

FA NATIONAL SERIOUS CASE PANEL
DISCIPLINARY COMMISSION
on behalf of Gloucestershire Football Association

PERSONAL HEARING

of

Mr LEVI SENIOR

Tytherington Rocks Saturday FC

[Case ID: 10456404M]

THE DECISION AND REASONS OF THE COMMISSION

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Introduction

1. On 07 August 2021, Tytherington Rocks FC (“Tytherington”, the “Club”) Saturday First team, played a Western Football League, Division One, away fixture against Bishop Sutton FC (“Bishop Sutton”) First team – collectively the “match”.
2. The Match Officials were Mr Jack Clench (Referee), Mr Martin Pearse (Assistant Referee) and Mr Oliver Loveridge (Assistant Referee). The three Match Officials submitted reports of a Tytherington player’s conduct from this match.
3. Gloucestershire Football Association (“Gloucestershire FA”) investigated the reported incident.

The Charge

4. On 24 August 2021, Gloucestershire FA charged Mr Levi Senior, a Tytherington player:
 - 4.1. with misconduct for a breach of FA Rule E3 – Improper Conduct against a Match Official (including physical contact or attempted physical contact and threatening and/or abusive language/behaviour), contrary to FA Rule E3.1, (Charge 1);
 - 4.2. with an Alternate Charge of misconduct for a breach of FA Rule E3 – Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour), contrary to FA Rule E3.1, (Alternate Charge 1); and
 - 4.3. it was alleged that Mr Senior had attempted to head-butt the Referee after being dismissed from the field of play during the match, which constitutes Attempted Physical Contact or Attempted Threatening and Abusive Behaviour against a Match Official as defined in the FA Regulations.
5. Gloucestershire FA advised in the charge letter that, due to the serious nature of the offence, Mr Senior was immediately suspended from all football and football activities until his case had been dealt with by a disciplinary commission.

6. The relevant section of FA Rule E3 states¹:

“E3.1 A Participant shall at all times act in the best interest 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.

[...]”

7. The *Physical Contact or Attempted Physical Contact* under *Offences against Match Officials* in the Disciplinary Regulations states²:

“96.2 Physical contact or attempted physical contact: physical actions (or attempted actions) that are unlikely to cause injury to the Match Official but are nevertheless confrontational, examples include but are not limited to: pushing the Match Official or pulling the Match Official (or their clothing or equipment); and

[...]”

8. Gloucestershire FA included with the charge letter the evidence that they intended to rely on in this case.

9. Mr Senior was required to respond to his charges by 31 August 2021.

The Reply

10. On 06 September 2021, Mr Senior responded by denying all his charges and requested to attend a Personal Hearing.

11. A letter, dated 06 September 2021, from the Club Secretary, Mr R.B. Whittaker, and an undated witness statement from Mr Nathan Croot, the Club Captain, were submitted with the response to the charges.

The Commission

12. The following members of the FA National Serious Case Panel were appointed by The Football Association (“The FA”) to this Discipline Commission (the “Commission”, “we/us”):

¹ p. 124 of FA Handbook 2021/22

² p. 194 of FA Handbook 2021/22

Mr Thura KT Win (Chairman);

Mr Andy Chaplin; and

Mr Steve Francis.

13. Mrs Debbie Sowton, a member of the FA National Secretary Panel and from Hampshire FA, acted as the Secretary to the Commission.

The Hearing & Evidence

14. We convened at 7:00pm on 22 September 2021 via videoconference for this Personal Hearing (the “Hearing”).
15. We had received and read the bundle of documents and viewed the video clip, submitted in evidence on behalf of Mr Senior, multiple times, both in normal speed and in slow motion, prior to the Hearing.
16. The following is a summary of the principal submissions provided to us. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that we did not take such point, or submission, into consideration when we determined the matter. For the avoidance of doubt, we have carefully considered all the evidence and materials furnished with regard to these cases.
17. The Hearing was attended by:
- 17.1. Mr Senior;
- 17.2. as witness for the County FA in support of the charges:
- 17.2.1. Mr Jack Clench, the Referee; and
- 17.2.2. Mr Martin Pearse, the senior Assistant Referee;
- 17.3. as witnesses for Mr Senior in defence of his charges:
- 17.3.1. Mr Jake Edwards, the Club Assistant Manager;
- 17.3.2. Mr Troy Monks, the Club Chairman; and
- 17.3.3. Mr Nathan Croot, the Club Captain.

