

NON-PERSONAL HEARING

THE FOOTBALL ASSOCIATION

and

WEST HAM UNITED FC

THE DECISION AND REASONS
OF THE FA REGULATORY COMMISSION

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Introduction

1. On 29 August 2015, West Ham United FC (“West Ham”, the “Club”) played the Premier League away fixture against Liverpool FC (“Liverpool”) with a kick-off time of 3.00pm (collectively, the “match”).
2. The appointed Match Referee was Mr Kevin Friend.
3. Mr Friend reported an incident of approximately five West Ham players surrounding him after the dismissal of West Ham player, Mr Mark Noble.

The Charge

4. On 02 September 2015, The Football Association (“The FA”) charged West Ham with misconduct for a breach of FA Rule E20(a) by alleging that, in or around 78th minute of the match, West Ham failed to ensure that its players conducted themselves in an orderly fashion (the “Charge”).
5. The FA designated this case as a Non Standard Case as the Club was charged with a similar breach of FA Rule E20(a) in the preceding 12 months following a fixture against Southampton FC on 11 February 2015.
6. The FA enclosed the following evidence that it intended to rely on:
 - 6.1. Report of the Match Referee, Mr Kevin Friend, dated 29 August 2015; and
 - 6.2. Video clips of the incident, accessible by a following a link sent to the Club Secretary by EMail.
7. The Club was required to reply to the Charge by 6:00pm on 07 September 2015.

The Reply

8. On 04 September 2015, the Club responded by admitting to the Charge and requested the Charge to be dealt with at a Paper Hearing on the content of the documents served upon the Club and the submissions made by Mr Andrew

Pincher, the Club Secretary, in response to the Charge (the “Reply”).

The FA Rule

9. The FA Rule E20(a) states:

“20 Each Affiliated Association, Competition and Club shall be responsible for ensuring:

(a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether expressed or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and ...”

The Regulatory Commission

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

Mr Thura KT Win JP (Chairman);

Mr Stuart Ripley; and

Major William Thomson.

Mr Robert Marsh, The FA Judicial Services Manager, acted as Secretary to the Commission.

The Hearing & Evidence

11. We convened at 3pm on 11 September 2015 by videoconference for this Non-

Personal / Paper Hearing (the “Hearing”).

12. We had read the bundle of documents prior to the Hearing.

13. Mr Friend, the Match Referee, reported the following:

“In approx. the 78th minute of the match when I sent [off] the West Ham player Mark Noble, there were approximately 5 West Ham players surrounding me. I did not feel intimidated but I ask [T]he FA to look at the footage of this incident.”

14. We also viewed the video clips of the incident (in para 6.2) a number of times.

15. In reply to the Charge, Mr Pincher’s written submission included the following explanations and their mitigation:

15.1. The background of events leading to the dismissal of their player, Mark Noble, and their successful claim for his wrongful dismissal;

15.2. The previous breach of FA Rule E20(a) in the Premier League fixture against Southampton in February 2015 was also following a dismissal of one of their players and a subsequent successful claim for wrongful dismissal. However, since then, the Club had a change of Manager and several new players;

15.3. Acceptance that the Rule had technically been breached but, as Mark Noble’s dismissal was unexpected by both sets of players, the initial reaction was one of shock and bemusement, and to enquire the reasons for Mark Noble’s dismissal;

15.4. The Referee also moved into the area where several West Ham players were already situated to administer the dismissal. Their players had not moved any real distance and had not actively or aggressively pursued the Referee;

15.5. Acknowledgement of one of their players, Winston Reid, briefly putting his hand on the Referee’s shoulder as he approached the Referee from behind but it was not forceful or aggressive and he quickly took his hand

away once facing the Referee;

- 15.6. Their players were pleading Mark Noble's innocence and seeking both the explanation and understanding of the Referee's decision;
 - 15.7. The Referee walked backwards and the players followed at a similar walking pace but stopped and stood still when the Referee stopped, and kept a respectful distance while they listened;
 - 15.8. The Referee reported that he 'did not feel intimidated' and there did not appear to be any abusive comments or language, or any further actions required to be taken by the Referee; and
 - 15.9. It is human nature to challenge an injustice.
16. Mr Pincher also included a document containing photographs that he referred to in his submissions.

