

THE FA DISCIPLINARY COMMISSION

On behalf Amateur Football Alliance Limited

CHAIR ALONE

NON-PERSONAL - HEARING

OF

Gaston Guei [1394530]

THE DECISION AND REASONS OF THE COMMISSION

CASE ID: 10360834M

19 May 2021

THE COMMISSION

- 1. Evans Amoah-Nyamekye – (Chair alone)**

SUMMARY OF DECISION

The Commission found the charges of breaches of FA Rule E3.1:

- 1) Improper Conduct against a Match Official (including abusive language/behaviour).
- 2) improper conduct being aggravated by reference to a person's disability pursuant to Rule E3.2.

by way of partial admission and corroborating evidence **proved** against Gaston Guei.

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 to increase the sanction from the minimum threshold.

Accordingly, the Commission imposed a suspension of 7 matches for the totality of the improper conduct charges. The Commission also imposed a fine of £75.

The Commission also imposed the mandatory order for Gaston Guei to undergo a FA Equality online Education Course within four (4) months. Should he fail to do so he is to be suspended from all footballing activities until such time as he does undertake the course, details of which will be provided to him.

The Commission also imposed 7 disciplinary points.

The reasons for the decision are stated in full below.

INTRODUCTION

1. On 10 April 2021, a match between Old Manorians Reserves v Bealonians Football Club Reserves took place.
2. In the details of the charge, it is alleged that Gaston Guei used *abusive and/or indecent and/or insulting language contrary to FA Rule E3.1, and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to disability*. This refers to the comment(s) *"you are mentally deranged"*.
3. According to the papers supplied, the discriminatory language that supports the alleged aggravated breach included the use of the terms *"you are mentally deranged"* towards the match official.
4. We understand that Gaston Guei had received the documents.
5. The case was presented before a Disciplinary Commission appointed by The Football Association ("The FA") as a non-personal hearing chair alone.

THE CHARGE

6. Gaston Guei was charged with two charges of breaches of FA Rule E3:
 - I. Charge 1: FA Rule E3.1 - Improper Conduct against a Match Official (including abusive language/ behaviour).
 - II. Charge 2: FA Rule E3.2 - Improper Conduct - aggravated by a person's Disability.

THE PLEA

7. On the whole game system the entry indicates that Gaston Guei accepted the charge and pleaded guilty on 13 May 2021. However, the response from Gaston Guei was a qualified response in that he does not fully accept the whole case against him. The case was presented to the Commission as a guilty plea, but the Commission decided to proceed on the basis of a not guilty plea.

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.

OFFENCES AGAINST MATCH OFFICIALS

Categories of Offence

96 The three categories of offence against Match Officials are as follows:

96.1 Threatening behaviour: words or action that cause the Match Official to believe that they are being threatened;

96.2 Physical contact or attempted physical contact: examples include but are not limited to: pushing the Match Official, pulling the Match Official (or their clothing or equipment), barging or kicking the ball at a Match Official (causing no injury) and/or attempting to make physical contact with the Match Official (for example, attempting to strike, kick, butt, barge or kick the ball at the Match Official); and

96.3 Assault: acting in a manner which results in an injury to the Match Official. This includes spitting at the Match Official (whether it connects or not).

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 alone)

THE HEARING

10. The hearing of the charges (the “Hearing”) took place by chair alone on 19 May 2021.

11. The response from Gaston Guei confirmed that had been provided with all the statements and evidence with which we had been provided. Accordingly, Gaston Guei had fair notice of the allegation made against him.

12. The following is a record of the salient points which 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 Gaston Guei said to the match official “*you are mentally deranged*”.

ASSESSMENT OF CHRISTOPHER BEAMENT'S EVIDENCE

15. The Commission concluded that the statement of CHRISTOPHER BEAMENT was trying to be helpful, like other statements in this case it was unable to be vigorously tested by the Commission.

16. In his match referee report he states ‘

‘I blew the whistle at the end of the second game, of a double header fixture. Some of the Old Manorian players wanted to express their displeasure at my officiating. The Old Manorian captain did his best to usher his players in the opposite direction of where I was standing. However 3 players got within 5 metres of me and said in a loud voice. Player wearing the no 2 shirt shouted that I was a 'shit ref'. Player wearing the no 11 shirt shouted I was 'embarrassing'. And player wearing the no 12 shirt shouted I was 'mentally deranged'. I thanked them for their loud comments and said I would be reporting the incidents. There may well have been other comments, but these are the ones I heard and recorded. I did not get their names as I did not want to inflame or escalate the situation.’

17. The Commission took the view that CHRISTOPHER BEAMENT heard the alleged comments and appears to have made the notes contemporaneously.

18. The team sheet was provided, and Gaston Guei was identified as wearing number 12.

19. The Commission accepted the evidence of as a truthful and reliable statement.

ASSESSMENT OF MARVIN BLAKE'S EVIDENCE

20. The Commission concluded that the statement of Marvin Blake was trying to be helpful, like other statements in this case it was unable to be vigorously tested by the Commission.

