

NATIONAL COUNTY FOOTBALL ASSOCIATION SERIOUS
CASE PANEL

On behalf of Amateur Football Alliance

Non- Personal Hearing

of

Nicholas HORNE [59083459]

Case ID: 10366949M

THE DECISION AND REASONS OF THE COMMISSION

Introduction/Background

1. On 17 April 2021, Polytechnic Third played Old Garchonians Reserves in the SAL Trophy Division 10, collectively the “match”.
2. On 19 April 2021, an extraordinary incident report form was submitted by the referee Denis Hasanaj to Amateur Football Alliance (“Amateur FA”). Amateur FA investigated the matter.

The Charges

3. On 26 April, Amateur FA charged Nicholas Horne (NH), who played for Polytechnic Third, with Misconduct for a breach of FA Rule E3.1 – Improper Conduct (including foul and abusive language) (“charge 1”) and that this Improper Conduct was aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability, contrary to FA Rule E3.2 (“charge 2”) [Charge 1 and 2 collectively known as “Aggravated Breach Charge”].
4. The FA Rules of the Association are contained in The FA Handbook Season 2020-21 at page 119. Rule E3 states:

E3.1 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 behaviour.

E3.2 A breach of Rule E3.1 is an “Aggravated breach” where it includes a reference, whether expressed 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.

The Allegation

5. It was alleged that NH used foul and abusive language, namely that he made the comment “fuck you, you fucking Arab” which constituted a breach of FA Rule E3.2 by reference to ethnic origin.

The Reply

6. KD responded to the Amateur FA Discipline Team, via the whole game system on 27 April 2021, indicating that he accepted the charge of Improper conduct including foul and abusive language but denied the charge of Improper Conduct aggravated by a persons Ethnic Origin, and requested that the matter be dealt with at a non-personal hearing.

The Commission

7. This case was determined by the Football Association (“The FA”) as suitable to be dealt with by a Chair from the National CFA Serious Case Panel, sitting in alone, acting in accordance with the guidance issued. Accordingly, the FA appointed the following National Panel Member: Loraine Ladlow (Chair).
8. The Role of the Chair is to determine the participants liability and decide sanction. In this case the Chair, having considered all the documents provided, determined that this case was not unduly complex and agreed that the matter could be dealt with by her sitting alone as the Commission.

Documents Received

9. The Commission had received and read the bundle of documents prior to determining the case, which included:

Amateur FA Evidence

- (i) Misconduct Charge Notification dated 26 April 2021;
- (ii) Extraordinary Incident Report Form, completed by Denis Hasanaj, Referee, dated 19 April 2021 and further email evidence sent 19 and 23 April 2021;
- (iii) Emails from Jermaine Bossman, Old Garchonian's club secretary, sent 19 & 20 April 2021;
- (iv) Email statement from Eoin Doran, player, received 20 April 2021;
- (v) Email exchange between Alliance FA and Colin Mongul, Polytechnic FC club secretary dated 19 & 21 April 2021;
- (vi) Email Statement Onur Alkaya, player Old Garchonian's, dated 23 April 2021;

Participant charged Evidence

- (vii) Two Witness Statements from Nicholas Horne, the participant;
- (viii) Witness Statement from Sam Pett, Polytechnic Captain;
- (ix) Email statement of Barry Madigan, Chairman of Polytechnic FC sent 25 April 2021;
- (x) Screenshot of Whole Game System, confirming charge 1 admitted and charge 2 denied and requesting a non-personal hearing.

10. 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, or to all the statements and information provided, however the absence in these reasons of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when it determined the matter. For the avoidance of doubt, the Commission have carefully considered all the evidence and materials furnished in this case.

11. The Commission having considered all the evidence, had regard to the following:

(a) In his statement, the referee Denis Hasanaj stated that he awarded a penalty to Polytechnic, for a challenge by an Old Garchonians player on NH. He stated that NH stood up and informed him he had been grabbed in his private area, which the Referee confirmed he had not seen. He stated that NH then lost his temper and said, “fuck you, you fucking Arab” towards Eoin Doran from Old Garchonians. After NH had said this, two Old Garchonian players reacted and became violent towards NH and that NH responded by throwing some punches and kicks. He stated that at that point other team members intervened to de-escalate the problem. He confirmed that NH admitted ‘racist abuse’ and that he sent him off for it. After the incident, he stated that the match was abandoned due to the fighting and the racism. He stated that had NH not used racist language then the fight would not have started, and he would not have had to abandon the match. He confirmed that the match was beyond the restart stage as everyone had heard NH’s racist remark.

