

ANTI-DISCRIMINATION

DISCIPLINARY COMMISSION

On behalf of Shropshire Football Association

PERSONAL HEARING

Of

WILL SMALE

Case ID: 9872891M

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THE DECISION AND REASONS OF THE COMMISSION

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## **Introduction**

On Sunday 3 March 2019, Boars Athletic FC ('Boars') played Coton Rovers FC ('Coton') in the Shropshire Sunday Challenge Cup Semi Final. The referee, Lee Gregory ('the Referee') was assisted by Assistant Referee 1 Paul Shepherd ('AR1') and Assistant Referee 2 Chris Sale.

Yousef Abkari ('Mr Abkari') was an attacker for Boars. He spent the game attacking the left back defender for Coton, Will Smale ('Mr Smale').

Mr Abkari alleges that during the first half, Mr Smale made a number of comments to him which Mr Abkari considered to be of a racist nature and Mr Abkari reported this to the AR1 and to the Referee. Mr Abkari alleges that after reporting the racist comments to the Referee, Mr Smale also called him a 'faggot'. During the second half, it is alleged that Mr Smale continued to make racist comments towards Mr Abkari.

## **The Charges**

The FA charged Mr Smale with the following:

- (1) It is alleged that his language towards Mr Abkari in saying, "smelly paki"; "go back to my chip shop"; "paki"; "you smell like curry"; "are you carrying a bomb"; "do you speak English"; "chips and mushy peas please" was improper conduct (including foul and abusive language) contrary to Rule E3(1); and further that the above is also an aggravated feature, being contrary to Rule E3(2), in that it was a reference to race;
- (2) Further it is alleged that his language towards Mr Abkari in saying "faggot" was improper conduct (including foul and abusive language) contrary to Rule E3(1); and further that the above is also an aggravated feature, being contrary to Rule E3(2), in that it was a reference to sexual orientation.

The relevant section of FA Rules E3(1) and (2) 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."*

## **The reply**

Mr Smale submitted a communication in which he denied the charge and requested a personal hearing.

Mr Smale attended the Commission in person on 5 September 2019.

### **The Commission**

The following members were appointed by The FA to this Disciplinary Commission (“the Commission”):

John Murphy (Chair);

Mark Warren (Independent FA Appointment); and

Simon Parry (Independent FA Appointment).

Vicky Collins of Staffordshire FA acted as the Secretary to the Commission.

### **The Hearing and Evidence**

The Commission convened at 6.30pm on 5 September 2019 at a venue in Shrewsbury.

A preliminary issue for the Commission to address was that there was only one charge brought against Mr Smale when there appeared to be two distinct sets of particulars of claim – being an aggravating feature of race as well as sexual orientation – as written down on the charge sheet. The Commission took the view that the parties were clear that both sets of particulars would need to be addressed and accordingly, there was no prejudice to any party by continuing to treat them separately at least as far as evidence and findings of fact.

The Commission were also content to permit Mr Smale to bring in an observer, Mr Andrew Stout, who is the new Club Secretary at Coton.

### **Mr Smale aggravated charge – Rule E3(2)**

The Commission had received and read the documents prior to the hearing, which included:

#### **On behalf of the FA:**

- (i) Extraordinary Incident Report Form dated 5 March 2019 from Lee Gregory, Referee;
- (ii) Extraordinary Incident Report Form dated 5 March 2019 from Paul Shepherd; AR1;
- (iii) Letter dated 14 March 2019 from Paul Coyne, manager of Boars;
- (iv) Shropshire FA County Cup Team Sheet dated 3 March 2019 for Coton;
- (v) Letter dated 8 March 2019 from Yousef Abkari;
- (vi) Letter dated 4 March 2019 from Ian Smith, Captain of Boars;
- (vii) Letter dated 5 March from Robie Leadbetter, a spectator;
- (viii) Handwritten letter undated from ‘C.M.Smith’;
- (ix) Email dated 9 April 2019 from AR2, Chris Sale.

### On behalf of Mr Smale

- (x) Email dated 27 March 2019 from Mr Smale;
- (xi) Email dated 27 March 2019 from Matt Smith, Coton captain;
- (xii) Email dated 27 March 2019 from Thomas Flint, Coton player.

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.

Mr Abkari gave evidence first. He stated that he played against Mr Smale for the entire game. He was certain that the constant racial slurs, as identified in the charge against Mr Smale, were said by him, in a whisper, throughout the first half. Mr Abkari stated that during the first half, he informed the AR1 and then the Referee about Mr Smale's racial slurs towards him. After informing the Referee, Mr Abkari heard Mr Smale call him a "faggot". Mr Abkari stated that the Referee said that the matter would be dealt with by him speaking to the player.

Mr Abkari informed his manager at half time and that Mr Smale continued to use racial slurs towards him throughout the second half. Mr Abkari was clear that his team mates were aware during the game that Mr Smale was making racist remarks to him.

Mr Coyne immediately stated that he did not hear Mr Smale say anything racist or about sexual orientation. He confirmed that Mr Abkari made him aware of the racial slurs in time that at half time, Mr Coyne went into the Referee's changing room and notified the Referee and two ARs that he supported his player, Mr Abkari, who had notified at least two of them during the first half about Mr Smale's racial slurs towards him.

Mr Smale denied making any racial slurs towards Mr Abkari and further denied using the word 'faggot' towards Mr Abkari. He stated that he was a whole-hearted player but no racist.

