

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

THE FOOTBALL ASSOCIATION

- and -

RAFAEL BENITEZ

Applicant

Respondent

DECISION AND REASONS OF
THE REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION
FOLLOWING A PERSONAL HEARING HELD
ON 13TH OCTOBER 2009

1. Background

1.1 On 16th August 2009, the first day of the 2009/10 FA Premier League season, Tottenham Hotspur FC entertained Liverpool FC. The match, which ended in a 2-1 win for Tottenham, was refereed by Mr. Phil Dowd. The Liverpool goal was scored with a penalty kick, but towards the end of the game two further penalty appeals by Liverpool were turned down by the Referee. Following the game, the Liverpool manager, Mr. Rafael Benitez, attended a post-match interview with the BBC, as he was contractually obliged to, as well as a press-briefing.

1.2 An initial letter was sent by the FA to Mr. Benitez on 17th August 2009 inviting him to respond to certain comments and a gesture that he allegedly made following the game during his interview by the BBC and the post-match press-briefing (as to which, see below). A detailed response, dated 25th August 2009, was sent on behalf of Mr. Benitez by his representatives, Football Factors.

1.3 By letter dated 28th August 2009, Mr. Benitez was charged by the Football Association with misconduct for an alleged breach of FA Rule E3. Mr. Benitez then requested a personal hearing.

2. The basis for the misconduct charge

2.1 There are three limbs to the FA's case which are presented individually and/or cumulatively as evidence of alleged misconduct on the part of Mr. Benitez:

- (i) During his post-match interview with the BBC, Mr. Benitez was questioned about the two Liverpool penalty appeals that were not given. He was asked the question: *"Is that because you feel it's difficult for a referee to give two penalties to the same team in an away game?"* Mr. Benitez responded: *"For this referee, yes"*; and/or
- (ii) Later, at the post-match press briefing, Mr. Benitez was asked the following question: *"Can you get two penalties at an away ground?"* Mr. Benitez's response was: *"No. With this referee, I knew this was impossible"*; and/or
- (iii) Also during the post-match press-briefing, in response to a question regarding his thoughts about the Referee's overall performance, Mr. Benitez responded by taking his glasses out of his pocket and holding them and then putting them away again.

3. The FA's case

3.1 The first and second limbs

- (i) Due to their similarity, these two comments were effectively treated as the same allegation. The FA's case in this regard is that Mr. Benitez implied that the Referee would not award an away side more than one penalty in a game, under any circumstances. In other words, even if a second penalty award was merited to the away side, it would never be given by Mr. Dowd. Although the reason(s) why he might never award more than one penalty were not explored by either of the interviewers or Mr. Benitez himself, the FA contends that anyone listening to or reading his comments would be left with the reasonable impression that Mr. Benitez believed that Mr. Dowd would either: (a) not award a penalty kick on its merits, or (b) that he favoured the home side when considering penalty appeals, or (c) that he does not have the courage to award a penalty to the away side when he should.

3.2 The third limb

- (i) As to his gesture in the post-match briefing, the FA says that whilst it may have been intended by Mr. Benitez to be humorous, the joke was at the expense of Mr. Dowd. The gesture clearly implied that Mr. Dowd needed to wear glasses and that without them he was unable to see properly in order to make correct decisions during the course of a game, as had happened in the game in question.

- 3.3 The misconduct charge against Mr. Benitez must be viewed in the context of the FA's Respect Campaign. Pre-season guidance given to Premier League Clubs by the FA, which Mr. Benitez acknowledged he had received and was aware of, included a section entitled "Media Comments". The section warned that certain types of public comment

may lead to disciplinary charges, particularly where made in respect of match officials. These include an implication of bias, questioning the integrity of the referee, and where a comment is personal in nature such that it causes, or may cause, offence at any time. In respect of all three limbs of the misconduct allegations against Mr. Benitez, the FA characterised them as personal/offensive in nature and constituted improper conduct and/or were likely to bring the game of football into disrepute.

- 3.4 It was neither the FA's case that by either his comments or gesture, Mr. Benitez had alleged or suggested bias on the part of Mr. Dowd, and nor was the case put on the basis that he had questioned the Referee's integrity. Accordingly, the Commission had to consider whether one or more of the three limbs of the charge were of a personal or offensive manner, when judged objectively, as the wording of the relevant section in the Guidance requires.

