

IN THE MATTER OF A DISCIPLINARY COMMISSION
OF THE FOOTBALL ASSOCIATION

Before:

Robert Englehart KC

Matt Wild

Tony Agana

B E T W E E N:

The Football Association

Complainant

- and -

John Yems

Respondent

SANCTION

PRELIMINARY

1. On 17 November 2022 we found 11 charges of misconduct, consisting of Aggravated Breaches under Rule E3.2, to have been established against Mr Yems; in addition, Mr Yems admitted a further aggravated breach. Accordingly, we had to determine the appropriate sanction. Following receipt of written submissions from both parties, we held a remote hearing on 6 January 2023. We deliberated amongst ourselves, and our decision was then communicated to the parties in a decision letter of 6 January 2023. We now briefly set out the basis for our decision.

APPLICABLE REGULATIONS

2. The general powers of a Regulatory Commission in relation to sanction are set out in Regulation 41 of the Disciplinary Regulations. The powers are wide and flexible. However, Regulation 41 specifically provides for it to apply “Save where expressly stated otherwise”. Regulation 45 of the applicable 2020/2021 Regulations provides in apparently mandatory terms:

Where an Aggravated Breach is found proven, a Regulatory Commission shall apply The Association’s sanction guidelines for Aggravated Breaches set out at Appendix 1 to Part A: Section One: General Provisions.

Hence, we are required to apply Appendix One to Mr Yems’s case.

3. Appendix One unequivocally states:

A finding of an Aggravated Breach against a ... Manager ... will attract an immediate suspension of between 6 Matches and 12 Matches.

Thus, we are on the face of it directed to apply a match based suspension in respect of the 12 charges found proved against Mr Yems. Nevertheless before us both Mr Radstone for the FA and Mr Harris for Mr Yems invited us to impose a

time based suspension, although understandably they did, of course, differ as to the suggested length of a suspension.

4. A match based suspension certainly gives rise to difficulties in the case of someone like Mr Yems who is no longer contracted to any club. It would beg the question by reference to the matches of what club it is to be assessed. Moreover, Appendix One might suggest that each of the 12 charges proved in Mr Yems's case would attract cumulative match related suspensions. Mr Harris emphasised the unfairness, although we think that in a case such as the present, where a course of conduct is in issue, proportionality could be satisfied by directing suspensions to run concurrently rather than consecutively.
5. There was some discussion about the above difficulties at the hearing. However, we noted that in both the previous decisions cited before us, that is *FA v Beardsley* and *FA v Broster and Adams*, time based suspensions were imposed without any discussion as to their appropriateness. Ultimately, we were prepared to accept what both parties in agreement with each other desired. We express a suspension in terms of time, although we do have regard to the approximate number of missed matches which such time might involve in fixing the time.

FA SUBMISSIONS

6. For the FA Mr Radstone submitted that this was an unprecedented and extremely serious case. It involved racist bullying over a significant period of time. In written submissions Mr Radstone identified the following aggravating features:

Mr Yems's role as a manager

His lack of remorse or insight

The repetitive nature of the misconduct

The number of different victims

The victims' youthful ages

The effect of Mr Yems's conduct on the victims

Subjecting the victims to a contested hearing

The public nature of Mr Yems's racist statements

Mr Yems's repetition of similar types of statement

Mr Radstone only identified two possible mitigating factors: the absence of prior misconduct charges and the admission of one charge, albeit on a basis which the FA did not accept.

7. At the hearing Mr Radstone summarised his four principal submissions:
 - (1) This was an unprecedented case in terms of the number of charges involving racism, islamophobia and xenophobia.
 - (2) It was not material that Mr Yems was not in fact a racist. It was the impact on the victims which was important.
 - (3) The effect on the feelings and mental health of the young victim had been remarkable.
 - (4) A sanction should reflect the gravity of Mr Yems's behaviour.

Taking everything into account, Mr Radstone submitted that a suspension of at least 24 months would be appropriate.

SUBMISSIONS FOR MR YEMS

8. For Mr Yems, Mr Harris emphasised the clear finding in our decision that Mr Yems was not personally a racist. His attempts at jocularly had been thoughtless and misguided but not malevolent. And Mr Yems himself had

accepted our decision and was remorseful. He had suffered a lot, particularly from a media frenzy over the allegation against Mr Yems of deliberate racial segregation at the Club. This was, of course, the allegation which was not supported by the players' evidence and was withdrawn by the FA.

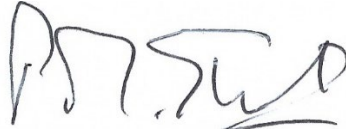
9. Mr Harris asked us to bear in mind that Mr Yems had had a distinguished, successful and diverse managerial career. He had worked with people from many different nationalities, religions and ethnic origins. But now, he had lost his job with the Club and had been out of work since May 2022. His mental health had suffered; he and his family had particularly suffered from the unfounded allegation of racial segregation. Whilst it was realistically accepted that there would be a period of suspension, Mr Harris invited us to consider suspending the suspension in part.

DISCUSSION

10. We regard this as an extremely serious case. We have accepted that Mr Yems is not a conscious racist. If he were, an extremely lengthy, even permanent, suspension would be appropriate. Nevertheless, Mr Yems's "banter" undoubtedly came across to the victims and others as offensive, racist and islamophobic. Mr Yems simply paid no regard to the distress which his misplaced jocularly was causing.
11. We are directed by Appendix 1 to Part A of the Regulations to have regard to the aggravating, as well as the mitigating, factors. This was not an isolated instance but a sustained course of conduct involving remarks made in public. Mr Yems was, of course, in a position of trust and power as a manager of young players upon whom the effect of the way he talked was so distressing.

12. We do bear in mind that Mr Yems is not some conscious racist. We also acknowledge that he and his family would have suffered considerably from the unjustified allegation, and attendant publicity, of racial segregation at the Club. Mr Harris described the publicity as a “witch hunt”. Nevertheless, we came to the conclusion that only a lengthy period of suspension could be justified in this case. We read with interest the two previous decisions which were cited to us, but unsurprisingly the facts of those cases were very different. There are no close precedents for the present case. But, what is clear is that overt racism, even if not deliberate, has no place in football or indeed in any other walk of life.
13. We decided that Mr Yems should be suspended from all football and football related activities for the balance of the current season and next season. The suspension should run up to and include 1 June 2024. In arriving at this decision we took into account the approximate number of matches which a League 2 club would play over this time.
14. We were told that Mr Yems has in fact undertaken two online courses. Nevertheless, we direct in accordance with the Regulations that Mr Yems should be subject to an education programme, the details of which will be provided by the FA to Mr Yems.
15. We were not addressed as to Mr Yems’s financial means. However, in principle, we were of the view that, as in the *Beardsley* decision, Mr Yems should both forfeit his hearing fee and pay the costs of the Regulatory Commission.

16. We also considered whether to impose a fine in addition to the suspension. However, in view of the length of the suspension we concluded that it would not be appropriate to impose a financial penalty in addition.

A handwritten signature in black ink, appearing to be 'A. J. S. D.', written in a cursive style.

Chairman on behalf of the Disciplinary Commission

London, 9 January 2023