

**In the matter of an appeal from a decision of a Regulatory Commission of
The Football Association**

Appeal Board: Lord John Dyson (Chair)
Ms Alison Royston
Mr Stuart Ripley

Between:

Evangelos Marinakis

Appellant

and

The Football Association

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

1. These are the written reasons for a decision made by the Appeal Board on 1 November 2024 dismissing the Appellant’s appeals against liability and sanction from the decision of the Regulatory Commission (RC) on 14 October 2024 (written reasons dated 17 October 2024).
2. By a letter dated 30 September 2024, the Appellant was charged by the FA with a breach of FA Rule E3.1 in respect of an incident which occurred at the conclusion of a match between Nottingham Forest FC (“the Club”) and Fulham FC on 28 September 2024. The Charge Letter alleged that “in or around the end of the tunnel area following the end of the fixture your behaviour was improper”. Enclosed with the letter were:

- (i) Extraordinary Incident Report Form of the Match Referee, Mr J. Smith, dated 29 September 2024;
 - (ii) Extraordinary Incident Report Form of the Fourth Official, Mr T. Robinson dated 30 September 2024;
 - (iii) Email correspondence between Assistant Referee Mr J. Mainwaring and ██████████ of the FA dated 30 September 2024; and
 - (iv) Email correspondence between Assistant Referee Mr N. Davies and ██████████ dated 30 September 2024.
3. The RC correctly recorded¹ that the essence of the allegation was that the Appellant spat on the floor as the match officials walked past him after the match.
4. The Appellant (who is the owner of the Club) responded to the charge in a written statement dated 7 October 2024. He denied the spitting. He said that on 28 September he had been suffering from a “*hacking cough*”. He said: “*As the officials approached, I felt a cough coming and I coughed on the floor, down and to my right, which was away from the path the officials were taking*”.
5. FA Rule E3.1 provides:

“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”.

The evidence relied on by the FA

6. In his report of 29 September, Mr Smith said as he walked down the tunnel at the end of the match, the Appellant was stood on his left hand side at the end of the tunnel; and as he walked past him “he spat on the floor next to my left foot”. In answer to the question “Misconduct?” he wrote “yes”. In his further observations sent on 7 October, he repeated that he saw the Appellant “spit on the floor next to me” and added that “at no point did I see him coughing when he was stood there”.

¹ Para 3

7. In his report of 30 September, Mr Robinson said that he witnessed the Appellant “making a spitting action as the match officials walked past him”. In answer to the question “Misconduct?”, he wrote “not sure”. In his further observations sent on 10 October, he repeated that that he had witnessed the Appellant making a spitting action and confirmed that he had not seen him coughing previously to the incident whilst he was monitoring the players and staff enter the tunnel area.
8. In his email to ██████████ sent on 30 September, Mr Mainwaring said that the Appellant was standing at the top of the tunnel as he walked up with Mr Smith and Mr Davies. As they approached him, he “spat on the ground in front of us”.
9. In his email to ██████████ sent on 30 September, Mr Davies said that he followed Mr Smith into the changing room and that when they entered, Mr Smith told him that the Appellant “had spat on the floor in his direction as he walked past him”. He confirmed that he had not witnessed the reported spitting incident.
10. The fundamental issue of fact for the RC to resolve was, therefore, whether the Appellant had spat in the vicinity of Mr Smith or had coughed. The resolution of this issue depended on an assessment of the evidence with the assistance of the CCTV footage.

The RC’s assessment of the facts

11. The RC rightly recorded² that the key factual issue was whether the Appellant spat on the floor towards the match officials or whether he expectorated because he had a hacking cough. They said³ that they were struck by:
 - (i) In their initial accounts, both Mr Smith and Mr Mainwaring referred to the Appellant spitting;
 - (ii) If this conduct had been triggered by a cough, it is likely that they would not have regarded it as a significant event;
 - (iii) Neither of them mentioned a cough;
 - (iv) Very shortly after the incident, Mr Smith told Mr Davies that the Appellant had spat on the floor in his direction, which supports the

² Para 33

³ Para 34

view that Mr Smith did consider that the Appellant had spat on the floor as he walked towards and past the Appellant.

12. The RC reviewed the video footage and explained⁴ why they considered it did not support the suggestion that the Appellant had coughed. They continued:

“38. The substance of the responses from Messrs Smith, Mainwaring and Robinson was consistent. They did not see EM cough. Together with their initial accounts, we conclude that Messrs Smith, Mainwaring and Robinson have been clear and consistent. Mr Smith and Mr Mainwaring clearly observed the spit. Mr Robinson observed a spitting action. We accept their evidence individually and collectively.

39. We are not persuaded by EM’s attempt to identify inconsistencies between the accounts. The thrust of what the witnesses say is clear and consistent.

