

IN THE MATTER OF THE FOOTBALL ASSOCIATION
DISCIPLINARY PROCEEDINGS
BETWEEN:

THE FOOTBALL ASSOCIATION
-and-
JONJO SHELVEY

WRITTEN REASONS OF THE REGULATORY COMMISSION

Introduction

1. Mr Jonjo Shelvey was charged with a breach of FA Rule E3 in respect of his conduct during the fixture between Newcastle United FC (“NUFC”) and Wolverhampton Wanderers FC (“WWFC”) that took place on 17 September 2016. The charge letter dated 8 November 2016 alleged that Mr Shelvey committed an Aggravated Breach of Rule E3 namely that in or around the 87th minute of the match Mr Shelvey used abusive and/or insulting words towards WWFC player, Romain Saiss, contrary to Rule E3(1) which words included reference to ethnic origin and/or race and/or nationality.
2. The Regulatory Commission is composed of David Casement QC (Chairman), Tony Agana and Gareth Farrelly. The final hearing took place on 19 December 2016 in Birmingham. The Football Association (“the FA”) was represented by Ms Amina Graham assisted by Mr Yousif Elagab and Mr Shelvey was represented by Mr Jim Sturman QC. Others attending the hearing which took place in Birmingham on 19 December 2016 were as follows:

Mr Jonjo Shelvey

NUFC player

Mr Glenn Patterson

NUFC player liaison and security

Mr Dwight Gayle

NUFC player

Mr Aleksandar Mitrovic	NUFC player
Mr Dominic Iorfa	WWFC player
Mr Matt Doherty	WWFC player
Mr Cameron Borthwick-Jackson	WWFC player
Mr Daniel Tanveer Batth	WWFC player
Mr Romain Saiss	WWFC player
Mr Robert Edwards	WWFC first team coach
Dr Matthew Perry	WWFC first team doctor
Mr Andrea Butti	WWFC former team general manager
Mr Zoran Djurkovic	Interpreter
Mr Robert Mullis	Interpreter
Mr Simon Barker	Observer PFA
Mr Jason Lee	Observer PFA

Background

3. It is clear there was an incident involving abusive language around the 87th minute of the game following a tackle on a WWFC player for which Vurnon Anita of NUFC received a red card. At that stage of the match, which was being played at St James' Park, WWFC was leading NUFC by two goals to nil. Mr Saiss had made a gesture with his hand to show an imaginary card prior to the referee showing the red card thereby suggesting that Mr Saiss thought the incident was worthy of such. It is clear that Mr Gayle was very unhappy at Mr Saiss's conduct and he took issue with him over it.
4. Mr Saiss is a French national, born in France and of Moroccan extraction. He joined WWFC in August 2016, only a few weeks before this incident, and this was his first experience of playing for an English club. His command of the English language was at best extremely basic when he joined WWFC. It is alleged by the FA that shortly after the red card was awarded Mr Shelvey

called Mr Saiss an “Arab” or “Arabic” “cunt” and/or “prick.” The FA relies primarily upon the first hand accounts given by WWFC players Mr Iorfa, Mr Doherty and Mr Borthwick-Jackson. Further the FA alleges that Mr Shelvey also used the word “Moroccan” towards Mr Saiss in an abusive and insulting manner although only Mr Doherty heard that word being used. The FA also relies upon the evidence of other witnesses as corroboration of the accounts given by the three players. A number of those witnesses gave evidence at the hearing. It is a feature of this case that Mr Saiss, who was the object of the alleged abusive words, did not hear the alleged words being spoken and neither did the referee.

5. Mr Shelvey denies that he made any reference to “Arab”, “Arabic” or “Moroccan” during the match. He does accept that he shouted “smelly breathed prick” at Mr Saiss two or three times following what he asserts was someone calling him “a bald cunt.” Mr Shelvey is indeed bald and has suffered from alopecia since childhood. He said in his evidence that he has encountered abuse about this condition for many years and during this match he believed that Mr Saiss shouted this at him. Mr Shelvey also accepted during his interview and at the hearing that he could not be sure who it was that shouted this at him but he was sure it was one of the WWFC players. Mr Shelvey was adamant that this was the reason he used this strong language to Mr Saiss and disavows any suggestion it was because of the imaginary red card gesture used by Mr Saiss, which he maintains he did not see and was not told about during the match. Mr Shelvey called evidence, in particular from Mr Gayle and Mr Mitrovic.
6. Mr Shelvey accepted in interview that in a further exchange with Mr Iorfa he called him a “peasant” a number of times. This was a reference to what apparently is known as “cashing someone off.” This is when a player, in this case Mr Shelvey, insults another player by emphasising that he earns substantially more money than that player. In the present case, Mr Shelvey asserts this was in response to Mr Iorfa calling him a “fucking prick.” Mr Iorfa denies this and maintained that it was Mr Shelvey’s reaction to Mr Iorfa

