

COUNTY ANTI-DISCRIMINATION

DISCIPLINARY COMMISSION

On behalf of Shropshire Football Association

Correspondence Hearing

of

Sam JACKSON

Case ID:9467107M

Linked to Case 9466029M

THE DECISION AND REASONS OF THE COMMISSION

Introduction

1. On 29 April 2018, Boca Seniors FC (“Boca Seniors”) played Craven Arms Rovers FC 1st (“Craven Arms”) in the Shrewsbury Sunday League (“the match”).
2. In an email dated 1 May 2018, Mr Les Bowen, the Manager of Craven Arms, alleged that during the match, a player from Boca Seniors had been discriminatory towards a player from Craven Arms.
3. Shropshire Football Association (“Shropshire FA”) commenced an investigation into the allegations.

The Charges

4. On 30 July 2018, Shropshire FA charged Sam Jackson with:
 - (i) Discrimination, on grounds of origin, colour, race, nationality, religion, sex, sexual orientation or disability contrary to FA Rule E4 (“charge 1”) and, in the alternative,
 - (ii) Misconduct for a breach of FA Rule E3 – Improper Conduct (including foul and abusive language) (“charge 2”) and that this Improper Conduct was aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability, contrary to FA Rule E3(2) (“charge 3”) [Charge 2 and 3 collectively known as “Aggravated Breach Charge”].
5. It was alleged that Sam Jackson said to a player from Craven Arms, “you talking to me or somebody else” while sniggering and holding his hand by his eye and grinning, which was improper and which made reference to the person’s disability, within the meaning of FA Rule E3(2).
6. The relevant section of FA Rule E3 (1) and (2) and FA Rule E4 (p.118 onwards of the FA Handbook Season 2017-18) states:

“(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.

(2) A breach of Rule E3 (1) is an “Aggravated breach” where it includes a reference, whether expressed 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”.

(3) “A participant shall not carry out any act of victimisation as defined by the Equality Act 2010, or any act of discrimination by reason of ethnic origin, colour, race, nationality, religion or belief, gender reassignment, sexual orientation, disability, age, pregnancy, maternity, marital status or civil partnership, unless otherwise permitted by law and The Rules or regulations of The Association.

7. Sam Jackson was required to respond to the charges by 13 August 2018.
8. Shropshire FA included with the charge letter the following evidence they intended to rely on;
 - (i) An email statement from Mr Les Bowen dated 1 May 2018 and clarifying email with attached photos dated 3 May 2018;
 - (ii) An email response from Mr Jake Winstone dated 18 May 2018 and clarifying email dated 3 June 2018;
 - (iii) An email statement from Mr Owen Holdsworth dated 7 May 2018;
 - (iv) An email statement from Mr Nick Bowen dated 9 May 2018;
 - (v) An email Statement from Mr Sam Jackson dated 3 June 2018 and clarifying emails dated 2 and 6 June 2018;

The Reply

9. On a date unknown Mr Sam Jackson responded to the Shropshire FA Discipline Team, indicating that he denied all the charges brought against him and wished the matter to be dealt with by way of a correspondence hearing.

The Commission

10. The Following members were appointed by The Football Association (“The FA”) to this Disciplinary Commission (“the Commission”):

Mrs Loraine Ladlow (Chairman);

Mr Bradley Pritchard (Independent FA Appointed); and

Mr Anthony Rock (Independent FA Appointed).

11. Matt Carpenter, of Norfolk FA, acted as the Secretary to the Commission.

The Hearing and Evidence

12. The Commission convened at 0900hrs on 15 August 2018 via videoconference for this Correspondence Hearing (“the Hearing”).
13. The Commission had received and read the bundle of documents prior to the hearing.
14. The following is a summary of the principal submissions provided to the Commission. 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 the Commission did not take such point, or submission, into consideration when it determined the matter.

For avoidance of doubt, the Commission have carefully considered all the evidence and materials furnished with regard to this case.

