

THE FA DISCIPLINARY COMMISSION

On behalf of Surrey County Football Association Limited

A PERSONAL HEARING

OF

Joseph Blendell [56595759]

THE DECISION AND REASONS OF THE COMMISSION

MISCONDUCT REPORT NO: 9670846M

7 March 2019

THE COMMISSION

- 1. Evans Amoah-Nyamekye - Chair**
- 2. Naila Hadid – Wing Member**
- 3. David Miller –Wing Member**

SUMMARY OF DECISION

The Commission unanimously found the charge of FA Rule E3 'improper conduct – aggravated by a person's **Ethnic origin, Colour, Race, Nationality**, Faith, Religion, Gender, Sexual Orientation or disability' **not** proved against Mr. Joseph Blendell.

The reasons for the decision are stated in full below.

INTRODUCTION

1. On 29 September 2018, a match fixture between Hanworth Villa First v Banstead Athletic First took place.
2. In essence the allegation against Joseph Blendell is that during the match he is alleged to have said to Shadrac Malembe 'Go back to *F£\$king Africa*'..
3. Following an investigation Surrey County FA charged Joseph Blendell with misconduct for a breach under FA Rule E3 on 11 December 2018.
4. Joseph Blendell acknowledged the misconduct charge and pleaded not guilty to the charge and requested a personal hearing.
5. The case was presented before a Disciplinary Commission appointed by The Football Association ("The FA") as a personal hearing.

THE CHARGE

6. Joseph Blendell faced charges of misconduct for breach of FA Rule E3 for allegations of Improper Conduct aggravated by a **person's Ethnic Origin, Colour, Race, Nationality, Faith, Religion, Gender, Sexual Orientation or Disability**.

THE PLEA

7. In a response, Joseph Blendell pleaded not guilty to the charge and requested to be present at the hearing.

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.

THE COMMISSION

9. The following members were appointed to the Disciplinary Commission (“the Commission”, We/us”) to hear the case:

THE COMMISSION

- i. **Evans Amoah-Nyamekye - Chair**
- ii. **Naila Hadid – Wing Member**
- iii. **David Miller –Wing Member**

THE HEARING

10. We convened around 19:10 in order to give the county FA witnesses time to attend, no witnesses attended on behalf of the county. James Sanderson acted as Secretary to this Commission.

11. In advance of the “Hearing” we had received and read the bundle of documents containing the submissions and statements from all of the parties.

12. Before the commencement of the hearing we were informed by Adrian Shorter of Surrey FA that Joseph Blendell had received all the necessary documents.

13. We received the following main statements/documents:

- 13.1. Surrey County F.A letter dated 11 December 2018;
- 13.2. Charge sheet;
- 13.3. Match referee’s report;
- 13.4. Statement/email from Shadrac Malembe, the complainant ;

14. We received from Joseph Blendell:

- 14.1. Acknowledgement to charge;
- 14.2. Statement of Joseph Blendell;

15. The Commission confirmed through Joseph Blendell, that he had been provided with all the statements and evidence with which we had been provided. Accordingly,

Joseph Blendell had fair notice of the allegation made against him. It was evident from the response to the charge from Joseph Blendell he had received the said material and was aware of the facts. This was confirmed at the hearing by Joseph Blendell.

16. Joseph Blendell had prepared a statement prior to the hearing and confirmed that he had witnesses to call.

THE EVIDENCE GIVEN DURING THE COMMISSION

The following is a record of the salient points heard by the Commission and is not intended to be and should not be taken as a verbatim record of the evidence.

The Commission was extremely grateful to James Sanderson for his assistance during the hearing.

THE COUNTY FA'S CASE**Assessment of Shadrac Malembe's evidence**

17. The Commission never heard live evidence from Shadrac Malembe. This was unfortunate as the allegations were not able to be fully tested by all interested parties.
18. In essence the allegation is located in his statement which states' that during the second half of the match the number 4 of Banstead Athletic said to him *"go back to fu@\$ing Africa where you come from"*.
19. The Commission gave Joseph Blendell the opportunity to express the questions he would have asked had the witness been present.
20. The Commission concluded that there was no corroborative evidence to support the allegations made by Shadrac Malembe.