(b) In his statement Eoin Doran stated that around the 35th minute of the game Polytechnic were awarded a penalty which was contested. He stated that the Polytechnic player wearing number 9 told him to “fuck off” and grabbed the ball aggressively and placed it on the ground. He stated that as he turned his back and was walking out of the area for the penalty to be taken, he heard voices behind him, then he was grabbed from behind by the number 9 player, who had dropped the ball and was in his face. He then heard Number 9 say, “fucking Arab”. He stated that players on both sides were horrified and instantly number 9 was surrounded by people accusing him of being racist. He confirmed that he believed it had been directed at one of his team who was actually an Arab but was then informed it was directed at him. He confirmed that he is a dark-skinned Irish man. To stop the situation boiling over he tried to get his team members to come away, when he was again approached by number 9 and, to stop him from grabbing

him he put number 9 in a headlock. At this point he was surrounded by players from both teams. He stated that number 9 had completely lost his head. After a few moments, the situation calmed down and he confirmed that number 9 admitted to making the comment. A decision was made then to abandon the game.

(c) Onur Alkaya stated that the game was going well with no animosity between the teams up until the 35th minute of the game when Polytechnic were awarded a penalty and words were exchanged between a player from Old Garchonians (Eoin Doran) and number 9 from Polytechnic. He stated that number 9 was then heard to call Eoin a “fucking Arab”, which infuriated everyone on the pitch, including some Polytechnic players who were apologising. After the incident a few players surrounded number 9 who was confrontational at first, but then began apologising. After the referee abandoned the game, number 9 apologised again, in the presence of the referee and claimed it was “in the heat of the moment”.

(d) Nicholas Horne, the participant stated that just before half time his team were awarded a penalty following a foul on him. He stated that a few of the Old Garchonian players were protesting the referee’s decision and words were exchanged and a little scuffle took place between him and number 14 from Old Garchonians. He stated that tempers were hot and that having been provoked in the way that he was, he muttered the word “Arab” under his breath, which was stupid of him and which he regretted. He stated that number 14 did not hear the comment or react straight away and that he was not of Arab ethnicity, he was Irish. He stated that what followed was a reaction he had never seen before, with players running at him and grabbing him and that, for the safety of the players, the match was abandoned. He confirmed that he apologised to the Old Garchonians captain and offered apologies to all the players, the referee and his own teammates for using that word and that he deeply regretted saying it. He recognised it was wrong. He stated that he denied the charge because what he said was not aggravated by the ethnic origin of the Irish man, although he fully understands the severity of his choice of words.

- (e) Sam Pett, Captain of Polytechnic stated that 40 minutes into the game Polytechnic were awarded a penalty, following which an altercation occurred between NH and one of the Old Garchonian players and that numerous other players then became involved. He stated that as the pair were eventually pulled apart NH said something. He confirmed that a large brawl then ensued, following which the game was abandoned.
- (f) Barry Madigan, the Chairman of Polytechnic FC stated that he wished to add his profuse apologies for the racial abuse made by their player and confirmed that he does not condone such behaviour. He also stated that apologies had been sent to the Old Garchonians, their player and the referee.

Burden and Standard of Proof

12. The burden of proof rests with the County FA. The applicable standard of proof required for this case is the civil standard of proof namely, the balance of probability. In simple terms, this means that the Commission must be satisfied, based on the evidence, that it was more likely than not that an event occurred.

Findings of Fact

13. The Commission found the following facts on the relevant evidence:
- (i) NH accepted that he called a player from Old Garchonians an "Arab". However, his not guilty plea was put forward on the basis that the player to whom the words were directed was of Irish descent and not from an Arab country.
 - (ii) The Referee, Eoin Doran and Onur Alkaya stated that NH admitted to making the comment. NH accepted that he had apologised after the match for making the comment.
 - (iii) The referee was clear in his evidence when he stated that he heard NH say, "fuck you, you fucking Arab" towards an Old Garchonian player Eoin Doran. The referee's evidence was corroborated by Eoin Doran and Onur Alkaya.
 - (iv) The Referee stated that NH had lost his temper and Eoin Doran described NH as being "in his face" shortly before the comment

was made. NH confirmed that tempers were hot and that he believed he had been provoked, prior to making the comment.

