

In the Matter of Gabriel Armando De Abreu of Arsenal FC

Claim of Wrongful Dismissal and Excessive Punishment

Reasons for Regulatory Commission Decision

Tuesday 22nd September 2015

Information and Background

1. These are the full reasons for the decision of the Regulatory Commission in respect of the wrongful dismissal and excessive punishment claims submitted by Arsenal FC on behalf of Gabriel Armando De Abreu (“the Player”).
2. The Player was dismissed in the fixture of Chelsea FC v Arsenal FC on Saturday 19th September at Stamford Bridge. The Referee, Mr. Michael Dean, had dismissed the Player and submitted the following report to The Football Association (“The FA”):

“In the 45th minute of the game Gabriel Paulista was dismissed from the field of play for a act of violeny (sic) conduct. I was stood next to him and he backheeled a Chelsea player catching him with his studs, this gave me no option but to dismiss the player from the field of play”.
3. On Monday 21st September Arsenal FC notified The FA of their intention to submit a claim of wrongful dismissal as well as a claim in the alternative that the standard punishment is clearly excessive. Such a claim in the alternative was introduced for the commencement of the 2015/16 Season. The standard punishment for a dismissal of violent conduct is a suspension of three matches.
4. On Tuesday 22nd September Arsenal FC submitted their submissions in respect of their claim in addition to nine video clips, five exhibits, and five photographs/still images.

The Regulations

5. The relevant paragraphs of Regulation 5 of the Disciplinary Procedures Concerning Field Offences and in particular wrongful dismissals, reads:

“a) A Player and his Club may seek to limit the disciplinary consequences of the dismissal of a Player from the Field of Play by demonstrating to The Association that the dismissal was wrongful. In order to demonstrate that a dismissal was wrongful for the purposes of this regulation, the Player and his Club must establish that the Referee made an obvious error in dismissing the Player.

...
c) The Regulatory Commission that considers a claim of wrongful dismissal is concerned with only the question of whether any sanction of a suspension from play is one which should be imposed in view of the facts of the case. This role is not to usurp

the role of the Referee and the dismissal from the Field of Play will remain on the record of the Club and the Player, will remain the subject of the administration fee and will accrue the appropriate number of penalty points for a first team sending off.

...

e) The Claim will be determined based on video and/or DVD and written evidence only. None of the Match Officials nor the Club or Player are entitled to be present or represented at the Regulatory Commission."

Note: The regulations regarding claims that the sanction is clearly excessive are not included in these reasons as that matter was not required to be determined.

The Hearing

6. The Members of the Regulatory Commission convened on Tuesday 22nd September 2015 to consider the claims submitted on behalf of the Player. The Members of the Regulatory Commission were Mr. Roger Pawley, Mr. Paul Raven and the Commission was chaired by Mr. Brian Jones.
7. The Regulatory Commission was assisted by Mr. Robert Marsh, Judicial Services Manager at The FA, who acted as Secretariat.
8. The Commission was further assisted by Mr. Adam Gale-Watts of the Referee Advisory Panel. Mr. Gale-Watts was present to provide advice in respect of the applicable law of the game relevant to the dismissal and any guidance given to Match Officials when considering a dismissal under the relevant law. He did not take any part in our deliberations in respect of the claim.
9. The Commission, under the procedures, considered the claim of wrongful dismissal first. If that claim was to fail and therefore be dismissed by this Commission we would proceed to consider their claim for excessive punishment. In order to be successful in their claim of wrongful dismissal the onus was on the Club to prove to the Commission's satisfaction that the Referee had made an obvious error in dismissing the Player.
10. In assisting us, Mr. Gale-Watts outlined the relevant law of the game to the Commission which reads as follows:

"A player is guilty of violent conduct if he uses excessive force or brutality against an opponent when not challenging for the ball."
11. Mr. Gale-Watts further outlined that an act of violent conduct is punishable by a red card and therefore a dismissal as opposed to an act of aggression which would receive a caution. The Commission, in checking their understanding of the difference with Mr. Gale-Watts, used the example of a push in the chest of an opponent, which depending mainly on the force, could result in a caution or a dismissal.
12. The Members of the Regulatory Commission considered the Referee's report in addition to the submissions of Arsenal FC including all exhibits and images provided. The Commission also viewed the video clips of the incident provided by the Club.

One clip in particular provided a clear view of the full action of the Player for which he was dismissed by the Referee.

13. The Commission, in considering what the members could view on the videos, did consider it to be an act of aggression carried out by the Player. However, the Commission also considered the factors outlined under the law of game relevant to violent conduct, namely those of brutality or excessive force.
14. The Commission found that the act carried out by the Player was not one of brutality. The Commission considered further whether the act was one which was carried out with excessive force beyond that of an aggressive act.
15. The Player had his back to his opponent and raised his lower leg towards that opponent. The level of force used by the Player, whilst making slight contact, was considered by the Commission to be low and the nature of the act could not be considered violent.
16. The members of the Regulatory Commission were unanimous in their decision that this act should not have been considered to be more than a caution offence and therefore the Referee had made an obvious error in dismissing the Player from the field of play. The Commission concluded that the offence was aggressive but clearly fell short of violent conduct as defined by the laws of the game, namely that the act was absent excessive force or brutality.
17. Given the conclusion reached, that the Referee had made an obvious error, the Regulatory Commission therefore ordered that the claim of wrongful dismissal be upheld and the suspension be removed with immediate effect.
18. The claim of excessive punishment, lodged by the Club in the alternative, falls away given the successful claim of wrongful dismissal.

Brian Jones (Chairman)

Paul Raven

Roger Pawley

26th September 2015