

IN THE MATTER OF AN APPEAL FROM THE DECISION OF
A FOOTBALL ASSOCIATION INDEPENDENT REGULATORY COMMISSION

B E T W E E N :-

THOMAS TUCHEL

Appellant

and

THE FOOTBALL ASSOCIATION

Respondent

WRITTEN DECISION AND REASONS
OF THE APPEAL BOARD

Appeal Board:	Graeme McPherson QC (Chairperson) Faye White Matt Williams
Secretary to Appeal Board:	Paddy McCormack (Judicial Services Manager)
Date:	26 August 2022
Venue:	By Microsoft Teams
Appearances:	N/A – non-personal hearing

(A) Introduction and Background

- 1) At the end of the Premier League match between Chelsea FC (*'CFC'*) and Tottenham Hotspur FC (*'THFC'*) on 14 August 2022 (*'the fixture'*) Thomas Tuchel (*'the Appellant'*) and Antonio Conte (*'AC'*) approached one another to shake hands. As they shook hands, AC did not make eye contact with the Appellant. The Appellant considered that to be a sign of *'disrespect'* (his word) on the part of AC. As a result, instead of releasing AC's hand, the Appellant
 - a) Continued to grip AC's hand,
 - b) Jolted AC back towards him after AC had passed him by, rather than allowing AC to walk on by, and
 - c) Told AC to *'look me in the eye when he shakes my hand'*.
- 2) AC verbally reacted to the Appellant's conduct and words. Words were exchanged between them while the Appellant continued to grip AC's hand. Although within a few seconds a number of individuals – stewards and staff and players from each club – intervened to separate AC and the Appellant, their confrontation sparked a larger confrontation on the field of play between technical area staff and players. Each of the Appellant and AC were shown a red card by the match referee and told to leave the field. Each did so, although AC was also involved in a short further verbal altercation with a CFC player before he left the field.
- 3) By letters dated 15 August 2022 the Football Association (*'the FA'*)
 - a) Charged the Appellant with Misconduct for a breach of FA Rule E3 in respect of the Incident. We refer to the charge against the Appellant as *'the TT charge'*
 - b) Charged AC with Misconduct for a breach of FA Rule E3 in respect of the Incident. We refer to that charge against AC as *'the AC charge'*.The FA's case in support of each charge was that the behaviour of the Appellant/AC during the Incident amounted to improper conduct. The charge letters explained that the FA designated each of the TT charge and the AC charge as a Non-Standard Case *'due to the level of aggression demonstrated in the alleged behaviour and/or the unusual nature of the reported behaviour'*.
- 4) With the TT charge and the AC charge the FA served on the Appellant and AC

- a) Two Report Forms completed by the match referee, Anthony Taylor. Those Reports
 - i) Recorded that the Appellant and AC had each been sent off by him *‘under Law 12 section: Physical or aggressive behaviour (including biting and spitting)’*
 - ii) Stated as follows:

‘At the final whistle the two managers [the Appellant and AC] shook hands at the side of the pitch which appeared to result in prolonged physical contact between them. As a result an aggressive conformation ensued which caused a further mass confrontation involving the technical areas and players. Having showed [the Appellant and AC] the red card I advised [each of them] to leave the field of play’; and
 - b) Video clips of the Incident.
- 5) The Appellant and AC each submitted his Reply Form to the FA
- a) Admitting the TT charge/the AC charge, and
 - b) Confirming
 - i) that he did not request a personal hearing for the purpose of addressing the Regulatory Commission on the question of the appropriate sanction to be imposed on him, and
 - ii) that he understood that the charge against him would be dealt with by a Regulatory Commission at a paper hearing on the basis of the documents served on him and any documentation that he supplied to the FA.
- 6) The following documentation was supplied to the FA:
- a) By/on behalf of AC:
 - i) A letter dated 16 August 2022 in which AC
 - (1) Confirmed that he admitted the AC charge, and
 - (2) Set out the matters that he wished the Regulatory Commission to take into account when determining what sanction to impose in respect of his admitted breach of FA Rule E3. Those matters included
 - (a) An apology *‘for the events that happened after [the fixture] ... which is not something I like being associated with or seeing on a football field ...’*
 - (b) An explanation of the context (as AC saw it) in which the Incident had occurred