- (v) The Commission found the evidence of the Referee to be clear and reliable and consistent with those of other witnesses and found it more likely than not NH had made the comment, “fuck you, you fucking Arab” to Eoin Doran.
- (vi) The Commission also found that, based on the evidence of the Referee, Eoin Doran and of NH himself, that NH was in a heightened state shortly before making the comment, which made it less likely that he would have muttered the word “Arab” under his breath as NH asserted, and more likely that he would have said the words “fuck off you fucking Arab” out loud in a manner which reflected his state at that time and clearly enough to be heard by those witnesses.
- (vii) The Commission also noted the evidence of witnesses who confirmed that following the comment made by NH, there was a significant reaction from players from both teams, which ultimately lead to the match being abandoned. The Commission noted that for the comment to have triggered such a reaction it was unlikely to have been muttered as the other players would not have heard it.
- (viii) The Commission also noted the comments of the Chairman of Polytechnic FC who accepted that the comment made by NH was discriminatory in nature.
- (ix) Having satisfied itself that NH made the comment as alleged, the Commission considered the claim by NH that as the comment was not made to someone of Arab descent then it could not be an aggravated breach against someone’s ethnicity. The Commission did not accept this assertion. The charge brought against NH under Rule E3 of Improper Conduct states that a participant shall not use abusive, indecent, or insulting words/behaviour and that a breach of that rule will be aggravated where it includes a reference, whether expressed or implied, to ethnic origin. The ethnicity of the person to whom the

comment is made or directed does not have to match with the words used.

- (x) The Commission also noted that the assessment of the evidence is subjective, which means that if the recipient of the comment, or any other person who heard the comment believes it to refer to a person's ethnicity then that it is open to the Commission to find the charge proven. Taking all these factors into account, the Commission was satisfied that NH made the comment as alleged and that the comment was aggravated by reference to ethnicity.

Decision

14. After considering all the written and oral evidence and the standard of proof, the Commission found there was sufficient evidence to support the charge namely that NH did use foul and abusive language amounting to improper conduct, that he made the comment "fucking off you fucking Arab" and that the improper conduct was aggravated by reference to a ethnicity. Therefore, the charge was PROVEN.

Previous Disciplinary Record

15. The Commission, having found the charge proven, sought NH's previous disciplinary record, and noted that he had a clean record with no other misconduct charges.

The Sanction

1. The Commission noted the Disciplinary Regulations of the FA Handbook Season 2020-21) on sanction, which state:

Where a Participant commits an Aggravated Breach for the first time, a Regulatory Commission shall impose an immediate suspension of at least six matches on that Participant, The Regulatory Commission may increase this suspension depending on any additional aggravating factors present.

Whether or not a suspension has been imposed by the Regulatory Commission in respect of an Aggravated Breach, that Regulatory Commission must order that the Participant who commits an Aggravated Breach be subject to an Education Programme and may

impose a financial penalty or any other sanction that it considers appropriate.

2. The Commission also considered the Football Association Sanction Guidelines, as set out in the FA Handbook 2020/21. The sanction was dependent on the Commission's assessment of the case, including the aggravating and mitigating features present, as to whether the Commission considered the case to be low, medium or high.
3. Having regard to the aggravating features, the Commission found that the words used by NH were offensive, that they caused a significant reaction by players from both teams and led to the match being abandoned. The Commission observed that the making of such comments was unacceptable and that it impacted on the reputation of footballers and the game of football as a whole.
4. The Commission noted that the participant had offered apologies to all parties and was remorseful. The Commission also took into account that the participant had a clean disciplinary record.
5. After taking all the aggravating and mitigating factors present, the Commission assessed the level of seriousness and imposed the following sanctions:
 - (1) A fine of £75.00;
 - (2) A six match suspension from football;
 - (3) Ordered to complete the FA's Equality Education Course, on-line, the details of which will be provided to him in due course by the FA. In the event that Nicholas Horne fails successfully to undertake the course within 3 months, he will be further suspended from all footballing activity until such time as this course is completed;
 - (4) 6 Club Disciplinary Points to be recorded.
6. The decision of the Commission is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed

Loraine Ladlow

4 May 2021.