

**A Football Association Regulatory Commission
Personal Hearing**

**In the matter of a Misconduct Charge against Filippo Costa, formerly of
AFC Bournemouth**

**Reasons for Regulatory Commission Decision
2 February 2016**

1. Members of the Commission:

Roger Burden (Chairman), Marvin Robinson and Shaun Turner

2. Secretary to the Commission:

Paddy McCormack, The FA's Judicial Services Manager

3. Also present:

Yousif Elagab, Regulatory Advocate for The FA

Filippo Costa, player formerly of AFC Bournemouth

Angelo Cascella, Legal Representative for Mr Costa

Emmanuel Osadebe (Gillingham FC player & witness for the FA, present only during a period of questioning)

Darren Oldaker (Gillingham FC player & witness for the FA, present only during a period of questioning)

Pasqual De Lucia, Independent Interpreter

4. Mr Costa was charged, dated 7 December 2015, with misconduct under FA Rule E3 in that it was alleged that he used abusive and/or insulting words during the U21 Premier League Cup fixture between Gillingham FC and AFC Bournemouth on 16 September 2015. It was further alleged that the alleged breach was an "Aggravated Breach" as defined in FA Rule E3(2) as it included a reference to ethnic origin and/or race and/or colour.

5. Mr Costa had denied the charge on 21 December 2015 and had requested to attend a Commission for a Personal Hearing.
6. The Commission had the following evidence before it:
 - An extraordinary incident report from Mr Jamaal Horne, the Match Referee, in which he said that, late in the first half of the match, a Gillingham player (Emmanuel Osadebe) had approached him and said “ref, he just called me a nigger”. Mr Osadebe pointed and confirmed that Filippo Costa had made the comment. Mr Horne added that neither he nor his senior assistant had heard the comment but that he then spoke to the Bournemouth captain, to Mr Costa and to officials from both clubs to make them aware of the allegation.
 - A statement from Mr Osadebe in which he stated, inter alia, that during a verbal exchange with Mr Costa, Mr Costa had called Mr Osadebe a “fucking nigger”. Mr Osadebe said that he was looking at Mr Costa and was within a yard of him when the words were said. Mr Osadebe said that he went to confront Mr Costa but was pulled away by a player referred to as “DO” and that this player had confirmed that he had heard the words. Mr Osadebe then said that he told the referee what had happened.
 - A statement from Darren Oldaker, a player for Gillingham FC, in which Mr Oldaker said that he saw the incident in which Mr Osadebe and the Bournemouth number 3 were exchanging words. Mr Oldaker said that he clearly heard the number 3 say “fucking nigger” to Mr Osadebe. Mr Oldaker said that he was only 3 yards away from the incident.
 - A transcript of an interview dated 13 October 2015. Sections of the transcript appeared redacted. The interviewers were David Matthews and Richard Berry of The Football Association. The interviewee was Mr Costa, assisted by Richard Hughes as interpreter and club representative of AFC Bournemouth. The transcript covers 22 pages and is repetitive but can easily be summarised by saying that Mr Costa denied using the words “fucking nigger” and pointed out some inconsistencies between the video of the incident and the statements from the two Gillingham FC players. In particular the way in which the two players had approached each other after the alleged language.

- A transcript of an interview dated 6 November 2015. The interviewer was David Matthews of The Football Association. The interviewees were Emanuel Osadebe, Darren Oldaker and Darren Hare. Mr Hare was the Academy Manager and was Mr Osadebe's representative. The transcript covers 12 pages but can be summarised by saying that Mr Osadebe said that he heard Mr Costa say "fucking nigger" and he then walked straight towards the referee but that Mr Oldaker had pulled him back to say that Mr Osadebe should do something about it. During that conversation Mr Oldaker confirmed that he had also heard what was said.
 - A statement from Angelo Cascella which was provided as a written response on behalf of Mr Costa. The statement included reference to Mr Costa's background, under the heading "Thoughts, Values and Truth". The statement referred to the Swiss Civil Code, the Italian Civil Code and proof beyond any reasonable doubt in establishing the burden of proof. The statement stressed Mr Costa's denial of the offence and suggested that the video of the incident would show a discrepancy in the claims by Messrs Osadebe and Oldaker, in particular Mr Osadebe's movement and behaviour in relation to Mr Oldaker, Mr Costa and the referee.
 - A statement from Alessandro Cannataro in which he said that he was playing in the match for AFC Bournemouth, and that he had been standing close to Mr Costa and Mr Osadebe at the time of the incident but had not heard any racial insult.
 - A video of the incident.
7. The following is a summary of the principal written and oral submissions provided to the Commission. It does not purport to contain reference to all the points made, 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 the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence, materials and oral submissions provided with regard to this case.
8. Mr Elagab explained to us that the redacted sections in our interview transcripts were as a result of "highlighting" short sections on the originals which the photo-copying process had obscured. He assured us that the sections were not significant, and primarily stated Richard (Hughes) spoke in Italian.