18. During the case management process at the start of the Hearing, we explained to Mr Senior, and asked what was in dispute, in order that everyone can focus on the evidence in relation to the disputed issues. Mr Senior told us that he swore at the Referee but did not, or made attempt to, head-butt the Referee.
19. Mr Clench, the Referee, was the first witness to give live evidence. Mr Clench confirmed his report, dated 09 August 2021, in which he stated (we quote):
“After being shown the red card, Levi Senior (the player dismissed) made his way towards me saying ‘you are a fucking joke’. As he reached my immediate vicinity he lowered his head towards me before pulling away at the last possible moment. He then left the field of play. I consider it as a threat at the time as he walked towards me, I genuinely thought he was going to head butt me. As I said he got extremely close to the side of my face /head and withdrew as he walked past me.”
20. During his live evidence, Mr Clench told us that: he had only made one report two days after the match; after the red card, Mr Senior made his way towards him from four or five yards; Mr Senior is taller than him, Mr Senior ducked down a bit; no words were exchanged then; he stayed looking at Mr Senior; Mr Senior got to about a couple of inches from his face and pulled away; there was no contact; he thought Mr Senior was going to head butt him, but he stood his ground and did not move; there were a few players around and he could not move in an evasive reaction; no benefit to react and he said nothing to add when Mr Senior suggested it would be natural instinct to move out of the way; he disagreed with the version of events being put forward by Mr Senior; and the comment, which Mr Senior admitted he said was *“Ref, that’s fucking shit”*, was not what was said, but it was as reported by him.
21. Mr Pearse, the senior Assistant Referee, was next to give live evidence. Mr Pearse confirmed his report, dated 18 August 2021, in which he stated (we quote):
“I was the Senior Assistant Referee and I saw Levi Senior commit a foul which resulted in a second yellow card for the offence. I did not hear or see any reaction towards the Referee and only knew that the referee, Jack Clench, felt that Levi Senior acted in a threatening manner, after the game in the changing room, when Jack mentioned it.”
22. During his live evidence, Mr Pearse told us that: he made the report on 18 August

2021 as it slipped his mind and he was reminded to submit his report; the incident was around the centre circle and he was quite away from the incident, about 30m away on the dugouts side; he was not aware of the incident at the time and did not witness it himself first-hand; the Referee told both Assistant Referees afterwards in the changing room; the other Assistant Referee did not give the impression that he witnessed it first-hand either when it was being told by the Referee; he did not notice the Referee being shaken-up by the incident and there was no impact on the Referee's performance for the remainder of the match, after the incident.

23. Mr Loveridge, the other Assistant Referee, was unable to attend the Hearing and, therefore, we were unable to test his evidence that he had submitted in a report, dated 17 August 2021. We would put appropriate weight to that evidence.
24. That concluded the evidence in support of the charges.
25. Mr Senior was next to give live evidence. Mr Senior had submitted a statement on 20 September 2021 when he said he was asked to submit one. Mr Senior confirmed his statement with a retraction of his suggestion he made of a friendship between the Referee and Assistant Referee. Mr Senior's statement had covered incidents prior to his dismissal, but the Commission was only concerned with the factual evidence of what happened after Mr Senior being shown the red card and him leaving the field of play. In that regard, Mr Senior had said in his statement that (we quote the relevant text):

"I am writing this statement in regards to a false accusation which has been made against me. I would not attempt to physically assault neither threaten a match official on game day... I am the one who has been penalised and missed out games due to false accusations by both jack, and the linesman. The most senior official, who was also another linesman confirmed in his statement he did not witness any of this, which lays confusion to how one witnessed it, but the other didn't... The only thing I will apologise for, is swearing. After I went sent off due to being fouled, I said 'that's Fucking Shit ref' as I was walking off the pitch. I should not have used this language... I am not a malicious person, and neither would I be violent towards anyone. Yes I am competitive, but I wouldn't make any person feel threatened..."

26. During his live evidence, Mr Senior told us that: when he received the second yellow card, everyone was shocked; he turned around and said to the Referee *"Ref, that's fucking shit"*; he was not happy about being sent off; he walked past the Referee; and walked off the pitch.
27. We played the video clip evidence submitted and examined the relevant section of it with Mr Senior. The video clip showed that: after the red card was shown, Mr Senior and the Referee were in close proximity around the centre circle; Mr Senior was looking at the Referee and, from the angle of his head, the Referee was appeared to be looking to his own right; Mr Senior, who is taller than the Referee, appeared in the video at that time to be about the same height as the Referee, meaning Mr Senior had lowered part of his body to be in approximate same height as the Referee; Mr Senior then appeared to have stood up or standing straighter, becoming taller again, as he walked past the Referee; there was no instinctive body reaction from the Referee to the alleged threat, who had said in his report that he felt threatened and that he thought Mr Senior was going to head-butt him, either at the time of them being very close or after Mr Senior had walked past him; immediately after the red card was shown, there appeared to be Mr Senior, the Referee and a couple of other players, with plenty of space behind the Referee and to his right to instinctively move if the threat was there; the Referee did not turn to look at Mr Senior to see what Mr Senior would do next or to ensure that Mr Senior was leaving the field of play; the Referee remained facing away and moved in the direction he was facing (opposite direction to Mr Senior was going); but Mr Senior turned around to look back, as he got closer to the touchline.
28. During our questioning, Mr Senior told us that: he is taller than the Referee; he was looking at the Referee's face and focussed on the Referee; he was about one foot in front of the Referee and made adjustment to move around the Referee towards the touchline; he made a comment then; he was frustrated on the day but there was no intention to head-butt the Referee.
29. Mr Jake Edwards, the Club Assistant Manager, was next to give live evidence. Mr Edwards had also submitted a statement on 20 September 2021 when he said he was asked to submit one. Mr Edwards confirmed his statement, which states

