

NST-E22-158632

Softball Australia v Steven Albee

## Determination

### National Sports Tribunal Appeals Division

sitting in the following composition:

Panel Member/s

Craig Green

in the arbitration between

**Softball Australia**

*Applicant*

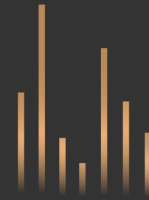
Represented by Mr Ian Fullagar, Solicitor, instructed by Ms Bron Parry

And

**Steven Albee**

*Respondent*

Unrepresented



## PARTIES

1. Softball Australia (SA) and Mr Steven Albee, Head Coach of the New South Wales team participating in the Under 14 Australian Softball Championships.

## INTRODUCTION

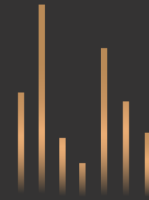
2. On Sunday, 17 April 2022, Mr Albee, was found to have acted in a verbally and physically aggressive manner towards the plate umpire during the final of the Under 14 Male Australian Softball Championships. Mr Albee was ejected from the game immediately.
3. The Tournament Tribunal (**Tournament Tribunal**), convened at the completion of the game and under the Guidelines for Determining Penalties (**Guidelines**), found Mr Albee guilty of *Offences against umpires – threatening an umpire by word/action*.
4. The minimum penalty for this offence under the Guidelines is an eight (8) game suspension at a commensurate level, and a maximum penalty is two (2) years suspension.
5. The Tournament Tribunal imposed an eight (8) game suspension at the commensurate level of competition as a sanction for this offence. Softball Australia (**SA**) believes this sanction to be inadequate.
6. This Determination first deals with the jurisdiction of this Tribunal. Next, it sets out the factual background to the Parties' dispute, then recounts the history of the proceedings before the NST. The Tribunal then sets out the relevant rules and regulations which apply to the dispute.
7. The Tribunal next summarises the main submissions of the Parties, including the outcomes each Party proposes as appropriate in this case (ranging from a period of suspension for four (4) months and a period of suspension for two (2) years). The Tribunal then assesses each of those proposed outcomes on their merits, based on the application of the relevant rules to the facts as established by the evidence.

## NST JURISDICTION

8. The jurisdiction of the NST is engaged by section 35(1) of the *National Sports Tribunal Act 2019* (**NST Act**) and Clause 5.3(a) of the Softball Australia Review and Appeals Policy (**SA RAP**).

## FACTUAL BACKGROUND

9. On 20 April 2022, SA wrote to Mr Albee advising him that he was suspended from all aspects of Softball.
10. SA submitted a formal complaint with Sport Integrity Australia (**SIA**) on 27 April 2022. On 11 May 2022, SIA used its discretion to refer the complaint back to SA to be managed under the 2022 Australian Championships Regulations (**Regulations**).
11. On 2 June 2022, SA submitted an application to the National Sports Tribunal (**NST**) and confirmed its intention to proceed with arbitration of the matter in the Appeals Division of the NST on 7 June 2022.
12. The Parties attended a preliminary conference conducted by the NST on 23 June 2022.



13. The substantive issue for determination in the Appeal is whether the sanction imposed by the Tournament Tribunal should stand or if an alternative penalty should be imposed on Mr Albee (**Substantive Dispute**).

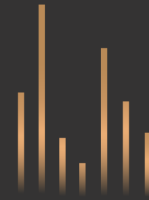
## PROCEEDINGS BEFORE THE NST

### Timeframe for the Preliminary Issue

14. The Parties requested a resolution of a preliminary issue being the matter of Mr Albee's suspension in the interim, that is, to confirm when Mr Albee's current suspension is to end and whether, for the duration of time it takes for the Appeal to be finalised with the NST, Mr Albee is to remain suspended (**Preliminary Issue**).
15. The Parties agreed to lodge submissions and adhere to the following schedule:
- **SA** is to file with the NST Registry and serve on Mr Albee written submissions and any evidence it relies on by **5:00pm AEST Tuesday 28 June 2022**.
  - **Mr Albee** is to file with the NST Registry and serve on SA written submissions and any evidence in reply he relies on by **5:00pm AEST Wednesday 29 June 2022**.
  - Noting the request for expedition, a determination on the preliminary issue will be made on the papers or at a Pre-Hearing Conference to be held at a time suitable to the NST and the Parties as soon as practicable.
16. A decision in relation to the preliminary issue was made on 30 June 2022, that being that Mr Albee was to remain suspended whilst the Substantive Dispute was being considered.

