

**DECISION OF THE OFC DISCIPLINARY AND ETHICS COMMITTEE
CONSTITUTED UNDER THE OFC DISCIPLINARY CODE OF JUNE 2019**

In the matter of: Maxwell Keana

HearingDate: 11 December 2019

Committee members: Michael Goodwin (Chair), Mark Anthony, Mona Ioane

Association: Solomon Islands Football Federation (SIFF)

Competition: OFC U-16 Championship 2018 (Finals Tournament)

Matches: 9 September 2018 – PNG v SOL
12 September 2018 – SOL v NZL
15 September 2018 – SOL-VAN
19 September 2018 – SOL v FIJI
22 September 2018 – SOL v NZL

Charge

Maxwell Keana is charged with breaches of Articles 73 and 59 of the OFC Disciplinary Code (March 2014) which states:

Article 73 Ineligibility

1. *If a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. Art. 32A) and paying a minimum fine of NZD500.*
2. *If a player takes part in a friendly match despite being ineligible, his team will be sanctioned by forfeiting the match and paying a minimum fine of NZD500.*

Article 59 Forgery and Falsification

1. *Anyone who, during any football related activity, creates a false document, forges a document, makes a false claim in a document with potentially legal repercussions or uses a forged document to deceive others will be sanctioned with a suspension for at least six (6) matches.*
2. *If the perpetrator is a player, a suspension of at least six (6) matches will be pronounced.*
3. *If the perpetrator is an official, the body will impose a ban on performing any football related activity for a period of at least twelve (12) months.*
4. *An association may be held liable for an infringement as defined in par.1 committed by one of its officials and/or players. In such a case, an expulsion from a competition may be pronounced in addition to a fine for the association.*
5. *The body may also pronounce a fine of at least NZD1,000.*

Evidence

The following evidentiary documents were reviewed by the Committee:

1. OFC Disciplinary Code (March 2014).

2. OFC U-16 Championship 2018 Regulations.
3. Letter from Amos Loku Lupa (also signed by Maxwell Keana) dated 15 October 2019.
4. Statutory Declaration by Maxwell Keana (undated) – 2 versions.
5. Passport of Maxwell Keana issued 25 June 2018.
6. Statutory Declaration of Hilda Hickie Sotutu (Midwife) dated 16 October 2019.
7. Letter from Rev. Beckily Kahui (Bishop Ag) dated 15 October 2019.
8. Birth Notification from Western Provincial Health Service dated 16 October 2019.
9. Statutory Declaration of Ben Keana and Selina Keana (Parents) undated.
10. Solomon Islands Government Birth Certificate issued 4 October 2018.
11. Letter from Dr Alex Munamua, Department of Orthopaedic Surgery, Solomon Islands Government dated 21 October 2019.
12. Statutory declaration from Hansel Mamupio dated 28 November 2019.
13. Statement by Diane Justus dated 22 November 2019.
14. Statement by Gabriel Riotarau dated 27 November 2019.
15. Statement by Moses Toata dated 21 November 2019
16. Statement by Robert Seni dated 25 November 2019
17. Statement by Stanley Waita dated 25 November 2019
18. Statement by Leonard Paia, with annexures A to D, dated 28 November 2019.
19. Medical Imaging Report dated 31 August 2019.
20. Solomon Star Newspaper article dated 13 October 2019.

In addition to the Committee, the following persons were in attendance at the hearing by telephone conference, and evidence was received by relevant persons at the conference:

1. Leonard Paia (CEO – SIFF)
2. Moses Toata (Technical Director)
3. Stanley Waita (Head Coach – U17 National Team)
4. Robert Seni (Team Manager – U17 National Team)
5. Donald Marahare (Legal counsel for SIFF)
6. Maxwell Keana
7. Teona Ivano (interpreter from Michael Goodwin’s office)
8. Barbara Lloyd (secretary to the OFC Disciplinary and Ethics Committee)
9. Lisa Scott, OFC Legal and Compliance Officer.

Written submissions were also presented by the legal counsel for SIFF in addition to oral submissions (Outline of Submissions dated 10 December 2019). The Committee has considered these submissions in arriving at its decision.

Decision

Consideration of the Evidence:

- (a) There is overwhelming evidence that Maxwell Keana was born on 28 July 1998, well before the eligibility date of 1 January 2002 (see documents 3, 4, 6, 7, 8, 9, 10 and 19). This includes admissions from Maxwell Keana, his parents, his uncle, his delivering midwife, and his baptising reverend. This is supported by the Medical Imaging Report. Mr Keana confirmed this position orally at the hearing.
- (b) As a result, Maxwell Keana was ineligible to play for the Solomon Islands in the OFC U-16 Championship 2018 (Finals Tournament).

