

**IN THE MATTER OF JOSEPH BARTON OF QUEENS PARK RANGERS FC
BEFORE THE FOOTBALL ASSOCIATION REGULATORY COMMISSION**

Date: 23rd May 2012.

Venue: Wembley Stadium, London.

Participant: Mr Joseph Barton

Match and Competition: Manchester City FC –v- Queens Park Rangers FC
Premier League

Match Venue: Manchester City FC

Date of Match: 13th May 2012

Regulatory Commission: Messrs B. M. Jones [Chairman], P. Elliott MBE [Football Panel Member] and I. Beeks.

Mr M. Ives [Secretary to the Commission].

Present: Mr Joseph Barton

For the Football Association:

Mr M. Johnson.

Ms. A. Graham.

Mr Barton's legal representatives:

Mr N. De Marco (Counsel).

Mr N. Blair (Clintons, Solicitors).

There were two observers on behalf of Mr Barton as follows:

Mr A Taylor – Mr Barton's Commercial advisor

Mr I Taylor – Queens Park Rangers FC Media Manager.

Charge:

Mr Barton was charged for 2 breaches of FA Rule E3 as follows:

- 1) His conduct towards Sergio Agüero as evidenced in the report and email from the Match Referee Mr Dean and video clip amounted to violent conduct.
- 2) His conduct towards Vincent Kompany as evidenced in the report and email from the Match Referee Mr Dean and video clip amounted to violent conduct.

Decision:

Mr Barton admitted the first charge above and denied the second charge and requested the opportunity to attend a Commission for a personal hearing.

Having listened and considered the evidence and all the parties submissions in relation to the 2nd breach, the Commission found that the charge had been proved.

In relation to both cases, Mr Barton was warned as to his future conduct and:

- a. Suspended from all Club football for a period of 8 first team competitive matches. The suspension to run consecutively to the suspension of 4 matches already imposed for the sending off offence involving Mr Tevez.
- b. Fined the sum of £75,000.00
- c. Ordered to pay £1,500.00 towards the costs of the Personal Hearing
- d. The personal hearing fee is to be forfeited.

Reasons:

The Regulatory Commission carefully considered all of the written and oral evidence before it including the various video clips submitted by both parties of the match.

The referee Mr M. Dean gave evidence by video link. Mr Dean had an excellent view of the "Kompany" incident and was close at hand and he stated that he was 100% sure that Mr Barton attempted to head butt Mr Kompany and that his view was unobstructed.

The Commission concur with this view as the video clips show the close proximity of the referee to the incident. Mr Dean confirmed that had the incident taken place in isolation during the match he would have dismissed Mr Barton for violent conduct.

Mr Dean was questioned about the “Tevez” incident for which Mr Barton was dismissed. It was confirmed that neither the referee nor the Assistant saw the alleged incident of Mr Tevez striking Mr Barton although Mr Barton immediately made representations to Mr Dean that is what happened, and such comments by Mr Barton can be clearly seen in the video. The Commission accept that Mr Barton was aggrieved by the action of Mr Tevez and Mr Dean confirmed that had the incident been seen by the officials as shown by the clip supplied by Mr Barton, it would have been an automatic red card. The Commission find that this does not however excuse the subsequent action by Mr Barton in relation to Messrs Kompany or Agüero.

Mr Dean confirmed he did not see Mr Agüero push Mr Barton in the chest but had he done so he would have simply spoken to Mr Agüero about his conduct.

Mr Dean confirmed he did not see Mr Kompany barge Mr Barton at the time but saw it on the video. He considered that to be body checking and would not have sent him off for that as being violent conduct although some may have classed this as improper conduct.

Mr Dean was of the view that Mr Lescott’s involvement amounted to trying to persuade Mr Barton to leave the field of play as did Mr Richards.

The Commission found Mr Dean’s evidence to be truthful and consistent of an experienced referee at the top level.

The Assistant Referee Mr Garratt gave evidence by telephone mainly about the “Tevez” incident. He did not see Mr Tevez strike Mr Barton as it was not in his eye line at the time.

The Commission found Mr Garratt’s brief evidence to be truthful but not particularly relevant to the 2 charges being addressed on the day.

It had been understood by the Commission that Mr Lescott was to attend by video to give evidence but unfortunately was not able to do so and was unlikely to do so in the future.

The Commission had before them an email from him and the same was considered however due to his unavailability to be cross examined the email was given very little weight in the Regulatory Commissions considerations.

Mr Barton gave live evidence to the Commission and was the only witness actually in attendance.

Mr De Marco on behalf of Mr Barton confirmed that he was relying on the two video clips that the FA relied on and did not intend to refer to the others.

He informed the Commission that Mr Barton would say that he cannot really remember if, “in the heat of the moment” Mr Lescott pushed his head and he could not say it was that which caused his head to make the sudden movement seen in the video or if he was trying to free himself from Mr Lescott’s hand.

