

In the matter of a Regulatory Commission of The Football Association

Between:

The Football Association

and

Jose Mourinho

Reasons for Regulatory Commission Decision 13 October 2015

Introduction and background

1. These are the written reasons for an FA Regulatory Commission decision on Tuesday 14 October 2015 ordering a £50,000 fine and a suspended one match stadium ban against Mr Jose Mourinho for his admitted misconduct in breach of FA Rule E3 (1) by his comments to the media following a Premier League match *Chelsea FC v Southampton FC* on 3 October 2015.
2. The Commission members are Nicholas Stewart QC (chairman), Mr Chris Reeves and Mr Paul Raven. Our written reasons are requested under 9.3 of the *Regulations for Football Association Disciplinary Action*¹. We are unanimous on our decision and the reasons.
3. By letter to Mr Mourinho dated 5 October 2015 the Football Association charged him with misconduct for breach of FA Rule E3, alleging that his comments to the media on 3 October 2015 constituted improper conduct in that they had alleged and/or implied bias on the part of a

¹ *The FA Handbook, Season 2015-2016*, pages 319-329.

match official or match officials and/or brought the game into disrepute, in contravention of Rule E3 (1).

4. FA Rule E3(1) states (as far as relevant here):

“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”

Mr Mourinho is clearly a Participant.

5. Mr Mourinho had given separate television interviews to BBC television and to Sky Sports television following the match on 3 October 2015. The charge letter enclosed full transcripts of both interviews and gave hyperlinks where each interview could be viewed in full. Key passages from both interviews were quoted in the charge letter although it was made clear that the FA might rely on the whole of the interviews in support of the charge.

The Regulatory Commission hearing

6. Mr Mourinho did not request a personal hearing so we dealt with the matter on the papers only. That paper hearing took place with the chairman of the Regulatory Commission sitting at Wembley Stadium, accompanied by the FA Judicial Services Manager Mr Robert Marsh acting as secretary to the Commission, and Mr Reeves and Mr Raven participating by video link.
7. The Regulatory Commission, as well as the charge letter and Mr Mourinho’s formal reply admitting the charge, had and considered the following material:
- (1) Those transcripts and the hyperlinks to the two interviews.
 - (2) Letter dated 8 October 2015 from Mr Mourinho addressed to this Regulatory Commission, expressly accepting the charge and containing a number of points in explanation and mitigation.

(3) An 8 page document “Submissions on behalf of Jose Mourinho” also dated 8 October 2015, confirming Mr Mourinho’s admission of the charge and then setting out points in mitigation under three headings:

- The context of the comments.
- Mr Mourinho’s past record.
- Other relevant cases where charges have been brought under FA Rule E3 for media comments.

with eight tabs of supporting material.

A key point: Did Mr Mourinho question the referee’s integrity?

8. While he formally admitted the charge straight away after receipt of the FA’s charge letter, Mr Mourinho has consistently maintained, both in his letter to the Regulatory Commission and in those 8 page written submissions, that he had not questioned the integrity of the match referee. That is an issue which this Regulatory Commission needed to resolve in order to decide an appropriate penalty for his breach of Rule E3. A breach which did not include any aspersion on a match official’s integrity would be significantly less serious than one which did.
9. The key comments on this issue were in the BBC television interview. Mr Mourinho was complaining, as he also did in the Sky Sports interview, that the referee ought to have given but instead denied Chelsea a penalty when the score was 1-1. The transcript includes the following:

“ . . . it was a big penalty for us. Not small, not doubtful, big, huge, and the referee is 10 or 15 metres away and doesn’t give the penalty and gives a free kick against us. I comment to the fourth official and I agree completely with what [he] told me. [He] told me “the referee is 10 metres away, he is in the best position so for sure he had the right decision”. And at that time [he] calmed me because I believe in him. In the end of the game, I come to the dressing room, he was right the referee was 10 metres away, but it was a penalty. And we don’t get decisions, I think referees are afraid to give us

decisions when we are top, I understand the feeling that everybody wants to push you down but when you are so down, give us a break. Be honest with us and give what you have to give, and it's a big penalty."