- (c) The evidence is clear that Maxwell Keana knowingly forged his application for a birth certificate and his application for a passport using a birth certificate he knew to be misleading by providing the incorrect date of birth. This was done fraudulently to secure eligibility to play for the Solomon Islands in the OFC U-16 Championship 2018 (Finals Tournament). He maintained his deceit until 31 August 2019 when he was medically examined and a Medical Imaging Report revealed his ineligibility and he was excluded from the team.
- (d) There is insufficient evidence to directly implicate any particular SIFF official in the fraud or forgery to attempt to gain eligibility. Mr Keana alleges that it was normal practice at SSIF to field ineligible players and that in his case the Head Coach announced to the team at training that the players needed to ensure that they had a birth certificate with a date that qualified them despite many being overaged. However, the allegations by Mr Keana of officials being involved and complicit are not corroborated, are only vague references without specifics such as dates and times, and they are contrary to the detailed written statements of SIFF officials, particularly the statement of Gabriel Riotarau who assisted the players in understanding and completing the passport process. While there is some concerning evidence from Mr Keana, it lacks weight and veracity, particularly as it is uncorroborated by any other player or person and appears to have been motivated by his disappointment at being excluded from the Solomon Islands team for the FIFA U-17 World Cup 2019.
- (e) However, it is apparent that SIFF attempted to cover up the true reason for Mr Keana's exclusion from the Solomon Islands team for the FIFA U-17 World Cup 2019. They publically stated that it was due to Mr Keana failing a medical test, rather than for ineligibility and failed to disclose this to OFC until 28 November 2019 as part of this disciplinary hearing process (See Solomon Star Newspaper article dated 13 October 2019). The cover up by SIFF of this issue is serious and warrants a serious sanction, both due to the action itself, and because of the need to deter such conduct and ensure that member associations conduct themselves with transparency, honesty and in the best interests of the sport and its associated bodies.

The Committee makes the following findings:

1. Maxwell Keana has breached Article 73(1) of the OFC Disciplinary Code by playing in five (5) official matches while he was knowingly ineligible due to being well overaged.
2. Maxwell Keana has breached Article 59(1) and (2) of the OFC Disciplinary Code by his deceitful, fraudulent and false conduct, by creating and using a false birth certificate and passport to improperly seek eligibility for the Solomon Islands National Team in the OFC U-16 Championship 2018 (Finals Tournament) and the FIFA U-17 World Cup 2019.
3. The actions of Mr Keana are deliberate and fraudulent and there is a need to apply a long suspension to punish such conduct and to act as a stern deterrent to other players contemplating such behaviour.
4. In respect of SIFF and Articles 73 (1), and Article 59 (4) and (5), the OFC U-16 Championship 2018 (Finals Tournament) has concluded and the Solomon Islands team has already moved on to play at the FIFA U-17 World Cup 2019. No forfeiture of a match can now be contemplated. This weighs more heavily in favour of the imposition of a large fine, and future sanctions, particularly given the determination by the Committee that that SIFF attempted to cover up the true reason for Mr Keana's exclusion from the Solomon Islands team for the U-17 World

Cup. Had SIFF disclosed the real reason for Mr Keana's exclusion for the team, a disciplinary investigation and hearing could have been convened before the U-17 World Cup, and consideration given to excluding the Solomon Islands team from the World Cup due to the eligibility breaches. The Committee is mindful that the next placed team in the OFC U-16 Championship 2018 (Finals Tournament) has been denied the right to go to the U-17 World Cup.

Sanction

Article 2 of the OFC Disciplinary Code gives the scope of the Code a very wide application. In addition to the specific provisions of the Code and the prescribed sanctions, the Code applies where the statutory objectives of the OFC are breached, especially with regard to forgery and corruption. It also applies to any breach of OFC regulations, such as Article 34 (2) of the OFC U-16 Championship 2018 Regulations (see also Article 85).

Sanctions apply whether they have been committed deliberately or negligently (Article 8(1)). This Committee may reduce, increase or modify the sanction as it sees fit (Article 10(2)). Section 2 then sets out the wide range of sanctions that this Committee can impose, which are comprehensive. This Committee decides the scope and duration of the sanction which may be limited to one or more certain categories of match and competition (Article 41(1) and (2)).

