

ANZ Championship
Disciplinary Hearing

Game: Mojo Central Pulse v Ascot Park Hotel Southern Steel
17 May 2015
Game Result: PUL 55 v STE 55

Introduction

1. Katrina Grant, the Captain of the Central Pulse, was referred to me as Disciplinary Officer for alleged misconduct relating to her interactions with the one of the umpires in the Pulse's game against the Southern Steel held 17 May 2015.
2. It was alleged that Ms Grant showed dissent to the umpire, swore at the umpire, and confronted him in an aggressive and inappropriate manner, following his decision to penalise her in the closing seconds of the game. The umpire in question provided a written complaint regarding Ms Grant's alleged misconduct, and much of the alleged behaviour was captured on television footage. In addition, a complaint was made about Ms Grant's alleged behaviour by the Southern Steel.
3. The game in question, and the game to follow on 25 May 2015, was of great significance to the Pulse's chances of qualifying for the play-offs. As a result, once the matter was notified to me, an Initial Hearing was urgently convened for Friday 22 May 2015, at which time it was intended that the matter would be dealt with substantively.
4. In the lead-up to the Initial Hearing, Counsel for Ms Grant, Tim Castle, made submissions that Ms Grant should not be expected to deal with the matter substantively on 22 May 2015, due to what he submitted was late notification of the complaint to Ms Grant. Furthermore, Mr Castle submitted that Ms Grant should be permitted to play in the game scheduled for 25 May 2015, allowing for a substantive hearing to be heard following that date.
5. After hearing from Mr Castle, I directed that the substantive hearing would not take place on 22 May 2015. Instead, the 22 May hearing was focused on the question of whether Ms Grant should be suspended from playing in the interim. Following submissions from Mr Castle, and a robust discussion around the principles present in the Championship Rules, and the principles of natural justice, I directed that Ms Grant would not be suspended in the interim. This allowed Ms Grant to focus on preparing for her game on 25 May 2015, and to then deal with the disciplinary hearing following that. The direction that Ms Grant would not be suspended in the interim was influenced by the fact that she had only received notification of the allegations mid-week, and that this was the first time such allegations were to be considered by a Disciplinary Officer with respect to a Player (and therefore the matter should not be brought on with undue haste). The decision to defer the substantive hearing and to allow Ms Grant to play should not be seen as setting any necessary precedent. Each question of interim suspension and the timing of hearings will need to be considered on its merits in future cases.

Summary of the Substantive Hearing and Decision

6. The substantive hearing of Ms Grant's matter occurred on 27 May 2015. The hearing ran for some considerable length of time, and involved the allegations against Ms Grant being put to her, the hearing of evidence from the umpire and others present at the time, evidence from Ms Grant herself (both in writing and by way of questions), and the provision of detailed submissions on behalf of Ms Grant from her senior and experienced counsel Mr Castle.

7. At the conclusion of the hearing, I delivered an oral decision, given the significance of the matter for Ms Grant and the Pulse. I advised her that I did not uphold all of the allegations against her in the manner they were made. Specifically, I dismissed allegations made in reliance of the Southern Steel's complaint regarding Ms Grant's alleged comments to the media as the Southern Steel had not supported its initial complaint with any evidence, and any remaining aspects of their complaint fell within the matters raised by the umpire.
8. With respect to the balance of the complaint, I found that Ms Grant did not swear at the umpire, but rather, she showed dissent in relation to his decision on the Court, swore about his decision (to herself) as she made her way across the Court, and confronted him in an inappropriate manner at the umpire's bench at the immediate conclusion of the game. It is important to note that Ms Grant's role as Captain permitted her to engage with the umpire at the conclusion of the game. However, my findings were that the manner in which she did that was not appropriate, and that this, coupled with her dissent on the Court and her swearing as she walked across the Court, amounted to misconduct.
9. In terms of sanction, I was assisted by submissions from Mr Castle regarding the wide range of sanctions open to a Disciplinary Officer in cases such as this, and the lack of previous decisions to guide the exercise of my discretion. I considered and discussed how other professional sports deal with cases of abuse, or dissent, to match official's decisions. Taking all matters into consideration, I formed the view that an appropriate sanction for players exhibiting this kind of behaviour would ordinarily be a 2-3 game ban. This reflected the need to ensure that umpires are treated in a respectful manner, that players in the position of Ms Grant have a role to play in modelling behaviour for those watching the game live and on television, but also reflecting my finding that Ms Grant did not abuse the umpire *per se*.
10. Taking into account Ms Grant's excellent playing and disciplinary record, her usual high-degree of professionalism (confirmed by the umpire in the course of his evidence), and her clear remorse for what happened (including acknowledgment of the same on, *inter alia*, social media), I reached a view that such a ban would be 2 weeks in the ordinary course of events. However, I was concerned that Ms Grant was also the first player to go through a process such as this one, and I was persuaded by Mr Castle's submission that it would be appropriate to suspend the ban in all of the circumstances of this case. Accordingly, Ms Grant's 2 match ban was suspended for a period of 12 months, during which time it will be reinstated should she plead guilty or be found guilty of any misconduct offence by this, or any similar, tribunal.
11. Ms Grant and her counsel were advised of her right of appeal at the conclusion of the hearing, but to her and her counsel's credit, they indicated that such appeal rights would not be necessary. This reflected the responsible but principled manner in which Ms Grant presented herself throughout the hearing. As noted above, the hearing ran for a number of hours. In part, this was as a result of it being the first time a Player has appeared in front of a tribunal such as this one. To that end, much of the matters argued before me, and canvassed in my determination, will be of assistance to this tribunal and others moving forward. In light of that, the Player's conduct during the hearing, and the outcome imposed, I decided that no order as to costs was appropriate or necessary.