15. In a statement dated 1 May 2018, Mr Les Bowen, the Manager of Craven Arms wrote to the Shropshire FA making a formal complaint. The statement referred to a player from Boca Seniors known as "Stuart" Jackson. This player was later identified as Mr Sam Jackson, by Mr Jake Winstone, Secretary of Boca from photographs taken by Mr Les Bowen and sent to him by Shropshire FA.
16. Mr Les Bowen stated that Ian Reeves, a Craven Arms player had previously sustained injuries in car crash, including the loss of an eye. He stated that Mr Reeves now has a glass eye, which has no movement.
17. Mr Les Bowen stated that during the game Mr Jackson made comments about Ian Reeves facial disorder and, whilst face to face with Mr Reeves, Mr Jackson said "*are you looking at me*".
18. Owen Holdsworth, believed to be a Craven Arms player, provided a statement dated 7 May 2018. In the statement he described a player, that is consistent with the description and the confirmed identify of Mr Sam Jackson. Mr Holdsworth states, "*I heard him say something about Ian's eye then when I turned around he had one hand over his eye looking at Ian, so he was blatantly indicating it to Ian. I was stood no more than 6 yards away*".
19. Mr Nick Owen, captain of Craven Arms, in a statement dated 9 May 2018, stated "*I was no more than 15 feet (away) when I heard Boca Seniors centre half making derogatory remarks directly to Ian Reeves. Sarcastically asking which direction he was looking in while making gestures in reference to Ian's disability with his hands and face. As well as asking Ian, "where you looking?". He was sniggering at the same time*".

20. Mr Sam Jackson provided a statement dated 2 June 2018 in which he stated; *“After a coming together between myself and the player in question, there were words exchanged. During that time the referee told us both to grow up and get on with it. Mr Reeves continues his war of words. It was at that point I asked, “are you talking to me?”*
21. In response to questions of clarification from Shropshire FA, Mr Jackson provided further information in an email dated 6 June 2018 in which he stated that by ‘coming together’ he meant that he *“went in for a tackle, in my opinion I won a clean tackle and he took exception. There was a little shove, but it was handbags at best”*. Mr Jackson also confirmed that there were *“the usual expletives, f@@@k off etc. Exactly what was said I don’t recall”*. When asked by the Shropshire FA what was said for him to ask “are you talking to me” Mr Jackson replied, *“I couldn’t tell you what he had said, as I said I wasn’t taking any notice.... Mr Reeves was looking in my general direction I asked the question are ‘you talking to me’*’.

Standard and Burden of Proof

22. The Commission reminded itself that the burden of proving a charge falls upon the County FA.
23. The applicable standard of proof required for this case is the civil standard of proof namely, the balance of probability. This standard means the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

Findings and Decision

24. The Commission’s first task was to determine whether the charges was found proven or not. The Commission must be satisfied that it is more likely than not Mr Sam Jackson made the comment as alleged, in the way that is alleged.

25. If the Commission find Mr Jackson did make the comment in the way that is alleged, to satisfy charge 1, the Commission have to consider whether that amounted to victimisation of Mr Reeves, as defined by the Equality Act 2010 or that Mr Reeves was discriminated against, in respect of his disability.
26. If the Commission find that Mr Jackson made the comment in the way that is alleged and find charge 1 proved, then they need not go on to consider charges 2 and 3 as these are laid by the Shropshire FA, in the alternative. However, if the Commission do not find charge 1 proved, they should go on to consider charges 2 and 3. The test in respect of Charge 2 and 3 is two-fold. First, whether the comment allegedly made by Mr Jackson was improper, ie. foul and/or abusive, contrary to FA Rule 3(1) and if it is found to be improper secondly, whether this comment included the reference to disability as alleged, within the meaning of FA Rule 3(2).
27. The Commission considered all the evidence before it and noted that:
 - (i) Mr Jackson did not dispute he was the Boca Senior player described and identified by witnesses
 - (ii) It was unclear from Mr Bowen's statement whether he himself heard or witnessed the comment.
 - (iii) Mr Holdsworth and Mr Nick Bowen were on the pitch and witnessed the incident. Both witnesses stated they heard Mr Jackson speak to Mr Reeves and saw him make hand gestures which they both believed referred to Mr Reeves disability.
 - (iv) Witnesses stated that they reported the incident to the Match Referee
 - (v) Mr Jackson confirmed the Match Referee was nearby and had spoken to both Mr Jackson and Mr Reeves prior to the incident.
 - (vi) There was no statement from the Match Referee or from Mr Reeves.

