

**THE FOOTBALL ASSOCIATION and ROBERTO MARTINEZ**

**APPEAL BOARD HEARING – 16 October 2012**

**Present:** Richard Smith QC – Appeal Board Chairman  
Maurice Armstrong  
Denis Smith

Roberto Martinez – Appellant  
John Duncan – Appellant Representative

Dario Giovannelli – for the Football Association

1. On the 24<sup>th</sup> September 2012 Roberto Martinez was charged with improper conduct in contravention of FA Rule E3. It was alleged that his reported post match comments concerning the Manchester United v Wigan fixture played in September 2012 inferred that the match referee had been bias in his officiating of the game.
2. By a Notice of Reply to the charge dated the 27<sup>th</sup> September, the Appellant entered a guilty plea.
3. On the 2<sup>nd</sup> October 2012 a Regulatory Commission was convened to hear Mr Martinez's case, whereupon Mr Martinez was fined £10,000 and warned as to his future conduct.
4. By a Notice of Appeal dated the 9<sup>th</sup> October, the Appellant set out his Grounds of Appeal in respect of the aforesaid Regulatory Commission hearing. It was clear to the Board from that documentation that the Appellant in fact contested not only the sanction that had been imposed upon him, but also his apparent guilt to the original charges.

**Preliminary matters**

5. In the light of the Appellant's assertion as to his innocence, the Board enquired at the outset of the appeal hearing as to whether in fact Mr Martinez was seeking (in effect) to vacate his original guilty plea and contest the charges before the Board. Such intention was confirmed by Mr Martinez, and

indeed such assumption had been foreshadowed in the Football Association's reply to the Notice of Appeal.

6. Notwithstanding the procedural difficulty of reopening Mr Martinez's plea and reconsidering the subject matter of the charges de novo, the Football Association agreed that in the individual circumstances of this case on its particular facts, such a course was in the interests of both parties and in the fairness of the proceedings. Accordingly, the Board proceeded to hear the matter de novo and did not consider itself limited to a reconsideration of the original documentation either with or without the new evidence disclosed in advance of the Appeal Board hearing.
7. In the course of the hearing Mr Martinez produced fresh evidence that had not been available to the original hearing before the Regulatory Commission, namely a video and associated transcript of his complete post match conference. Therein he expressed the words subsequently reported in the press that were the subject matter of the charges brought by the FA.

#### The Appellant's case

8. The Board were shown, and carefully considered, the footballing clips to which the Appellant made reference in his post match interview, and more importantly the post match interview itself.
9. The Appellant produced in addition a document setting out the reported words as appeared in the FA charges, together with the actual words spoken in respect of each of those charges, as revealed in the post match interview . The transcript of the post match interview is annexed to this judgement at Appendix 1, and the document of quotes as Appendix 2.

The latter document was agreed between the parties to be an accurate record of both the spoken words in the post match interview, and the words that appeared in the media reports, the subject of the charges. That is with one exception set out hereinbelow.

10. In respect of quote 1, the Appellant maintained that he had said:

“...**it** wasn't going to measure...”

“

The FA contested that the Appellant had at this particular point in fact said:

“..**he** wasn't going to measure...”

The Board, having had the benefit of hearing the broadcast tape for themselves, were unanimous in their view that Mr Martinez had in fact used the word “*he*” - which was clearly a reference to the referee. The Board proceeded on that basis.

11. The Appellant contended that seen in the entirety of their full and proper context, the words used in the subject matter of the charge, were not capable of being interpreted by an objective observer that the referee had acted with a favouritism and preference to one team rather than the other – that is circumstances of bias.
12. The Appellant to the contrary suggested that his intention, and succeeded aim, was to illustrate simply that referees officiating at Old Trafford were “influenced” by external factors, such that there was an imbalance in the decision making process. Accordingly, Mr Martinez sought to identify what he considered to be a difference between such “influence” and any assertion or inference of “bias”.
13. The Appellant submitted that whilst he accepted that at no stage in his post match interview had he sought to explain what he considered to be either the principle or content of any such “influence”, he argued that his:
  - (i) Praise of the referee, and
  - (ii) Identifying the relevant factual incidents within the game

were themselves sufficient to illustrate and infer that the Appellant's concern was only directed as towards such “influence” and was not in any sense either intended or capable of being inferred as a reference to bias. Mr Martinez maintained that his use of language in this regard had been clear and sufficient enough to dispel any inference of bias.