The Alleged Misconduct

12. I was provided with a copy of a written complaint from the umpire involved in this matter, Jono Bredin, as part of a misconduct referral from the CEO of the ANZ Championship/TTNL Ltd. I was also provided with a complaint presented to TTNL by the Southern Steel. From that material, I identified the following 3 allegations which Ms Grant was required to respond to:

1. *That Ms Grant was in breach of Rule 103.2(d) (the obligation not to dissent from, attack, disparage or criticise Match Officials' decision) and 10.4.1 (the obligation to act in a disciplined and sporting manner) when she disputed the decision of the Match Official in the game to award the penalty, and then to advance it;*
 2. *That Ms Grant was in breach of Rules 10.3.2(d) and 10.4.1 when following the end of the game she approached the Match Official and swore at him following his explanation of why he had advanced the penalty; and/or*
 3. *That Ms Grant was in breach of Rules 10.3.2(d) and 10.4.1 in criticising the performance of the Match Official in a post-game interview with a journalist, leading to an article being published quoting her criticism.*
13. At the commencement of the hearing, Mr Castle submitted that in the absence of specific evidence detailing the alleged post-match comments (charge number 3 as noted above) should be immediately dismissed. That submission was accepted, and the hearing proceeded to consider the two matters at items 1 and 2 above.

The Evidence

14. Mr Bredin appeared before me by telephone link to expand upon, and be questioned in relation to, his written complaint. The key passages of Mr Bredin's complaint read as follows:

In the closing stages of this match, I penalised Katrina Grant for Contact just outside the Goal Circle. I determined that this infringement was deliberate and delaying play in the context of the game and made the decision to advance this penalty to just inside the Goal Circle in accordance with the International Rules and Effective Game Management Guidelines issued by INF.

Katrina Grant then disputed my decision loudly and with obscenities, so I advanced the penalty close to the Goalpost under Rule 19.3 of the International Rules. If the game had not then concluded at this time, I would have taken further disciplinary action under the International Rules including a Suspension. I did not choose this course of action due to the heated nature of the situation and the fact that the game had ended.

As I walked from the Goal Line to meet my Co-umpire, Katrina Grant turned to me and stated "that was fucking bull".

A short time after returning to the Umpire's bench, Katrina Grant approached me and asked "Why was the last play advanced so close to the post when I was genuinely going for the ball"? I replied "It was the way you spoke to me". Her response to me then was "you're fucked" and then she turned to walk away. I then stated "Don't speak to me like that" and at this point I turn away to gather my things. Katrina Grant returns to continue the conversation, at which point Colleen Bond (Umpire Support) intervenes and states "that is not appropriate and to go and speak to Kate".

15. In the course of his evidence Mr Bredin conceded that he could not be sure that Ms Grant swore at him when she challenged him regarding his call, either on the Court or at the umpire's bench following him leaving the Court. He accepted, after questioning from Mr Castle, and a review of the video evidence available, that Ms Grant's use of obscenities may have been restricted to her own comments and utterances regarding the situation. He remained adamant that Ms Grant's tone and demeanour in addressing him was aggressive, and inappropriate, although he acknowledged that this was out of character for Ms Grant in his experience. I found Mr Bredin to be a reliable witness. He made appropriate concessions regarding how he had initially interpreted Ms Grant's actions, and showed balance when he described his view of Ms Grant's usual level of professionalism in complimentary terms.

