

IN THE MATTER OF AN INDEPENDENT REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

The Association

- and -

GIUSEPPE BELLUSCI

Participant

WRITTEN REASONS FOR THE DECISION
OF THE INDEPENDENT REGULATORY COMMISSION
FOLLOWING THE HEARING ON
5TH FEBRUARY 2015

1. BACKGROUND

- 1.1 On 21st October 2014, Norwich City FC played Leeds United FC in a Football League Championship fixture at Carrow Road, Norwich.
- 1.2 In or about the 20th minute of the match, an incident occurred between the Norwich striker, Cameron Jerome, and the Leeds central defender, Giuseppe Bellusci. There had been no interaction between the pair prior to that point. The altercation began when Norwich won its first corner of the game. Mr. Bellusci was marking Mr. Jerome. There was some jostling between the pair at the corner, and an exchange of words. After the ball was partially cleared by a Leeds' player, Mr. Jerome put his leg out in an attempt to impede Mr. Bellusci's progress away from the Leeds' goal. Norwich won the ball back and commenced another attack. Mr. Jerome made further physical contact with Mr. Bellusci, pushing or grabbing him from behind.

- 1.3 It is at this point that abusive words of a racist nature are alleged to have been said by Mr. Bellusci that have given rise to these disciplinary proceedings against him. The attention of the match referee, Mark Clattenburg, was drawn to the altercation between the two players and he stopped the game. Mr. Jerome complained to Mr. Clattenburg that Mr. Bellusci had called him (Mr. Jerome), a “*negro*”.
- 1.4 After speaking to Mr. Jerome, Mr. Clattenburg approached the touchline on the bench side of the pitch. Mr. Jerome followed him. Mr. Clattenburg spoke with the Norwich Manager, Neil Adams, and the Leeds United Assistant Manager, Novica Nikcevic. The Fourth Official, Darren Drysdale, was also present. Mr. Clattenburg informed those present that Mr. Jerome had made an allegation that he had been racially abused by Mr. Bellusci. Mr. Clattenburg asked Mr. Drysdale to take a note of the allegation. Mr. Jerome then repeated the allegation using the same Italian words that he had used when he first complained to Mr. Clattenburg on the pitch, and also repeating the word “*negro*”. Mr. Clattenburg said that he would address the matter at half-time so that it could be reported to The Football Association (“The FA”), but as he had not heard the comments he could not take any action.
- 1.5 Mr. Clattenburg then returned to the pitch and isolated Mr. Bellusci and the Leeds’ captain, Jason Pearce. At this stage, the evidence of both Mr. Clattenburg and Mr. Bellusci is that the latter was only told in a general way that an allegation had been made that he had racially abused someone. The precise abusive word that he is alleged to have used was not identified. The significance of this will be returned to in due course.
- 1.6 Shortly after the match re-started, Mr. Clattenburg cautioned Mr. Jerome for raising his arm towards the face of Mr. Bellusci.

- 1.7 At half-time, Mr. Clattenburg invited Mr. Jerome to enter the Match Officials' dressing-room where the latter repeated his allegation to all four Officials. Also in attendance were representatives of both Clubs. Mr. Bellusci was not invited to attend as Mr. Clattenburg decided not to involve him at this stage. There was insufficient time during the half-time interval for a record to be made of Mr. Jerome's version of events.
- 1.8 At the conclusion of the match, the same people who had attended the meeting at half-time - again not including Mr. Bellusci - were invited back into the Match Officials' dressing-room. Mr. Jerome repeated his account of what had happened. Mr. Drysdale was asked to write down the words that Mr. Jerome alleged Mr. Bellusci had used, including those spoken in Italian, so that they could be included in Mr. Clattenburg's report to The FA.
- 1.9 The undisputed evidence before the Regulatory Commission was that Mr. Bellusci did not become aware of the precise nature of the racially-abusive word that he was alleged to have used, namely "negro", until he was on the team bus for the return journey to Leeds. He was informed of it by English-speaking team mates.
- 1.10 An Extraordinary Incident Report was prepared, dated 22nd October 2014 (*i.e.* the day after the match). It was approved of and signed by Mr. Clattenburg. Nothing turns on whether the report was prepared by him or on his behalf by Mr. Drysdale in his capacity as fourth official (the latter being customary practice). The Report contains the following record of events:

"Cameron Jerome informed me "I have been racially abused man!!". I isolated the player and asked him to repeat the words used. He informed me that the words used were "Vaffanculo, testa di catzo (sic) and Negro".

