

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

**Appeal Board: Lord John Dyson (Chair)  
Mr Abdul Iqbal KC  
Ms Aishnine Benjamin**

**Between:**

**Rodrigo Bentancur**

**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 16 December 2024 dismissing the Appellant’s appeal against sanction from the decision of the Regulatory Commission (“the Commission”) on 12 November 2024 (written reasons dated 14 November 2024).

**The facts**

2. Rodrigo Bentancur (“the Player”) is a professional footballer with Tottenham Hotspur Football Club (“THFC”). He is a “Participant” in the game of football as defined in paragraph A2 of the FA Rules, and is consequently subject to both those Rules and the FA Disciplinary Regulations.
3. The facts are fully set out at paragraphs 4 to 17 of the Commission’s written reasons. They are not in dispute. What follows draws heavily on the Commission’s reasons.

4. In about June 2024, the Player was interviewed at his home by a well-known Uruguayan journalist, Rafa Cotelo (“Mr Cotelo”), who was accompanied by an assistant and a cameraman. His interview with the Player was apparently part of a series of interviews he was conducting with high profile Uruguayan footballers which were turned into films uploaded onto the internet by Mr Cotelo through a number of vehicles including his own YouTube channel and Instagram page.
5. Mr Cotelo has a significant following on social media, with 245,000 Instagram followers and 12,800 subscribers to his YouTube channel. Each of the previous films in the series had attracted 108,000 to 230,000 views on YouTube. At the time of the statement in support of the charge dated August 2024, the Player’s interview film had been viewed 67,213 times on YouTube.
6. The interview was conducted in Spanish. This is the language in which the Player is most proficient. It was informal, casual and generally light-hearted. At the relevant part of the interview, when the now admitted misconduct occurred, the Player was holding his young daughter in his arms and she was putting a scrolled up football shirt to his face.
7. The only part of the interview to which the charge relates is the following translated exchange, which appears to have concerned a request by Mr Cotelo to see one of the football shirts that the Player had at his home:

*“Mr Cotelo: Your shirt... well, what about the Korean’s shirt?”*

*The Player: Sonny?*

*Mr Cotelo: Or a champion.*

*The Player: Or one of Sonny’s cousins as they all look more or less the same”.*

8. The Player, who was smiling throughout much of the interview, laughed after he made the last comment.
9. The reference to “Sonny” was to Heung-Min Son (“Sonny” being his popular nickname), the Player’s team colleague at THFC, who is South Korean and who plays for South Korea at full international level.
10. The interview included the above exchange which was posted by Mr Cotelo on Instagram and has been heavily re-posted. The Player had no editorial

control, or any control over the content of the film, as Mr Cotelo published it, and the Player did not himself post (or re-post) any part of the interview on any social media or in any other form.

11. When the film was posted by Mr Cotelo, the Player was on international duty with Uruguay at the Copa America. He was told of its posting by THFC's Media Team on the day it was first posted; and the Player responded the following day saying *"Sony brother! I apologise to you for what happened, it was just a very bad joke! You know what I love you and I would never disrespect you or hurt you or anyone else! I love you brother! @hm\_son7."*
12. The Player said that he then apologised to Heung-Min Son personally, before in the following week writing on his Instagram this:

*"I would like to communicate to all fans and everyone who follows us that after my interview where I referred to Son and no one else, I have spoken to him and, logically given our deep friendship, he understands it was only an unfortunate misunderstanding. All has been clarified and solved with my friend. If someone felt offended because of my words through this media tool I would like to offer my sincere apologies. But I would also like you to know that never, never I referred to anyone else. Only to Son and for that reason I've never had the intention to offend directly or indirectly anyone. A big hug and all my respect to anyone."*

13. On or before 20 June 2024, Heung-Min Son posted a statement on his Instagram page:

*"I've spoken with Lolo [i.e. the Player]. He made a mistake. He knows this and has apologised. Lolo would not mean to ever intentionally say something offensive. We are brothers and nothing has changed at all. We're past this, we're united, and we will be back together in preseason to fight for our club as one."*

The message was signed off "Sonny", with a white heart emoji.