He was first aware that a complaint concerning racism had been reported to the officials when he returned to the field for the start of the 2nd half. One of the ARs mentioned that a complaint about racist remarks, had been received about a Coton player, during the half time break. He said that the Referee did not speak to him at all about the racial complaints.

Mr Smale said that he discovered that the complaint of racism was about him later that day but after the end of the game.

Mr Smale suggested that it was possibly a case of mistaken identity by Mr Abkari but he did not offer any further explanation to substantiate the mistaken identity defence.

Mr Flint then spoke on behalf of Mr Smale. Mr Flint stated that he had played next to Mr Smale for every minute of the game and that he had not heard any racial slurs or use of the word "faggot" by Mr Smale at all. He stated that midway through the first half, Mr Abkari switched to play on the

opposite side of the pitch to where Mr Abkari defenced, and continued on the opposite side until mid-way throughout the second half. Further he said that after the match, the changing room was alike a party, having just won the semi-final, so the first he became aware of that there was a complaint about racist wordings from a Coton player was after the game and via the players' Whatsapp group.

The Commission did receive written submissions from a number of other persons, on behalf of both the Shropshire FA and Mr Smale, who were not present at the hearing. The Commission were reluctant to rely on these submissions because the evidence therein could not be tested by cross examination at the hearing.

The Commission did note that in the absence of the Referee and the two ARs, it had been presented with two Extraordinary Match reports from the Referee and AR1. The Referee's written report stated that he had not heard any racist slurs or the use of the word "faggot" directed towards Mr Abkari during the game but that Mr Abkari had approached him during the first half to state that Mr Smale had made a number of racial slurs towards him.

Similarly the AR1's written report stated that the Referee had come over to him, during the first half, but the AR1 told the Referee that he had also not heard any racial slurs from Mr Smale towards Mr Abkari.

### **Standard of Proof**

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**

The Commission considered all the evidence before them and, in particular, the evidence that it had heard at the hearing.

The Commission had to weigh up the testimony from Messrs Abkari and Coyne against the testimony from Mr Smale and Mr Flint. The Commission found Mr Abkari a credible witness who gave clear and coherent evidence that the words, both the numerous racist remarks and "faggot", were directed to him by Mr Smale. He was supported by Mr Coyne who was forthright in stating that he had no direct evidence about whether Mr Smale made any alleged remarks but the Commission found that his evidence concerning the Referee and AR1 being informed by half time, corroborated the evidence of Mr Abkari and how he reacted during the first half, by informing the Referee and AR1.

Mr Smale was clear in his denial of the allegations, but the Commission were not persuaded his suggestion that this was a case of mistaken identity. Both Mr Smale and Mr Akbari agreed that they had spent the entire game in the same positions and duelling against the other, so the Commission were clear that Mr Abkari was definite in identifying Mr Smale as the culprit. The Commission noted Mr Smale's evidence that the Referee did not speak to him during the game.

Mr Flint gave very clear evidence. However, when he stated that Mr Akbari had swapped sides during the middle half of the game, this contradicted the evidence of both Messrs Smale and Akbari who stated that they spent the game playing against each other. Further Mr Flint suggested that he found out about the allegations against Mr Smale not after the game but much later via the players' Whatsapp group. The Commission noted that Mr Smale became aware very shortly after the final whistle and the Commission were of the opinion that as a matter of common sense, it was more likely than not that Mr Smale's team mates in the changing room after the game, would have been aware of the allegations against their teammate.

Noting the consistency and corroboration in the evidence from Messrs Akbari and Coyne and the substantial contradiction in evidence between Messrs Smale and Flint regarding Mr Akbari changing sides mid game, the Commission held that it was more likely than not that Mr Smale did make the remarks of a racial nature towards Mr Akbari, as well as calling him a "faggot". For that reason, the Commission found the charge proven.

The Commission were satisfied, on a unanimous basis, that Mr Smale's improper conduct did include the aggravated features listed in the charge.

### **Previous Disciplinary Record**

The Commission sought Mr Smale's previous disciplinary record. The Secretary advised the Commission that Mr Smale had no relevant previous matters on his record.

### **The Sanction**

The Commission noted the relevant Disciplinary Regulations and Sanctions Guidelines.

The Commission were content to hear from Mr Stout who gave a character reference on behalf of Mr Smale by way of mitigation, which was duly noted by the Commission.

The Commission was required to impose a minimum sporting sanction of a five match suspension. The Commission did consider that there were further aggravating features to Mr Smale's conduct in that he had made numerous racist remarks, continuing throughout the game, and further, he had made an aggravating remark concerning sexual orientation. Accordingly the Commission determined that it was proportionate to add an additional two matches to the suspension.

After taking all aggravating and mitigating features present, the Commission assessed the charge and unanimously imposed the following sanctions:

- (1) A fine of £75 (seventy five pounds);
- (2) A suspension of 7 games;
- (3) That Mr Smale completes The FA's online Equality Education Course, the details of which will be provided to him in due course by The FA. In the event that Mr Smale fails to undertake and complete the Course within 4 months, he will be further suspended from all footballing activity until such time as he does so;
- (4) And 7 penalty points for Mr Smale's club, Coton Rovers FC.

The decision of the Commission is subject to the right of appeal under the relevant FA Rules and Regulations.

**Commission**

John Murphy - Chair

Mark Warren

Simon Parry

5 September 2019