3. Mr. Benitez's defence

3.1 The first and second limbs of the FA's case

- (i) In relation to the first and second matters, Mr. Benitez states that his meticulous pre-match preparation extends to an analysis of the proposed referee's statistics, including the number of penalties that he has historically given to home and away teams. Mr. Benitez produced OPTA data which supports the submission made on his behalf that, as a matter of record, Mr. Dowd had not awarded more than one penalty to an away side in any of the matches that he has officiated between the 2004/05 season and the present season. Further data showed that he officiated in 111 Premier League matches in the 5 seasons between 2004/05 and 2008/09.

- (ii) In short, Mr. Benitez says that he was simply stating a matter of provable fact when he said what he did during the BBC interview and at the subsequent briefing about Mr. Dowd's record of awarding more than one penalty kick to the away side. His use of the word "*impossible*" in this context merely intended to convey that fact.

3.2 The third limb of the FA's case

- (i) In this regard, Mr. Benitez submits that producing his spectacles from his pocket was simply a light-hearted gesture on his part, intended only to inject some humour into a serious, dour environment. No offence to the Referee was intended and he points to the fact that he made two other jokes during the press-briefing.
- (ii) Mr. Benitez also points to the fact that no misconduct charge was brought by the FA against another Manager who, in a more public and ostentatious way, made a not dissimilar gesture rebuking match officials during a Championship match that took place the same weekend as the Tottenham Hotspur v Liverpool game.

4. The decision of the Commission

4.1 The first and second limbs of the charge

- (i) The FA presented statistical data to the Commission which shows that in the Premier League seasons between 2004/05 and 2008/09, the average number of penalty kicks awarded to home and away sides by Mr. Dowd represents virtually the mean average of his contemporaries. In other words, his record in this regard compares favourably with other top-flight referees. The statistics also reveal that two penalty kicks were awarded to the away side on only four occasions in a total of 1,900 matches, a statistical ratio of 0.002 per match.

- (ii) The Commission received no evidence, statistical or otherwise, to show that Mr. Dowd ought to have awarded the away side more than one penalty kick in any of the matches in which he had officiated since 2004/05. In other words, there is no evidence from which anyone reading the data could reasonably conclude that Mr. Dowd had failed, for whatever reason, to award more than one penalty kick to the away side when two (or more) penalties were merited.

- (iii) The Commission noted that both of the interviewers' questions were framed in general terms. Mr. Benitez was not asked to state whether, as a matter of historical record, Mr Dowd had ever awarded more than one penalty to an away side. Instead, he was initially asked whether he thought that it was "*difficult*" for referees to award more than one penalty to an away side. The suggestion that lay behind the question was that referees might be reluctant to give two penalties to an away side, perhaps for fear of the reaction of the home side and/or its supporters, or for some other reason(s). The FA contends that Mr. Benitez's unqualified response left that impression.

- (iv) However, what did not come across when Mr. Benitez made his comments during the interview and press-briefing is his use of statistical data, most notably Mr. Dowd's record of awarding penalty kicks. The Commission accepts his evidence that when he said what he did, Mr. Benitez was basing his comments on the data that he had considered before the Spurs match. His use of the word "*impossible*" is arguably still capable of implying that he believed that Mr. Dowd would never award more than one penalty to an away team, even if they were so-called 'stonewall' claims, but the Commission accepts Mr. Benitez's claim that that was not his intention.

(v) The FA submits that, irrespective of his intention, it was left open to any reasonable person listening to, or reading the comments made by Mr. Benitez, to infer that they were personal or offensive. It is correct to say that he did not qualify his comments in any way, but the Commission does not consider his failure to do so to be material. Any viewer or listener with a working knowledge of the game would understand that the likelihood of an away side being awarded two or more penalty kicks in a game is very small indeed. Mr. Benitez might arguably have been over-stating the position somewhat when he described the prospects of Mr. Dowd making such an award as “*impossible*”. However, the statistical probability shows the occurrence to be close to impossible and if he had characterised the chance of Mr. Dowd, or any referee, awarding two penalties to the away side as “*extremely unlikely*”, such a description could not be criticised, based on provable data. The difference between that description and the one used by Mr. Benitez is, in the view of the Commission, insufficient in the sense that they each convey, to characterise what Mr. Benitez said as actionable misconduct. The Commission concludes that a person of reasonable stoicism would not have regarded Mr. Benitez’s comments as being of an offensive or personal nature, particularly when it is not the FA’s case that Mr. Benitez alleged bias against Mr. Dowd or impugned his integrity. If any doubt exists in that regard, then the Commission exercises it in favour of Mr. Benitez.

