

THE FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

Sitting on behalf of the Surrey Football Association

In the matters of:

ANTONY BURTON

Case ID 9786845M

&

CHE TIMBOU

Case ID 9786775M

THE COMMISSION'S DECISIONS AND REASONS

INTRODUCTION

1. These are the written reasons and decisions of the Disciplinary Commission which sat on the above matters on Thursday 9th May 2019.
2. The Disciplinary Commission appointed by the Football Association ("the FA") was Mr. Craig Harris, acting as Chair, Mr. Roger Pink and Mr. Barrie Funnell. The Secretary appointed to the Commission was Mr. Adrian Shorter, of the Surrey FA.

BACKGROUND

3. The circumstances of these cases, conjoined under FA procedural rules for reasons that will become obvious, arose out of the Kingston Patriots First Team -v- Mickleham Badgers First Team match that was played in the Leatherhead & District League, on 25th November 2018.
4. Antony Burton was the match referee. He was being assessed on that date by Mr. Anthony Newman, an FA registered referee assessor.

5. Che Timbou was a coach/manager of the home side, Kingston Patriots First Team. Both he and Mr. Burton were, therefore, 'Participants' as defined in the FA Handbook for the purposes of the Commission's jurisdiction.
6. From the written evidence provided to the Commission, there appears to have been some acrimony arising between the Kingston Patriots players and staff, on the one hand, and the referee, on the other, from before the match began. That continued during the match, with complaints about refereeing decisions and the like, and thereafter, up to the point at which Mr. Burton was paid and left the ground.
7. The incident(s) that led to charges being raised against Messrs. Burton and Timbou, however, related to a particular set of exchanges between them after the match, when Mr. Timbou was arranging and came to pay Mr. Burton's fee for refereeing.
8. In the context of a continuing disagreement between them, when Mr. Timbou came to pay Mr. Burton he threw the money to the ground for Mr. Burton to pick up, by his own admission, rather than handing it to Mr. Burton in a proper manner. Mr. Burton set this out in an Extraordinary Incident Report Form, submitted to the FA after the match on 25th November 2018, and that eventually led to Mr. Timbou being charged as set out below.
9. Mr. Timbou, meanwhile, had emailed the FA on the same date, after the match, alleging that during the disagreement he was called a "*black git*" by Mr. Burton, who allegedly also used other (non-racial) derogatory language towards him. Mr. Timbou said that he had thrown Mr. Burton's fee to the floor in response to the racially derogatory remark. That would lead to Mr. Burton eventually being charged as set out below.
10. The charges laid against the Participants were specific to those exchanges set out above [at §§8-9] and so the Commission was not tasked with coming to any decisions in respect of any other (mis)conduct that was complained of through the generality of evidence in the case. Neither was the Commission tasked with passing judgment on Mr. Burton's refereeing performance.

CHARGES & REPLIES

Antony Burton

11. By letter dated 7th March 2019, with a reply date of 21st March 2019, Antony Burton was charged with two offences by the Surrey FA.
12. Firstly, he was charged with contravening FA Rule E3(1), by use of improper conduct (including foul and abusive language). Secondly, he was further charged with contravening FA Rule E3(2), by use of improper conduct aggravated by reference to the FA's 'protected characteristics' (colour and race applied here).
13. Both allegations were brought specifically with reference to Mr. Burton's alleged use of the phrase "*black git*" towards Mr. Timbou, as explained at §9 above, rather than any wider alleged improper conduct.
14. Mr. Burton denied the allegations in their entirety and requested a Personal Hearing. The Commission therefore had to determine Mr. Burton's liability for the charges and, if required, sanction.
15. Given that the phrase "*black git*", if used as alleged, would plainly satisfy the aggravated element of the charge brought under FA Rule E3(2), and both charges were brought by specific reference to that phrase alone, the two charges against Mr. Burton would naturally stand or fall together on the facts of this case. The question was whether the phrase was used at all.

Che Timbou

16. By letter dated 6th March 2019, with a reply date of 20th March 2019, Mr. Timbou was charged with a single offence of contravening FA Rule E3(1), by use of improper conduct against a Match Official (including abusive language/behaviour). This charge related to the conduct set out at §§8 & 9 above, as reported by Mr. Burton but accepted by Mr. Timbou in his own report in any event i.e. his throwing the referee's match fee to the ground rather than handing it to Mr. Burton.

17. Mr. Timbou admitted the charge and requested a non-personal hearing.
18. He remained, however, the central witness in the FA's case against Mr. Burton, such that he was due to attend and give evidence at Mr. Burton's personal hearing.
19. The same Commission would therefore consider the sanction to be imposed in Mr. Timbou's case at the conclusion of Mr. Burton's personal hearing and, given the circumstances, would have taken anything Mr. Timbou might say into account in mitigation of his admitted offence, notwithstanding that he had not requested a personal hearing himself. The fact that all matters would be dealt with at a personal hearing would not be held against Mr. Timbou, he having not requested one. In any event, Mr. Timbou did not attend the hearing, as the Commission will explain below.

