

Football Association Regulatory Commission (the 'Commission')
in the matter of a Wrongful Dismissal claim brought by West Ham
United FC (the 'Club') on behalf of Cheikhou Kouyate (the 'Player')

Regulatory Commission Decision

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat on Tuesday 5th April 2016.
2. The Commission members were Mr S Ripley (Chairman), Mr D Smith (Football Panel Member) and Mr G Farrelly (Football Panel Member).
3. The Commission were advised on the Laws of the Game, namely in respect of Serious Foul Play, by Mr A Wiley of the Referee Advisory Panel. Furthermore, Mr Wiley provided Practical Information for Match Officials with regard to Serious Foul Play arising from guidance from the Professional Game Match Officials Limited (PGMOL). Mr Wiley remained available for any clarification sought by the Commission, however took no part in deliberations.

4. Mr P McCormack of the FA Judicial Services Department acted as Secretary to the Regulatory Commission.
5. In order for a claim of Wrongful Dismissal to be successful the Player and his Club must establish by the evidence it submits that the Referee made an obvious error in dismissing the Player.
6. The relevant incident took place in the West Ham United FC v Crystal Palace FC, Premier League fixture which took place on Saturday 2nd April 2016.
7. In his Official Report Form the Referee, Mr M Clattenburg, stated *“In the 67th minute, Cheikhou Kouyate miscontrolled the ball and proceeded to launch with initially both feet off the floor to try and retrieve the ball. He then proceeded with a straight leg which was high and with his studs showing which resulted in catching his opponent high on his foot and bottom of his chin [sic] which endangering his safety. I send Cheikhou Kouyate off the field of play for serious foul play”*.
8. The Club submitted video footage evidence of the incident from a number of different angles along with eight still photographs and a supporting letter

from the Club Secretary, Mr A Pincher, the contents of which the Commission read and noted. The Commission did not give much weight to the still photographs or certain elements of the Club's submission, however the numerous video angles did assist the Members when considering the matter.

9. The Commission were conscious of the questions a Referee is to consider, where applicable to the situation, when identifying a Serious Foul Play offence, as noted by Mr Wiley at the beginning of the hearing, namely:

- a. Does the player have a chance of playing the ball in a fair manner?;
- b. Can the player legitimately play the ball without putting his opponent at undue risk?;
- c. What degree of speed or intensity is the player using when making the challenge?;
- d. What is the distance the player has travelled to challenge for the ball?;
- e. Is the player making the challenge off the ground/airborne and in control of his actions?;

- f. What was the position of the feet of the player making the challenge?;
- g. Did the player lead with his studs showing when making the tackle?;
- h. Does the player show clear malice or brutality when making the challenge?; and
- i. Does the challenge clearly endanger the safety of the opponent?.

10. Having viewed the available footage of the incident on numerous occasions, having considered the Club's submissions and all the factors outlined by Mr Wiley, the Commission members were split as to how they viewed the incident with two being of the opinion that the Referee had made an obvious error in sending off the Player and the remaining member being of the opposite view.

11. The majority view was that the ball had fallen equidistant between the two players, the Player's leading foot was not high as the ball had bounced in a spinning motion keeping it low to the ground, that he had made his challenge for the ball in a lateral sweeping movement with his toe pointing downward as opposed to a studs up blocking movement. In addition, the majority of the Commission members felt that the Player had made the

challenge without use of excessive force, speed, brutality or intensity and although he was stretching for the ball he had retained control of his actions.

12.As such, with the benefit of the numerous camera angles available to them, which it is accepted that the match referee does not have, the Commission decided by majority decision that the claim for Wrongful Dismissal was successful and the relevant suspension be withdrawn with immediate effect.

13.This decision is final and binding in accordance with the relevant regulations within the prevailing FA Handbook.

Stuart Ripley

Regulatory Commission Chairman

5th April 2016