### Timeframe for the Substantive Dispute

17. In relation to the Substantive Dispute, the Parties agreed to lodge submissions and adhere to the following schedule:
- **SA** to file with the NST Registry and serve on Mr Albee a recording of the match, copies of all evidence and submissions lodged in the Tribunal, and any recording of the Tribunal Hearing by **5:00pm AEST Friday 15 July 2022**.
  - **SA** to file with the NST Registry and serve on Mr Albee any written submissions, bundle of documents (including evidence) upon which they intend to rely, a list of authorities and/or witnesses upon which they intend to rely (if any), and all other documents they wish for the NST Member to consider by **5:00pm AEST on Friday, 15 July 2022**.
  - **Mr Albee** to file with the NST Registry and serve on SA any written submissions, bundle of documents (including evidence) upon which he intends to rely, a list of authorities and/or witnesses upon which he intends to rely (if any), and all other documents they wish for the NST Member to consider by **5:00pm AEST on Friday, 29 July 2022**.
  - **SA** to file with the NST Registry and serve on Mr Albee any written submissions and documents in reply for the NST Member to consider by **5:00pm AEST on Friday, 5 August 2022**.
  - The Appeal is to be conducted on the papers, unless the Participants or NST Member request otherwise. If a hearing is required, it will be scheduled at a time suitable to the NST and Participants in the week commencing **8 August 2022**.
  - The timetable set out above was varied due to a delay in SA providing access to a video of the game. Mr Albee sought and was granted additional time to consider the video of the match and to make submissions thereto.
  - The amended timetable provided that Mr Albee to file with the NST Registry and serve on SA any materials by **5.00pm on Monday, 8 August 2022** with SA to file with the NST Registry and serve on Mr Albee any materials in reply by **5.00pm on Monday 15 August 2022**.



18. The Tribunal has decided that it is appropriate to conduct the Appeal on the papers.

#### APPLICABLE RULES

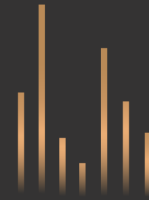
19. The competition operated pursuant to the Regulations, which provides for SA to conduct a number of national championships across a range of age categories, commencing at under 14 age groups.
20. The Tournament Tribunal made reference to the Guidelines applicable for the national championships.
21. The Tournament Tribunal found Mr Albee guilty of *Offences against umpires – threatening an umpire by word/action*. The minimum penalty for this offence under the Guidelines is an eight (8) game suspension at a commensurate level, and a maximum penalty is two (2) years suspension.
22. The Regulations includes a Coaches Code of Conduct, which relevantly provides at 7:

*Be professional in your appearance and manner and accept responsibility for your actions.*

- *Display high standards in language, manner, punctuality, preparation and presentation.*
- *Display control, respect, dignity and professionalism to all involved with softball, including opponents, coaches, officials, umpires, scorers, administrators, the media, parents and spectators.*
- *Encourage your players to demonstrate the same qualities.*

#### MAIN SUBMISSIONS OF THE PARTIES

23. Additional facts and allegations found in the Parties' written submissions may be set out, where relevant, in connection with the discussion of the merits that follows. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties in this Determination it refers only to the submissions and evidence that I consider necessary to explain my reasoning.
24. SA's principal submission is that the sanction imposed on Mr Albee by the Tournament Tribunal was inadequate for the offence and also the circumstances in which the offence occurred.
25. It is noted from the Tournament Tribunal Report that Mr Albee "largely accepted" the report but only admitted the offence of swearing at the umpire. SA submit that the video of the incident clearly shows Mr Albee physically remonstrating with the plate umpire and poking the plate umpire in the chest. It is submitted by SA that the Tournament Tribunal's finding that Mr Albee's behaviour was unacceptable particularly in the age group is clearly correct.
26. SA noted that there is no issue before the NST as to process or liability in this matter. It is only sanction that is being considered. It is the level of sanction applied by the Tournament Tribunal that is being appealed by SA and SA submits that the Tournament Tribunal erred in only applying an 8-game sanction, being the minimum in the circumstances.
27. SA submits that the sanction decision of the Tournament Tribunal should be replaced with the maximum recommended two (2) year sanction under the Guidelines on the grounds that in the circumstances the eight (8) game sanction is so unreasonable that no reasonable tribunal could have applied it.
28. SA also noted that although Mr Albee offered an apology to parents after the match, he did not appear to have apologised to the umpire or others involved in the organisation of the competition

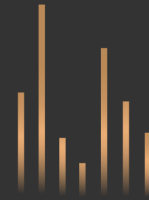


or the sport. It was submitted that Mr Albee is disingenuous and does not take what he has done and this process seriously. SA submit that Mr Albee still has this attitude and considers himself the victim.

