

THE FA DISCIPLINARY COMMISSION

On behalf of Amateur County Football Association Limited

HEARING (via web ex)

(consolidated with DAMILOLA OYETAN)

OF

Jonathan Neil [61990362]

THE DECISION AND REASONS OF THE COMMISSION

CASE ID: 10138303M

14 September 2020

THE COMMISSION

1. Evans Amoah-Nyamekye – (Chair)
2. P Sowton
3. Mark freedman

SUMMARY OF DECISION

The Commission found two charges of breaches of FA Rule E3:

- 1) improper conduct including foul and abusive language,
- 2) improper conduct being aggravated by reference to a person's :- Race, colour, ethnic origin contrary to Rule E3(2).

by way of corroborating evidence **PROVED** against Jonathan Neil in relation to improper conduct but **NOT PROVED** in relation to the aggravated element.

The case against Damilola Oyetan was found proved.

After having considered the seriousness of the incident, the disciplinary record, the mitigating and aggravating factors, the guidelines sanctions under FA Rule E3 and the Disciplinary Sanctions Guidelines issued by the FA, the Commission decided not to increase the sanction from the threshold.

Accordingly, for both players, the Commission imposed a suspension of 2 matches for the totality of the improper conduct charges. The Commission also imposed a fine of £20.

The reasons for the decision are stated in full below.

INTRODUCTION

1. On 1 February 2020, a match between Enfield Old Grammarians v UCL Academicals Reserves took place.
2. In the charges, it is alleged that Jonathan Neil used improper conduct aggravated by a person's race, ethnic origin, colour. The aggravated conduct he is alleged to have used is the word "*Nigger*".
3. In the charges Damilola Oyetan was charged with Improper conduct (including violent conduct and threatening and/or abusive language/behaviour).
4. We understand that Jonathan Neil and Damilola Oyetan had received the documents.
5. The case was presented before a Disciplinary Commission appointed by The Football Association ("The FA") as a personal hearing via web ex.

THE CHARGE

6. Jonathan Neil two charges of breaches of FA Rule E3:
 - 1) improper conduct including foul and abusive language,
 - 2) improper conduct being aggravated by reference to a person's ethnic origin, colour, race, nationality pursuant to Rule E3(2).

Damilola Oyetan was charged with Improper conduct (including violent conduct and threatening and/or abusive language/behaviour).

THE PLEA

7. On whole game system the entry indicates that Jonathan Neil and Damilola Oyetan denied the charges and pleaded not guilty the case proceeded on that basis.

THE FA RULES

The applicable FA Rule E3 states:

GENERAL BEHAVIOUR

8. *E3 (1) 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 a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.*

E3 (2) A breach of Rule E3(1) is an "Aggravated Breach" where it includes a reference, whether express or implied, to any one or more of the following :- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

Should the Regulatory Commission find that an "Aggravated Breach" of Rule E3(1) is proven, then the commission will be bound to impose a suspension of at least six matches, pursuant to FA Rule E3(2).

In accordance with The FA Sanction Guidelines, if a Commission find this charge proven, they will be required to decide whether they feel the proven misconduct should be classified as a low, medium or high level of seriousness. When reaching any decision, the Commission will take into account any aggravating or mitigating factors.

The FA's has recommended sanction guidelines for the Improper conduct for aggravated breaches.

THE COMMISSION

9. The following members were appointed to the Disciplinary Commission (“the Commission”, We/us”) to hear the case:
 1. **Evans Amoah-Nyamekye – (Chair)**
 2. **P Sowton**
 3. **Mark freedman**

THE HEARING

10. The hearing of the charges (the “Hearing”) took place by chair alone on 14 September 2020.
11. The response from both participants confirmed that he had been provided with all the statements and evidence with which we had been provided. Accordingly, Jonathan Neil had fair notice of the allegation made against him.
12. The following is a record of the salient points which we the Commission considered and is not intended to be and should not be taken as a verbatim record of the evidence considered.
13. In advance of the Hearing we had received and read the bundle of documents.