He repeated the word Negro on two occasions and there was (sic) words used before and after the word Negro but Cameron Jerome could not recall what these words were" (emphasis added).

1.11 Upon receipt of the Extraordinary Incident Report, the allegation was investigated by The FA and tape-recorded interviews were conducted of both Mr. Bellusci and Mr. Jerome, on 10th November 2014 and 4th December 2014 respectively. A formal witness statement had been prepared on behalf of Mr. Jerome, and was signed by him, prior to his interview. The statement is dated 6th November 2014.

1.12 During his interview, Mr. Bellusci alleged that during the exchange that had taken place between them, he had told Mr. Jerome in the little English that he knew: *"Leave me, fuck off"*. The ball was then cleared and as Mr. Bellusci was following the ball Mr. Jerome grabbed him from behind on the neck, or on the collar. At this, Mr. Bellusci claims to have said to Mr. Jerome in Italian:

"... ti faccio un'occhio nero, pezzo di merda."

Translated into English, the above words mean:

"I will give you a black eye you piece of shit" (the word "nero" meaning black).

1.13 When questioned during interview, Mr. Bellusci initially denied using the words, *"vaffanculo"* or *"testa di cazzo"*. Later on, he conceded that it was possible that he had used those words, he could not remember perfectly. He said that they were *"quite light"* in Italian. As has been noted, he claims that he told Mr. Jerome to *"fuck off"* in English.

1.14 Throughout the lengthy interview of him, Mr. Bellusci denied that he had used the word “*negro*” and asserted that he had used the word “*nero*” on only one occasion and in the context set out above. He alleged that Mr. Jerome was motivated to make the allegation to try and get him (Mr. Bellusci) sent off. Mr. Bellusci was “100% I never used the word ‘*negro*’”.

1.15 In order to avoid repetition, the key aspects of Mr. Jerome’s interview will be set out in the Commission’s overall analysis of the evidence, including that given at the hearing. Suffice it to say that he maintained his claim that he had heard Mr. Bellusci use the word “*negro*”. He acknowledged that “*negro*” and “*nero*” sounded so similar that there was “*obviously a chance*” that he could have confused the two, but that he had not. He was “100%” sure that Mr. Bellusci had not said “*nero*”.

1.16 By letter dated 22nd December 2014, Mr. Bellusci was charged by The FA with misconduct for a breach of FA Rule E3(1) for using abusive and/or insulting words towards Mr. Jerome arising out of the incident in question. The charge letter further alleged that the breach was Aggravated, as defined in Rule E3(2), as it included a reference to ethnic origin and/or colour and/or race.

1.17 Mr. Bellusci denied the charge and requested a personal hearing before a Regulatory Commission.

2. THE HEARING BEFORE THE COMMISSION

2.1 It follows from the background facts that the narrow factual issue the Commission had to decide was whether Mr. Bellusci had used the word “*negro*” on one or more occasions during his exchange with Mr. Jerome, or whether the word that he used on a single occasion was “*nero*”. There was no dispute that the word “*negro*” was both insulting and racially abusive. If we found that that insult had been used, an Aggravated Breach of FA Rule E3(1) would be established pursuant to Rule E3(2).