(vi) In arriving at its decision, the Commission further noted that in the course of his comments, Mr. Benitez used the word “*unbelievable*” to describe Mr. Dowd’s failure to award Liverpool at least one further penalty. That particular epithet does not form part of the charges against him and the Commission does not regard it as being materially

any more, or less, offensive than the comments that do form the subject-matter of the misconduct charge. The Commission also had the opportunity of listening to and viewing the entire post-match interviews which it found, in the totality of the comments made by Mr. Benitez, to be balanced in terms of his criticism of his own side's performance.

- (vi) The Commission therefore finds that the first and second limbs of the misconduct charge are not proven.

4.2 The third limb of the charge

- (i) On behalf of Mr. Benitez, Mr. Bean submitted that this aspect of the FA's case is, frankly, ridiculous for the reasons set out above. The Commission rejects that submission. Producing his spectacles may have provoked laughter from the assembled audience, but the joke was at the expense of the Referee. He may not have spoken but, by his gestures, Mr. Benitez was effectively saying that the Referee could not see properly and that had he been wearing glasses his decision-making would have improved. The joke masked a serious point. Objectively, the Commission finds that his conduct in this respect was capable of being regarded as both personal and offensive. It is not an answer to say that referees have been asked where their spectacles are since time immemorial. The use of such words, or their implication by conduct, on the part of a manager/coach in an interview must now be understood to amount to misconduct.
- (ii) Mr. Bean also makes the twin points that the gesture was made in a closed press-room and that another Manager was not charged with misconduct for making an arguably more controversial gesture in front of a crowd of supporters. As to the first of those

arguments, the observations of the journalists present at the press-briefing at which Mr. Benitez made the gesture were disseminated to millions of their readers in their Sunday newspapers. In relation to the second point, whether the FA does, or does not, act consistently in its charging of Managers is not a matter for this Commission on the question of the misconduct charge itself. Its relevance, if any, goes only to mitigation and penalty.

- (iii) The Commission therefore finds that the gesture made by Mr. Benitez at the press-briefing constituted misconduct and a breach of FA Rule E3. The third limb of the FA's case is therefore proven.

5. Penalty

- (i) Mr. Benitez accepted his awareness of the guidance that had been issued to Clubs, including that in relation to media comments, together with its wider context within the Respect Campaign. There are now well-established channels through which managers may address issues of concern with referees, without them being played out in the media glare, notwithstanding any contractual duties they may have or pressures to which they are subjected.
- (ii) Nevertheless, there are a number of significant mitigating factors in favour of Mr. Benitez, most notably his exemplary disciplinary record. The Commission was told that he has not had any misconduct charges against him during his extensive coaching and managerial career spanning twenty-three years at the highest level. We also accept that whilst his gesture at the post-match press briefing made an underlying point, it was meant to be humorous and was without any malicious intent. Additionally, whilst the

Commission finds the gesture to have been personal and offensive, the level of offence caused is likely to have been towards the lower end of the scale.

- (iii) The Commission also takes into account the fact that in response to the initial letter from the FA inviting him to explain his actions, Mr. Benitez apologized unreservedly if an unfavourable interpretation had been placed on his comments, which he had not intended.
- (iv) Taking into account all of the relevant considerations, the Commission concludes that the appropriate penalty in this case is that Mr. Benitez be issued with a warning as to his future conduct in interviews and press-briefings. We further direct that each party shall bear its own costs, save that the hearing fee of £100 paid by Mr. Benitez shall be retained.

Craig Moore

Chairman of the Regulatory Commission

13th October 2009

The Commission comprised:

Craig Moore (Barrister, Independent Chairman)

Mr. J. Pearce (FA Council Panel Member)

Mr. P. Hough (FA Council Panel Member)

Mr. G. Taylor (FA Football Panel Member)

Appearances:

For the FA:

Mr. D. Giovannelli

For Mr. Benitez

Mr. Graham Bean