Mr Barton gave evidence to the Commission with the assistance of the video clips. He maintained that he was trying to make his way off the pitch and that Mr Lescott said to him that “he would see him in the tunnel”. He took this as confrontational and that it was suggested that the matter would be “sorted out” in the tunnel.

In cross examination he maintained that he was barged but was not sure by whom. He was conscious that the club were “fighting for their lives” to remain in the Premier League and it was an important match for Manchester City as they could win the title that day. He confirmed that he was very angry and that he had lost his temper with the situation and he felt there had been an injustice in that Tevez had struck him first. Again the Commission accepted this to be a fair assessment of his state of mind at the time.

He maintained that he did not think that he had an angry reaction to Mr Kompany and that Mr Lescott did push his head towards Mr Kompany, although he could not be certain if it was a push towards Mr Kompany or he was trying to move his head away from Lescott’s hand.

With regard to the Tweets he admitted that he made inaccurate statements regarding the sending off and he appreciated now that he should not have tweeted to his one and a half million twitter followers as he did and which contained lies.

He could not give a satisfactory answer to the Commission when he was asked why Mr Lescott would use Mr Barton’s head as a weapon to attack his own team mate Mr Kompany, which could have caused him injury sufficient for him to leave the field of play and maybe be substituted in their most important match of the Premier League season. Further in doing that Mr Lescott risked being dismissed himself.

The Commission found this line of defence to be unconvincing.

Both parties made representation about the applicable standard of proof to be considered in determining the matter surrounding the Kompany incident.

The Standard of Proof is set out at paragraph 7.3 of the FA Regulations and states as follows:

“The applicable standard of proof shall be the flexible civil standard of the balance of probability. The more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter”.

Mr Johnson on behalf of The Football Association considered the matter to be a straight forward football matter that should not require a greater burden of evidence to prove the matter.

Mr De Marco contended that a greater burden of evidence was required as the matter was a serious one. He then went on to suggest however that if the case was proved against Mr Barton it was only serious enough to warrant an additional one match suspension. That argument appeared to be contradictory against itself and so was not attractive to the Commission.

The Commission having considered both of the arguments considered the matter not to be so serious as to require the greater burden of evidence to prove the matter and was a simple football matter. If the incident had occurred in the match itself it would have resulted in a dismissal and that would carry an automatic three match ban. That indicates the true “seriousness” of the incident in football terms.

However *if* the Commission are wrong on that matter they are firmly of the view that the evidence was sufficiently compelling to allow them to have found the case against Mr Barton proved even applying an enhanced or heightened standard of proof such as that which might be required in the most serious of cases.

Having made that decision the Commission considered the evidence and found the charge in connection to the “Kompany” incident proved.

The Commission having reached that decision listened to the mitigation from Mr De Marco and then had to consider sanction for both the “Aguero” incident which Mr Barton had admitted and for the “Kompany” incident.

The Commission considered the “Aguero” incident was a cold and calculated attack from behind Mr Aguero. It was deliberate and the absolute anger etched in Mr Barton’s face, is most clearly seen in the videos. It was premeditated and without any provocation and could easily have caused Mr Aguero injury and maybe have put him out of the rest of the game. Fortunately he did not suffer any serious injury but he must have been taken very much by surprise and shocked which could have affected his game. The incident was watched by millions of people on television and Mr Barton really had no option other than to admit his guilt and he did so. No great credit can be, or was, given for the admission in this regard.

In Mr Barton’s 11 page, 45 paragraph statement before the Commission he deeply regrets his actions during the match. He apologises to the Commission and to the FA. He says that he is sorry for what he did to Mr Tevez and Mr Aguero but nowhere does he apologise to Mr Aguero for the attack on him.

He clearly has had personal problems in the past and the Commission had his football record before them and which they considered carefully before reaching any decision on sanction.

They considered in detail what mitigation he had together with his statement which clearly shows a side of Mr Barton that the press do not disclose, namely his charity and awareness-raising organisations in which he is involved. Also they were pleased to hear of the success in his rehabilitation on various issues in his personal life. They hope that following on from this case Mr Barton will continue with all of his efforts and come through this ordeal a better person and footballer.

It is true that the second charge related to an attempted head butt, not an actual head butt. That was also considered by the Commission when considering sanction. In the light of the video evidence it was probably only due to the evasive action by Mr Kompany that the “attempt” did not turn into an “actual” head butt. The video clearly shows how very close they were to actual contact being made.

The “Aguero” incident as clearly seen and stated above was considered by the Commission to be more serious than the “Kompany” incident. Taking all the above into account for the “Aguero” incident a five match suspension was deemed appropriate and for the “Kompany” incident a three match suspension was deemed appropriate. We then considered whether a reduction should be made taking account of the totality principle.

However, balancing all aspects of the case we considered that the imposing of an 8 match suspension, a £75,000.00 fine, a warning as to his future conduct, an order to pay £1,500.00 towards the costs of the personal hearing and the loss of the personal hearing fee was an appropriate and proportionate penalty.

This decision is subject to appeal as per the relevant regulations.

B.M. Jones (Chairman)

24th May 2012