(we quote the relevant text):

“... I had a clear view of the instance from the dugout... When Levi is given his second yellow card Levi walks straight of the field of play. As Levi walks off the pitch he does say to the Ref “That’s fucking shit ref” Although Levi shouldn’t have said this towards the ref. Levi has reacted towards the wrong decision given against him... There was absolutely no attempted headbutt towards [the Referee]. As shown in the video [the Referee] does not flinch or react to Levi which if a headbutt was attempted then [the Referee] would have flinched just like anyone in that situation...”

30. During his live evidence, Mr Edwards told us that: he was in the dugout about 20 to 30 yards from the incident and had an uninterrupted view; after the red card was shown, Mr Senior was making his way to the touchline when he made the comment *“that’s fucking shit ref”*, as he passed the Referee when slightly in front of or parallel to the Referee; the comment was not picked up by the camera, which was about five yards behind the dugout, and the spectators were also making noises; and Mr Senior did not make an attempt to head-butt the Referee.
31. Mr Troy Monks, the Club Chairman, was next to give live evidence. Mr Monks had not made a statement, but he told us during his live evidence that: he was in the stand at the time, which was about 30 to 40 yards from the incident; Mr Senior shouted *“what for?”* when he was shown the red card; Mr Senior walked towards the Referee and his head was down toward the Referee; as he walked past, he said *“you’re shit”* in an aggressive way and some swearing; Mr Senior then walked off the pitch; and nothing he witnessed could be interpreted as a head-butt; and he was closer to the incident than the Assistant Referee on the opposite touchline.
32. Mr Nathan Croot, the Club Captain, was next to give live evidence. Mr Croot confirmed his undated statement, but it was submitted with the Reply to the charges³, in which he stated (we quote the relevant text):

“I was present at the game vs Bishop Sutton and in the dugout when the incident in question happened. I was looking directly at the event as it occurred. At no point did Levi attempt to headbutt the referee. I could see that he was visibly annoyed at the decision to

³ para 11

be sent off and may have even swore aloud, but I am convinced that there was nothing like a headbutt from Levi..."

33. During his live evidence, Mr Croot added that: he was stood in the dugout, after coming off earlier due to an injury, and he had a clear view of the incident; Mr Senior was frustrated for being sent off; swore loudly, walked off towards the dugout; and Mr Senior made further mutterings as walked directly towards him.
34. A statement was also received from Mr Tiago Carreiras, the Manager, on 22 September 2021, but he did not attend the Hearing and, therefore, we were unable to test his evidence. We would put appropriate weight to that evidence.
35. That concluded all evidence and Mr Senior confirmed that all evidence had been presented and heard.
36. Mr Senior felt that he had not had a fair hearing as the Match Officials were allowed to give evidence on events beyond the incident in question, but he and his witnesses had to focus on the incident alone. We tried to explain to Mr Senior that only evidence relevant to the charges were admitted and that information on how the two Assistant Referees received the details of the incident in the changing room after the match was relevant as to whether they witnessed the incident first-hand themselves or whether they reported what was told to them by the Referee. Mr Senior and his witnesses included in their statements, what they said, were poor decisions and performance of the Referee during the match and their belief that the Referee was bias, which were not relevant in establishing liability, but that information could become relevant, if and when, the liability was established and if he wished to offer some of that information in mitigation. Mr Senior did not accept this explanation, so we advised Mr Senior that we would note that he felt he did not have a fair hearing.
37. For the record, in a discussion during our deliberations, all Commission Members unanimously agreed that Mr Senior was given a fair hearing and only relevant evidence were heard from, and relevant questions were put to, the Match Officials in support of the charges, Mr Senior and his witnesses in defence of the charges.

