

The Football Association Regulatory Commission

In the Matter of

The Football Association Ltd

-v-

Scott Flinders (York City FC)

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Reasons for Regulatory Commission decision Monday 22nd August 2016.

The Regulatory Commission members were Messrs. Brian M. Jones (Chairman), Mick Kearns (JP) and Marvin Robinson appointed by The Football Association.

PARTIES:

Mr Scott Flinders was present and was represented by Mr Mark Knowles. Messrs Richard Jobson and Jason Lee, both of the PFA attended as observers.

Mr Yousif Elagab of Counsel represented The FA and Mr Alex Treacher of The FA attended as an observer.

Mr Paddy McCormack the Judicial Services Manager of The FA acted as Secretary to the Commission.

The following is a record of the salient points which the Discipline Commission considered and is not intended to be and should not be taken as a verbatim record of the hearing.

CHARGE:

By a Misconduct Charge Notification of the 2nd June 2016 Mr Scott Flinders was charged with misconduct for a breach of FA Rule E3 in respect of the Football League 2 fixture AFC Wimbledon v York City FC played on Sunday 19th March 2016.

It was alleged that in or around the 71st minute Mr Flinders used abusive and/or insulting words contrary to Rule E3(1). It was further alleged that such breach of Rule E3(1) was an "Aggravated Breach" as defined in Rule E3(2) as it included a reference to ethnic origin and/or colour and/or race.

It was noted that should the Regulatory Commission find that an "Aggravated Breach" of Rule E3(1) was proven, then the Commission would be bound to impose a suspension of at least five (5) matches, pursuant to FA Rule E3(3) to be found at pages 112-113 of the current FA Handbook. Further the Commission may increase the suspension depending on any additional aggravating factors present.

1. The detail of the charge was that Mr Flinders was alleged to have said to a member of the opposition Lyle Taylor in conversation that she (Flinders's wife) "doesn't like your kind".

2. Mr Flinders denied the charge and requested to attend before a Regulatory Commission for a personal hearing.
3. It must be made perfectly clear from the outset that the Regulatory Commission were not charged with deciding whether Mr Flinders was or was not racist.

HEARING:

4. The members of the Commission had before them a bundle of documents which they had read before convening. No useful purpose would be gained by describing in these Reasons each document as that would add to the writer's typing and the readers reading, suffice it to say that the bundle consisted of statements from Lyle Taylor (AFC Wimbledon player and complainant); Neal Ardley (Manager, AFC Wimbledon); Neil Cox (Assistant Manager, AFC Wimbledon); Rob Lewis (Referee), transcript of The FA interview with Scott Flinders, Scott Flinders Defence case summary, statement of Scott Flinders, statement of Craig Hinchcliffe (Goalkeeping coach, York City FC), statement of William Boyle (loan player, York City FC), character reference for Mr Flinders prepared by Lisa Charlton Club Secretary York City FC dated 24th June 2016.
5. In addition there were two (2) most helpful video recordings which were watched on a number of occasions.
6. The hearing took place at the offices of The Football Association, Wembley Stadium, London on Monday 22nd August 2016.
7. The Football Association take matters of this nature very seriously. For someone to be abused as alleged is a serious matter and equally so for someone to be accused of such behaviour.

BRIEF SUMMARY OF THE EVIDENCE:

ON BEHALF OF THE FA:

LYLE TAYLOR:

8. In his statement Mr Taylor described his ethnic background as mixed Black Caribbean and White British.
9. Mr Taylor had been consistent with his evidence throughout the investigation by The FA and giving evidence before the Regulatory Commission.
10. The incident in question is reported by the Referee as follows:

"As the ball had been cleared from a corner kick away to my left, I understand there was some jostling between Wimbledon 33, Lyle Taylor and the York goalkeeper, Scott Flinders. After the game, Mr Taylor said that he had grabbed what he thought was the keepers shirt but had in fact grabbed his testicles.

Flinders: "What the fuck did you grab my bollocks for?"

Taylor: "Because your missus doesn't, does she".

Flinders: "But she doesn't like your kind"

The last comment made by Mr Flinders was in the opinion of Mr Taylor, racial. These last words are also consistent with the initial exchange between Mr Taylor and I on the field of play when he first approached me in the 71st minute to complain".