16. In addition to Mr Bredin, I also had evidence before me from Colleen Bond, and other witnesses relied upon by Ms Grant. They all supported the submission made by Mr Castle that Ms Grant did not swear at Mr Bredin, nor did Ms Grant say “*that was fucking bull*” [about Mr Bredin’s decision], nor did she say to him “*you’re fucked*”. Rather, Mr Castle submitted, I should find on the basis of the evidence before me, that Ms Grant used profanity only in the manner in which she uttered, effectively to herself, about what had happened.
17. Mr Castle’s submissions were supported by the athlete’s evidence herself. Ms Grant provided a detailed written statement covering the matter. Importantly, in her statement, she recorded the following matters:

I emphatically reject several things that the umpire says in his report...First of all he says I disputed his decision loudly and with obscenities. That is completely wrong. I am deeply hurt by that allegation. It is not true...

I was very uptight at the penalty, and then being advanced twice for it. I shouted almost to everybody, but actually to nobody “I was going for the fucking ball man...”. This was not directed at the umpire. I was not looking at him and I was not facing him or even directing the words at him...

I most certainly did not say, either to Mr Bredin or to anybody “...that was fucking bull”. That is completely wrong...Mr Bredin may be confusing [the word “bull”] with the word “ball”...

I went back to my team and we huddled as we do at the end of a game. I was still furious and I told them all what I have just said “I was going for the fucking ball man” – which I think they knew – and I think I said that a second time. It was to my bench.

I then decided to approach the umpire’s bench to clarify what it was for which the umpire had advanced me. As captain I believe I have the right (and sometimes the responsibility) to ask questions of officials for clarification. I said to him “why did you advance me?”...

Mr Bredin’s answer to me was “...because of the way you spoke to me...” and I retorted “I didn’t even speak to you the first time...”. Mr Bredin waved me away and said “don’t speak to me like that...”.

At that point, Ms Colleen Bond, who is also referred to in the Umpire’s Report came forward and she said to me words to the effect, “Katrina this isn’t the time and place to be doing this...it’s inappropriate...you won’t feel good about it afterwards...go and talk to Kate...”.

I know that Colleen Bond did not hear me say the words Mr Bredin says I used – she could not have heard them because I did not use them. I am sure she could see I was upset; I was upset. I am now very embarrassed about that.

What I did say as I walked away was “...this is just a power trip...”...which I admit to saying to my embarrassment and shame. I lost my temper.

When I look at the rules, I want to face up to, and take responsibility for, showing dissent against the decision of Mr Bredin to first penalise me and then advance me twice. I deeply regret my dissent now and I recognise how important it is not to show dissent, even under the most extreme and provocative circumstances. That is the action for which I apologised in my letter to Mr Bredin and I want to repeat it here. I feel deeply remorseful. Again I want to apologise for these actions.

But what I do not admit, and I will not accept, is that I abused, threatened, intimidated or used offensive, insulting or abusive language towards the umpire – neither on nor off the court. I would never do that. I let my discipline slip I accept, but I do not believe it

brought the game into disrepute and I most certainly did not abuse the umpire in the way that has been alleged against me...

18. Further, Ms Grant confirmed that at the time she was notified of the complaint she wrote to Mr Bredin to apologise for her behaviour. This candid letter recorded her disappointment in the way in which she acted, and said:

"I let the emotions of a game get the better of me and I want to apologise for my behaviour.

I will out of respect for the officials, teams, fans and everyone associated with netball improve my behaviour and hope we can move on and have a strong working relationship".

19. To the extent Ms Grant answered questions in support of her written evidence I found her to be contrite, but straight talking. To her credit she acknowledged her behaviour was not appropriate, and her evidence was credible and creditable.