THE COUNTY FA'S CASE

14. In the charges, it is alleged that Jonathan Neil used improper conduct and the word '*Nigger*' which is deemed improper giving reference to a person's ethnic origin, colour and or race.
15. Damilola Oyetan was charged with Improper conduct (including violent conduct and threatening and/or abusive language/behaviour).

ASSESSMENT OF GERRY FRANKLIN'S EVIDENCE – MATCH REFEREE

16. The match referee states:

Fixture:	UCL Academicals Reserves v Enfield Old Grammarians Reserves on 01/02/2020
Competition:	Amateur Football Combination, Intermediate North
Offender:	Jonathan Neill
Club:	Enfield Old Grammarians
Incident:	Extraordinary Incident relating to Misconduct

I, as the Referee am submitting the following extraordinary incident report relating to Misconduct.

Names of Assistant Referees (were neutral and involved in the Report):

DURING A BREAK IN PLAY IN THE SECOND HALF WHEN I HAD TO BRING THE 2 SKIPPERS TOGETHER TO CALM DOWN THE OVER APPEALING WHICH WAS BUILDING UP. MY ATTENTION WAS DRAWN TO A MINOR SCUFFLE AROUND 30YDS AWAY. AS I APPROACHED THIS ONE OF THE UCL PLAYERS ALLEGED A RACIST COMMENT HAD BEEN USED BY AN OLD GRAMMERIAN PLAYER. THIS HAD HAPPENED OUT OF MY EARSHOT. AFTER THE GAME I TALKED TO THE UCL SKIPPER WHO GAVE ME THE NUMBER OF THE ENFIELD PLAYER FROM WITNESSES OF THE UCL PLAYERS . HIS NUMBER WAS 4 [JONNY NNEILL] THE WITNESSES CLAIMED HE CALLED THEIR BLACK PLAYER A NIGGER ...GERRY FRANKLIN REFEREE

17. The Commission concluded that the report was clear.
18. The Commission concluded that the charge report did not assist in concluding that Jonathan Neil was responsible for such aggravated improper conduct.

ASSESSMENT OF ETHU CRORIE EVIDENCE

19. In the written statement it states:

I was playing for another UCL Academicals team on the day of the match in question. I was approached, after the game, by the captain of UCL Academicals 2nds. Stuart Richards told me that there had been an incident of racist abuse towards Damilola Oyetan. Mr Richards told me that Mr Oyetan had not heard it but it had been witnessed by another player and by members of the opposition team. Mr Richards told me that there had been an apology by the player in question. Mr Richards told me that the referee had been informed of the incident but had been unable to take action against the player involved as the referee, Mr Franklin, had not heard the comment being made.

I asked Mr Richards to explain what had happened in writing. After the game, Martin Rankin, a committee member, sent an email to Enfield Old Grammarians setting out what had happened and asking for action to be taken against the player in question. The player had been identified by name immediately after the game. Enfield Old Grammarians have not responded at all.

I mention this background to show that the incident of disgraceful racist behaviour was reported immediately to the referee during the game, then, immediately after the game to me as President of the club and then, shortly afterwards, to Enfield Old Grammarians.

It is disappointing to say the least that the player in question has responded by making unfounded allegations against the victim. This is unacceptable. It is clearly invented to deflect blame. If these allegations were based on fact then it is extraordinary that the player failed to raise it with the referee, his club, the AFA or with UCL Academicals. We have not received anything from the club or from the player asserting that any of our players, let alone the victim of the racist abuse, did anything untoward. It is no coincidence that these allegations were only made once the player became aware of the AFA investigation into his actions.

In addition to any action taken against the player for his racist language, this misguided attempt to mislead the disciplinary tribunal by making untruthful accusations against the victim of racist abuse should be dealt with in the most severe terms. False allegations of, in this case, homophobic or xenophobic abuse cannot be tolerated.

20. The Commission took the view that this confirmed that Damilola (victim) did not hear the alleged comments.

ASSESSMENT OF DAMILOLA OYETAN'S EVIDENCE

21. In his statement Damilola stated:

The game took place at our home ground, Shenley (Bell Lane AL2 1BZ), on Saturday 1st February. Kick-off was 2pm, the racist incident took place roughly 80 minutes in to the game.