21. Marvin Blake states that the:

'Referee spoke to our players before the game about his expectations of us and how he would officiate the double header, he reiterated that he would communicate directly through our captain if there was any dialogue or decisions that required addressing during the game. The pace of the game and positioning of the referee caused reactions from both teams throughout. The game with the stop start resulted in the game being played at pedestrian pace, there was a reluctance to communicate with our captain even though this was stressed prior to kick off. To extend on the referees positioning; one of which was his decision to award a penalty to the opposition while unsighted. There was a coming together with one of our players and opposition right wing back clearly outside of the box resulting in their player being on the ground. Both teams first instinct was the players safety and he indicated that he was okay. A penalty was immediately awarded and the referee walked towards the spot to the disbelief of both teams. The coming together was out the box and discussions amongst both teams while the team captains communicated with the referee took place. It was only due to the sportsmanship from their right wing back as the referee spoke with him about what had happened and honesty from the opposition team that the decision was rescinded. The referee had visibly been wearing two watches for the days' double header, however his whistle had been blown to end one of the halves after only 20 minutes with him walking from the pitch, again to the disbelief from the teams. It was after a reminder to him about the timing that he blew his whistle again for the remainder of the half to continue play. I recall some of our players commenting from a distance about their thoughts on the referee performance and that we would file a report. They were quickly reminded to refrain from communicating immediately from our captain.'

22. The Commission took the view that Marvin Blake was close enough to have heard the comments about the referees performance.

ASSESSMENT OF GABRIEL M'S EVIDENCE

23. Mr Gabriel M was the second team captain he states: *'I do recall the referee having words with a number of players from both sides after the game & I know all my players were not happy with his performance on the day but I walked off the pitch & didn't witness the said incident! However if something did happen as he said Im a bit perplexed as to why he did not mention it to me or the manager because during both matches when he made so many questionable decisions all through the match we were communicating with each other & during that time my players still managed to control themselves!'*

24. The Commission found this as confirmation that he did not see the incident.

THE PARTICIPANT'S CASE**ASSESSMENT OF THE STATEMENT OF GASTON GUEI**

25. The Commission concluded that the response from the investigation conducted by the Amateur FA, confirmed that Gaston Guei was number 12.

26. Gaston Guei states:

'My name is Gaston Guei, wearing number 12 playing for Old manorians FC 2 against Bealonians FC on Saturday 10/4/2021. It would have been a good double header match, but the referee ruined it by his consistent bad decisions against us. Any good referee, should never have his decision reversed by any player. Fair play to Bealonians FC, for their honesty. When they fouled us, and the referee gave them the free kicks, they gave us the ball back, as they knew it was the wrong decision made by the referee. Bealonians's defender kicked one of our striker in the penalty box, which was a obvious penalty and their defenders shouted "sorry mate, I didn't mean to kick you" right next to the referee and he gave them a free kick against us. Shortly we had a goal kicked off the line, when I started celebrating and the referee looked at me and said he didn't see anything. I asked him if he was mentally ok to be making such decisions against us. He gave me a yellow card for this. His decisions got worse as the game went on and I wanted to stop playing, because I refused to watch myself and teammates being unfairly treated for 120 minutes, by this individual. He stopped the second game 20 minutes early, without even realising. Luckily our manager Marvin, asked him why he stopped the game. He responded, "oh sorry I made a mistake".. All in all this man was the worst, inconsistent, unfair, rude, disrespectful, careless and heartless referee in my 28 years of playing football. I pray, he doesn't EVER take charge of any games I am involved in. I love playing football, I don't want a referee to favour one team over the other, no matter what person problems he is going through.

27. The Commission concluded that Gaston Guei used using improper conduct by using abusive language/ behaviour being aggravated by reference to a person's disability pursuant to Rule E3.2. The Commission noted the word '*mentally*' was accepted by Gaston Guei to have been used.

28. The Commission also noted he accepted the charge.

THE COMMISSION'S CONCLUSIONS

29. The Commission found the two charges of breaches of FA Rule E3 improper conduct by way of partial admission and corroborating evidence **proved** against Gaston Guei.
30. The reasonable inferences which could be drawn are from the circumstances of the case were namely:
- 30.1. Gaston Guei accepted using improper conduct by using abusive language/behaviour being aggravated by reference to a person's disability pursuant to Rule E3.2. On whole game system the entry indicates that Gaston Guei accepted the charge and pleaded guilty on 13 May 2021.
- 30.2. The evidence was fully tested, and the Commission was satisfied that Gaston Guei was identified correctly by his shirt number 12.
- 30.3. Gaston Guei used the words '*you are mentally deranged*' towards the match referee. '

BURDEN OF PROOF

- 30.4. The applicable standard of proof required for this case is the civil standard of the balance of probability, meaning more likely than not.
- 30.5. An incident is discriminatory when it is perceived by the victim or any other person to be discriminatory.
- 30.6. 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.
- 30.7. 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

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

- 31.1. On 10 April 2021, a match between Old Manorians Reserves v Bealonians Football Club Reserves took place.

The Commission found:

- 31.2. The case proved against Gaston Guei in relation to the charges of breaches of FA Rule E3:
- I. improper conduct against a match official including abusive language/ behaviour E.3.1
 - II. improper conduct being aggravated by reference to a person's disability pursuant to Rule E3.2.
 - III. Gaston Guei used the words '*you are mentally deranged*' towards the match referee.

THE DECISION

32. Having read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
33. 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.
34. 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.
35. 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.
36. The Commission decided that on the balance of probabilities Gaston Guei did use the words and conduct alleged.
37. All of the evidence provided was considered.

MITIGATION

34 There was a statement formally provided by Gaston Guei to the allegations. We applied an appropriate weight to this factor. The Commission took into account the plea of guilty.

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-low, the disciplinary record, Gaston Guei having one previous misconduct against a match official recorded in 2017, 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, the Commission imposed a suspension of 7 matches for the totality of the improper conduct charges. The Commission also imposed a fine of £75.

38 The Commission also imposed the mandatory order for Gaston Guei to undergo a FA Equality online Education Course within four (4) months. Should he fail to do so he is to be suspended from all footballing activities until such time as he does undertake the course, details of which will be provided to him.

39 The Commission also imposed 7 disciplinary points.

CONCLUSION

40 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 alone)

19 May 2021

