

THE FA DISCIPLINARY COMMISSION

on behalf of Leicestershire & Rutland County Football Association

A PERSONAL HEARING

of

George Markou-Nikandrou

THE DECISION AND REASONS OF THE COMMISSION

Introduction

1. On 19 April 2016, a match took place between Blaby & Whetstone Athletic (Blaby) v Ashby Ivanhoe Reserves (Ashby) (collectively “the match”).
2. Gary Allen, manager of Blaby reported an incident of misconduct taking place during the match.
3. It was said by Mr Allen that he had asked Mr Markou-Nikandrou, Assistant Referee, how long was left in the match. He was ignored by the Assistant Referee who then proceeded to call him a “*stupid fat Englishman*”. Mr Markou-Nikandrou then waved his wrist at Mr Allen and said “*watch broke*”. This was done in an aggressive manner with Mr Markou-Nikandrou moving his face close to Mr Allen’s
4. Mr Markou-Nikandrou was charged with misconduct contrary to FA Rule E3 and E3(2).

The charge

5. On 2 August 2016, Leicestershire & Rutland FA layed the two charges of misconduct contrary to FA Rule E3 and E3(2).
6. FA Rule E3 and Improper Conduct - including foul and abusive language and E3(2) Improper Conduct - aggravated by a person’s ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability contrary

The Plea

7. A “*Not Guilty*” plea was entered by Mr Markou-Nikandrou and a request for the matters to be dealt with at a personal hearing (“the Hearing”).
8. The case was presented before a Disciplinary Commission appointed by The Football Association (“The FA”) as a personal hearing.

The FA Rules

9. The FA Rule E3 states:

- “(1) A participant shall at all times act in the best interest 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 behaviour.*
- (2) A breach of Rule E3(1) is an “Aggravated Breach” where it includes a reference, whether express or implied, to any one or more of the following :- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.*
- (3) Subject to sub-paragraphs E3(4) -E3(6) below –*
- (i) Where a Participant commits an Aggravated Breach of Rule E3(1) for the first time, a Regulatory Commission shall impose an immediate suspension of at least five matches on that Participant. The Regulatory Commission may increase this suspension depending on any additional aggravating factors present.*
- (ii) Where a Participant commits a second or further Aggravated Breach of Rule E3(1), a Regulatory Commission shall impose an immediate suspension of more than five matches, taking into consideration an entry point of an immediate suspension of ten matches, and any aggravating or mitigating factors present.*
- (4) Where an Aggravated Breach of Rule E3(1) is committed –*
- (i) By a Participant for whom a match-based suspension would be inappropriate due only to that Participant’s particular role in football; or*
- (ii) In writing only; or*
- (iii) Via the use of any communication device, public communication network or broadcast media only; or*
- (iv) By reference only to nationality, a Regulatory Commission will not be bound to impose an immediate suspension of at least five matches for a first such breach, or of more than five matches for a second or further such breach. Instead the Regulatory Commission may impose any sanction that it considers appropriate, taking into*

account any aggravating or mitigating factors present. For the avoidance of doubt and without limitation, E3(4)(i) shall not apply to a Manager, coach or Player.