40. EM suggests that the absence of a visible reaction from the match officials is inconsistent with what – as a matter of basic common sense – one would expect if one had been spat at or towards. We do not accept that there is a uniform human reaction that one can expect. There is nothing inconsistent with the reactions of the officials and the allegation that has been made. Mr Smith did raise the conduct with Mr Daniels (sic) after they entered the match officials room. That was very shortly after the alleged conduct.

.....

44. Nevertheless, in conclusion, in our judgment we unhesitatingly reject EM’s account that he spat or expectorated as a result of a cough. We are satisfied that he deliberately spat on the floor as the referee walked past him. Regrettably, we regard EM’s attempt to explain and justify his conduct as completely implausible.

Does spitting on the floor in front of or next to a referee amount to misconduct?

.....

⁴ Para 35

47. *In our view, the only reasonable inference we can draw from our rejection of EM’s explanation for the spit is that EM deliberately spat in a disrespectful and disgusting display of contempt towards the match officials. In our view, there is no other credible explanation for his conduct. In the circumstances, it clearly amounts to misconduct within the meaning of Rule E3. Consequently, we found the charge proven.”*

Sanction imposed by the RC

13. The RC accepted the submission of the FA⁵ that the spitting was “*entirely unprovoked*” and that “*no match official should; be expected to tolerate such a flagrant display of disrespectful behaviour*”.
14. The RC concluded⁶ that the Appellant should be the subject of a ground ban from the Club’s next 5 first team games (home, away or neutral venue) and that a ground ban alone was a sufficient penalty.

Grounds of Appeal

15. In the Notice of Appeal, the Club challenged the RC’s decision on the grounds that:
- (i) It failed to give the Appellant a fair hearing (Regulation 6.1 FA Handbook p 266);
 - (ii) Alternatively, it misinterpreted and/or failed to comply with the Rules and Regulations of the FA relevant to the hearing (Regulation 6.2);
 - (iii) Alternatively, the decision was one to which no reasonable commission could have come to (Regulation 6.3);
 - (iv) Alternatively, the sanction imposed was excessive in all the circumstances (Regulation 6.4).
16. At the hearing on 1 November 2024, however, Lord Grabiner KC for the Club abandoned the first and second grounds of appeal and focused his submissions exclusively on the third and fourth grounds of appeal.

Was the RC’s decision that the Appellant’s behaviour amounted to misconduct within the meaning of Rule E3.1 one to which no reasonable Commission could have come?

⁵ Para 49

⁶ Para 55

17. There is no difference between the parties as to the correct test to be applied in answering this question. Lord Grabiner says it is analogous to the test applied by the courts in judicial review cases. He also accepts that the principles to be applied by an Appeal Board were aptly summarised by the Appeal Board in the case of *The FA v Jurgen Klopp* (11 November 2022, para 20):

- *That this appeal is by way of a review of the decision of the RC, not a rehearing*
- *That the burden rests with the Appellant – the FA – to establish that the RC’s decision was one to which no reasonable Regulatory Commission could have come. The hurdle for the FA to clear is thus a high one*
- *That when assessing whether the RC’s decision was one to which no reasonable Regulatory Commission could have come, an Appeal Board is entitled to examine both i) The route by which the Regulatory Commission reached its decision, and ii) The ultimate decision reached by the Regulatory Commission*
- *That when considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of a review, a Regulatory Commission made up of individuals with considerable sporting and dispute resolution experience (as the RC was) should be accorded a generous and significant margin of appreciation by an Appeal Board*
- *That evidential assessments and factual findings made by a Regulatory Commission should only be disturbed by an Appeal Board if they are clearly wrong or wrong principles have been applied; it is not for an Appeal Board to substitute its own view simply because it might have reached a different decision.*

18. Lord Grabiner makes a number of points. First, and fundamentally, he says that the RC must have misunderstood the evidence of Mr Robinson. Contrary to what the RC said, his evidence was not consistent with that of the other FA officials in that (i) he spoke of seeing a “spitting action” not “spitting” and (ii) unlike Mr Smith, he said in his report that he was “not sure” whether the Appellant’s behaviour was “misconduct”. In these circumstances, it was not

reasonably open to the RC to conclude that the substance of the responses from Messrs Smith, Mainwaring and Robinson was consistent. This conclusion was essential to the RC's reasoning.