asking him what was his problem after Mr Iorfa had heard the words which are the subject of this charge towards Mr Saiss.

7. The dispute which the Commission must resolve is whether the FA have discharged the burden of proof, which it carries, to make out the charge on the balance of probabilities that Mr Shelvey used the words alleged such as to found an Aggravated Breach of FA Rule E3(1). The FA has confirmed that it only seeks a ruling on the aggravated form of the charge. In other words, if there is no Aggravated Breach the FA does not seek to assert that the words used by Mr Shelvey constitute a non-Aggravated Breach.

The Rules

8. Rule E3(1) and (2) appear at page 112-3 of The FA handbook 2016/17 and they state the following:

(1) 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 or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behavior.

(2) A breach of Rule E3(1) is an 'Aggravated Breach' where it includes a reference to only one or more of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender assignment, sexual orientation or disability.

9. The FA submitted that E3(2) is engaged when a breach of Rule E3(1) includes a reference to one or more of the protected characteristics identified in Rule E3(2). It follows, so the FA submit, that Rule E3(2) is also engaged when one of the specific characteristics itself is used in a way which also breaches Rule E3(1). Although nothing turns on it in respect of the facts of this case we agree with that analysis.

10. In respect of sanction it is provided at E3(3)(i) that where an Aggravated Breach is committed for the first time the Commission shall impose an immediate suspension of at least five matches. The Commission has the power to increase the suspension depending on any additional aggravating factors present.

The Evidence

11. Mr Iorfa gave evidence that Mr Shelvey was aware of Mr Saiss's gesture for a red card to be shown after the tackle. His account began with Mr Shelvey asking "Why are you asking for a card, you're winning." Mr Shelvey denies this. He then proceeded to call out the number of Mr Saiss's shirt "27,27". Again Mr Shelvey completely denies this and says he would have only said "oye" to attract the attention of a player such as Mr Saiss who he did not know and whose name he did not know how to pronounce. Mr Iorfa's account in his statement went on to say that when Mr Shelvey was standing close to him he said "you Arab prick" and "you Arab cunt." In his evidence in chief however Mr Iorfa only recalled Mr Shelvey saying "you Arab cunt." In cross-examination by Mr Sturman, Mr Iorfa said at the time he was not 100% sure of what he heard at first but he was pretty sure. It was when Mr Doherty approached him to ask "did he say that?" that Mr Iorfa became absolutely or 100% sure of what he had heard. In re-examination Mr Iorfa was taken to his witness statement and said he recollected Mr Shelvey also saying "you Arab prick." Both he and Mr Doherty then reported the matter immediately after the conclusion of the match. Mr Iorfa was adamant that Mr Shelvey used the word Arab.
12. Mr Doherty and Mr Borthwick-Jackson were also cross-examined in respect of their written statements and the statements recorded by others. It was put to both players, as it was to Mr Iorfa, that their accounts were not consistent with each other as to what was heard nor consistent with notes that had been taken by third parties at the time. Mr Doherty maintained in his oral evidence that he heard Mr Shelvey say "Moroccan prick" and "Arabic

cunt” although he conceded those words could have been in a different order. He said he was “1000%” certain of this. He explained that when he spoke to Mr Iorfa he said “is he allowed to say that?” such was his surprise at the words he heard from Mr Shelvey. Mr Borthwick-Jackson gave evidence that he heard Mr Shelvey call Mr Saiss a “smelly Arab cunt” and said he was “100%” sure of what he heard.