The sanctions applied in this proceeding are as follows:

1. For the breach of Article 59(1) & (2) of the OFC Disciplinary Code, **Maxwell Keana shall be suspended from playing football in the Oceania region and from representing an OFC member association or club in an international match for a period of 12 months** commencing four (4) days after notification of this decision to SIFF. The Committee considered that the seriousness of the breach, and the need for deterrence, warranted a suspension for a period of 2 years, but reduced the sanction to 12 months due to the young age of the player, the fact that this is his first offence, and his admission of being ineligible and coming forward with this information and assisting in the disciplinary process.
2. For the breach of Article 73(1) of the OFC Disciplinary Code, there is no prescribed sanction for the player, and the Committee considers that Sanction 1 is the appropriate penalty in total for Mr Keana.
3. The breach of Article 73(1) of the OFC Disciplinary Code prescribes that Mr Keana's team will be sanctioned by forfeiting the match and paying a minimum fine of NZD500. As indicated above, the matches can no longer be forfeited, and the circumstances warrant a serious penalty. **The Committee imposes a fine of NZD10,000 on SIFF** to be paid on or by 30 April 2020.
4. This Committee has the jurisdiction and power to modify the sanction for forfeiture of matches (Article 10(2)) as prescribed in Article 73(1), to cover participation in future tournaments, given the matches can no longer be forfeited. In addition, Article 59 (4) and (5) allows for an association to be held liable for the infringement by one of its players, and a fine and expulsion from a competition is contemplated for such an infringement. Also, Article 13 of the Code allows the Committee to impose a sanction of "exclusion" using the power provided under Articles 29 and 33. The Committee determines that the fine in Sanction 3 is sufficient to cover the liability of SIFF for a fine under Article 59. However, given the gravity

of the eligibility breach, and the attempt to cover up the breach to avoid sanction, under Articles 73(1) and Article 59(4), **the Committee expels SIFF from entering a boys team in the next qualifying tournament for the next FIFA U-17 World Cup for boys (currently set as the OFC U-16 Championship 2020).**

In arriving at the sanction for a breach of Article 59(4), the Committee rejects the submission by SIFF that “expulsion” is confined to a “match suspension” in Article 19. The wording of Article 59(4) is expansive, and clearly applies to “an association” and contemplates the association being expelled from a competition. It follows that the Committee has jurisdiction and power to expel SIFF from entering a boys team in the next U-17 qualifying tournament. In any event, the Committee has power to modify a sanction under Article 10(2) and Article 29 provides the Committee with the power to impose an “exclusion” of member associations from taking part in future competitions. It is essential that in imposing a sanction the Committee arrives at a decision that gives efficacy to the penalty being imposed in the particular circumstances.

Appeal rights

Eligibility to appeal is governed by the OFC Disciplinary Code:

Article 127 Contestable decisions

An appeal may be lodged to the Appeals Committee against any decision passed by the Disciplinary and Ethics Committee, unless the sanction pronounced is:

- a) a warning;*
- b) a reprimand;*
- c) a suspension for less than three (3) matches or of up to two (2) months;*
- d) a fine of less than NZD1,000 imposed on a Member Association or a club and of less than NZD500 in other cases*

Article 128 Eligibility to appeal

- 1. Anyone who is affected by a decision and has an interest justifying amendment or cancellation of the decision may submit it to the Appeals Committee.*
- 2. Member Associations may appeal against decisions sanctioning their players, officials or members. They shall have written agreement of the person concerned.*

Article 129 Time Limit for Appeal

- 1. The party intending to appeal shall announce his decision in writing within fifteen (15) days of the communication of the decision.*
- 2. The announcement of the intention to appeal shall be sent directly to OFC. The petition of appeal shall, however, be forwarded to OFC via the member association.*
- 3. The member association receiving the petition of appeal shall forward it immediately to OFC. The decisive moment for complying with the time limit for lodging this petition is the moment it reaches the OFC.*

Article 130 Grounds for complaint

The appellant may object to insufficient representation of the facts and wrong application of the law.

Article 131 Petition of appeal

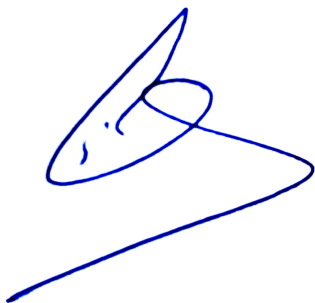
1. *The appellant shall submit his petition of appeal in writing.*
2. *The appellant's petition of appeal shall include the necessary arguments, reasons and means of proof and be signed by the appellant or his representative, subject to Art. 128.*

Article 132 Deposit

1. *A party intending to lodge an appeal shall deposit the amount of NZD1500 to OFC's bank account within fifteen (15) days from the date of the appeal.*
2. *The appeal shall be deemed inadmissible without the aforesaid deposit.*
3. *This amount shall be reimbursed to the appellant should the appeal be upheld. Costs and expenses payable by an appellant who loses the case are deducted from this amount. Any remaining amount is reimbursed to him. If the deposit is insufficient, the appellant will be ordered to pay the difference.*
4. *If an appeal is dismissed, the deposit shall be forfeited.*

Date: 13/12/2019

Franck Castillo



Oceania Football Confederation General Secretary
On behalf of the OFC Disciplinary and Ethics Committee