

**IN THE MATTER OF
A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION
PROCEEDINGS BETWEEN:**

THE FOOTBALL ASSOCIATION

And

NUNO ESPIRITO SANTO

And

THE FOOTBALL ASSOCIATION

And

MORGAN GIBBS-WHITE

**WRITTEN REASONS OF
THE INDEPENDENT REGULATORY COMMISSION**

Regulatory Commission: Dominic Adamson KC

Bradley Pritchard

Mick Kearns

Secretary to Commission: Paddy McCormack

Date: 14 October 2024

Hearing Format: Personal Hearing via video conference

Introduction

1. These are the written reasons of decisions made by an Independent Regulatory Commission which sat on 14 October 2024 to determine the sanctions to be imposed on Mr Nuno Espirito Santo (NES) and Mr Morgan Gibbs-White (MGW) who are, respectively, the Head Coach of and a player for Nottingham Forest Football Club (the Club).

2. The charges arise out of the same incident in a game between the Club and Brighton & Hove Albion FC. Therefore, they are being dealt with together.
3. The Participants confirmed at the outset of the hearing that there was no objection to the constitution of the Regulatory Commission.
4. We wish to record at the outset our gratitude to Mr Phillips on behalf of the FA and Mr Rawlinson on behalf of NES and MGW for their assistance in this case.

The Charge Against NES

5. By a letter dated 24 September 2024 NES was charged with a breach of FA Rule 3.1 in respect of an incident which occurred at the conclusion of a match between Brighton & Hove Albion FC and Nottingham Forest FC which took place on 22 September 2024.
6. It is alleged that that in or around the 83rd minute of the above fixture NES acted in an improper manner and/or used abusive and/or insulting words towards a Match Official.
7. The substance of the allegation is that following the sending off of MGW, NES was gesticulating at the Match Official, Mr Rob Jones, aggressively whilst swearing. Some of what he said included the comment “*you’re fucking us again*”.
8. The FA designated this as a Non-Standard Case due to a previous proven breach of FA Rule E3 which related to the fixture against Everton FC on 21 April 2024 which was the subject of Commission hearing on 14 August 2024.
9. NES admitted the charge and requested a personal hearing.

The Charge against MGW

10. By a letter dated 24 September 2024 MGW was charged with a breach of FA Rule 3.1 in respect of an incident which occurred at the conclusion of a match between Brighton & Hove Albion FC and Nottingham Forest FC.

11. It is alleged that in or around the 83rd minute of the fixture, following his dismissal, MGW acted in an improper manner and/or used abusive and/or insulting words towards the Fourth Official, Mr Anthony Taylor.
12. The FA designated this as a Non-Standard Case due to the incident occurring outside the jurisdiction of the Match Officials. The substance of the allegation is that after he had been dismissed and as he was leaving the field MGW stated to the Official *"I've won the fucking ball. You're a fucking prick"*.
13. MGW admitted the charge and has also requested a personal hearing.

The Rule

14. FA Rule E3.1 states:

"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 Written Evidence

15. We have been provided a hearing bundle which comprises a pdf bundle running to 115 pages which we have considered in full. The fact that we do not refer to a particular document does not mean that we have not considered it.
16. In the material before us we have a copy of the Official Report from Robert Jones, the Referee, reporting NES. It states:-

"Following the sending off of Morgan Gibbs-White, Mr Espirito Santo was gesticulating at me aggressively whilst swearing and being aggressive. Some of what he said included "you're fucking us again". After the game, Mr Espirito Santo and his Assistant Coach, Rui Pedro Silva, came to my dressing room to apologise for their behaviour and said that they now agreed that we had made the right decision regarding Mr Gibbs-White tackle. They seemed genuine in their remorse about their reactions during the game and I really appreciated the gesture from both of them."

17. In addition, we have been provided with two Extraordinary Incident Reports prepared by Mr Jones and Mr Taylor, the Fourth Official.