29. SA noted a number of social media posts made by Mr Albee, which SA advised were the subject of separate actions.
30. Mr Albee submitted that a suspension for a period of 4 months from the time of the offence, that is 17 April 2022, at all levels, was an appropriate sanction.
31. Mr Albee raised a number of issues relating to the alleged conduct of players in the grand final and the impact that this conduct had on players in his team, including a letter from the parents of a player on the New South Wales team.
32. Mr Albee also noted that he was not an experienced coach at the state level and was not able to sufficiently to deal with issues of player welfare that arose during the grand final.
33. Mr Albee noted that he had not denied abusing the plate umpire nor had he made anyone else responsible for his actions. Mr Albee submitted that, during the Tournament Tribunal hearing, he accepted full responsibility of his abuse towards the plate umpire, however he did not accept being physical with the plate umpire.
34. Mr Albee also submitted that the incorrect Guideline was relied upon by the Tournament Tribunal and that the appropriate sanction was for a period of up to twelve (12) months.
35. Mr Albee noted that he has apologised to parents after the match. Mr Albee also noted that he has apologised to the two base umpires prior to the commencement of the Tournament Tribunal, and he had subsequently apologised to the plate umpire by email. The letter from the parents of a player in Mr Albee's team confirmed that Mr Albee had apologised for his behaviour during the final.

## MERITS

36. The Tournament Tribunal found the behaviour of Mr Albee to be unacceptable and that he was aggressive towards the plate umpire through both words and actions. The Tournament Tribunal found that there was a particular concern that the conduct occurred in the junior age group.
37. The Tournament Tribunal also found that whilst Mr Albee had apologised to the teams and parents and acknowledged his behaviour was wrong, a penalty needed to be imposed given the seriousness of the behaviour leading to the ejection of the coach from the game.
38. Having found that Mr Albee's actions were serious, and also noting that the conduct occurred in the final of a junior national competition, the imposition of the minimum sanction available goes directly against those findings and context.
39. The Tribunal notes that Mr Albee's actions included both verbal abuse towards the plate umpire as well as moving towards the plate umpire on two occasions.
40. The Tournament Tribunal however does not provide any details for why, in light of the above findings and concerns, it decided to impose the minimum period of suspension under the Guidelines, noting that the maximum sanction is a suspension for a period of two (2) years.
41. It is noted that the video shows a base umpire stepping between Mr Albee and the plate umpire so as to move Mr Albee away. Contrary to Mr Albee's submissions, Mr Albee clearly makes contact with the plate umpire by poking his finger into the plate umpire's chest.



42. The Tribunal notes that this Appeal relates to a consideration of the sanction to be determined and not a re-hearing of the merits of the matter that was before the Tournament Tribunal. Much of Mr Albee's submissions were directed towards explaining the broader context in which his actions towards the plate umpire had occurred, including the actions of players during the game and a suggestion that the plate umpire had not appropriately managed those issues. Such submissions however are not relevant to the Appeal.
43. The materials filed by Mr Albee in relation to the Appeal included a reference, which provided details of his sporting and coaching expertise, including coaching positions at the Penrith City Softball Association, for under 12, under 14 and under 16 age groups. It is noted that Mr Albee's argument is that he lacked experience in coaching at state level and that this contributed to how he acted during the game. This however appears to be at odds with the information that he provided to the Tribunal, that highlights his previous coaching experience at a range of levels, including coaching of junior age groups and information explaining his focus on player welfare.
44. The Tribunal notes that the Guidelines provide for a range of penalties in relation to offences against umpires, including "*Foul or abusive language directed at an umpire*" with a recommended range of penalties from two (2) games to a suspension for one (1) year. As noted, Mr Albee acknowledged that he had sworn at the plate umpire.
45. The Tournament Tribunal considered that the offence of "*Threatening an Umpire by word/action*" was appropriate because Mr Albee was abusive towards the plate umpire and had made physical contact with the plate umpire. The video showed that Mr Albee moved to stand very close to the plate umpire and he poked his finger into the chest of the plate umpire. The video also shows that a base umpire had to step in between Mr Albee and the plate umpire to move Mr Albee away.
46. The Tribunal considers that Mr Albee's actions were particularly serious, given that he is an experienced coach; that the conduct occurred at a national championship level; and the tournament was for junior players. The Tribunal accepts that Mr Albee's actions were such to be considered threatening.
47. With reference to the above factors and the terms of the Guidelines, the Tribunal considers that a period of suspension at the maximum recommended level, is warranted.
48. The Guidelines provide that in determining a sanction, consideration can be given to mitigating factors. Mr Albee apologised to parents after the game and then to the plate umpire. Mr Albee has acknowledged that his behaviour was unacceptable. These factors are relevant in terms of mitigation hence a reduction shall be applied.

**THE TRIBUNAL THEREFORE DETERMINES:**

1. Mr Albee is suspended for a period of eighteen months, commencing from 17 April 2022.

Date: 25 August 2022



Craig Green