10. That last comment – “Be honest with us and give what you have to give, and it’s a big penalty” – can only reasonably be understood as saying that in denying a penalty the referee had made a decision against Chelsea which he had not honestly believed was correct. That was a plain attack on the integrity of the referee. We therefore reject Mr Mourinho’s contention, made in point 2 of his letter to the Regulatory Commission (and elsewhere in the papers), that he had not questioned the referee’s integrity but instead had spoken “on a broader level about the impact I genuinely believe football pundits are having on referees at Chelsea matches”. While his two interviews did go into that broader issue, that does not neutralise or reduce the force of that specific comment which did question the referee’s integrity. We stress that we are not attempting to read Mr Mourinho’s mind when he made his remarks. Our task is to hear and read what he actually said and reach a common sense view of how the listeners and viewers would have understood him.
11. We note Mr Mourinho’s observations in his letter that English is not his first language and that getting a genuine and fair point across in the way that was intended can be even more difficult for foreign managers like him. However, his English is far too sophisticated for that to affect our conclusion, as the interviews themselves demonstrate.
12. It is not necessary for us to set out further passages from either of the interviews. Mr Mourinho has accepted that overall those interviews constituted misconduct in breach of Rule E3 and we have decided against him on the most serious aspect of his comments, his questioning of the referee’s integrity.

Points in mitigation

13. What we do then need to consider is the various points made by and on behalf of Mr Mourinho in mitigation. We shall state those points and express our conclusions fairly briefly, although we have given all points full and careful consideration:

(1) *Mr Mourinho admitted the charge at the earliest opportunity*: That is true but he expressly denied the key element of questioning the referee's integrity, on which we have decided against him.

Context

(2) *In none of the clips did he state or suggest that the match referee or referees were consciously making unfounded decisions against the club Chelsea FC, or question the integrity of the match referee or referees in any way [His first point on Context, 3.1 of the written submission]*: We have already explained why we reject this point.

(3) *There is a lack of clarity amongst managers concerning where the line is currently being drawn by The FA when it determines whether media comments are in breach of FA Rule E3 [His second point on Context, 3.5 of the written submission]*: Mr Mourinho's comments in this case were so clearly on the wrong side of the line that there is no need to go into this issue at all. It is no mitigation for Mr Mourinho.

(4) *The interviews took place immediately after the game when tensions were running high [His third point on Context, 3.8 of the written submission]*: This is plainly correct but is no excuse. Mr Mourinho is an experienced manager and an experienced interviewee. This was not some spur-of-the-moment unguarded outburst. These were quite lengthy comments, delivered calmly and (as his next point expressly acknowledges) in a controlled way.

(5) *Mr Mourinho made his comments in a controlled way, and did not express any anger towards the referee [His fourth point on Context, 3.9 of the written submission]*: We do not see how this offers any material mitigation, given the seriousness of what he so calmly said about the referee.

(6) *His issued statement putting on record that he considers receiving a misconduct charge from the FA to be an extremely serious issue and that his admission of such a serious charge is damaging to his reputation [His fourth point on Context, 3.10 of the written submission]:* Especially given the qualified extent of his admission, we do not consider this offers any material mitigation.

Mr Mourinho's past record

(7) *Mr Mourinho accepts that this Regulatory Commission will take into account the two previous findings of misconduct by media comments in the past three seasons but makes the point that in neither case had he called into question the integrity of the referee or alleged that referees were biased [Para. 5 of the written submission]:* We do give Mr Mourinho's past record suitable weight when judging the appropriate penalty for this latest breach. We have rejected his contention in the present case that he did not question the referee's integrity.

(8) *Following the second of those previous decision, on 27 January 2015, Mr Mourinho has refrained from commenting on refereeing decisions, despite significant provocation from the media [Para. 6 of the written submission]:* We do not have evidence of that provocation and Mr Mourinho has always been free to comment on refereeing decisions as long as he avoids a breach of the FA Rules. But in any case we do not consider that a period of less than 10 months since his last breach of Rule E3 can amount to positive mitigation in relation to the breach we are now considering.