11. He was adamant that the words alleged were in fact spoken and it was clear from the video evidence that the time line given by him was correct. In other words the video confirmed the evidence of Mr Taylor as to what happened leading up to the words being said to him by Mr Flinders.
12. When considering the totality of the evidence the members of the Regulatory Commission were unanimous in the view that Mr Taylor was a consistent and credible witness and that his version of events was confirmed by the video evidence.

ROB LEWIS (REFEREE):

13. Mr Lewis gave evidence by WebEx (video conference).
14. Mr Lewis did not hear the actual conversation between the two players as he was some distance away as clearly shown in the video recording.
15. However he did confirm that within a few seconds of a particular incident occurring and as soon as he called Mr Taylor to him Mr Taylor complained that the York City goalkeeper had made a comment to him. Mr Taylor was told to report it to the match official at the end of the game, and indeed did so and was accompanied by his Manager when making such complaint.
16. The "particular incident" was some pushing and shoving between Mr Taylor and Mr Flinders which the referee had not seen but which was brought to his attention by one of his Assistants through the communication system.
17. That pushing and shoving was clear to see from the video evidence.
18. Although he did not hear the alleged conversation between Mr Flinders and Mr Taylor he gave firm and clear evidence about Mr Taylor's reaction.
19. He was also able to provide a perfectly good explanation as to why he did not mention the complaint to Mr Flinders at the time as he did not want to give rise to a potential incident and also as to why he did not speak to the York City Management about the complaint after the match, namely that the Management had left the ground by the time a formal complaint was lodged.
20. The members of the Regulatory Commission found Mr Lewis's evidence to be helpful and was accepted.

BRIAN BAKER:

21. Mr Baker was the match assessor and was present with the match officials in their changing room when Mr Taylor and his manager made the formal complaint after the match.
22. On the day of the match he made a report to The Football Association and his evidence was in line with that report.
23. He confirmed that both he and the Referee wrote down what they were told by Mr Taylor in the changing room after the match had ended and when Mr Taylor had some time to consider whether he wished to proceed with a complaint to the match official.
24. His evidence was clear and straight forward and accepted by the members of the Regulatory Commission.

NEIL COX:

25. Mr Cox is the Assistant Manager of AFC Wimbledon.
26. His team scored in the last minute of the game to win the match 2 – 1
27. In the changing room there was a lot of excitement and happiness but he noticed Mr Taylor was just sitting there looking really unhappy and was clearly upset about something.
28. He spoke to Mr Taylor and was told what had happened. He said that he (Cox) must report it to the Manager Mr Ardley and he went off to find him and report the matter.
29. Mr Cox gave evidence in a firm and forthright manner and the Regulatory Commission members found him to be an honest and truthful witness.

NEAL ARDLEY:

30. Mr Ardley is the Manager of AFC Wimbledon.
31. The first he knew about the matter was when it was reported to him by Mr Cox and when he was dealing with the Press interviews.
32. He confirmed the evidence of the previous witnesses in so far as reporting the matter to the Match Officials in their changing room sometime after the match had ended.
33. He explained to the Regulatory Commission that he would have expected his player to tell him about the incident and not necessarily report it immediately to the match officials and it was quite clear to the Regulatory Commission members that he had given Mr Taylor time to consider his position and that he had properly advised Mr Taylor at the time.
34. He also gave a perfectly good explanation why he had not informed the York City Management of the complaint, namely that the Management had left the ground by the time a formal complaint was lodged.

35. His evidence was clear and concise and accepted by the members of the Regulatory Commission.

ON BEHALF OF THE DEFENCE:

CRAIG HINCHCLIFFE:

36. Mr Hinchcliffe was attending a football course in Scotland and was unable to attend the hearing in person. Due to time restraints of the course he was only available at a certain period of time and by way of a Preliminary Application some days before the hearing the Chairman had ordered that to assist Mr Hinchcliffe he could give evidence by telephone and that the Commission would allow, if required, for his evidence to be taken out of order.

37. Mr Hinchcliffe therefore gave evidence by telephone.

38. Mr Hinchcliffe was the goalkeeping coach for York City FC.

39. He confirmed that his statement was true.

40. He did not hear the conversation between Mr Flinders and Mr Taylor.

41. He would have dealt with things differently to the way they were and he had a different version of events to Mr Taylor as to what happened immediately after Mr Taylor and Mr Flinders parted company on the field of play.