- (c) AC's recollection of the Incident: *'I extended my hand towards [the Appellant] with the intention of briefly shaking his, however he grabbed my hand and did not release his grip. Due to his very firm grip my arm jarred causing me to be pulled backwards. I was both surprised and unhappy that such handshake caused me to be pulled back with such physical force'*
 - (d) Observations of events which occurred immediately after the Incident
- ii) A further letter dated 16 August 2022 from Kelly Francis, the Football Secretary at THFC, identifying certain additional points that THFC asked the Regulatory Commission to take into account on AC's behalf, including
 - (1) That *'at no point was [AC] the aggressor in the situation having extended his hand to shake that of [the Appellant] at the end of the game ...'*
 - (2) That the Incident had already been addressed between THFC and AC, with AC being reminded of his responsibilities
 - (3) AC's previous disciplinary record (*'... just 1 prior FA charge [for the previous 5 years] in November 2017'*)
- b) By/on behalf of the Appellant
 - i) A letter dated 18 August 2022 in which the Appellant
 - (1) Confirmed that he admitted the TT charge, and
 - (2) Set out the matters that he wished the Regulatory Commission to take into account when determining the sanction, if any, to be imposed in respect of his admitted breach of FA Rule E3. Those matters included
 - (a) His previous professional relationship with AC
 - (b) An explanation of the context (as the Appellant saw it) in which the Incident had occurred
 - (c) The Appellant's recollection of the Incident: *'At the end of the [fixture] I approached [AC] to shake his hand as an act of sportsmanship. [AC] took my hand but did not look at me and I considered his demeanour to be a sign of disrespect towards me. I therefore held on to his hand as he walked past me and told him to look me in the eyes when he shakes my hand. [AC] replied in Italian and acted very aggressively towards me. I did not however react to his aggression and did not say anything insulting to him'*
 - (d) Observations of events which occurred immediately after the Incident

- (e) An acknowledgement that he *‘could and should have dealt with [AC’s] conduct towards [the Appellant] in a more appropriate manner (for example by speaking to him privately afterwards)’*
 - (f) The fact that he had never previously been shown a red card or been charged with improper conduct
 - (g) An apology to the FA and the Regulatory Commission *‘for having to bring and consider the Charge’*
- ii) A further letter dated 18 August 2022 from David Barnard, Director of Football Operations at CFC, identifying certain points that CFC wished the Regulatory Commission to take into account on the Appellant’s behalf, including the assertion that the Appellant had *‘immediately sought to diffuse the situation despite the aggression directed towards him by [AC]’* unlike (it was said) AC. CFC submitted that the Misconduct admitted by the Appellant had been *‘at the lowest end of the scale of improper conduct’*.
- 7) An FA Regulatory Commission (***‘the Commission’***) comprising Stuart Ripley, Alan Hardy and Tony Agana considered the TT charge and the AC charge (which, with the consent of the Appellant and AC, had been consolidated) at a paper hearing on 19 August 2022. Having considered
- a) The documents that were before it, including the recollections of each of the Appellant and AC about the Incident
 - b) The video clips of the Incident
 - c) The previous disciplinary records of each of the Appellant and AC
- the Commission
- i) Accepted the Appellant’s admission of the TT charge and AC’s admission of the AC charge, and
 - ii) Imposed the following sanctions:
 - (1) On AC - a fine of £15,000, and
 - (2) On the Appellant – a fine of £35,000 and a touchline ban until CFC’s first team had completed 1 match in an approved competition.
- The Commission subsequently published Written Reasons dated 22 August 2022 (***‘the Decision’***).