BURDEN & STANDARD OF PROOF

20. The burden of proving the charge against Mr. Burton was on the Surrey FA.
21. The applicable standard of proof was the balance of probability.
22. The balance of probability means the Commission will be satisfied an event occurred if it considers that, on the evidence, the occurrence of the event was more likely than not. The same standard applies to the Commission's consideration of whether any proven act or omission amounts to a violation of the FA rules concerned, taking account of any applicable defence. The FA has the burden of disproving any such defence to the same standard.

DECISION ON LIABILITY: ANTHONY BURTON

23. The only witness required to attend the hearing in support of the FA's case against Mr. Burton was Mr. Timbou, he being the only person to report having seen/heard the improper conduct alleged against Mr. Burton. Mr. Timbou, however, failed to attend the hearing despite having been required to do so by the Surrey FA.

24. The case papers showed that Mr. Timbou had reported the conduct complained of by email to the FA on 25th November 2018 – the very day of the match – which might have given some credibility to the report.
25. Thereafter, however, Surrey FA had faced great difficulty in contacting Mr. Timbou. He had failed to respond to emails from the FA during the investigation, on 07/01/19 and 18/01/19, and, thereafter, had not been contactable by the FA or his own Club in advance of Mr. Burton's personal hearing – the Commission was apprised of this information by the Secretary, Mr. Shorter, when Mr. Timbou failed to attend in time for the hearing to commence at 18:30 hours, as planned.
26. At the Commission's direction, the Secretary made final efforts to contact Mr. Timbou to enquire as to his whereabouts before the hearing began – it was delayed slightly for this purpose – but they yielded no response. That was against a background of him having been non-contactable for some months.
27. The Commission therefore decided to commence the hearing – Mr. Burton having attended on time – and would consider the FA's case on the papers alone. Mr. Burton was so informed.
28. Such an approach is permissible under FA rules, whereby hearsay evidence is admissible, but, it follows, all evidence relied upon by the FA became hearsay evidence i.e. written reports without the relevant witnesses attending to give live evidence and be questioned/challenged as to their accounts (in reality this meant only Mr. Timbou in this case, as nobody else reported witnessing the misconduct alleged against Mr. Burton).
29. The Commission was bound to approach such evidence with considerable caution, bearing in mind the general deficiencies and dangers that come with hearsay evidence, particularly when it amounts to the only evidence against a Participant in support of a charge and that Participant entirely disputes it.
30. The evidence that the Commission considered requires no repetition here, given it was all considered in paper form as indexed in the FA's evidential bundle. The alleged facts have been summarised above. The evidence comprised an email sent to the FA by Mr. Timbou on the date of the match, 25th November 2018, complaining about Mr Burton's conduct. The

Commission also took account of the reports of the referee assessor, Anthony Newman, by emails dated 24th & 27th January and 25th April 2019, the investigation report from Ashley Gumbrell, dated 31st January 2019, and the statement of Rachel Knight, a Mickleham Badgers official, as well as the appendices provided by the FA in the case papers (demonstrating email correspondence to/from those concerned).

31. As nobody other than Mr. Timbou reported seeing/hearing the alleged misconduct with which Mr. Burton was charged, the Commission had to consider this case essentially by reference to his account, as against Mr. Burton's response, to which the Commission turned next.
32. Mr. Burton had first provided an Extraordinary Incident Report Form, dated 25th November 2018, concerning the events after the match when his match fee was thrown to the floor by Mr. Timbou. He had then given a written statement, of sorts, by way of email in response to the allegations made against him in Mr. Tibou's email of 25th November 2018, which had been forwarded to him (Mr. Burton) by the FA. In short, Mr. Burton said that he would, *"Completely deny any of these allegations"* in response to that email.
33. At the hearing, Mr. Burton chose to give evidence but merely said that he maintained the accounts he had given originally, in his Extraordinary Incident Report Form and email response to the allegations, but added three observations: First, that the match assessor Anthony Newman did not report having seen or heard any of the conduct complained of against him. Second, that Mr. Timbou had not reported the alleged use of racist language to Mr. Newman at the time, despite knowing he was there as a referee assessor, even if Mr. Newman had not seen/heard it himself. Third, that there were no other witnesses in support of Mr. Timbou's account.
34. Dealing with those observations in turn: The Commission noted that on the basis of Mr. Newman's emailed statements, whilst he was in and around the vicinity of the post-match disagreement between Messrs. Timbou and Burton, there were various stages to that disagreement (as Mr. Timbou went through the process of collecting money for the referee's fee, as he explained in his statement) and Mr. Newman might not have been within earshot of the offending remark at the time it was made, if it was made at all. That possibility (i.e. Mr. Newman having not been immediately at hand when the alleged offending remark was made) seems a realistic one, when one compares Mr. Newman's

statements with that of Mr. Timbou. He might, therefore, have simply been unable to report on the specific issue at hand.

