the Match in question and the hearing. To be abundantly clear:

1. Ordinarily no representative of FV is present at a Match.
2. FV receives reports as to what occurred and then discipline is imposed pursuant to the GDT. These reports are and were in this case provided to Clubs and Associates.
3. It is sometimes not clear what happened until the hearing before the Tribunal.
4. In this case we heard and determined the matter in respect of Altona Magic and Dandenong Thunder and provided brief verbal reasons. As a consequence of conducting the hearing as we did, in the presence of North Sunshine Eagles, their representatives were aware of the case they had to meet.

5. In our opinion at the time, the written material and the conduct of the hearing meant that North Sunshine Eagles were aware of the case they had to meet.

In respect of both complaints, and particularly the detail in the GPZ submissions dated 3 July 2019, we do not consider that there has been an injustice. On any version of events the submissions of GPZ were helpful and detailed. At least by 3 July 2019, North Sunshine Eagles were aware of the case they had to meet and were able to assist us in respect of both our consideration of guilt or not as the case may be and penalty.

We are not critical of the complaints raised and wish to record our gratitude to Mr Galatas for the detail in his letter dated 21 June 2019, his appearance before us and the detail in his submissions dated 3 July 2019.

So far as North Sunshine Eagles are concerned:

1. George Briskovic is the club reserves coach. His FFA ID is 74202961. As a consequence he is an Associate of North Sunshine Eagles within the meaning of clause 2.6(a) of the GDT.
2. Besnik Kutleshi has an FFA ID of 71340053. By the GPZ letter dated 21 June 2019 and submissions dated 3 July 2019, he has been banned from the Club, removed as President and removed from any connection with the Club. No action has been taken by the club to cancel his active registration.
3. Arsim Kutleshi holds an FFA ID of 85091098. His registration is not active in 2019. As with Besnik Kutleshi, he has been banned from the club.
4. In addition to the above, each of Arsim Kutleshi, Besnik Kutleshi, and George Briskovic identify as being supporters of North Sunshine Eagles. This is evident from the evidence of the Dandenong Thunder, Altona Magic, the referee, the assistant referee, the fourth official, and second assistant referee.
5. Arsim and Besnik Kutleshi are supporters of North Sunshine Eagles and as a consequence are "Associates". George Briskovic is an Associate by virtue of his role as club reserves coach.
6. The evidence provided to us showed that each of Arsim Kutleshi, Besnik Kutleshi and George Briskovic engaged in violent conduct that in our opinion was "severe" and/or "significant" to use the words in MP 10. In our opinion, the charge against North Sunshine Eagles of a breach of MP10 is proven.

Having found a breach of rule MP10, we are obliged to and do consider the matters set out in Clause 7.8(c) of the GDT, But for the cooperation of North Sunshine Eagles, FV would have found it difficult to identify the wrongdoers. North Sunshine Eagles have taken steps to identify its club associates and minimise the risk of reputation of such behaviour ever again.

In our opinion, no criticism can be made of North Sunshine Eagles after the relevant events had taken place. But for their action, the wrongdoers would probably not have been identified. It is difficult to identify what other steps North Sunshine Eagles could have taken.

Clause 1.2(c) of the GDT provides that the objectives of the GDT are to “provide a safe and secure playing and spectating environment.”

The melee that occurred was not a safe environment. For reasons that were never clear, but must have existed, supporters of North Sunshine Eagles were motivated to violently interfere in a “Match” between two other teams.

If this behaviour was allowed or tolerated, then less people will go to games as it will be unsafe to do so. It therefore was our role to devise a mechanism using the rules whereby supporters of North Sunshine Eagles would defuse each other and discourage each other from behaving in a similar way. In addition, it was incumbent upon us, in these relatively unique circumstances to send a message of general deterrence to other clubs as to what they could expect if they were involved in similar behaviour.

We have balanced the cooperation of North Sunshine Eagles with the general deterrence that is required. Having regard to that balanced consideration we make the following finding against North Sunshine Eagles:

1. It is guilty of conduct within the meaning of MP10.
2. But for its cooperation we would have fined North Sunshine Eagles the sum of \$10,000.
3. Having regard to its cooperation, we will suspend the fine of \$10,000 until 31 December 2020. If North Sunshine Eagles is found guilty of any conduct under MP10 between now and 31 December 2020 then the fine of \$10,000 will be payable within 30 days.