- (5) (i) *Where in youth football a Player aged 12 – 15 inclusive commits an Aggravated Breach of Rule E3(1) for the first time, a Regulatory Commission shall impose a suspension of at least five matches. The Regulatory Commission may increase this suspension depending on any additional aggravating factors present. A minimum of one match shall come into effect immediately and any remainder of the suspension shall be suspended on such terms and for such period as the Regulatory Commission considers appropriate.*
- (ii) *Where a second or further Aggravated Breach of Rule E3(1) is committed in youth football by a Player aged 12 – 15 inclusive, a Regulatory Commission shall impose an immediate suspension of more than five matches, taking into consideration an entry point of an immediate suspension of ten matches, and any aggravating or mitigating factors present.*
- (6) *Where an Aggravated Breach of Rule E3(1) is committed in youth football by a Player aged under 12, no disciplinary charge will be brought. The primary aim in such cases will be education. (7) Where two or more Participants from a Club commit any Aggravated Breach of Rule E3(1) in any twelve month period, regardless of whether any such breach falls within sub-paragraph E3(4), the Club itself will be liable to a sanction imposed by a Regulatory Commission. The Regulatory Commission may impose any sanction that it considers appropriate, taking into account any aggravating or mitigating factors present. For the purpose of this Rule, a decision of a Regulatory Commission that a Participant has committed an Aggravated Breach of Rule E3(1) will be conclusive evidence of that fact, unless that decision is or may be subject to appeal in accordance with FA Rules or regulations. (8) A Regulatory Commission may impose a financial penalty or any other sanction that it considers appropriate in respect of an Aggravated Breach of Rule E3(1) whether or not it has imposed a suspension in respect of the same breach.*
- (9) *A Participant who commits an Aggravated Breach of Rule E3(1) will be subject to an education programme, the details of which will be provided to the Participant by The Association.*

The Commission

10. The following members were appointed to the Disciplinary Commission (“The Commission”, “We/us”) to hear this case:

Mr K Singh (Chair);

Mr K Johnson (Council Member);

Mr R Cader (Local Football Anti-discrimination Panel Member); and

Miss R Scase, Football Services at Leicestershire & Rutland County Football Association acted as the Secretary.

The Hearing

11. The following is a summary of the principal submissions provided to The Commission. It does not purport to contain reference to all the points made, however the absence of a point, or submission, in these reasons should not imply that The Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, The Commission has carefully considered all written and oral evidence in respect of this case.
12. We convened at 6 PM on 3 October 2016 at Leicestershire & Rutland FA offices at Holmes Park, Whetstone.
13. Mr Markou-Nikandrou represented himself.
14. In advance of the hearing we were notified the manager of Ashby intended to give evidence on behalf of Mr Markou-Nikandrou. Despite the absence of a witness statement The Commission permitted this to take place.
15. The Commission had received and read the bundle of documents containing the statements and correspondence from all parties.
16. We received a witness statement from Mr Allen in support of the charge dated 24 June 2016.
17. Mr Markou-Nikandrou had provided an Extraordinary Incident Report Form

dated 20 April 2016 and email correspondence dated 28 June 2016. In addition, The Commission had before it County Association Report Form and the Extraordinary Incident Report of, Referee, Anthony Quinn, as well as the Extraordinary Incident Report of James Anderson all dated 20 April 2016. Mr Anderson was another Assistant Referee.

18. Mr Anderson did not attend to give evidence. Nevertheless, the Commission took his Extraordinary Incident Report into account and attached the appropriate weight given in his absence and the untested nature of his account.
19. At the start of his evidence Mr Allen confirmed truth and accuracy of his witness statement. He confirmed nothing of significance had taken place prior to the incident in question with Mr Markou-Nikandrou.
20. Mr Allen confirmed the incident took place in the dugout after a second player had been sent off. This took place in the final few minutes of the match. Mr Allen confirmed Rob Blanchard, Assistant Manager, Treasurer, Michael Gamble were stood approximately 2 m away from him at the time of the alleged abuse.
21. Further, Mr Gamble confirmed the alleged words were said in a conversational tone and there was noise in the area. However, Mr Allen stated that everybody in the dugout had heard what was said. He was asked about the absence of any other witnesses confirming his account. His reply was that all of a sudden he was asked to come in to the Leicestershire & Rutland FA offices about the incident. The date of hearing he was given clashed with a holiday and then shortly after submitting his witness statement he was given a date to attend the hearing.
22. Mr Markou-Nikandrou gave evidence, he confirmed the truth of his account as set out in his Extraordinary Incident Report form. He denied the allegations made against him. He confirmed Mr Allen had been dismissed from the field of play by the Referee. However he had returned to the technical area. Mr Markou-Nikandrou asked Mr Allen to leave. At this point Mr Allen said "Go

fuck yourself". He was asked to leave the field of play again by Mr Markou-Nikandrou and Mr Allen was alleged to have said *"If you come anywhere near me I will knock you down"*.