### Football Association case

14. Mr Giovannelli did not choose to ask questions of the Appellant. In his submissions Mr Giovannelli observed that the reported words were of themselves capable of inferring that the referee was biased. The context of the post match interview (now) seen as a whole, in the view of the FA in no way dispelled the sensible inference to be drawn from the words used that the referee was biased in his decision making.
15. The FA noted further that even if they had seen the video of the post match transcript at the stage of considering charges, they would have still proceeded with their allegations. Such assertion is, of course, entirely consistent with the view that was taken by the FA at the Appeal Board hearing.

### The Board's decision

16. Having carefully considered the exact wording of the reported quotes relied upon in the charges as against the words actually used by Mr Martinez in the post match interview (see Appendix 1), the Board concluded that the quotes fairly and sufficiently accurately reflected the sense of the words used by the Appellant in his interview. Such alterations or inaccuracies as to the exact quotation of the words used, did not in the view of the Board in any way change the sense and meaning of that which was actually said.
17. The Board concluded that the words used were unequivocally capable of being construed as inferring that the match official was biased in his decision making. The words conveyed a very clear suggestion that one team was being unfairly, preferentially favoured at the expense of the other. There was as the FA had said, an inescapable "theme" to the entirety of the post match interview to the effect that one team had been preferred to the other.
18. In considering the reported words in their full context the Board unhesitatingly came to the conclusion that nothing in that interview did anything to explain,

correct or dispel the inference of bias as referred to hereinabove at paragraph 17.

19. Mr Martinez, as he had candidly accepted in his own evidence, singularly failed to explain or identify what he in his own mind was seeking to convey by the suggestion that the official had been "influenced". In the absence of any explanation of that idea or any illustration of its content, one is left with a very clear inference that what in fact was being suggested and inferred by the manager's comments was a sense of unfair favouritism on the part of the official.

Accordingly, the Board concluded to the requisite standard of proof that the Appellant's media comments were capable of being interpreted to infer bias on the part of the official. That was improper conduct as alleged within the meaning of FA Rule 3. The charge was proved.

#### Sanction

20. Mr Martinez declined the opportunity to assist the Board with mitigation.
21. The Board's attention was drawn to the comparative previously decided cases of Andre Villas-Boas and Tony Pulis, where £12,000 and £10,000 fines were imposed in contested hearings respectively.
22. The Board concluded that the Appellant had not intentionally set out to assert or infer bias on the part of the match official. However, managers and particularly those in the spotlight of the Premiership, have a responsibility to ensure that their words used to the media are not open to an interpretation other than that which is plainly spelt out. Such was the case here. The Board were prepared to accept that Mr Martinez had in fact intended, and did, praise the referee in the hope of escaping sensationalist headlines that otherwise might have been sought by journalists. However, Mr Martinez failed to make himself sufficiently clear in order to escape obvious inference of bias that were evident as left in his words.
23. The Board therefore had a degree of sympathy for Mr Martinez's intentions and what they took to be his very genuine concern for the betterment of the

game. His failing was in the manner in which he expressed himself to the media rather than any sinister sentiment concerning the officials. In the light of those individual circumstances, having regard to the fact that the comments were only printed in a limited amount of the media, and taking considerable account of Mr Martinez's conduct and at the Appeal Board hearing, the Board imposed a fine that otherwise might have been considered to be lenient in all the circumstances. The Appellant fined £8,000 with costs.

24. Such sanction is neither designed nor intended to be a precedent for any future case of a similar kind. The Board note that the sanction imposed was particular to the somewhat unusual circumstances of this individual case.

25. It is a matter of some considerable regret that the post match video was not made available to all parties at a much earlier stage of these proceedings. The Board are certain in their view that if the Regulatory Commission had seen the interview and had the benefit of Mr Martinez's careful observations about the same, they too would have come to a different view upon sanction. The Board understands why they did not in the absence of the opportunity to have before *them* the complete facts and context.