38. In closing, Mr Senior told us that: he was trying to be as honest as he can be and he will deal with the consequences, but it was not right (to be falsely accused); he was missing football (due to interim suspension); he understands code of conduct; and he was guilty of swearing, but not for the physical contact charge.

Standard of Proof

39. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, we would be satisfied that an event occurred if we considered that, on the evidence, it was more likely than not to have happened.

The Findings & Decision

40. We found inconsistencies in evidence from various witnesses, which questioned the credibility of witnesses. The video evidence, whilst it did not completely show the incident of physical contact or attempted physical contact, it was valuable in seeing the contributory or associated evidence in relation to the alleged act, such as where the parties were looking at the material time, their respective reactions to this physical contact or attempted physical contact etc.
41. Based on the evidence and on the standard of proof required, we determined that Mr Senior had made two comments – one “*you are a fucking joke*”⁴ as he walked towards the Referee after the red card was shown and the other “*Ref, that’s fucking shit*”⁵ was when he was looking at the Referee and focusing on the Referee’s face before Mr Senior walked past the Referee towards the dugout.
42. From the video evidence⁶, we noted that, from the angle of his head, the Referee appeared to be looking to his own right and not at Mr Senior to be able to properly see the actions of Mr Senior at that time. We also did not see in the video clip any automatic instinctive body reaction from the Referee to the alleged threat or that Mr Senior was going to head-butt him, either at the time of them being very close or after Mr Senior had walked past him. There was plenty of space behind the Referee and to his right to instinctively move if the threat was there

⁴ para 19

⁵ paras 25, 26, 29, 30

⁶ para 27

and, if Mr Senior had posed a threat, the Referee did not turn to look to see what Mr Senior would do next or to ensure that Mr Senior was leaving the field of play. The Referee remained facing away and moved in the direction he was facing (opposite direction to Mr Senior was going), but Mr Senior turned around to look back, as he got closer to the touchline. We also noted from Mr Pearse⁷ that he did not notice the Referee being shaken-up by the incident and there was no impact on the Referee's performance for the remainder of the match, after the incident. And, Mr Pearse did not report that the Referee had told him there was an attempted head-butt but simply "*...the referee, Jack Clench, felt that Levi Senior acted in a threatening manner...*"⁸.

43. We were not persuaded that Mr Senior had made an attempt to head-butt the Referee. Therefore, we were unanimous in finding that the Charge 1 of Improper Conduct against a Match Official (including physical contact or attempted physical contact and threatening and/or abusive language/behaviour)⁹ NOT PROVEN.
44. However, we found that Mr Senior had made two comments "*you are a fucking joke*" and "*Ref, that's fucking shit*"¹⁰ to the Referee in an aggressive way¹¹ in his frustrations of being sent off, but we did not consider these comments were made in a threatening manner.
45. We were, therefore, unanimous in finding the Alternate Charge 1 of Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour)¹² PROVEN, but WITHOUT the element of threatening behaviour. And, we assessed the initial level of seriousness and culpability of our findings in Mr Senior's case to be at a medium level.

Previous Disciplinary Record

46. We then sought Mr Senior's offence history. Mrs Sowton advised us that Mr Senior has: four cautions in Season 2016/17; one dismissal in Season 2017/18; one misconduct for threatening behaviour in Season 2018/19 when he was given

⁷ para 22

⁸ para 21

⁹ para 4.1

¹⁰ para 41

¹¹ para 31

¹² para 4.2

12 matches and £125 fine, including admin fee; nothing in Season 2019/20; two cautions on Season 2020/21; one caution, one dismissal from this match and the misconduct charges that we were dealing with. Mr Senior confirmed this offence history.

Mitigation

47. Mr Senior told us that he had missed matches already for being on the Interim Suspension Order and he would like to get back to playing football as soon as possible.

The Sanction

48. Mr Senior's previous disciplinary record would aggravate the sanction and there was little mitigation offered by Mr Senior.
49. We noted that the Sanction Guideline for the Improper Conduct against a Match Official (including abusive language/behaviour) – i.e. without the threatening element in the charge – at the National League System football level that Mr Senior is playing at is a suspension of 0 to 6 matches and a fine of up to £100.
50. After taking into consideration all circumstances in this case, Mr Senior is:
- 50.1. to serve an immediate suspension from all football and football activities until such time Tytherington Rocks First Team completes 4 (four) matches in approved competitions, but it is backdated from when Mr Senior was interim suspended on 24 August 2021;
 - 50.2. fined a sum of £40 (forty pounds); and
 - 50.3. 6 (six) Club Disciplinary Points to be recorded.
51. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win JP LLM MCI Arb (Chairman)

29 September 2021