23. Glenn Andrews confirmed Mr Allen had entered the field of play at the time of the second sending-off. He was seen to be arguing with the Referee. Mr Andrews was standing in the technical area at the time. Mr Allen was then seen to leave the field of play and go into the spectator area. He did not see Mr Allen again in the technical area. Although, he stated his attention was focused on the match.
24. Mr Andrews confirmed that he had, had a go at Mr Markou-Nikandrou during the match. However, he did not *"bite back"*.
25. Mr Quinn confirmed the truth and accuracy of his account as set out in his Extraordinary Incident Report. He also confirmed he had not worked with Mr Markou-Nikandrou prior to the match in question. Although he had Refereed matches involving Mr Allen prior to the match in question he would not have known his name.
26. Mr Quinn stated Mr Allen had been dismissed from the field of play at the time of the second sending-off. However, a few moments later Mr Markou-Nikandrou's flag was seen to be waving. He then approached Mr Markou-Nikandrou to investigate. Mr Allen was seen to have come out of the spectator area and was standing in the technical area. Mr Allen was send to be jogging back to the spectator area as if in a joking manner. In Mr Quinn's view, he was playing up to the crowd of spectators. Mr Quinn clearly stated he would not have started the match until Mr Allen had returned to the spectator area.

Burden and standard of Proof

27. The burden of proof is on Leicestershire & Rutland Football Association. The applicable standard of proof required for this case is the civil standard of the balance of probability. The balance of probability standard means that the

Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

Our Findings

28. The Commission noted the vagueness of Mr Allen's witness statement. He referred to the incident taking place with Mr Markou-Nikandrou without any previous difficulty with him during the match. In the light of which, The Commission considered it highly unlikely Mr Markou-Nikandrou would have behaved in the way alleged.
29. Further, Mr Allen's witness statement and oral evidence made no mention of being dismissed from the field of play. Instead, he stated that he had been asked to return to the technical area by the Referee. The Commission preferred the evidence of Mr Quinn in this regard.
30. The Commission also noted the absence of any evidence from the witnesses who were said to have been in the technical area standing a short distance from Mr Allen at the time of the alleged abuse. Mr Allen's explanation for their absence did not seem coherent.
31. The Commission was impressed by the evidence of Mr Quinn. He gave a clear account of the circumstances surrounding the second sending-off. He confirmed Mr Allen was seen in the technical area after Mr Markou-Nikandrou had waved his flag. The Commission noted this contradicted Mr Allen's account. On the balance of probabilities The Commission accepted the account of Mr Quinn and Mr Markou-Nikandrou on this issue. It was more likely than not Mr Allen had been dismissed from the field of play as Mr Allen had accepted he had entered it at the time of the second sending off.
32. Further, The Commission noted the consistency of Mr Markou-Nikandrou's oral evidence with the account he gave in his Extraordinary Incident Report and email correspondence. In addition, The Commission noted the Extraordinary Incident Report forms of Mr Quinn and Mr Johnson were consistent with Mr

Markou-Nikandrou's account of the circumstances in which Mr Allen was told to leave the pitch. Moreover, The Commission observed how Mr Markou-Nikandrou gave evidence in a straightforward manner. Consequently, after taking all of the above into consideration The Commission did not find on the balance of probabilities Mr Markou-Nikandrou would have abused Mr Allen in the way that was alleged.

33. The Commission unanimously found as a fact the words which are the subject of charge were not said.

The Decision

34. As a result of our findings, The Commission dismissed charges 1 and 2.

Appeal

35. This decision may be appealed in accordance with the relevant regulations within the prevailing FA Handbook.

Signed...

Mr K Singh

Mr K Johnson

Mr R Cader

7 October 2016