I was having a verbal argument with number 4 (Jonny Neill) over a bad tackle that his fellow defender had put in moments before and we got separated by a few of our respective players. Some of my teammates (and his) pulled me away in attempt to diffuse the situation while a few of his teammates did the same along with my teammate, Abban Magos, who was trying to calm him down while he was shouting at me. Seconds later, Abban told me he heard the defender shout something racist at me and subsequently tried to bring the referee's attention to it.

Having been pulled away from the situation, I had not heard it.

I told the number 4 that he is lucky that the referee or myself had not heard what he had said because he would have been sent off or I would have walked off the pitch as I felt it was unacceptable.

Later on during the game, he attempted to apologise to me saying "I am sorry for what I said" while trying to shake my hand.

I refused his handshake and said nothing back.

22. Damilola also confirmed that he did not hear the racist comments during live evidence.

23. Damilola did confirm that there was a lot of pushing and shoving resulting in him receiving and giving a slap to the face.

24. Damilola wanted to introduce video evidence of a witness named as Abban who was said not to be available to attend the hearing. The Commission rejected that request as the identify and circumstances of the footage could not be verified.

25. The Commission concluded that such contact amounted to improper conduct, on behalf of both players.

ASSESSMENT OF THE EVIDENCE OF STUART RICHARDS

26. In his statement Mr Richards states:

The game took place at our home ground, Shenley (Bell Lane AL2 1BZ), on Saturday 1st feb. Kick-off was 2pm, the racist incident took place roughly 80 minutes in to the game.

There had been a minor scuffle following a perceived bad tackle from an Enfield player, and the referee had taken me and the opposing captain aside to try and calm things down. Whilst he was talking to us, the scuffle continued 5-7 yards away. A UCL player, Abban Magos, then approached to interrupt our conversation with the referee in order to inform us that an Enfield player (number 4, Jonny Neill) had said something racist towards an Academicals player, Damilola Oyetan. Mr Oyetan did not hear the insult when it was made, but when informed immediately afterwards, confronted Mr Neill, who then apologised for what he had said.

Having not heard the remark, the referee took no action. Mr Magos reported that a handful of Enfield players would, however, have heard it. But unfortunately, no action as taken by them either.

27. The Commission took the view that the evidence further corroborated the evidence that Damilola did not hear the alleged words despite being close to Jonathan Neil.

28. Mr Richards stated that he heard the words 'Nigger bastard'. The Commission noted that there was no other evidence that supported that combination of words being used.

THE PARTICIPANT'S CASE

ASSESSMENT OF THE STATEMENT OF JONATHAN NEIL

29. The Commission concluded that the response from Jonathan Neil was genuine. Jonathan Neil states:

I, (Jonathan Neill), will state:

I have already provided a clear account of what happened, as have other members of my team, which unfortunately seems to have been largely dismissed. I find it extremely disappointing that although Mr Oyetan was aggressive and confrontational throughout the game, and ultimately violent by punching me in the face, it seems his club and the AFA have made him out to be an innocent victim.

I have never met Mr Oyetan before, I have never played against him before, and certainly had no issue with him in any way that could be considered prejudice. I absolutely did not have a problem whatsoever with his race or nationality. The sole grievance I have with this player is his ridiculous, aggressive and immature behaviour throughout the game which simply does not belong on a football pitch. He lost his temper multiple times, ultimately leading him to assault me. I have also previously highlighted throughout the game that he was generally abusive and confrontational towards many players, with his team mates and referee speaking to him on a number of occasions about this. He mocked my accent multiple times, as well as blowing kisses towards me and constantly calling me a "pretty boy".

I also find it difficult to understand how a charge can be brought against me, when I have clearly vehemently denied any accusation against me, and have my version of events backed up by many witnesses.

There can be no grounds to charge me where there is absolutely no evidence whatsoever. We have one player within a large group of people who claims he heard me make a racist remark, after I was assaulted. I find it very strange that within a large group of players huddled in the same area, that not one other person on either team can verify this claim.

I would also like to highlight that it is unacceptable how long this investigation has gone on for. It has now been three weeks since this game and yet there is still no resolution. I have not played for three weeks while this investigation is pending, which I understand entirely that this is correct and normal protocol for my club to follow during an ongoing investigation, however now I have been unable to play for three weeks, and for what? Because I was assaulted and then wrongly accused of something without anything whatsoever to back up these claims? I cannot see how this is in any way a fair process.

