

In the Matter of Joss Labadie (Dagenham and Redbridge FC)

Reasons for Regulatory Commission Decision

Wednesday 15th April 2015

1. These are the written reasons for an FA Regulatory Commission decision made on Wednesday 15th of April 2015.
2. The Regulatory Commission members were:

Mr. G. Thompson (Chairman)
Mr. R.G. Pawley
Mr. G Mabbutt
3. Mr. M. Ives the Football Association's Head of Judicial Services acted as Secretary to the Commission.
4. Mr. Labadie had been charged by the Football Association with a breach of FA Rule E3 in that it was alleged that in or around the 95th minute in the Football League 2 fixture, Stevenage FC v Dagenham and Redbridge FC on the 21st March 2015 his behaviour as evidenced in correspondence, statements, photographs and video clips constituted violent conduct.
5. The FA had designated this as a Non Standard charge due to the violent and/or serious and/or unusual nature of the alleged incident.
6. By his form of acknowledgment, dated the 27th March 2015, Mr. Labadie denied the charge and requested to attend before a Regulatory Commission for a Personal Hearing.

7. The Football Association were represented by Mr. M. Johnson, Head of Regulatory Legal at The FA.
8. Mr Labadie was represented by Mr. G. Bean of Football Factors Ltd

Evidence

9. We were presented with the following evidence;
 - (1) report of the match referee, Mr. D. Whitestone, dated 22nd of March 2015;
 - (2) email from Mr. C. Clark, Club Secretary of Stevenage FC, to Mr. M. Ives of the FA Judicial Services Department, dated 22nd of March 2015;
 - (3) email correspondence between the Assistant Referee, Mr. M. Pottage and Mr. T. Shamel of the FA's Regulatory Department, dated 24th of March 2015;
 - (4) email from Mr. D. Whitestone to Mr. T. Shamel, dated 25th of March 2015;
 - (5) statement of Mr. R. Henry, player of Stevenage FC, dated 25th of March 2015;
 - (6) exhibit RH/1: photographs of injury (six pages in total);
 - (7) two video clips of the incident one in slow motion and one in real time;
 - (8) statement from Mr. J. Labadie dated 27th March 2015;
 - (9) statement from PC Andrew O Connor dated 21st March 2015; and
 - (10) statement from PC Holly Mason dated 21st March 2015.
10. In addition we heard live evidence from;

On behalf of The Football Association;

- (1) Mr. R. Henry, player of Stevenage FC;
- (2) Mr. M. Pottage, Assistant Referee.

On behalf of Mr Labadie

- (1) Mr. J. Labadie;
- (2) PC A. O'Connor; and
- (3) PC H. Mason.

11. In outlining the case on behalf of The Football Association, Mr Johnson emphasised that the fact that Mr Labadie had bitten his opponent, Mr Henry, was not in dispute. What had to be determined was whether or not the action of biting Mr Henry was a deliberate act.
12. Mr Johnson reminded the Commission that the onus was on The Football Association to prove that Mr Labadie had deliberately bitten Mr Henry and that the standard of proof was the balance of probability.

Decision

13. Having listened to all of the evidence, the Commission found on the balance of probability that Mr Labadie had deliberately bitten Mr Henry. Therefore the charge under FA Rule E3 was, in the opinion of the commission, found proven.
14. In considering sanction the Commission ordered that Mr Labadie;
 - (1) be warned as to his future conduct;
 - (2) be immediately suspended from playing all football, including friendlies, for a period of six calendar months;
 - (3) be fined the sum of £2,000;
 - (4) ordered to pay a contribution towards the costs of the regulatory commission of £750;
 - (5) the personal hearing fee is to be forfeited.