- 2.2 The FA bore the burden of proving the misconduct charge, the relevant standard of proof being the balance of probabilities. Having regard to the serious nature of the charge, the Commission paid particular attention to the cogency of the evidence relied upon in support of it.
- 2.3 The Commission only heard oral evidence from Mr. Jerome and Mr. Bellusci (the latter's evidence being translated by an Interpreter appointed by The FA). The witness statements of the Match Officials were taken as read. None of them had heard the exchange in question and the relevance of their evidence went to the contemporaneous nature of the allegation that Mr. Jerome reported to them, together with the consistency of his recollections. At an early stage of the hearing, the prospect was raised of further witnesses being called to speak to the question of consistency of both Mr. Jerome and Mr. Bellusci. In the event, the further evidence did not materialise.
- 2.4 On behalf of Mr. Bellusci, Mr. Bromley Martin QC acknowledged at the outset of his cross-examination of him that there was no question other than that Mr. Jerome honestly believed that he had been racially abused. Instead, Mr. Bellusci's case was that Mr. Jerome had misheard or misinterpreted what the former had said.
- 2.5 It became apparent during the course of his evidence, that Mr. Jerome's understanding of Italian was much more shaky and incomplete than the sense conveyed by his initial reporting to the Match Officials of the words that he attributed to Mr. Bellusci. Mr. Jerome had learned some 'choice' Italian words during his time at Cardiff City from an Italian player whom he had befriended. The difficulties in his understanding of Italian emerged in the following manner:

(i) "Vaffanculo"

- (a) At the time of the incident itself, Mr. Jerome understood the Italian word "*vaffanculo*" to mean "*fuck off*" in English. In the statement that he signed some two weeks later, he said that he understood the word to mean "*you mother-fucker*" or "*your mum's a whore*" – something like that in Italian".
- (ii) An audio recording of Mr. Bellusci saying: "*vaffanculo vaffanculo*" was played to Mr. Jerome during his interview. Mr. Jerome was asked whether that was something that was said to him during the game, to which he replied "*no*". The transcript of the questions and answers that then followed suggest that Mr. Jerome did hear Mr. Bellusci use the word "*vaffanculo*", but louder and more aggressively than how the word was spoken the word on the audio tape. However, as it is reasonable to assume that his understanding of the word was acquired through normal speech, his initial response in interview indicates the difficulty that he had in identifying a word that he had clearly attributed to Mr. Bellusci immediately after the incident.

(ii) "Testa di cazzo"

- (a) In his witness statement, Mr. Jerome said that he understood the words "*testa di cazzo*" to mean "*dickhead*". When he was interviewed a month or so later, he said that he thought that the phrase meant: "*son of a bitch or something like that*".

2.6 There is a respectable argument that the more important overarching consideration is that Mr. Jerome understood the words "*vaffanculo, testa di cazzo*" to be offensive. They undoubtedly are and so whether he knew precisely what they meant may be said to be less important. The pivotal aspect of his recollections is that he heard Mr. Bellusci use the word "*negro*". The difficulty, though, is that there were other matters that reduce the weight and hence the reliance that is capable of being placed upon his evidence:

- (i) During the cross-examination of him, Mr. Jerome said for the first time that he had heard Mr. Bellusci say: "*testa di negro*". This did not appear in either his witness statement, or interview. A literal translation of the three words is: "*head of a negro*", and rather meaningless. This goes directly to the reliability of his recollections, as opposed to his understanding of what particular Italian swear words mean.
- (ii) Mr. Jerome alleges that when the word "*negro*" was said, he and Mr. Bellusci were facing one another. Despite them being very close together, Mr. Jerome has variously alleged that the word "*negro*" was used by Mr. Bellusci (a) "*on two occasions*" (as reported contemporaneously to Mr. Clattenburg and his fellow Officials), (b) that he "*clearly heard*" Mr. Bellusci use the offending word "*at least 4 times*" (in his witness statement), and (c) that the offending word was said "*3 or 4 times*" (in his oral evidence to the Commission).
- (iii) In his witness statement, Mr. Jerome states that the word "*negro*" was "*followed by something I didn't understand.*" In the passage from Mr. Clattenburg's Extraordinary Incident Report, set out at paragraph 1.09 above, Mr. Jerome told the Match Officials that words were used by Mr. Bellusci before and after the word "*negro*", but that he could not remember what they were. Mr. Clattenburg's statement confirms this. In his witness statement, Mr. Bellusci's use of the word "*nero*" is preceded and followed by other words. Accordingly, there is consistency between Mr. Jerome and Mr. Bellusci as to positioning of the pivotal word, the only difference being whether it was "*nero*" or "*negro*".
- (iv) Allied to the last point, when the audio tape of Mr. Bellusci saying "*Ti faccio un occhio nero*" (i.e. "*I will give you a black eye*") was played to him in interview, Mr. Jerome was asked: "*Is that something that you heard said to you during the game?*" In response, Mr. Jerome said:

"Could well have said it – I can't remember definitely him saying that ..."

That was a fair concession, and also a significant one.

(v) Finally, in his witness statement, Mr. Jerome says this:

"I think that he said "negro fucker" or something like that, but I didn't hear the last word properly."

The fact that the words *"negro fucker"* in English are framed in speech-marks implied that Mr. Jerome was quoting the actual words that were used by Mr. Bellusci. But when he was asked about this, Mr. Jerome said that Mr. Bellusci did not use any English words during the exchange and that *"negro fucker"* was his (Mr. Jerome's) interpretation of something that Mr. Bellusci had said in Italian. Mr. Jerome was then asked what the Italian word for *"fucker"* was, but had to accept that he did not know.

2.7 The competing recollections of the incident and the precise words that were used fall to be considered in the context in which they were formed. The backdrop was a fast-moving sequence of play that took place in just over 30 seconds from start to finish. During that time, the ball was twice crossed into the Leeds' penalty area, with the Norwich attacks being repelled on both occasions. Both Players were no doubt attempting to perform their jobs which required concentration. Although physical contact and some 'industrial' words had already been traded, the fateful exchange of words did not start until approximately 18 or 19 seconds after the altercation first started. There was still enough time for further abusive words to be spoken by both Players and by then their attention was less focussed on the play.

- 2.8 At first blush, a threat to give someone “a black eye” seems rather old-fashioned, although on Mr. Bellusci’s case it was immediately followed by an obvious insult (i.e. “piece of shit”). Since Mr. Jerome fairly conceded that he both initiated the physical aggression and was the more aggressive, one might have expected Mr. Bellusci’s retaliation to be more robust than threatening his aggressor with a black eye. Nevertheless, Mr. Bellusci said that it was used in Italy.
- 2.9 More importantly, any suggestion that Mr. Bellusci has used the word “nero” in order to ‘manufacture’ a case to fit in with “negro” is undermined by the timing of his reporting to a Leeds’ official what he claims to have said, which preceded him first becoming aware of the racially abusive word that he was alleged to have used.
- 2.10 It is also noteworthy that the English word “negro” does not have a direct equivalent in the Italian language. The Spanish word “negro” is pronounced ‘neg-row’ in Italy, but is translated as “nero” (‘nairo’) in Italian. As has been shown, “nero” is also the Italian word for black. This was the only word that Mr. Bellusci could think of after the match that he had used which Mr. Jerome may have mistakenly regarded as being racist. In other words, before Mr. Bellusci was actually told precisely what it was that he was alleged to have said.
- 2.11 Mr. Bellusci has been consistent throughout in his evidence as to the words used by him and that he said the word “nero” only once in a particular context. He maintained that case during his evidence before the Commission. Although he was somewhat defensive on occasions during questioning, the same could also be said of Mr. Jerome. This is a common response of witnesses when pressed to give answers and the Commission did not draw any adverse inferences against either of them for doing so.