30. The Commission concluded that Jonathan Neil accepted that he may have pushed Damilola first, however the Commission did not accept Jonathan Neil used the word 'nigger'.
31. When questioned by Damilola, Jonathan Neil rejected that he was the aggressor.
32. The majority of the Commission concluded that both Damilola Oyetan and Jonathan Neil used improper conduct.

THE COMMISSION'S CONCLUSIONS

33. The Commission found the two charges of breaches of FA Rule E3 improper conduct by way corroborating evidence **proved** against Jonathan Neil and Damilola Oyetan.
34. The reasonable inferences which could be drawn are from the circumstances of the case were namely:
- 34.1. Jonathan Neil and Damilola Oyetan accepted using improper conduct. Jonathan Neil had already apologised for such conduct as per his evidence given to the Commission.
- 34.2. The evidence was fully tested, and the Commission was satisfied that Jonathan Neil and Damilola Oyetan was responsible for the alleged conduct.
- 34.3. The Commission concluded that the word 'nigger' was not used by Jonathan Neil.

BURDEN OF PROOF

- 34.4. The applicable standard of proof required for this case is the civil standard of the balance of probability, meaning more likely than not.
- 34.5. An incident is discriminatory when it is perceived by the victim or any other person to be discriminatory.
- 34.6. The Commission took the view that the allegation and the evidence supporting that allegation needed to be tested. The Commission considered the possible innocent use and interpretation of the word versus any possible misinterpretation.
- 34.7. The Commission considered the context in which the comments were used, the intent behind the comments used and gave consideration to all the circumstances surrounding the use of the comments whilst considering the effect of the comments used.

OUR FINDINGS OF FACT

35. On the balance of the burden required, The Commission are satisfied to make the following findings of fact that:

- 35.1. On 1 February 2020, a match between Enfield Old Grammarians v UCL Academicals Reserves took place.

The Commission found:

- 35.2. The case against Jonathan Neil in relation to two charges of breaches of FA Rule E3:
- I. improper conduct including foul and abusive language, **PROVEN**
 - II. improper conduct being aggravated by reference to a person's gender pursuant to Rule E3(2). **NOT PROVEN**

The case of Damilola Oyetan was found to be proved.

THE DECISION

36. Having read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
37. We have to assess the reliability of the witness (that is whether, even although a witness may be attempting to tell the truth their evidence might not be relied upon for differing reasons) and the credibility of a witness (that is whether a witness is attempting to tell the truth). Of course, such an assessment is difficult to make if the evidence being considered is in written form.
38. Ultimately it is for the Commission to accept or reject each piece of evidence we are considering. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the discrepancies are important and leads assistance to the determination of the balance of probabilities.
39. Having decided which evidence, we accept and rejected; we then have to decide on the balance of probabilities if the alleged breach of the FA Rule is established.
40. The Commission decided that on the balance of probabilities Jonathan Neil did use the words and conduct alleged.
41. All of the evidence provided was considered.

MITIGATION

34 There was no mitigation formally provided by Jonathan Neil and Damilola Oyetan to the allegations. We applied an appropriate weight to this factor.

THE SANCTION

35 The Commission was then required to consider the appropriate sanction and penalty. In considering the appropriate sanction and penalty the Commission members discussed the severity of the offence.

36 After having considered the seriousness of the incident as medium given the multiple comments, the disciplinary record, the mitigating and aggravating factors, the guidelines sanctions under FA Rule E3 and the Disciplinary Sanctions Guidelines issued by the FA, the Commission decided not to increase the sanction from the threshold.

37 Accordingly, on both players, the Commission imposed a suspension of 2 matches for the totality of the improper conduct charges. The Commission also imposed a fine of £20.

CONCLUSION

38 This decision is subject to the right of appeal under the relevant FA rules and Regulations.

Signed The Commission:

THE COMMISSION

1. Evans Amoah-Nyamekye – (Chair)
2. P Sowton
3. Mark freedman

14 September 2020