- 8) At paragraph 23 of the Decision the Commission recorded that it felt such sanctions *‘reflected the seriousness of the behaviour of both [the Appellant] and AC during the Incident, but also reflected that [the Appellant] was significantly more culpable than AC in respect to causation’*.

(B) The Commission’s Decision in a little more detail

- 9) The factors to which the Commission had regard when evaluating the sanctions to be imposed on each of the Appellant and AC are to be found throughout the Decision, but particularly at paragraphs 16, 20 and 21 of the Decision. The factors that the Commission found to be most relevant included the following:
- a) That the Appellant and AC had each apologised and admitted the Charge/the AC charge
 - b) That as managers of Premier League Clubs, the Appellant and AC are to be held to elevated standards of behaviour; they are expected to set and maintain the highest standards of behaviour
 - c) That the Incident would have been witnessed by thousands of fans at the match and millions of viewers around the world
 - d) That it was *‘quite clearly [the Appellant] who instigated the confrontation between himself and AC by choosing to grip AC’s hand and jolt him back after AC had passed him by’*. The Commission concluded that *‘[the Appellant] [was] largely culpable for the Incident and [we] unanimously felt that this ought to be clearly and definitively reflected in the level of sanction imposed on [the Appellant] and AC’*
 - e) That had the Appellant not gripped AC’s hand, the Incident and subsequent melee that followed (*‘a mass gathering of staff, players and stewards that could easily have escalated the situation’*) would not have occurred
 - f) That the *‘explanation given by the Appellant for gripping AC’s hand – (‘AC did not look him in the eye’)* – was simply not justifiable

- g) That the Appellant's conduct in telling AC to '*look him in the eyes*' while gripping AC's hand and not allowing AC to move away had been an aggressive and '*highly provocative*' act
- h) That AC had been '*unwillingly pulled, literally, into the confrontation with [the Appellant]*'
- i) That although AC had reacted aggressively to the Appellant's actions, he had not '*hugely over-reacted given the circumstances*' although
 - i) he had remained irate after he had extricated himself from the Appellant's grip and others had separated them, and
 - ii) he had entered into a brief but heated verbal exchange with a CFC player before leaving the pitch
- j) That the confrontation between the Appellant and AC was likely to have increased tensions between two already highly-charged sets of spectators
- k) That AC had one previous (admitted) misconduct charge (from November 2017), while the Appellant no previous charges (see paragraph 16 of the Commission's Decision)
- l) That the starting point for an admitted Standard charge in relation to improper conduct at Premier League Level was £8,000
- m) The significant weekly income of each of the Appellant and AC.

(C) The present appeal

- 10) The Appellant now appeals against the sanction that was imposed on him by the Commission. That sanction was, he contends, '*excessive in all the circumstances*'. In his Written Submissions the Appellant relies on 3 broad matters to support that position:
- a) First, that the Commission attributed excessive weight to the Appellant's culpability in relation to the Incident, and gave insufficient weight to AC's culpability in relation to the Incident

- b) Secondly, that the Commission gave insufficient weight to the Appellant admitting the TT charge and to his previous clean disciplinary record
- c) Thirdly, that the Appellant's conduct was at the lowest end of the scale of improper conduct.

11) The FA's opposes the Appellant's appeal. In a nutshell its position is that

- a) The Commission's conclusions as to the respective culpabilities of the Appellant and AC in respect of the Incident were correct (and were certainly conclusions which a reasonable Commission was entitled to reach in the light of the evidence). In any event, they are findings of fact with which we, as an Appeal Board, should not interfere
- b) The Commission gave appropriate weight to both the Appellant's admission of the TT charge and the Appellant's previous clean disciplinary record
- c) The Commission was right to conclude – and was certainly entitled to conclude – that the Appellant's conduct was not at the lowest end of the scale of improper conduct.