Match report evidence

21. The Commission noted that the county association report form stated that the incident was not heard or reported by the Match Referee. It was unfortunate that the match referee could not attend the hearing.
22. In essence the evidence contained pure hearsay evidence. The Commission noted the contents of the statement and applied the limited weight to the untested evidence. The Commission concluded that unfortunate inability to test this evidence was central to its weight. In any event the Commission could not accept this as corroborative evidence that Joseph Blendell had used any of the words as alleged.

THE PARTICIPANT'S CASE

- 22.1. Joseph Blendell gave an opening address; in essence he stated that he was not guilty of the charges and that the allegations were false.
- 22.2. Joseph Blendell had prepared a statement prior to the hearing. On being questioned by the Commission, Joseph Blendell denied making any of the alleged comments.

ASSESSMENT OF JOSEPH BLENDELL'S EVIDENCE

- 22.3. On being questioned by the Commission Joseph Blendell was found to be an open and consistent as a witness.
- 22.4. The Commission found that Joseph Blendell gave robust denial evidence regarding the allegation.
- 22.5. The Commission accepted Joseph Blendell's evidence that he did not make the alleged comments.
- 22.6. The Commission took the view that Joseph Blendell' assertion in his closing submission that he had a diverse range of friends from different ethnicities was irrelevant to our determination of the key issues.

THE EVIDENCE OF Carl Taylor

- 22.7. The Commission found that Mr Taylor gave evidence clearly and honestly.
- 22.8. The Commission found that Mr Taylor's version of events could be accepted in that he did not hear Joseph Blendell use the alleged words used.

THE EVIDENCE OF Terry Molloy

- 22.9. The Commission found the evidence of Terry Molloy difficult to accept in its entirety. However the Commission did accept that the evidence could be relied upon as far as determining that he never hear the alleged words used.

23. The Commission confirmed with Joseph Blendell that he was satisfied he had, had a fair hearing and that all the evidence had been heard.

23.1. Joseph Blendell confirmed that he had had a fair hearing, and that he would not have a further opportunity to present any new evidence.

23.2. The Commission then allowed Joseph Blendell to present and make his final closing submissions on the case based on the evidence. In summary, he requested that the Commission took into account that:

- 23.2.1. There were inconsistencies in the evidence presented.
- 23.2.2. The weakness of the evidence given by the county F.A's witnesses.
- 23.2.3. The referee did not corroborate the allegations.
- 23.2.4. He came from a diverse multicultural background of team players.
- 23.2.5. The County witnesses failed to attend the hearing.

THE COMMISSION'S CONCLUSIONS

23.3. The Commission concluded that the use of the words "*go back to fu@\$ing Africa where you come from*" were not used by Joseph Blendell. The reasonable inferences which could be drawn are from the circumstances of the case which were namely:

- 23.3.1. There was no evidence from the referee or any other witnesses to support the allegations, given the makeup of the ethnicity of player from both teams that was an important factor.
- 23.3.2. Joseph Blendell's case was consistent with the denial.

BURDEN OF PROOF

- 23.4. The applicable standard of proof required for this case is the civil standard of the balance of probability. The balance of probability standard means that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.
- 23.5. The Commission members were conscious that they were not determining whether Joseph Blendell was racist but solely whether he had made discriminatory comments during the match.

OUR FINDINGS OF FACT

On the balance of the burden required, we are satisfied to make the following findings of fact that:

- 23.6. On 29 September 2018, a match fixture between Hanworth Villa First v Banstead Athletic First took place.
- 23.7. The Commission concluded that the use of the words *“go back to fu@\$ing Africa where you come from”* were not used by Joseph Blendell.
- 23.8. The Commission unanimously found the charge of FA Rule E3 ‘improper conduct – aggravated by a person’s **Ethnic origin, Colour, Race, Nationality**, Faith, Religion, Gender, Sexual Orientation or Disability’ **not** proved against Mr. Joseph Blendell.

THE DECISION

- 23.9. Having heard and read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
- 23.10. We have to assess the reliability of the witness (that is whether, even if 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. We are entitled to take into account the demeanour of the witness who appeared before us.

- 23.11. Ultimately it is for the Commission to accept or reject each piece of evidence they 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.
- 23.12. Having decided which evidence we accepted and rejected; we then have to decide on the balance of probabilities if the alleged breach of the FA Rule is established.
- 23.13. We considered all of the evidence written, oral, and visual and the final submissions.

Signed The Commission:

THE COMMISSION

- 1. Evans Amoah-Nyamekye - Chair**
- 2. Naila Hadid – Wing Member**
- 3. David Miller –Wing Member**

7 March 2019