9. In responding to questions, Mr Osadabe told us that there had been a brief exchange of words between himself and Mr Costa, but that he (Mr Osadabe) did not recall calling Mr Costa “a fucking cunt”. Mr Osadabe did concede that he might have used those words but could not be certain.

Mr Osadabe told us that Mr Costa had been mumbling but that Mr Osadabe had then clearly heard Mr Costa say “fucking nigger”. On watching the video, Mr Osadebe told us that the words were said at the time when Mr Costa had pulled his shirt up towards his face.

In his written statement, Mr Osadebe had said that on hearing the offensive words, he was shocked and surprised, had asked Mr Costa to repeat the words and went to confront Mr Costa but that DO (Mr Oldaker) had pulled him away. On being challenged that this sequence of events was not borne out by the video, Mr Oldaker told us that he had not seen the video when he made his statement.

10. In responding to questions, Mr Oldaker told us that he was certain that he heard Mr Costa say “fucking nigger” and confirmed that it was at the time that Mr Costa had raised his shirt. Mr Oldaker told us that he had seen Mr Costa say the words as the shirt had been raised to chin level, leaving the mouth in clear view.

11. In responding to questions, Mr Costa told us that he had been well aware that the word “nigger” was extremely offensive and he had been told never to say it. The matter had been raised whilst he was with team mates as the word is part of a song to which some of them were listening. Mr Costa said that there had been a brief exchange of words with Mr Osadebe and that he (Mr Costa) might have mumbled some Italian but he had only said “fuck off” to Mr Osadebe in response to Mr Osadebe calling him a “fucking cunt”. In explaining the moment when he lifted the front of his shirt, Mr Costa said that he had raised his shirt to wipe perspiration from his face and that he had raised it over his mouth to around his nose.

12. Mr Cascella asked us if he could introduce Mr Cannatoro as a witness via a skype-like process on Mr Costa’s mobile phone.

13. Mr Elagab objected to this, stating that it was not practicable for the Commission and attendees to gather round a mobile phone or for Mr Cannataro to watch, and answer questions regarding, the video.
14. We discussed the matter in private and agreed with Mr Elagab. We decided not to allow Mr Cannataro as a witness but noted that we had a written statement from him and would consider what weight, if any, to give it, during our deliberations.
15. In his summing up, Mr Elagab said that any discrepancies in the statements and responses from Messrs Osadebe and Oldaker could be explained by the difficulty that youngsters would have in trying to recollect facts in a fast-paced incident. He said that Mr Oldaker's evidence alone was sufficient to prove the case and that, without hesitation, Mr Oldaker had said that he had seen and heard the words coming out of Mr Costa's mouth. Mr Elagab also said that there was no time for any collusion between the two players and that if they did collude it would mean that they have both lied, with no apparent reason for doing so as they risked acquiring a reputation for making false racial allegations.
16. In his summing up, Mr Cascella told us that Mr Costa was of excellent character and had featured as such in at least two books. Mr Cascella went on to say that Mr Osadebe seemed relaxed when he was approached by Mr Oldaker, not the reaction of someone who has been racially abused. He also suggested that the Assistant Referee closest to the incident would have heard the remarks.
17. The Commission members were conscious that the applicable standard of proof for this case was the balance of probability.
18. We considered the evidence in private. We did not agree with Mr Cascella's suggestion that the Assistant Referee would have heard the conversations.
19. Mr Elagab had suggested that Mr Oldaker's evidence should be sufficient for us and that Mr Oldaker had seen and heard Mr Costa say "fucking nigger". Although the video wasn't absolutely clear, it did appear that Mr Costa's shirt was over his mouth at the time when Mr Oldaker was suggesting that he saw Mr Costa say the words as well as hearing them. We therefore doubted that part of Mr Oldaker's testimony.

20. In any case, we did not agree with Mr Elagab's suggestion that Mr Oldaker's evidence was sufficient for us to find the case proved.
21. We all agreed that Mr Osadebe's evidence was the more significant. He was the nearest to Mr Costa and was the one having the conversation with Mr Costa, albeit brief.
22. Contrary to Mr Osadebe's evidence, the video did not show that he was surprised or shocked during the brief conversation. Neither did it show that Mr Osadebe had intended to confront Mr Costa. In fact, Mr Osadebe did not break stride during the exchange until he was approached by Mr Oldaker, after which Mr Osadebe approached the referee and Mr Oldaker approached Mr Costa.
23. Our conclusion from this was that Mr Osadebe did not hear Mr Costa say "fucking nigger" and that it was more likely than not that he didn't say it. We had no reason to doubt the honesty of either Mr Osadebe or Mr Oldaker and we concluded that Mr Oldaker genuinely, but mistakenly, thought that he had heard Mr Costa say the phrase and had told Mr Osadebe in the brief exchange that they had when they came together. Having heard a variety of mumblings from Mr Costa, Mr Osadebe was easily able to convince himself that he had also heard the offensive phrase.
24. As a result of our conclusions, our unanimous decision was that the charge against Mr Costa was not proved.
25. This decision may be appealed in accordance with the relevant provisions within the prevailing FA Handbook.

Roger Burden

Chairman

4 February 2016.