(D) The test to be applied by an Appeal Board when considering whether a penalty is 'excessive'

12) Although neither party addressed us on this matter, we saw no reason to depart from the guidance given by the Appeal Board in *Zaha v The Football Association* (17 February 2019) as to the approach to be adopted when considering whether a sanction is 'excessive'. Accordingly, the approach that we adopted on this appeal was to ask ourselves whether the sanction imposed by the Commission on the Appellant was materially more than that which was necessary or proportionate in the circumstances of the case.

(E) The first ground of appeal

13) In his Written Submissions the Appellant '*rejects the [Commission's] assertion that he was "largely culpable for the incident"*' and invites us to conclude that the Commission erred in reaching that conclusion. He asserts that the Commission

- a) Ought to have concluded that it was AC's reaction, not his conduct, that caused the Incident to escalate as it did,

- b) That AC's culpability for the Incident (and its escalation) was greater than the Commission found, and
- c) That as a result, there ought to have been far less of a disparity between the sanction imposed on the Appellant and the sanction imposed on AC – in particular, the Appellant's sanction ought to have been far closer to the fine of £15,000 imposed on AC.

14) We have no hesitation in dismissing that ground of appeal:

- a) As the Commission found, the conduct that sparked the Incident was the Appellant's conduct in
 - i) Continuing to grip AC's hand,
 - ii) Jolting AC back towards him after AC had passed him by, rather than allowing AC to walk on by, and
 - iii) Telling AC to '*look me in the eye when he shakes my hand*'.

That conduct involved a level of aggression (as the Appellant accepted by admitting the TT charge), was unprovoked, was unjustified and was wholly improper. It was, as the Commission rightly found, highly-provocative conduct. It was conduct of the Appellant alone

- b) While AC's reaction to the Appellant's actions was itself improper (hence the AC charge and AC's admission of the AC charge), the Appellant's suggestion that the Commission ought to have found
 - i) That the Appellant was not '*largely to blame*' for the Incident,
 - ii) That AC's reaction had '*significantly escalated*' the Incident, and thus implicitly
 - iii) That AC's culpability for the Incident was greater than the Commission found in the Decision

mischaracterises and ignores the fundamental reason why the Incident occurred. AC's reaction was a direct consequence of the Appellant's wholly improper conduct. The fact that AC reacted as he did does not absolve the Appellant for blame for the wider confrontation that then followed and does not enable the Appellant to contend that that wider confrontation should be attributed solely, or even principally, to AC's misconduct. The Appellant's misconduct remained the root cause of the Incident.

15) Accordingly, in our view the Commission was not only entitled to conclude on the evidence that the Appellant had been ‘*largely to blame*’ for the Incident and that the Appellant had been ‘*significantly more culpable than AC*’, it was bound to do so. For the Appellant to even now be suggesting

- a) That the lion’s share of the blame for the Incident did not rest with him, and
- b) That a greater share of the blame for the Incident ought to have been attributed to AC shows a worrying lack of insight on his part both as to quite how serious his conduct was, whether by comparison to AC’s reaction or *per se*, and as to the cause of the events that, quite predictably, followed his conduct. This is a matter to which we return below when addressing the third ground of appeal.

16) In those circumstances it is unsurprising that the Commission concluded that the sanction to be imposed on the Appellant should be greater (to a significant degree) than the sanction to be imposed on AC. The disparity between their reflective sanctions reflects that.

(F) The second ground of appeal

17) The Appellant is in our view simply wrong to contend that the Commission gave him ‘*little or no credit*’

- a) For admitting the TT charge at the earliest opportunity, and
- b) For his clear previous disciplinary record.

18) Contrary to what is said in the Appellant’s Written Submissions, the Appellant’s clean disciplinary record was referenced in the Decision: see paragraph 16 of the Decision. Likewise, his admission of the TT charge was also referenced in the Decision. In those circumstances, it is plain that the Commission

- a) Did have in mind the Appellant’s admission of the TT charge and previous clean disciplinary record when considering what sanction to impose on the Appellant, and
- b) Did reflect such matters in its decision on sanction.