My Findings

20. I found that Ms Grant did not abuse Mr Bredin. That was clear from not only her evidence, but also a review of the video footage available, and from Mr Bredin's evidence.
21. However, Ms Grant did acknowledge showing dissent to Mr Bredin's on-court calls, and to using profanity, in a loud manner, as she crossed the court at the end of the game.
22. One area of dispute I needed to consider was whether Ms Grant continued the use of that profanity when she engaged with Mr Bredin at the umpire's bench. She denied doing so, although admitted to saying out loud that his actions were a "power trip". Mr Bredin remained of the view that Mr Grant had sworn again at that juncture, although he accepted that as with the profanity on the court it was essentially as part of comments made to herself, or in Ms Grant's earlier language "to everyone, but actually to no one". A review of the video was inconclusive, but provided no clear evidence of Ms Grant swearing at this juncture.
23. On the balance of probabilities I found Ms Grant did not use profanity at this point. However, this is of little import. She admitted to showing dissent initially, to losing her temper, and to using profanity out loud in the way she dealt with what had happened. She further admitted to saying words to the effect that Mr Bredin was on a "power trip", a comment which is clearly critical and disrespectful of the match official. This was all in the heat of the moment, and I find that the admissions made by Ms Grant accurately reflect what happened.
24. I cannot agree with her that her actions did not bring the game into disrepute. She candidly accepts that she should not have acted as she did, and appropriately has apologised for it. Her actions did in my view bring the game into disrepute, and accordingly I find that she did commit an act of misconduct in breach of Rules 10.3.2(d) and 10.4.1.

Decision and Sanction

25. Rule 10.6.3 of the ANZ Championship Rules provides for a range of sanctions to be imposed by a Disciplinary Officer in the event a breach of the Code of Conduct is admitted, or found to have occurred.
26. Mr Castle made a number of submissions regarding how I should apply my discretion, including:
 - (a) That I should take into account the principles of sentencing, borrowed from the criminal law, which includes requiring a decision maker to impose the least restrictive penalty consistent with a just outcome;
 - (b) That a suspension would be the most restrictive sentence, and that it would be out of all proportionality to the level of offending in this case;
 - (c) That Ms Grant's conduct *per se*, and the state of the game in general, does not require any aggravation of the sentence to be imposed; and
 - (d) That in mitigation, I should recognise:
 - (i) Ms Grant's prompt apology;
 - (ii) Her genuine remorse;
 - (iii) That her conduct is out of character for Ms Grant;
 - (iv) Her acceptance of some aspects of the allegations against her (and implicitly, that she was successful in challenging other aspects of the allegations); and
 - (v) And that whilst the conduct was of a public nature, it was also of relatively short duration and in the heat of the moment.
27. In setting a sanction it must be meaningful, and in proportion to the offence admitted or found to have been committed. It must also be relevant to the wrong which has occurred and act as a deterrent for future misconduct of the same or a similar nature. I am not convinced that a Disciplinary Officer is required to apply sentencing principles found in the criminal law in the context of a sports tribunal. However, Mr Castle's submission that any sanction given to Ms Grant must be proportionate is clearly the touchstone for setting a sanction when such a broad discretion to do so exists.
28. In all professional sports we must ensure that match officials are protected from unfair criticism, abuse, and other disrespectful behaviour. Our sports cannot proceed without them, and we cannot allow them to be treated disrespectfully by anyone involved in the game. It is from that position that I consider what an appropriate sanction in this case, and in similar cases in the future, should be.
29. Ms Grant did not abuse Mr Bredin. She improperly showed dissent, and was disrespectful in the manner in which she engaged with him. She also used profanity in a manner in which it could clearly be heard by those around her. In my view, were a player to conduct herself (or himself) in such a manner in the future, a short period of suspension from the game would be appropriate. Accordingly, I find that a sanction of a 3 game ban is appropriate for conduct of this nature absent any aggravating or mitigating features. If a player's conduct amounted to abuse of a match official then the penalty would necessarily be higher, with physical abuse of a match official incurring significantly higher penalties again.

30. In Ms Grant's case there are significant mitigating features, principally her previously exemplary record, her prompt admissions of wrongdoing, and her apology to Mr Bredin for it. Accordingly, for these considerations, I would reduce the ban from 3 to 2 matches, absent any other significant features of this case.
31. This is, however, the first time that this kind of matter has been considered by a Disciplinary Officer. This means that Ms Grant has had the pressures of going into this matter without knowing how the matter would proceed or be dealt with. She has also had the unfortunate experience of the media attention and consequent public discussion about her behaviour in a way that players in the future may not. In light of these factors, and the fact that Ms Grant's case is essentially setting the tariff for how such cases will be dealt with in the future, I have decided to suspend Ms Grant's penalty for a period of 12 months, subject to her not pleading guilty, or being found guilty, of another misconduct matter during that period of time.



Aaron Lloyd
ANZ Championship Disciplinary Officer
Auckland
27 May 2015