13. These three witnesses are the main witnesses called by the FA to discharge its burden of proof in respect of the charge. The witnesses were cross-examined at length by Mr Sturman, not on the basis that they were lying or had concocted a story to cause harm to Mr Shelvey but on the basis that they were mistaken in what they believed they heard. As Mr Sturman put it, “they heard what they feared to hear.” Further distilled, it was put to the witnesses that in fact what Mr Shelvey said was “you smelly breathed prick” and they have misheard this as “you Arab prick” or “you Arab cunt.” This, as Mr Sturman summed up in closing, was the real issue in the case in terms of what was actually said, and with the noise levels at the ground this was a mistake which the witnesses or some of them could easily have made. In addition there was a danger of cross-contamination of the evidence of the witnesses as they discussed what was said after the match and unwittingly this had affected their recollection.
14. After the match Mr Iorfa and Mr Doherty immediately informed Rob Edwards, the WWFC first team coach, of what was said and he relayed this to the referee. The notes of the referee, Tim Robinson, and a further statement from him have been adduced although the referee has not been called to give oral evidence. The notes recorded that Mr Iorfa informed him that Mr Shelvey called Mr Saiss a “smelly Arab prick.” This was then relayed by the referee to Rafa Benitez, the manager of NUFC, who after speaking with Mr Shelvey reported back that he disputed this assertion and asserted that the words he used were “smelly breathed prick” in response to Mr Saiss calling him a “bald cunt.”

15. Dr Perry, the WWFC first team doctor, gave evidence and exhibited his handwritten notes which he made at the time. He had become aware of a discussion in the changing room after the game when Mr Iorfa and Mr Doherty asked if they should explain to Mr Saiss what had been said even though it might offend him. He recalled Mr Edwards saying this is important and “if this was said they needed to say”. Dr Perry’s notes recorded matters relayed by Mr Iorfa and Mr Doherty. Notably it records Mr Iorfa as relaying that Mr Shelvey said “Oh you prick. Oh you cunt, you Arab cunt.” In the case of Mr Doherty he relayed that Mr Shelvey said “you Moroccan cunt,” “you Arab prick” and “you smelly breathed prick.”
16. The FA also relied upon the evidence of the team captain Daniel Bath who did not hear any of the words which form the basis of the charge although he did hear expletives being used. He did recall that on the pitch Mr Iorfa told him that Mr Shelvey has called Mr Saiss a “smelly Arab.”
17. Mr Saiss himself gave evidence. He was not able to take matters much further. He denied ever swearing at Mr Shelvey at any time. In fact it was not put to him that he was the one who shouted the comment that Mr Shelvey said angered him. It was clear from his evidence that his command of English even now is quite basic. He stated that he never heard the word Arab being used on the pitch and it was only after the match that he heard what was alleged to have been said towards him.
18. Mr Shelvey gave evidence that he lost his temper when he heard someone call him a “bald cunt.” He then responded to Mr Saiss, whom he suspected of saying it because he was walking away, not with reference to being Arab or Moroccan but solely with a personal insult of being a “smelly breathed prick.” This he said two or three times as he considered Mr Saiss did not hear him but he used the same words each time. He insisted that he did not know of Mr Saiss’s use of the imaginary card gesture. When challenged in cross-examination as to whether he was told of the gesture by Mr Gayle he denied

this and also denied making the gesture himself during the footage which appears at “SS4.”

19. In cross-examination by Ms Graham, Mr Shelvey accepted that at the point in the video footage where he says he was insulted he did not react immediately. It was put to him that it was only when he had a subsequent conversation with Mr Gayle that he turned to go back in the direction of Mr Saiss who was walking away. It was put to him that he had been told by Mr Gayle at this point of the card gesture by Mr Saiss and that he then became angry or more angry and used the words which are the subject of the charge before being pushed back by Mr Gayle. Mr Shelvey denied that he knew Mr Saiss was of Moroccan or Arab extraction.
20. Mr Gayle gave oral evidence and said that he heard someone shouting “bald cunt” at Mr Shelvey although he cannot be sure who said it. He also said he heard Mr Shelvey say only once, “smelly breathed prick.” Mr Mitrovic gave evidence but did not take matters any further. He said that he never heard the expression “smelly breathed prick” being used at all.