**Richard Smith QC**  
**Appeal Board Chairman**

# ***Appendix 1***

## POST MATCH INTERVIEW – OLD TRAFFORD – VERBATIM TRANSCRIPT

### Any complaints about the score line Roberto?

Well yes of course, from our point of view I don't think we defended the goals well enough, erm, I thought the first half performance, or for 50 minutes, I thought we, we were excellent.

We upset the rhythm of Manchester United, we created good opportunities and probably you need, you need to take one of them and I would say that we made a very open game and I was very, very pleased in the manner that we played them 50 minutes.

Then the first goal I think for me is a bit too soft and probably we didn't...that affected us too much.

I knew that is, was going to be a difficult week from our point of view, we got players coming back from international.

Jean Beausejour's been, has done incredible to get through 60 minutes today and probably we weren't at our best physically to cope with what we wanted to do but, erm, I've come to United now for three times before that, we had three sending offs in two games, for whatever reason, we don't seem to, to..... just to be measured in the same manner that the team at home and today the penalty, the first penalty is as bad a decision you are going to see in the Premier League.

That knocked us back and I think mentally it was a difficult, difficult performance for us for 50 minutes but I'm extremely, extremely proud.

I'm taking them 50 minutes of ourselves and then we need to do much better in the way that we conceded our goals.

### Were you very irritated by the referee's decision to award a penalty when Danny Welbeck went to ground?

I was, I was because you could see it, you could see that, you need to be involved in football and you know what he is trying to do and I'm sure that if you see the replay you'll understand what I'm trying to say and it is a shocking decision and in many ways you feel like you are fighting against a mountain and I don't want to sound like it is blaming the referee, not at all.

I just feel that when you come to a place like Old Trafford you need a very strong referee that he can measure both teams in the same manner, there were some tackles flying around that if they would have been the other way round, there would have been a couple of red cards and that disappoints you but, that's got nothing to do with the score line.

The score line is down to our performance, I don't think we done certain things well enough to get a positive result but, for 50 minutes I'm very, very proud. I've seen a massive, massive improvement in what we've done in the last few years, the performance for 50 minutes gave us a lot for the rest of the season.

### Did Welbeck go to ground too easily for you in that first half?

Too easy? Well too easy or I don't know how you can explain it, he just, he dived, he dived for the penalty. But, you'll see it, you need to watch the replay.

When you talk about red cards, Paul Scholes was putting in some meaty challenges, are they the ones you're talking about specifically?

No. Danny Welbeck, the last challenge, the last challenge, his foot is over the ball on Franco, it's completely reckless and on the new regulation you cannot do that, you can't.

I'm not gonna argue if that should be in the game or not, that's for everyone to argue, it's just with the laws now you cannot tackle people like that.

The foot is over the ball, it's reckless, it's dangerous and that's a red card, and that's a red card for Wigan Athletic, for Manchester United and for everyone.

It's just a referee should give that measurement for both teams, that's what irritates me.

Roberto, this referee is only 27-years-old and the FA...(interruption)

No but he is very capable, he's a very good referee.

So you don't have any problems with people being fast-tracked?

No, no, no not at all I think it's down to your talent and I've seen this referee in many games, in many big games and he's been outstanding, I just felt today from the first second, for whatever reason, it wasn't going to measure the two teams in the same manner.

There is a challenge in the second half where Franco and Rio Ferdinand challenge for the ball, probably Rio gets the ball but it is contact and if you give the first penalty against Welbeck you need to give that one, it's just you looking at a little bit of just the same assessment for the two teams, nothing else.

I'm not blaming the referee about the score line, I think Manchester United were clinical, I thought Manchester United were, looked sharp, I thought Manchester United were outstanding in the last half an hour of the game and they won the game in a very good way but, I'm just looking for a little bit of a fair ground to try to perform.

I thought my players were fearless and played with a real arrogance in the first 50 minutes and you need a referee that he can see that the game wants to be played on a level terms.