Previous Disciplinary Record

17. As the Club had accepted the Charge, we enquired about the Club's previous relevant disciplinary record.
18. Mr Marsh informed us that the Club has:
 - 18.1. one FA Rule E20(a) charge in November 2014 when the Club accepted the Standard Penalty of £20,000; and
 - 18.2. one FA Rule E20(a) charge in February 2015, which was a Non Standard Case, when the Club was fined £30,000.

The Burden of Proof

19. The applicable stand of proof required for this case is the civil standard of the balance of probability.

Our Decision

20. We were concerned that this was the Club's third breach of FA Rule E20(a) within a year and their second such breach within approximately six months.
21. We saw from the video clips that the Referee ran towards Mark Noble to show the red card; there were a number of West Ham players already in the vicinity; Mr Reid (#2) who was walking initially but ran the last three or four steps from behind the Referee, put his hands on the Referee's shoulder until he was facing the Referee, and spoke to the Referee; other West Ham players joined in; the demeanours of both Mr Reid (#2) and Mr Obiang (#14) appeared somewhat aggressive; there were up to 7 players surrounding the Referee at one point; the Referee walked backwards but the players continued to follow at similar pace; the Referee then walked away and spoke with another West Ham player but some West Ham players congregated around him again; and all this seemed to have taken place over quite a number of seconds.
22. We noted Mr Pincher's submissions that their players were pleading Mark Noble's innocence and seeking both the explanation and understanding of the Referee's decision. We were, however, unable to determine from the video clips what the exchanges were between the Referee and the West Ham players to fully agree with Mr Pincher's submissions.
23. We accepted that some of the West Ham players surrounding the Referee were there to listen but we had found that the demeanours, especially, of Mr Reid (#2) and Mr Obiang (#14) appeared somewhat aggressive and persistent.
24. We also felt that the prior incident of Mark Noble's dismissal or the successful Claim for Wrongful Dismissal afterwards, which was an unknown outcome at the time, did not excuse the behaviour of the players.
25. In fact, it is these key moments when things are not going in their favour that the clubs are required to ensure their players and participants conduct themselves in an orderly fashion. It is unlikely that there would be disorderly behaviour when things are going well and in their favour.

26. We also noted that the West Ham players surrounded, and followed, the Referee over a relatively extended period but accepted that the Referee did not feel intimidated or that further disciplinary actions were needed.
27. This was the Club's second breach of FA Rule E20(a) in a short period of time and their third breach of FA Rule E20(a) within a year. The Club's efforts in addressing such behaviours by their players do not appear to be successful to date and The FA's previous sanctions seemed not to be having a desirable deterrent affect.
28. This offence appeared to have taken place under the same circumstances as their previous offence in February 2015, and the Club and their players should know that there are proper procedures in place to challenge, which they had successfully employed previously, and not to surround the Referee at the time.
29. Mr Marsh advised us that the standard penalties in Sanction Guidelines for Surrounding the Match Referee offence committed by a Premier League club is £20,000 for the admitted first offence and £30,000 for the first offence if the charge was denied but subsequently found proven by a Regulatory Commission. However, as we were dealing with a Non Standard Case, these penalties do not apply and the sanction is open to us to determine, up to the maximum amount.
30. Mr Marsh reminded us that the maximum penalty for a breach of FA Rule E20 for a Premier League club is £250,000 with that maximum being doubled for a repetition.
31. Whilst we had some sympathy with the Club on the circumstances leading to this Charge, we could not ignore the repetition of these offences.
32. We, therefore, decided that our entry point for the fine would be £75,000.
33. However, based on our findings of the nature and seriousness of the offence, the Club's admission to the Charge and the mitigation presented, we decided to reduce the fine and considered that an appropriate and proportionate sanction

would be a fine of £50,000.

The Sanction

34. After having admitted to the Charge for a breach of FA Rule E20(a), taking into consideration of the previous relevant disciplinary record and this case being designated a Non Standard Case, the nature and seriousness of the offence and mitigation presented, we order that West Ham United FC be:
- 34.1. severely warned as to their future conduct; and
 - 34.2. fined the sum of £50,000 (fifty-thousand pounds).
35. We made no order for costs.
36. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win JP (Chairman)

Stuart Ripley

Major William Thomson

16 September 2015