35. Mr. Burton's other observations, however, were noteworthy in the Commission's opinion.
36. Mr. Timbou clearly knew that Anthony Newman was at the match in the capacity of being a referee assessor, as at the top of his statement he (Mr. Timbou) explains that Mr. Burton said he was being assessed before the game kicked off. Mr. Timbou then says that he himself asked the assessor whether his players could tape over piercings, rather than having to remove them, after Mr. Burton had required them to be removed i.e. he questioned Mr. Burton's refereeing directions by reference to the assessor. Despite being willing to take issue with Mr. Burton's decisions relating to the match by raising them with the assessor, Mr. Timbou does not appear to have raised any complaint of racial abuse being levelled towards him by the referee, even though the assessor, Mr. Newman, appears to have remained at the ground until leaving at the same time as Mr. Burton i.e. Mr. Newman was present after Mr. Burton made the alleged offending remark and Mr. Timbou could therefore have reported it to him (Mr. Newman) at the ground. The Commission considered this to be significant and it was a point about which Mr. Timbou could not be asked for further evidence by way of possible explanation, given his absence from the hearing.
37. It was also noteworthy, particularly in a case that now depended upon the hearsay account of one witness against Mr. Burton's own account, that no other witness reported having heard the words allegedly used by Mr. Burton, despite there having apparently been a spectator nearby when they were said (see the first new paragraph at page 8 of the evidence bundle, which is the second page of Mr. Timbou's report, where he speaks of a spectator being present at around that time). It might be that the spectator did, or did not hear the alleged words (the Commission could not speculate about this either way), but the FA made efforts to obtain further reports of the alleged misconduct in this case and *nothing* further came in response.
38. Bearing in mind (i) the lack of any contemporaneous report being made by Mr. Timbou about racial abuse directed at him, meaning a failure to report it to an FA registered assessor at the very time it happened, rather than by way of an email later that day by which time Mr. Timbou was aware (as he states himself) that Mr. Burton had contacted the Kingston Patriots Chairman to explain that he (Mr. Burton) had "*reported us* [Kingston

Patriots First Team] *in the referee whats app group*” (sic.), next to (ii) Mr. Timbou’s own report having been rendered hearsay evidence by his failure to attend the hearing, such that the Commission was left with unanswered questions on certain matters and Mr. Timbou’s credibility could not be tested, and (iii) there being no witnesses to corroborate that hearsay account, despite the possibility that there were witnesses present at the time, the Commission did not consider that the FA’s case remained strong enough to defeat Mr. Burton’s denial of the allegations against him, even on the balance of probabilities.

39. The Commission therefore found that the allegation that Mr. Burton used the phrase “*black git*” towards Mr. Timbou was not proved.

40. As both the charges raised against Mr. Burton were based upon his alleged use of that phrase after the match [as explained at §§11-15 above; see also the charge letter], it follows that the Commission found both the first and second charges against him were not proved.

41. Accordingly, no issue of sanction arose in Mr. Burton’s case as no charges were proved against him.

SANCTION: CHE TIMBOU

42. The Commission moved to consider the sanction to be imposed upon Mr. Timbou for his admitted violation of FA Rule E3(1), the facts of which (his throwing of the referee’s match fee to the ground) are set out in detail above and need not be rehearsed here.

43. The Commission was informed that Mr. Timbou had no previous disciplinary matters recorded against him.

44. The Commission noted the element of disrespect shown by Mr. Timbou in his throwing the referee’s match fee to the floor, which cannot be justified however one might view a referee’s performance or general conduct, as well as the fact that this was improper conduct occurring some time after the match had concluded, as both being relevant to the sanctioning decision.

45. In mitigation, however, the Commission noted Mr. Timbou's admission of the offence from the outset (he had explained his own misconduct in his report to the FA about Mr. Burton's conduct, on the day of the match itself, and admitted that misconduct once charged), his hitherto good record and the fact that, accepting his statement on this point as the Commission did, the match fee was eventually properly paid (this aspect of his account was not challenged). The Commission also noted Mr. Timbou's degree of contrition and remorse as set out in his own report.

46. Taking account of all of those factors and the FA's Sanctioning Guidelines¹, the Commission imposed the following sanction in this case:

- (i) Che Timbou is fined £40.
- (ii) He is suspended from attending any ground during matches played in FA approved competitions (from one hour before kick off until one after the match concludes), until such time as Kingston Patriots First Team have completed one match in FA approved competitions.
- (iii) He is warned as to his future conduct; and
- (iv) His club, Kingston Patriots, will be imposed with 5 penalty points pursuant to the FA's Respect sanction scheme.

RIGHT OF APPEAL

47. There is a right of appeal against the above decisions in accordance with the relevant provisions set out in the Rules and Regulations of the Football Association.

48. All of the Commission's decisions as recorded above were reached by unanimous agreement.

¹ There is large degree of overlap in sanction between the 'low', 'medium' and 'high' levels of offending for this type of offence in the Guidelines, outside the National League System, although the Commission considered this case fell into the 'medium' level before taking account of the mitigation set out above.

10th May 2019

Craig Harris (Chair)

Roger Pink

Barrie Funnell