



# Grievance Hearing Result

This notice is issued in accordance with Article 19 of the Football West Disciplinary & Grievance By-Law.

## Charged Party

<b>Name</b>	Jack Monaco	<b>Position</b>	
<b>Club</b>	Southern Spirit	<b>Registration No</b>	

## Fixture Details

<b>Date</b>	26 June 2011	<b>Time</b>	2:30 pm
<b>Fixture</b>	Southern Spirit v University of WA/Nedlands FC		
<b>Competition</b>	Sunday League Cup		

## Breach Details

<b>Annexe (if applicable)</b>	Article 3 - Players
<b>Section</b>	3.1
<b>Paragraph</b>	A player may not play for a team in the Sunday Cup if, in the same season, he has previously played for a different club in the Solo cup, Sole Reserves Cup or solo 18's Cup.
<b>Details of alleged offence</b>	Sunday League Cup: Southern Spirit v UWA-Nedlands FC Playing of Daniel Birner

## Hearing Outcome

<b>FINDING</b>	<p>The Club pleaded guilty to the elements of the breach at the commencement of the hearing. Upon doing so, it appropriately argued for and presented evidence to the effect that the breach was accidental, and such, a forfeit penalty should not have been imposed at first instance by Football West.</p> <p>Notwithstanding there is no requirement for the panel to provide reasons, the panel considered that in the circumstances of this particular case the Club in question, Football West and other member clubs could gain guidance through being appraised of its reasoning.</p> <p>The panel noted and took into account the provisions of Articles 3 &amp; 4 of the Sunday Cup Rules and particularly the classifications for breaches as being accidental, negligent or deliberate. The panel noted that negligent or deliberate breaches carry penalties of forfeit, however, with respect to 'accidental' breach, a penalty by way of forfeit is not to be imposed – see Article 4 (3).</p> <p>Article 4(2) of the competition rules provides that 'the determination of whether a breach is accidental, negligent or deliberate is entirely at the discretion of Football West'. The panel considered that in appropriate cases it could and should overturn a Football West determination if it was found to have been made inappropriately, in that it was not a determination that could</p>
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	<p>reasonably have been made upon the information Football West then had. In determining this, the panel needed to consider whether:</p> <ol style="list-style-type: none"> <li>1. Football West failed to take sufficient account of relevant facts or circumstances: and/or, whether</li> <li>2. Football West took into account irrelevant facts or circumstances.</li> </ol> <p>In the case in question, notwithstanding well made arguments put forward by the Club that the breach was accidental, and notwithstanding the panel had sympathy for the position the club found itself in, there was no basis upon which the panel considered it should interfere with the original 0-3 forfeit penalty imposed. The panel considered that there was no dishonest conduct by any member of the club in playing Daniel Birner, however the club did not exercise sufficient due diligence in confirming for itself Birner's true 'cup tied' status, to the degree that it was negligent according to the plain meaning of that word.</p> <p>The panel acknowledges and congratulates the club for the integrity it displayed in notifying Football West of the issue when it became known to it, and, for the professional manner in which club officials presented themselves and their position before the panel.</p>
<b>Result:</b>	The panel decided that the original penalty of 0 – 3 forfeit shall stand.

<b>Date of Notice</b>	15 July 2011
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**Right to appeal**

You have the right to appeal this decision in accordance with the conditions of Article 22 of the Football West Disciplinary & Grievance By-Law.



Keith Wood  
**Competitions Manager**