19. Secondly, not only does the evidence of Mr Robinson undermine the RC's conclusion that the evidence of the FA officials was consistent. It is also to be preferred to that of Mr Smith and Mr Mainwaring because any fair and reasonable interpretation of what is seen on the video footage supports the view that the Appellant coughed rather than spat.
20. Thirdly, the behaviour of all those who were present at the time of the incident provides strong support for the Appellant's account that he coughed and did not spit. There is no indication on the faces of anyone that anything untoward had occurred. If the Appellant had "spat in a disrespectful and disgusting display of contempt towards match officials" (para 47 Written Reasons), his behaviour would surely have evoked some reaction from someone.
21. In these circumstances, Lord Grabiner submits that it was not reasonably open to the RC to reject the Appellant's evidence that he had coughed and to find that he had spat.
22. We disagree. The issue is one of evidential assessments and factual findings. It is common ground that we should not disturb the RC's assessment of the evidence and factual findings unless we are satisfied that they were clearly wrong or wrong principles were applied. Lord Grabiner has not identified any wrong principle that was applied and we are far from satisfied that the assessments and findings were clearly wrong. In our view, the RC was entitled to hold that the substance of the evidence of the FA officials was consistent. They were entitled to hold that the difference between spitting and spitting action is immaterial.
23. It is true that the RC did not deal with the differences between Mr Smith and Mr Robinson on the question of whether the Appellant's behaviour was "misconduct". We consider this omission to be insignificant. The issue for the RC was whether the Appellant had coughed or spat. That was a question of fact on which the evidence of the witnesses was clearly of crucial importance. Whether the Appellant's behaviour amounted to misconduct was a question of judgment or opinion on which the views of the witnesses was of little or no relevance. So the fact that Mr Robinson and Mr Smith differed on that question is of no importance and we reject the criticism of the RC for failing to deal with it.

24. The RC was alive to the submissions repeated on appeal that (i) there were inconsistencies between the accounts and (ii) there was a lack of reaction from those who were present. The RC dealt with them at paras 39 and 40 of the Written Reasons and explained why it rejected them. We find the explanations convincing. At the very least, the RC was reasonably entitled to reject these submissions for the reasons that it gave.
25. We have carefully considered the video footage to see whether it demonstrates that the RC reached a conclusion which no reasonable Commission could have reached. In our view, it comes nowhere near to supporting such a conclusion.
26. We should add that Lord Grabiner was particularly critical of the language used by the RC at para 47 of the Written Reasons. In our view, the RC was entitled to express itself in these strong terms. But even if it went too far, that can have no bearing on whether its decision on liability was wrong.
27. For all these reasons, we dismissed the appeal against the RC's finding that the Appellant's behaviour amounted to misconduct contrary to FA Rule E3.1.

Appeal against sanction

28. The RC said⁷:

“An egregious display of disrespectful behaviour such as this fuels disrespect towards match officials. We take account of the fact that the conduct was not on the field of play and so was not broadcast on television. However, this was not conduct triggered in the heat of the moment as a result of a decision on the field. It was after the game had ended. There is no excuse for it. EM's position as the owner of a football club aggravates the situation. His conduct was entirely unacceptable and deserving of a serious punishment. We also regard his implausible attempt to explain his conduct as aggravating.”

29. The Appellant says that a 5-game stadium suspension is excessive and disproportionate; a suspension from the pitch and tunnel would have sufficed; an order that the owner of the Club remain in a closed box for the game and 4 minutes either side of the match would have been a proportionate punishment. Alternatively, it is submitted that 5 games are too many: 2 or 3 games would have sufficed. It should be recorded that the FA submitted to the RC that a

⁷ Para 51

financial penalty should be imposed and that a ground suspension for a minimum of 4 matches was appropriate.

30. In response to the appeal against sanction, the FA submitted⁸:

Furthermore, the Regulatory Commission was right to conclude, and in any event was entitled to conclude, that the improper behaviour found to be proven was serious. Showing such contempt for match officials in a place where that can be seen by other individuals, significantly undermines respect for the game of football and the officials who are entrusted with the responsibility of ensuring that that game is played fairly by all. Such behaviour is only more serious when it comes from an individual who himself has a position of both power and responsibility within the game. Whilst that conduct was not broadcast or seen in the public areas of the stadium, it has, inevitably, now been the subject of press reporting. It is therefore vital, the FA suggests, that a clear message is sent that this behaviour will not be tolerated in any part of football. Such a message, the FA submits, would not be conveyed were the Appellant to be permitted to attend games immediately after this misconduct has occurred.

31. We accept the entirety of these submissions. But we do not need to go as far as agreeing with the RC's conclusions and reasoning. It is sufficient to hold that the RC was reasonably entitled to reach these conclusions for these reasons.

32. We should conclude by recording that the decision of the RC was published by the FA in the usual way. This led to a profusion of media activity which was far from complimentary to the Appellant and no doubt upsetting to him. Lord Grabiner invited us to deprecate the publication of the RC's decision in advance of the outcome of the appeal saying that it undermined the appeal process.

33. We do not consider that it would be appropriate for us to say anything about the propriety or otherwise of the FA publishing decisions of the RC in advance of an appeal. So far as we are aware, the FA was given no notice that we would be asked to comment or rule on this and we have received no submissions from the FA on the point. It seems to us that it raises important issues relating to freedom of expression which call for careful consideration.

⁸ Para 51

Conclusion

34. For the reasons we have given, we decided to dismiss the appeals against liability and sanction.

35. The Appellant is ordered to pay the appeal fee and the full costs of the Appeal Board.

The Rt Hon Lord Dyson

Ms Alison Royston

Mr Stuart Ripley

Date: 5 November 2024