

COUNTY FOOTBALL ASSOCIATION
DISCIPLINARY COMMISSION

(on behalf of the Amateur Football Alliance (AFA))

Participant: Kai Clack-Ross [64237780] of Old Whitgiftians Reserves FC (OWR)

Hearing: Non-Personal Hearing

Date: 18/12/ 2019

Incident: Old Whitgiftians Reserves (OWR) v Reigatians Sixth (RS), in the Amateur Football Combination League 7 South, 16th November 2018 ('the Fixture')

THE DECISION AND REASONS OF THE COMMISSION

Disciplinary Commission

1. Mr Lionel Foy (Independent Chairman) was appointed to the Disciplinary Commission.
2. The case was considered at a non-personal hearing sitting alone.

Charge

3. In correspondence dated 27 November 2019, the AFA issued a charge letter alleging that Mr Clack-Ross had engaged in Improper Conduct including the use of foul and abusive language towards the referee, in breach of FA Rule E3.

Rule E3(1) states '*A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour*'. It was specifically set out in the details of this charge that Mr Clack-Ross had used foul and abusive language containing an aggravated reference to sexual orientation and/or race, due to the alleged use of the phrase "bitch nigger" to the referee.

4. It was separately specifically alleged that the words used were aggravated by reference to ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability, in breach of FA Rule E3(2). Rule E3(2) states '*A breach of Rule E3(1) is an "Aggravated Breach" where it includes reference, whether express or implied, to any one or more of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassessment, sexual orientation or disability*'.
5. Mr Clack-Ross accepted the charges and requested a non-personal hearing.

Evidence

6. The Commission had received and reviewed the following documents in advance of the Hearing:
 - a. AFA charge letter, dated 27th November 2019;
 - b. The referee's extraordinary incident report, dated 18th November 2019; where he states that "*...his team were 5-0 down. He commits a bad challenge as the last man and boots the ball away well after the whistle. I caution him. He then gets substituted. On the way off he calls for me, and then makes a cock-sucking gesture. I run over towards the touch line and give him a second caution and a red card. He claps sarcastically and throws his shirt at me. After the game he*

called me a 'bitch nigger' as I was on my way to collect my bag. All of his teammates apologised on his behalf, but it was clearly unacceptable behavior”.

- c. Statement from Kai Clack-Ross dated 18th November 2019 where he states *“...In the game a foul went against me which I perceived to be unfair and kicked the ball out of frustration and received a booking. Frustrated further I made a gesture at the ref as I was subbed and received a red card. Both of which I accept were a fair punishment. After the game I went on the pitch to shake the opponents hand with my teammates telling me to leave the ref alone in which I replied I wasn't going to confront the ref but said insulting words about his performance to them. So while I didn't make any comments to the ref I did make a few comments which I, unfortunately, can't remember about him and his performance. In regards to the racial comment I'm afraid I can't remember what I said but being of mixed heritage can assure you there was no racist intent behind any comments. However, I am aware due to the culture of my family and social circles I do use words that sometimes appear in my language when frustrated”.*
- d. Statement from Andy Setters of RS (role unknown) dated 18th November 2019, who states that *“two players (Terry Carr and Ross Moreria) have indicated that [they] witnessed a player from whitgift - we presume 22 -. This was connected with an incident approximately 5 mins from the end in which their player playing centre back committed a foul and was given a yellow card. He got very aggitated and called the referee a wanker and put his middle finger up towards the referee. He was subbed off by his own team at this time. None of our players reported hearing any racial language”.*
- e. Statement from Michael Tarlton, OWR Secretary, dated 19th November where he states *“towards the end of the game the referee awarded a free kick against Kai...for obstructing an opponent. Kai clearly disagreed by this decision and kicked the ball away in frustration. As a result of this, the referee booked Kai...this frustrated Kai even more and he started sarcastically applauding the referee. Realising that Kai's emotions were clearly running high, our captain decided to substitute Kai so that he could calm down. As Kai walked towards the touchline he starting swearing at the referee, at which point the referee walked over to him, and showed him a red card. More abuse followed from Kai before he completed his walk off the pitch and the game recommenced. One of the phrases Kai used in his outburst was 'bitch n*****r', which I assume is what has appeared in the referee's report.”*
- f. Statement from Ligan Gnanasekaran, OWR Reserve Manager, dated 26th November 2019, where he states *“I was quite far away from the initial incident but noticed that Kai did get quite frustrated and only saw him walking off. I did hear Kai make a few unruly*

comments but this was seemingly due to frustration. Once the match ended, he came back on the pitch to shake hands with players and made a few comments about the ref, which I believe the ref overheard. I did not hear Kai make any racial slurs or comments. I also know his character, and this is not something I believe he would say, even when frustrated”.