Other cases of FA Rule E3 charges for media comments

(9) *Mr Mourinho's written submission [para. 7 with attachments Tabs 4 to 8] drew our attention to cases of breach of Rule E3 by five other Premier League club managers by media comments about referees and their decisions:* We accept and would apply the principle that where there is a clearly established range of penalties for a line of cases of a particular type and seriousness, then to go significantly outside that range for a broadly

comparable case would normally need justification by particular facts and circumstances of that case. However, for a Regulatory Commission to go further than that principle and to treat a small number of previous decisions as setting any sort of firm benchmark or yardstick has considerable dangers. Each case turns on its own facts. We do not know all the facts of the previous cases and what points might have been made in mitigation. Even in those cases where we have full written reasons for the decision, it may be that the penalties were on the lenient side and that there would have been no unfairness if a stronger penalty had been imposed. We also note that in paragraph 7.2 of the written submission there is a reference to the £10,000 fine imposed in August 2013 on a manager with a previous record but without mentioning that, as we can clearly see from the written reasons of that Regulatory Commission, there was also a two-match touchline ban. Accordingly, while we do not disregard those previous decisions we must examine all the material before us to judge what is fair for this breach in this case. This is consistent with the approach indicated in the Court of Arbitration for Sport decision *CAS 2013/A/2379* at paragraph 9.30: “The Panel considers that although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interest of sport.” We do stress that we do not believe anyway that our decision on penalty does involve any marked inconsistency with the general approach of Regulatory Commissions in other cases.

The fair penalty for this misconduct by Mr Mourinho

14. In weighing all the facts and circumstances of this case, there are two matters which must have a strong bearing on the penalty:
 - (1) Mr Mourinho’s attack on the referee’s integrity by words which clearly implied that he had made a decision against Chelsea which he had not honestly believed was correct.
 - (2) The two previous Regulatory Commission findings of breach by Mr Mourinho of Rule E3 by media comments directed against match officials:
 - In May 2014 he was fined £8,000 and warned as to future conduct by a Regulatory Commission for post-match media comments in April 2014

- In January 2015, he was fined £25,000 and warned as to future conduct for media comments made after a match on 28 December 2014.

15. We recognize that in neither of those two previous cases was Mr Mourinho found to have questioned the integrity of the referee or suggested bias. We also remark that the January 2015 Regulatory Commission noted with some concern that Mr Mourinho had also been guilty of misconduct on two other occasions, in October 2013 and March 2014 (though we do not know what type of misconduct was involved in the first of those and the second was for re-entering the field of play and not for media comments).
16. Given that in the light of Mr Mourinho's misconduct record the January 2015 Regulatory Commission fined Mr Mourinho £25,000 for a significantly less serious breach than this one, we consider that a substantially larger fine is justified for this further and more serious misconduct committed less than a year later. We have therefore decided on a fine of £50,000.
17. We have also decided to add a one match stadium ban, though suspended and only to be brought into effect if within the next 12 months Mr Mourinho commits a further breach of Rule E3 by media comments. It appears to us that increasing levels of fine are not on their own going to be a reliable deterrent for Mr Mourinho against improper comments to the media. We have in mind particularly that the more than doubling of the January 2015 fine as compared with the May 2014 fine has not deterred him from this latest and more serious breach.
18. In our judgment the fair way to impose this deterrent is to suspend the ban so that Mr Mourinho is able quite easily to avoid its ever coming into effect. The matter is in his hands. All he has to do is refrain from any further breach by media comments for the next 12 months, whereupon the ban will expire completely.
19. We consider a (suspended) stadium ban and not just a touchline ban to be the right order. This was not an offence committed in the course of a game or on or by the field of play. The nature of this offence – and the further offence he would have to have committed if the ban is ever to have effect - makes a stadium ban the appropriate form.

Regulatory Commission order

20. We have made the following order against Mr Jose Mourinho for this breach of FA Rule E3:

- (1) Mr Mourinho is fined £50,000.
- (2) He is banned from attending, at any time on the match day, the stadium or ground at which Chelsea FC first team plays its next match in an approved competition.
- (3) This ban is nevertheless suspended and shall come into immediate effect if (but only if) an FA Regulatory Commission decides at any time that Mr Mourinho has committed a further breach of FA Rule E3 before 13 October 2016 by any comment or statement to or through the media.
- (4) That Regulatory Commission may further suspend this ban pending the outcome of an appeal by Mr Mourinho against its finding of such further breach of FA Rule E3.

21. We were not asked by the FA to make any order for costs and although the discretionary power remained under regulation 8.8 of the *Regulations for Football Association Disciplinary Action*, no order is made in relation to the relatively modest costs of this paper hearing conducted by video link.

Nicholas Stewart QC
Chairman

Chris Reeves

Paul Raven

15 October 2015