Roberto last season you got off to a really good start in August and then when you came back from international break you went on that horrific run of losses that put you in trouble for most of the season, how crucial is it going to be now after today's result to ensure it doesn't become a sequence?

Yeah, no, no that's a fair assessment.

I'm not going to lie to you, we really struggle after international breaks because the truth is we've got nine players that they go away on internationals, some of them arrive on Friday for the game on Saturday, some of them got 10 hours and nine hours flights so it is not ideal to prepare for a game but, the 50 minutes that we played today we never had that last season.

I think this is a completely different squad, it's a different team and what we need to do is learn from today, I think we're gonna learn a lot.

I think it would have been all too easy for us to be very defensive minded and not have a proper go and lose 1-0 at the end with a damage limitation performance, I don't like, our teams will never play like that.

We've got a lot out of this performance, it was very brave from certain players to perform in the manner that they did and now we're going into the Fulham game with a real desire and being a better team than we were before we start the game.

# ***Appendix 2***

Evidence to support the notion that the exact meaning of Roberto Martinez's quotes for which he has been charged have in fact been paraphrased or had disparate elements cut together to form a quote which is some way distanced from the exact words he used at the press conference.

Our argument is how can someone be judged on the *interpretation* of their words, rather than the ACTUAL words they said?

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### QUOTE 1

EXACT SOURCE IN CONTEXT: From filmed press conference

QUESTION: Roberto, this referee is only 27-years-old and the FA...*(interruption)*

RM: No but he is very capable, he's a very good referee.

QUESTION: So you don't have any problems with people being fast-tracked?

RM: No, no, no not at all I think it's down to your talent and I've seen this referee in many games, in many big games and he's been outstanding, I just felt today from the first second, for whatever reason, it wasn't going to measure the two teams in the same manner.

ACTUAL QUOTE FROM DAILY MAIL

***Michael Oliver is a very capable referee, who has been outstanding in many big games, but it was clear from the opening minutes that he was not going to measure both teams the same way***

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### QUOTE 2

EXACT SOURCE IN CONTEXT: From filmed press conference

RM: I just feel that when you come to a place like Old Trafford you need a very strong referee that he can measure both teams in the same manner, there were some tackles flying around that if they would have been the other way round, there would have been a couple of red cards and that disappoints you but, that's got nothing to do with the score line.

ACTUAL QUOTE FROM DAILY MAIL

***There were a couple of tackles by United players which, if they had been the other way round, would have been red cards.***

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### QUOTE 3

EXACT SOURCE IN CONTEXT: From Monday Papers transcript

*This quote this is taken from a private written transcript circulated among all the daily newspaper journalists (ie not the Sunday newspapers, so that they have a fresh angle to write on Monday – this is common practice for all Saturday matches). The journalist from the Daily Mail, John Edwards, was not actually present at the conference given by Roberto Martinez after the filmed press conference, and used the transcript (see attachment for full version) as his source.*

RM: And the last challenge by Danny Welbeck, we could argue all day long if you want them tackles in the game but the laws are you cannot tackle like that and it's a red card and it doesn't matter if you are 3-0 up, 3-0 down.

QUESTION: Which other challenge did you think you have been a red?

RM: Well, Scholes had two challenges that were bad challenges, that was probably not a red card, but two yellows and James McArthur gets booked for a very similar situation – I don't understand that judgement with the same challenges for different teams – but I don't want to speak about the referee

ACTUAL QUOTE FROM DAILY MAIL

*Welbeck should have been shown a straight red, and Paul Scholes had two bad challenges that were worthy of yellow cards. We had James McArthur booked for something very similar, yet Scholes got away with both. I cannot understand how those same challenges can be judged in different ways.*

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**QUOTE 4**

EXACT SOURCE IN CONTEXT: From filmed press conference

RM: I've come to United now for three times before that, we had three sending offs in two games, for whatever reason, we don't seem to, to..... just to be measured in the same manner that the team at home and today the penalty, the first penalty is as bad a decision you are going to see in the Premier League

ACTUAL QUOTE – INDEPENDENT

*I have come to United three times before today and for whatever reason we don't seem to be measured in the same manner as the team at home.*