2.12 Ultimately, the case against Mr. Bellusci depended upon the evidence of Mr. Jerome being accepted. There were no witnesses capable of corroborating either account, independent or otherwise. Mr. Jerome's immediate complaint to Mr. Clattenburg shows that he clearly felt that he had been racially abused, but the contemporaneous words that the Officials recorded him as saying are self-proving. Apart from demonstrating consistency on his part, the weight to be attached to his complaint did not improve with mere repetition. Moreover, as has been shown, Mr. Jerome's evidence has been inconsistent in certain material respects which, when taken with the other matters that have been identified, inevitably have an adverse affect on the reliability of his evidence as a whole.

2.13 Consequently, it is not possible to forensically dissect Mr. Jerome's consistent assertion that he heard Mr. Bellusci use the word "*negro*" - putting to one side for a moment how many times he claims to have heard it - from the rest of his evidence. As he himself fairly acknowledged, the two competing words contended for (*i.e.* "*negro*" and "*nero*") sound so similar, and give rise to an obvious chance of a mistake being made. The risk of such an error being made underlines the importance of it being proven to the satisfaction of the Commission that such a mistake did not happen, for the charge to be made out.

2.14 Accordingly, where their recollections differ, the Commission prefers the consistent evidence of Mr. Bellusci to that of Mr. Jerome, specifically in relation to the word that forms the basis of the alleged Aggravated Breach. On the balance of probabilities, we find that Mr. Bellusci used the word "*nero*" once, in the context that he claims, and that Mr. Jerome misheard or misinterpreted what was said as "*negro*". Once that misapprehension was planted in his mind, Mr. Jerome's reaction to it was entirely understandable. It inevitably set off an inquiry that was properly pursued and which culminated in this hearing.

2.15 In the light of other evidence, and the preference that we have expressed, it is not necessary for us to make a formal finding on the peripheral factual dispute as to whether Mr. Jerome called Mr. Bellusci a "*fucking Italian bastard*", or some such words. We are satisfied that Mr. Jerome used 'industrial' language towards Mr. Bellusci, but whether he made reference to his nationality and the precise nature of the insulting words that he used is not material to the outcome. Further, we do not regard Mr. Bellusci's failure to pursue a complaint against Mr. Jerome as material to the reliability of his evidence, either on this specific issue or more generally. He also told us that he did not have a sufficient command of English to be confident in making a complaint.

2.16 In arriving at our decision, the Commission reiterates that we found Mr. Jerome to be a truthful witness who honestly believed that he had been racially abused. He may well continue to do so. We do not accept that he was motivated to make such a serious allegation out of a desire to get Mr. Bellusci sent off. That theory was not pursued in cross-examination, consistent with the aforesaid acknowledgment that was made by Mr. Bromley Martin. The Commission further acknowledges the willingness of Mr. Jerome to make fair and appropriate concessions, both in interview and in his oral evidence. We were satisfied that at all times he sought to assist the Commission, but that he was mistaken in his hearing and understanding of what Mr. Bellusci said to him.

2.17 It follows that the charge relating to the alleged Aggravated Breach of Rule E3 fails. Although the 'basic' misconduct charge under Rule E3(1) is made out on Mr. Bellusci's own case, it was accepted that he would not have been charged with misconduct absent the alleged aggravating feature. We therefore dismiss the charge in its entirety.

2.18 We direct that the sum of £100 that accompanied Mr. Bellusci's request for a personal hearing should be repaid to him.

Craig Moore

Chairman of the Regulatory Commission

6th February 2015

Appearances:

The Independent Regulatory Commission

Mr. Craig Moore, Barrister, Independent Chairman

Mr. Peter Clayton, FA Council Member

Mr. Keith Allen, Independent Member of The FA Football Panel

For The Football Association

Mr. Dario Giovannelli (Counsel)

Instructed by The Football Association

For Mr. Bellusci

Mr. Michael Bromley Martin QC (Counsel)

Instructed by Brandsmiths Solicitors

The Commission was assisted by Mr. Robert Marsh, FA Judicial Services Manager,
and by the Interpreter.