Reasons

15. Mr Pottage confirmed that he did not see the bite on Mr Henry but confirmed that he was shown the consequences of the bite by Mr Henry immediately after the incident and again further after the game had concluded.
16. Mr Pottage however could offer no evidence, as he did not witness the bite, as to whether or not the actual biting was indeed deliberate. The Commission found Mr Pottage to be a truthful and credible witness.
17. Mr Henry submitted that as a result of him attempting to retrieve the ball during the closing minutes of the game from Mr Labadie in reaching round Mr Labadie's body he was bitten on the finger and suffered considerable pain.
18. Mr Henry confirmed when challenged that he did not place his fingers in the mouth of Mr Labadie either by accident or deliberately and that in his opinion the bite was therefore a deliberate act.
19. Mr Bean put it to Mr Henry that he was in fact the aggressor and was pulling at the head and neck of Mr Labadie. Mr Henry denied the allegation. The Commission found Mr Henry to be a truthful and credible witness.
20. Mr Labadie gave evidence and testified that he did not deliberately bite Mr Henry and that the bite was "an involuntary reaction" to the action of Mr Henry trying to retrieve the ball.
21. Mr Johnson put it to Mr Labadie that if the bite was an accident then he would surely have apologised to his opponent, Mr Henry, for the accident that occurred. Mr Labadie said he saw no reason why he should have apologised at the time.

22. On viewing the video it was clear by the reaction of Mr Labadie immediately following the biting incident that he was not in any way apologetic. The Commission found this reaction interesting and found the evidence submitted by Mr Henry more convincing than that of Mr Labadie when viewing the content of the video.
23. The Commission found the evidence submitted by Mr Labadie to be unconvincing and unreliable.
24. The Commission found the evidence submitted by both police officers, PC O'Connor and PC Mason, truthful recollection from their perspective. However neither Officer was in a position to assist in whether or not the biting was a deliberate act as neither officer had seen the actual bite.
25. On considering all of the evidence when viewing the video and when taking into consideration the force used in the bite, the Commission found that it was more likely than not that the biting action was deliberate and therefore found the charge against Mr Labadie proven.

Mitigation and Sanction

26. In confirming Mr Labadie's previous disciplinary record Mr Ives confirmed that Mr Labadie had two dismissals, one of which was for violent conduct in November 2010.
27. Of greater concern was a charge under FA Rule E3 Improper conduct including violent conduct, for another biting incident in February 2014. Mr Labadie was suspended for 10 matches and fined the sum of £2,000.
28. In presenting mitigation on behalf of Mr Labadie, Mr Bean asked the Commission to consider the following:
 - (1) Mr Labadie had been badly advised in how to respond to the earlier biting incident where he denied the case and asked for the matter to be

considered on correspondence only and he still maintains his innocence;

- (2) that the commission should also consider his denial of the current offence;
- (3) that the dismissal for violent conduct was almost 5 years ago;
- (4) the serious impact on his career that a second offence of this nature will have on him in the future;
- (5) the potential for his contract of employment to be terminated as a result of the current findings and the effect it will have on his available finances;
- (6) that the evidence submitted by the Police Officers suggested that Mr Labadie was subjected to an act of aggression by Mr Henry;
- (7) the Commission also heard character references by both the Chairman and Manager of the Club.

29. The Regulatory Commission found some of the mitigation surprising particularly in relation to his previous conviction for biting and his denial for the offence before them. The Regulatory Commission gave very little weight to this area of mitigation.

30. In considering sanction the Commission considered this matter to be very serious and that an appropriate sanction should be applied that takes into consideration a second incident of this nature.

31. The Commission accepted the dismissal for violent conduct was a considerable time ago and gave little weight to that incident when considering the final sanction.

32. They considered carefully whether or not to impose a sanction from all football and football activity which would have resulted in Mr Labadie not being able to have any involvement with a Club, including training, which would have had a more serious effect on his possible future career. Therefore

it was decided that any sporting sanction would be from playing only on this occasion.

33. In considering the relevant period of suspension the panel was mindful that any sanction would need to be significantly more than the previous 10 matches. Therefore it was considered necessary and appropriate to apply a period suspension.
34. As a result the Commission considered a period of six months when considering the close season was part of that period as an appropriate level of sanction.
35. Taking into consideration Mr Labadie's finances a fine of £2,000 was considered an appropriate level.
36. The Commission also felt it necessary to impose an order of part costs amounting to £750 as a contribution towards the cost of the Commission.
37. Mr Labadie has a right of appeal in accordance with FA Regulations.
38. The Commission asked the Club to consider approaching the PFA to assist Mr Labadie in obtaining support to help address the violence and biting that appears to be a trend.

Mr. G. Thompson

17th April 2015