- g. Statement from Jay Patel, OWR Reserve Player Manager, dated 26th November 2019, where he states “...the position I play is centre forward and therefore at the time the initial incident happened my back was facing away from it as I was speaking to the opposition goalkeeper and my fellow strike partner. I did however see the moment Kai was sent off and after asking the substitutes why he had been sent off (The first yellow was apparently for kicking the ball away and the second one was apparently for dissent) I spoke to Kai and told him to calm down. I know after the match a number of us told Kai to apologise to the ref however I do not think he had calmed down and was feeling partly at fault for the result. I believe Kai may have continued to speak about the referees performance in a non-complimentary way. Regarding the allegation of racism, although I heard a number of profanities I cannot personally say that I heard anything racist said”.
- h. Further statement from Michael Tarlton, OWR Secretary, dated 2nd December 2019 where he pleaded for leniency, stating that “...I do not believe it was meant as a racist comment, though: Having done some research on the internet, the phrase means 'a man who acts in a bitchy way towards other men' (definition taken from urbandictionary.com); Kai is black and this insult may be that something he would use towards men of his own race without any racist connotation; I believe that Kai had lost control of his emotions, was shouting out any insult that came into his head and this one was of them. I do not believe there was any racist intent, though; The fact that Kai is black and the referee is white clearly does not preclude the possibility of racism, but the term used was one commonly used within the black community without any racist connotations and I do not believe it was meant as a racist remark to the referee”.

Decision

- 7. The following is a summary of the principal submissions considered by the Commission. It does not purport to contain reference to all points considered, however the absence in these reasons of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission carefully considered all the evidence and materials furnished with regard to this case.
- 8. The burden of proof in relation to the charges was on the Amateur FA. The standard was the civil standard of balance of probability. The balance of

probability standard means that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

9. The Commission considered the evidence of the referee as set out in his extraordinary incident report. The referee's evidence was that after being substituted, Mr Clack-Ross made a "*cock sucking gesture*" and after the game called the referee a "*bitch nigger*".
10. The Commission also considered Mr Clack-Ross' written statement where he accepted foul and abusive language but does not remember making racially offensive comments, or comments referencing another's sexuality.
11. The Commission also considered the statements submitted by OWR Club Secretary, Mr Tarlton, who accepted that Mr Clack-Ross used the phrase "*bitch nigger*" in reference to the referee, but argued the factor that decides whether something is a racist comment or not is the sentiment behind it, not the vocabulary used.
12. Lastly, the Commission noted the statements provided by Lingan Gnanasekaran and Jay Patel, who stated they did not hear any racial comments, and that of Andy Setters, whose players similarly did not hear the racial comments.
13. The Commission found the Charges against Mr Clack-Ross proven, namely a breach of rule E3 aggravated by use of an abusive or insulting comment based on race and sexuality.
14. The factors taken into consideration in reaching this conclusion were the following;
 - a. the Commission noted that both the player and the Club Secretary had accepted the Charges.
 - b. on balance, the Commission was persuaded by the Match Official's account of events.
15. As the Charges had been admitted by Mr Clack-Ross, the Commission had only to consider an appropriate sanction.

Sanction

16. Having found the charge proven, the Commission was advised that Mr Clack-Ross had a clean discipline record as to misconduct charges.
17. The Commission referred to the FA's 2019-20 Disciplinary Regulations, in particular the Disciplinary Processes/General Provisions, Section 1, Aggravated Breaches (Rule E3(2), which provides in Sections 46 that whether or not a suspension has been imposed by the Regulatory Commission in respect of an Aggravated Breach that Regulatory Commission:

46.1. must order that the Participant who commits an Aggravated Breach be subject to an education programme, the details of which will be provided to the Participant by The Association;

46.2. may impose a financial penalty or any other sanction that it considers appropriate.

Section 47 further provides that:

47.1. where a Participant commits an Aggravated Breach for the first time, a Regulatory Commission shall impose an immediate suspension of at least six Matches on that Participant. The Regulatory Commission may increase the suspension where additional aggravating factors are present.

47.2 where a Participant commits a second (or further) Aggravated Breach, a Regulatory Commission shall impose an immediate suspension of no fewer than seven Matches. In determining the suspension to be imposed, the Regulatory Commission shall use as an entry point an immediate suspension of 11 Matches. The Regulatory Commission may depart from the entry point where aggravating or mitigating factors are present.

18. The Commission further considered the Football Association Sanction Guidelines which indicated that, for a first offence for an aggravated breach of FA Rule E3(1), a £75 fine should be issued.
19. Taking into account all of the aggravating and mitigating factors present, the Commission decided that a suspension of 6 matches was appropriate.
20. The Commission agreed that it had no compelling reasons present to deviate from a financial penalty of £75, for a first proven aggravated breach of FA Rule E3(1).
21. The Commission ordered Mr Clack - Ross to attend an online FA education course within 4 months of the publication of this Report, of which failure to comply would result in a sine die suspension.
22. There is the right to appeal these decisions, in accordance with FA Regulations.

Lionel Foy
18 December 2019