Conclusion on breach

21. The Commission have considered all of the evidence adduced by the parties including the written statements, evidence and notes that were read or referred to in the bundle. It is clear that there is a stark difference in the case presented by the FA and that presented on behalf of Mr Shelvey. There are differences in the accounts given by the witnesses on each side. However it must be borne in mind that the incident occurred during a match where there was a large crowd and a significant amount of noise. The immediate incident for the referee to address was the foul and the sending-off. The possibility of mishearing something that was said or not hearing at all something that was said must be taken into account. It is clear that not all of the witnesses heard everything that Mr Shelvey said. For example Mr Gayle

only heard once the comment which Mr Shelvey says he used two or three times and Mr Mitrovic did not hear that comment at all.

22. The Commission is unanimous as to the findings on the facts. Mr Shelvey did know that Mr Saiss had made a card gesture in support of the sending off. This had made Mr Gayle angry, as he said himself he was “pissed off” and Mr Gayle challenged Mr Saiss over the gesture. We find that it is more likely than not, given how annoyed he was, that Mr Gayle told Mr Shelvey of Mr Saiss’s gesture after which Mr Shelvey began to walk back in the direction of Mr Saiss to express his views on the matter. This is consistent with Mr Shelvey’s own description of himself on page 2 of the interview transcript. In “SS4” timed at 0:34 Mr Shelvey clearly made a card gesture with his hand to indicate the reason for his anger with Mr Saiss and we find this was in fact the reason for his anger that he referred to at page 6 of the interview transcript rather than the alleged earlier comment regarding his baldness as to which he gave no immediate reaction. Our finding in this regard gives rise to serious concern as to the credibility of Mr Shelvey and the reliability of his evidence when we come to consider what words he used.
23. However even without that finding regarding Mr Shelvey’s credibility, the Commission is satisfied that the evidence of the three main witnesses from WWFC is clearly to be preferred. Their evidence was given with conviction and openness. The certainty with which the witnesses gave their account of what they believed they heard was clear and compelling. The Commission has considered whether the three witnesses could have each misheard the use of the word “Arab” by Mr Shelvey and we conclude that this suggestion is unrealistic. The main witnesses called by the FA taken together with the other evidence and records adduced constituted a formidable case which could not be explained on the basis of the simple mishearing of words. The main witnesses were entirely consistent in respect of what was the central issue in the case, namely whether the word Arab or Arabic was used by Mr Shelvey during the course of what was, on any view, an ill-tempered

outburst of offensive language by him towards Mr Saiss which the latter clearly did not hear.

24. The witnesses adduced by Mr Shelvey did not really support his defence to any significant degree. Mr Gayle clearly did not hear all that Mr Shelvey had said even on Mr Shelvey's account. Mr Mitrovic heard even less than Mr Gayle. Clearly evidence that a witness did not hear something being said does not necessarily mean that it was not said. In respect of Mr Gayle's evidence that he did not tell Mr Shelvey about the card gesture by Mr Saiss we reject that evidence as improbable given his anger at the time and the other evidence referred to above. In our judgment this was the very thing that precipitated the outburst from Mr Shelvey.
25. The Commission finds that the FA has discharged its burden of proof on the balance of probabilities. Mr Shelvey is guilty of an Aggravated Breach of Rule E3(1) as alleged.

Conclusion on sanction

26. After hearing further submissions by Ms Graham and Mr Sturman the Commission adjourned to consider those submissions. The Commission have taken into account all of the matters addressed in submissions and also that Mr Shelvey has no previous history of similar breaches. This was a serious incident which lasted for a very short period of time. It was one incident albeit there were several statements each of which could separately have constituted an Aggravated Breach. In the circumstances the Commission imposes the mandatory minimum five match suspension.
27. In addition, after taking into account the earnings of Mr Shelvey as well as the seriousness of the offence and all the circumstances, the Commission imposes a fine of £100,000.

28. Mr Shelvey will also undertake and complete within the required timescale a face to face mandatory education course. The details of the course will be provided by the FA in due course.
29. Further, Mr Shelvey will pay the costs of holding the Commission hearing. The amount of those costs will be notified to Mr Shelvey by the FA.
30. Finally, Mr Shelvey is hereby warned as to his future conduct.
31. The enforcement of this decision is suspended for a period of seven days from the handing down of these written reasons or Mr Shelvey indicating that he does not intend to appeal this decision, whichever is the earlier.

David Casement QC (Chairman)

Tony Agana

Gareth Farrelly

20 December 2016