42. He confirmed that he did not know, nor could he say, why Mr Taylor made his way to the dugout before being called to the referee.

43. His evidence therefore was not really helpful at all.

WILLIAM BOYLE:

44. The parties agreed that this witness's evidence would not take long and in view of the time of day it would be convenient to hear him also out of turn.

45. Mr Boyle also gave evidence by telephone.

46. He confirmed that his statement was true and that he had seen both the videos.

47. He heard nothing of the alleged conversation and confirmed that the alleged words could have been said but he didn't hear them.

48. In the circumstances he was unable to assist the Regulatory Commission at all.

SCOTT FLINDERS:

49. He confirmed that his statement was true and that the transcript of the interview was true to the best of his knowledge.

50. He confirmed that the first he knew of the complaint was when he was called in to the Club Secretary's office and she told him about it, that being a couple of weeks after the match in question.
51. He stated, and repeated on more than one occasion, that it was not in his character to say such things as alleged and that he was 100% not a racist.
52. He agreed, as in his interview, that if the words alleged were said then he considered them to be racist.
53. He confirmed that prior to the conversation between him and Mr Taylor he had been "grabbed in the balls" by Mr Taylor and that had probably made him angry.
54. He was frustrated and wanted to confront Mr Taylor and did so by asking why he had grabbed him in the balls.
55. He stated that even so he was 100% in control of his emotions at the time.
56. He confirmed to the Commission that he accepted a lot of Mr Taylor's account of what happened but not the words "not your kind".
57. However he did not know, or could not remember, exactly what he said to Mr Taylor and unfortunately his evidence at formal interview and since has not been consistent and reliable.
58. He told the Commission that he did not throw a punch but the video evidence, watched by the members of the Regulatory Commission a number of times, seemed to contradict that comment.
59. The members of the Commission did not find Mr Flinders to be a convincing or a reliable witness and his evidence, like at interview, was inconsistent.

LISA CHARLTON:

60. Ms Charlton gave evidence in accordance with her letter.
61. The members of the Regulatory Commission noted her evidence.

CONCLUSION:

62. We reminded ourselves that the burden of proof is on The FA and the standard of proof is the civil standard of the 'balance of probability'. That means the Regulatory Commission is to be satisfied, on the available evidence that the incident was more likely than not to have occurred. Put simply we had to weigh up the evidence before us and decide which version was most probably true.
63. Mr Taylor presented as a genuine person and gave his evidence in a concise and clear manner and was a credible witness.

64 His evidence was contested by the members of the Commission and Mr Knowles and he did not waver at all.

65 In stark contrast thereto we reminded ourselves of the evidence of Mr Flinders.

66 The members of the Commission were unanimous in the decision, confirmed by the video evidence and the live evidence, which was largely accepted, that the incident as described at paragraph 10 above happened between Mr Flinders and Mr Taylor and that on the balance of probability, after reading, hearing and considering the evidence, and observing Mr Flinders whilst giving evidence, they were comfortable that the comments alleged to have been made by Mr Flinders were in fact made.

67 Therefore the charge under FA Rule E3(2) was proven.

MITIGATION:

68 We were pleased to hear that Mr Flinders had no previous record of misconduct of this nature.

69 We carefully considered the helpful mitigation which was presented by Mr Knowles on behalf of Mr Flinders and reminded ourselves of the contents of the letter from Mrs Charlton.

70 The Regulatory Commission members appreciated that there had been some provocation by Mr Taylor and that the same would be considered when deciding on a suitable and proportional sanction, but still within the confines of the Rule.

SANCTION:

71 Mr Flinders is to be warned as to his conduct.

72 In accordance with FA Rule E3(2) Mr Flinders will be immediately suspended from all football and football activity until such time as York City FC have completed five (5) competitive matches in approved competitions.

73 Mr Flinders be fined the sum of £1,250.

74 Mr Flinders to pay a contribution of £250 towards the costs of the hearing.

75 The Personal Hearing fee to be retained.

76 Mr Flinders to attend a one to one FA Education course (FA Rule E3(9)), details of which will be provided to him by The Association.

77 This decision is subject to the relevant Appeal Regulations.

Brian M. Jones (Chairman).

Mick Kearns; Marvin Robinson. Friday 25th August 2016.