- (vii) Mr Jackson accepted that there was an exchange of words with Mr Reeves and that he used the words as alleged in the charge.
 - (viii) Mr Jackson was vague in his recollection. The Commission thought it unlikely that after he and Mr Reeves had 'come together' Mr Jackson did not take any notice of Mr Reeves and/or was not aware of what he was doing.
 - (ix) Mr Jackson made no reference or gave any explanation to the allegation that he had made gestures to Mr Reeves pertaining to his disability.
28. The Commission found that, based on the evidence and on the standard of proof required it was more likely that not that Mr Sam Jackson had said to Mr Reeves "are you talking to me" whilst sniggering, holding his hand by his eye and giggling.
29. The Commission did not find that the words/gestures used by Mr Jackson were sufficient to satisfy charge 1, brought under FA Rule E4. The Commission therefore found charge 1 not proven.
30. The Commission found that the words/gestures used by Mr Jackson towards Mr Reeves were improper and they were aggravated by reference to disability and were sufficient to satisfy charges 2 and 3, collectively known as Aggravated Breach.
31. The Commission were unanimous in finding the Aggravated Breach Charge proven against Mr Jackson.

Previous Disciplinary Record

32. As the Commission found the Aggravated breach against Mr Jackson proven, they sought the player's previous disciplinary record. The Commission noted there were no previous offences.

The Sanction

33. The Commission noted under FA Rule 3 (pp.118-120 of the FA Handbook Season 2017-18) for sanctions, states:

“A Regulatory Commission may impose a financial penalty or any other sanction that it considers appropriate in respect of an Aggravated Breach of Rule E3(1) whether or not it has imposed a suspension in respect of the same breach.”

34. The Commission referred to FA Rules E3(3)(i) and E3(9) which state:

a. E3(3)(i) – Subject to paragraphs E3(4) – E3(6) below, where a participant commits an aggravated breach of Rule E3(1) for the first time, a Regulatory Commission shall impose an immediate suspension of at least five matches on that Participant, The Regulatory Commission may increase this suspension depending on any additional aggravating factors present. However;

b. E3(9) – A Participant who commits an Aggravated Breach of Rule E3(1) will be subject to an education programme, the details of which will be provided to the Participant by the Association

35. 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.

36. The Commission also considered The Football Association Sanction Guidelines and noted that for an offence under FA Rule E3(2), the sanction was dependent on the Commissions assessment of the case, including the aggravating and mitigating features present, as to

whether the Commission considered the case to be low, medium or high.

37. With regard to aggravating features, the Commission noted circumstances of the offence, that there had been an exchange with Mr Reeves prior to the incident, in which the Referee had intervened. Mr Jackson had provided no explanation or information to the Commission regarding the reference to Mr Reeves disability, although the Commission noted that there were no previous matters on Mr Jackson's record.
38. After taking all the aggravating and mitigating factors present, the Commission assessed the charges and imposed the following sanctions:
 - (1) A fine of £75.00 (seventy five pounds)
 - (2) A 5 match (five) suspension
 - (3) 6 (six) Club Disciplinary Points
 - (4) Ordered to complete the FA's Equality Education Course, on line, the details of which will be provided to him in due course by the FA. In the event that Mr Jackson fails successfully to undertake the course within 4 months, he will be further suspended from all footballing activity until such time as this course is completed;
39. The Commission's decision in respect of both finding and sanction was unanimous.
40. The decision of the Commission is subject to the right of appeal under the relevant Rules and Regulations of the Football Association.

Signed

Mrs Loraine Ladlow

Mr Bradley Pritchard

Mr Anthony Rock

15 August 2018