We consider this suspended fine as necessary and appropriate. Supporters of all clubs should feel safe at a Match. There was a “reason” why the Associates of North Sunshine Eagles were violent in a Match not involving that club. This suspended fine should assist North Sunshine Eagles in communicating the severity of what

occurred to its Associates. North Sunshine Eagles can communicate the consequences of it happening again between now and 31 December 2020. So far as other clubs are concerned, it shows the fines that can and will be imposed, and the consequences of non-cooperation with FV.

4. North Sunshine Eagles is to ban from any involvement in the Club, Arsim Kutleshi, Besnik Kutleshi and George Briskovic for the periods of time set out below.
5. North Sunshine Eagles is to communicate to all of its members setting out what its expectations are about the behaviour of associates.

#### **Parties 4, 5 and 6**

At the hearing, we were told by Besnik Kutleshi that the Police were investigating the incident that occurred and as a consequence, in order to preserve the right of silence of Arsim Kutleshi, George Briskovic and himself in any criminal prosecution, they had been instructed not to say anything to the Tribunal.

We have been able to proceed in respect of the three individuals having regard to:

1. The evidence of the referee, the assistant referee, the fourth official and the second assistant referee;
2. The letter from GPZ Legal dated 21 June 2019;
3. The statements from Altona Magic and Dandenong Thunder;
4. Our viewing of the video.

The evidence provided shows “severe” and “significant” violence being committed by each of parties 4, 5, and 6.

Besnik Kutleshi has the following prior convictions:

1. On 1 June 2016 the FFA Appeal Committee found Besnik Kutleshi guilty of violent misconduct and he was banned from participating in Football for 2 years, with one of the two years suspended for a period of three years.
2. On 17 April 2019, the FV Tribunal found Besnik Kutleshi guilty of violent conduct and he was banned for 13 matches. That finding enlivened the suspended penalty imposed by the FFA Appeal Committee made 1 June 2016.

Arsim Kutleshi has one prior conviction. On 10 April 2019, Arsim Kutleshi was found guilty of conduct in breach of MP5D and he was banned from the game for 9 matches.

George Briskovic has no prior convictions of which we are aware.

Having regard to them exercising their right of silence so far as any criminal prosecution is concerned, our expectation is that they would also be precluded from stating anything to us in any plea. Anything that they said by way of plea may be used against them in a subsequent criminal prosecution.

At the hearing, we directed that North Sunshine Eagles, as well as parties 4, 5, and 6 provide any further material to us in writing by 3 July 2019. By email dated 3 July 2019 to FV Besnik Kutleshi on behalf of himself, and parties 5 and 6 sought an extension of time to provide further material until 10 July 2019. No further material has been received.

In *South Melbourne Football Club v Football Federation Victoria [2010] VSC 355* at paragraph 19, guidance was provided as to the need for separate hearings in respect of guilt and penalty should be separate. His Honour observed that separate hearings may be desirable but whether they are necessary depends upon the circumstances of the case.

In our role we have to balance the justice to the Football community with the justice that people are entitled to in a court of law. The Football community cannot and should not await the outcome of the criminal justice system.

Our role is to be fair and reasonable in the circumstances of the case. In our opinion the severity of the penalty to be imposed together with the fact that we have not been provided any material by way of plea, means that we should allow this last chance to provide material for our consideration. Each of parties 4, 5 and 6 have 14 days to provide reasons for the penalties set out below to be mitigated. If they are to exercise that right, then the reasons must be in writing, supported by appropriate written evidence and then we will consider them in conjunction with what we have already considered.

The penalties we have imposed are to have immediate effect. We do not consider on the evidence for there to be any sensible likelihood that the penalties imposed after a plea hearing would be less than 14 days.

The penalties set out below are the same for Arsim Kutleshi and George Briskovic. We could not determine any greater or lesser wrong doing on the part of either party. The reason for the same penalty is that in the case of Arsim Kutleshi, he had one prior conviction, and in the case of George Briskovic, he is a coach of the club. Those two factors caused us to apply the same weight of penalty to both parties.

Having regard to the matters set out above, we impose the following penalties:

1. Besnik Kutleshi be banned for life from the game of football in the State of Victoria. This is to include any involvement in any club or being a supporter of any club.
2. Arsim Kutleshi be banned for a period of two years from any involvement of the game of football in the State of Victoria. Such ban to take effect immediately and conclude on 30 June 2021.
3. George Briskovic be banned for a period of two years from any involvement of the game of football in the State of Victoria. Such ban to take effect immediately and conclude on 30 June 2021.

15 July 2019

**Andrew Stops, Chair**

**Melissa Gesovski**

**Stephen Black**