14. On 20 June 2024, THFC re-posted this statement on its official Instagram page with the following comment:

*"Following a comment from Rodrigo Bentancur in an interview video clip and the player's subsequent apology, the club has been providing assistance in ensuring a positive outcome on this matter. This will*

*include further education for all players in line with our diversity, equality and inclusion objectives. We fully support that our captain Sonny feels that he can draw a line under the incident and that the team can focus on the new season ahead. We are extremely proud of our diverse, global franchise and playing squads. Discrimination of any kind has no place at our club, within our game, or wider society”.*

15. On 25 September 2024, Heung-Min Son was asked about the apology, and his response was widely reported. The Player relies on the report from “The Independent”, which records Heung-Min Son as saying:

*“At the moment because the FA process I can’t say much about it. But I love Rodrigo, I love him. We’ve lots of good memories, we started playing together when he joined (in January 2022). He knew. He apologised straight afterwards when he had holiday. I was at home. I didn’t even realise what was going on. He sent me a long message and you could feel it was coming from his heart. When we came back for pre-season, he felt sorry and he almost cried when he apologised publicly and personally as well. He felt like he is really sorry. We are all human and all make mistakes and we learn from it.*

*I love Rodrigo. I love him, I love him. He knows he made a mistake but I’ve no problem at all with him. We move on as a team-mate and friend, as a brother. We move on together.”*

### **The relevant rules**

16. The charge is brought under Rules E3.1 and E3.2, which provide as follows:

*E3.1 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 any combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.*

*E3.2 A breach of Rule E3.1 is an “Aggravated Breach” where it includes a reference whether express or implied, to any one or more of the following: ethnic origin, colour, race, nationality, religion or belief, gender, gender assignment, sexual orientation or disability.*

17. Where a Regulatory Commission finds a misconduct breach proved, then it may impose a sanction taking into account Appendix 1 to Part A of the Disciplinary Regulations (Standard Sanctions and Guidelines for Aggravated Breaches)<sup>1</sup>. Where an Aggravated Breach is found, it is required to apply the sanction guidelines for such breaches in that Appendix.

18. In respect of an Aggravated Breach, the Appendix provides as follows (so far as relevant):

### ***“Sanction Range***

*A finding of an Aggravated Breach against a Player... will attract an immediate suspension of between 6 Matches and 12 Matches (“Sanction Range”). A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range. The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the “Standard Minimum”).... A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.*

### ***Exceptions to the Standard Minimum***

*A Regulatory Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission determines that the Standard Minimum would be excessive:*

*Where the offence was committed in writing only or via the use of any communication device **and**:*

- Where the Regulatory Commission is satisfied that there was no genuine intent on the part of the Participant Charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or*
- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or*

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<sup>1</sup> FA Handbook 2024/25, page 180.

- *The age of the offence (e.g. a social media post made a considerable time ago).*

*For the avoidance of doubt, the existence of the circumstances above will not necessarily result in a departure from the Standard Minimum. A Regulatory Commission must be satisfied that the unique circumstances and facts of a particular case are of such significance that a departure from the Standard Minimum is justified to avoid an unjust outcome for the Participant Charged. In reaching a decision, the Regulatory Commission must also consider whether or not it is in the best interests of the game in tackling all forms of discrimination to depart from the Standard Minimum. In any event, a Regulatory Commission shall impose a suspension of no less than 3 Matches.”*

19. Under the heading, “*Factors to be Considered when Determining Sanction*”, it states:

*“A Regulatory Commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction and whether (and to what extent) to depart from the Sanction Range or when setting an appropriate time-based suspension. For the avoidance of doubt, any departure from the Sanction Range below the Standard Minimum may only be considered by a Regulatory Commission where the specific (and exhaustive) circumstances listed above arise. In so doing, the Regulatory Commission shall give consideration to any aggravating and mitigating factors...”*

20. There are then set out in non-exhaustive lists, “*Aggravating factors*” and “*Mitigating factors*”.

### **Decision and reasoning of the Commission**

21. Before the Commission, the Player denied that he had committed an Aggravated Breach of Rule E3.1 or that he had committed any breach of that rule. On his case before the Commission, therefore, the question of sanction did not arise.

22. The Commission concluded that the breach under Rules E3.1 and E3.2 had been proved. Its reasoning is set out at paragraphs 37 to 44 of the Reasons<sup>2</sup>.

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<sup>2</sup> Pages 172 to 176 of the Appeal Bundle.

The Player does not challenge the Commission's conclusions on breach. This is not surprising since in our view its reasoning is beyond challenge.

23. As regards sanction, the Commission:

(i) suspended the Player from all domestic club football (Category 1) until THFC had completed seven First Team Competitive Matches (Category 1) in approved competitions;

(ii) imposed a fine of £100,000; and

(iii) ordered him to attend a mandatory face-to face education programme.

24. The Commission rightly held that the sanctions guidelines required an immediate suspension of 6-12 matches. At paragraph 47<sup>3</sup>, it identified the following aggravating factors:

(i) The Player is a high-profile international footballer playing in the Premier League.

(ii) The remarks were made in an interview with a well-known journalist with large internet followings both on his YouTube channel and on Instagram. It was reasonably foreseeable that the remarks would be widely distributed via posts and re-posts on the internet, as they were.