19) Indeed, we would go further. Had the Appellant not admitted the TT charge (particularly in circumstances where the video evidence *prima facie* showed his guilt) and/or had the Appellant not had a clean previous disciplinary record, we would have expected the sanction imposed on him by the Commission to have been very considerably greater than the sanction in fact imposed.

(G) The third ground of appeal

20) As a starting point, it is to be noted that before the Commission the Appellant did not challenge the FA's characterisation (in the TT charge) of the Appellant's conduct as amounting to a '*Non-Standard Case due to the level of aggression demonstrated in the alleged behaviour ...*'. Given his tacit (and in our view correct) acceptance that his conduct involved a level of aggression, it is surprising that the Appellant nonetheless now seeks to persuade us that the Commission

- a) Ought to have found that his conduct was not '*overly aggressive*', and
- b) Ought to have concluded that his conduct was '*at the lowest end of the scale of improper conduct*'.

21) The Commission found that the Appellant's misconduct was serious. That is a conclusion which in our view it was open to the Commission to reach – and it is a conclusion that we endorse. As the Commission found

- a) The Appellant's conduct was aggressive, inappropriate, unjustifiable and highly provocative
- b) The Appellant's conduct not only instigated the confrontation between him and AC, it was a root cause of the melee that subsequently followed, which could easily have escalated further
- c) The Appellant's role as manager of CFC means that he is expected to set and maintain the highest standard of behaviour. His conduct fell woefully short of that high standard
- d) The conduct occurred in front of thousands of fans at the match (and in a highly charged atmosphere) and millions of viewers around the world.

22) In those circumstances the Commission's conclusion that the Appellant's Misconduct was not at '*the lowest end of the scale of improper conduct*' and indeed was considerably higher up that scale was both a conclusion that the Commission was entitled to reach and, in our view, a correct conclusion.

(H) Standing back and considering the sanction as a whole

23) In our view the sanction that the Commission imposed on the Appellant was not '*excessive in all the circumstances*'; it was not materially more than that which was necessary or proportionate in the circumstances of the case. In particular

- a) The Commission was perfectly entitled to conclude that a fine alone would not be an adequate sanction to reflect the Appellant's breach of FA Rule E3, and that a touchline ban should (in addition to a fine) be imposed
- b) Neither of the individual elements of the sanction was excessive:
 - i) The fine of £35,000 was not excessive in the light of the '*significant weekly net income*' of the Appellant as divulged to the Commission
 - ii) A 1 match touchline ban was the minimum touchline ban that the Commission could impose. That was not excessive
- c) Combining the elements of the sanction did not create an overall sanction that was excessive
- d) While the sanction imposed on the Appellant was more severe than that imposed on AC, that disparity was well justified in the circumstances of the case.

(I) Order and Costs

24) For the reasons given above, we dismiss the Appellant's appeal.

25) On 19 August 2022 the Chair of the Commission set aside the sanction imposed by the Commission on the Appellant until the outcome of any appeal that the Appellant might pursue was known. Now that the appeal has been determined, the sanction is 're-activated', meaning that

- a) The Appellant shall serve a touchline ban, effective immediately from 26 August 2022, until the CFC first team has completed one (1) Category 1 fixture in an approved competition, and
- b) The Appellant's fine of £35,000 is now payable.

26) Finally, we order the Appellant to pay the costs of the Appeal Board in the sum of £1,600 and the £100 appeal fee. We make that order to reflect the lack of merit in the appeal.

27) This decision is final and binding pursuant to Fast Track Appeal Regulation 17.

Graeme McPherson QC (Chairperson)
Faye White
Matt Williams

Signed by the Chairperson on behalf of the Appeal Board
26 August 2022