25. At paragraph 48<sup>4</sup>, it identified the following mitigating factors:

i. Not only had the Player not committed any previous offences, but there was no evidence of his ever having engaged in racist or otherwise discriminatory conduct inside or outside football.

ii. Whilst this was an absence of aggravation rather than positive mitigation, there was no pre-meditation, nor did the Player intend his comments to cause offence to his friend, Heung-Min Son, or to anyone else.

iii. The Player initially showed remorse and took responsibility for his actions and offered full and sincere apologies. That was greatly to his credit, but it was not to his credit that, thereafter, he elected to deny the charge on grounds which, on their face, undermined that initial, commendable

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<sup>3</sup> Page 177 of the Appeal Bundle.

<sup>4</sup> Page 177 to 178 of the Appeal Bundle.

reaction. The Commission accepted, however, that his remorse was and is genuine.

- iv. Whilst the Player ought reasonably to have foreseen substantial publicity for any comments he made to Mr Cotelo, the Player did not himself post or repost them.

26. At paragraph 49<sup>5</sup>, the Commission concluded that the breach fell towards the lower end of the guideline range but not the lowest point. Cases could easily be envisaged which were less serious than this, but nevertheless subject to the minimum suspension of six matches.

### **The ground of appeal**

27. The single ground of appeal against the suspension of seven matches is that the sanction was excessive<sup>6</sup> and thereby manifestly unjust. It is submitted on behalf of the Player that:

- i. The Player's admittedly offensive remark was not pre-meditated and did not evince any hostility towards Heung-Min Son or any section of society or ethnic group;
- ii. He was not actuated by anger or racism;
- iii. He did not intend to say anything racist or offensive;
- iv. He was naïve and his remark was an ill-judged joke;
- v. It was made in the course of a spur of the moment light-hearted exchange;
- vi. The Commission failed to give sufficient weight to the mitigating factors that it identified, in particular the Player's remorse and swift apologies.

28. Mr Sturman KC makes two further particular points on behalf of the Player. The first is that the Commission was wrong to say that less serious cases could easily be envisaged which were nevertheless subject to the Standard Minimum suspension of six matches. The second is that, if the Player had replied to a direct message on Instagram in the words he used during the interview, he would have fallen squarely within the Exception to the Standard Minimum

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<sup>5</sup> Page 178 of the Appeal Bundle.

<sup>6</sup> Paragraph 2.4 of "C – APPEALS – NON-FAST TRACK" at page 189 of The FA Handbook 2023/24.



sanction contained in Appendix 1 to Part A of the Disciplinary Regulations and would probably have been suspended for fewer than six matches.

**Our reasons for dismissing the appeal**

29. We start with the two points referred to at paragraph 28 above. As regards the first point, in our view the Commission was clearly right to say that less serious cases could easily be envisaged. In particular, the Player is a high-profile international footballer who plays in the Premier League and it was reasonably foreseeable that, as occurred, his comments to a well-known journalist would be widely distributed on the internet. The case would certainly have been less serious if the same exchange had taken place between a player from a lower league and, say, a local journalist. Mr Sturman was unable to explain why he submitted that the Commission was wrong to hold that less serious cases could easily be envisaged.
30. As for the second point, the fact that if the remark had been made in writing, the case would have fallen within the Exception to the Standard Minimum of a suspension for six matches is irrelevant. The remark was not made in writing. The task of those who apply the Rules is to apply them according to their terms, no more and no less. Mr Sturman's second point amounts to an implied criticism of the Exceptions to the Standard Minimum Sanction. Even if this criticism is well-founded, it can have no bearing on whether the sanction imposed was excessive.
31. Once it is accepted that (i) less serious cases can be envisaged and (ii) the suspension must fall within the range of 6 to 12 matches, we consider that the Commission's assessment cannot be faulted. It was right to say that the Player's breach "*falls towards the lower end of the guideline range*". The Commission took into account appropriately the relevant mitigating and aggravating factors. The Appeal Board also notes that the Player contested liability before the Commission. In all these circumstances, the Appeal Board concludes that the sanction imposed was not excessive.
32. We would add that Mr Sturman prays in aid the Player's apology to Heung-Min Song and Heung-Min's acceptance of the apology. We accept that this is a relevant mitigating factor. But the remark was also offensive to the whole South Korean community and beyond that community. It seems that this element has been overlooked.

**Postscript**

33. We have referred to the Exceptions to the Standard Minimum Sanction, which apply only where the offence is committed “*in writing only or via the use of any communication device*”. It may be that those responsible for drafting the Rules will wish to review the Sanction Range for Aggravated Breach in social media cases in the light of the massive increase in the use of social media in recent years and the inevitable risk of such media posts gaining large international exposure.

Lord John Dyson – Chair  
Mr Abdul Iqbal KC  
Ms Aishnine Benjamin

18 December 2024