18. Mr Jones states:-

“Following his sending off for a second yellow card, Morgan Gibbs-White approached my fourth official Anthony Taylor in an aggressive manner. He pointed aggressively at him very close to his face and said “I’ve won the fucking ball, you’re a fucking prick”.”

19. The Taylor states:-

“In the 83rd minute of the match, Nottingham Forest player Mr Gibbs-White made a challenge on an opponent in front of the technical area. In reaction to the behaviour of the Brighton technical area and the referee’s decision to dismiss Nottingham Forest player, Mr Gibbs-White for a second caution, Mr Espirito Santo, became very animated and aggressive. He left his technical area to show clear dissent in reaction to the decision and was heard saying to Mr Jones, “You’re fucking us again”. I then informed Mr Jones that Mr Espirito Santo should be dismissed. At the conclusion of the match, Mr Espirito Santo visited the referee’s changing room, accompanied by his assistant manager Mr Pedro Silva (who was also cautioned during the same incident), to apologise for his behaviour and also acknowledge that the correct decision had been made to dismiss his player for a second caution. The Premier League match delegate, Mr Kit Symons, was also present at this time.”

20. We have also been provided with video footage of the incident. After MGW’s challenge Mr Jones gave a signal with his hands which communicated that his initial view was that MGW had got the ball when challenging for it. NES repeated a similar gesture. It is clear that Mr Jones changed his mind after communicating with Mr Taylor. MGW was then issued with his second yellow card of the match and thus a red card and ordered to leave the field of play. As a consequence of this incident, NES can be seen pointing aggressively towards Mr Jones. He then can be observed making the comment to Mr Jones that he was ‘fucking us again’. As MGW left the field he walked towards

Mr Taylor. He aggressively told him “*I’ve won the fucking ball, you’re a fucking prick*”. He pointed aggressively towards Mr Taylor.

21. None of the above evidence is disputed.

22. In the written materials before us we have been provided with letters of apology from both NES and MGW. We say at once that we accept that both of these letters contain genuine expressions of remorse from both NES and MGW for their conduct. They reinforce the view that very shortly after the game both NES and MGW recognised that they had behaved inappropriately. The evidence before us indicates that Mr Jones was plainly appreciative of the fact that both NES and MGW had apologised shortly after game for their conduct.

The Oral Evidence

23. As noted above, NES and MGW requested personal hearings so that they could each address the Commission.

24. We heard from MGW first. He reiterated the contents of his letter of apology to the Commission. MGW explained that he had let his emotions get the better of him. He apologised for that. He said it ‘*definitely would not happen again*’. When cross-examined by Mr Phillips on behalf of the FA, MGW fairly and correctly accepted that his conduct after he had been sent off would have merited a red card in and of itself. He made the point that he had never acted like that before. We have no reason to doubt the accuracy of MGW’s evidence.

25. Our impression of MGW was that he is a relatively young man who gave his evidence in a straightforward and candid fashion. We accept that he let his emotions get the better of him in a febrile environment at an important stage of a hotly contested and important Premier League football match. We considered he was genuinely remorseful. We considered that his assertion that he would not let this happen again was genuine expression of his intention not to behave in a similar fashion again.

26. We then heard from NES. He explained that he has been a Premier League Manager for many years. He made the point that he does not have a reputation for being disrespectful. The situation on the day of this match was difficult. It was an intense

atmosphere. The referee had changed his opinion. We note that he did not suggest that that was an excuse for his behaviour. He said that he would '*improve dramatically*'. He was asked about a recent punishment which he had received for a breach of Rule E3 following a match against Everton. NES stated that was totally different because it related to media comments.

27. Under cross-examination from the FA, NES accepted that this case represented the third occasion that he had been subject to a misconduct charge. He was asked about the incident in the game and his reference to referee "*fucking us again*" and what was meant by the word again. NES explained that this was a reference to an incident in the first game of the season against Bournemouth when the same referee had sent off a Nottingham Forest player. NES did not agree with that decision.

28. NES was asked by the Commission about what he intended to do in order to prevent further misconduct. He accepted that only 39 days had elapsed since his previous sanction for misconduct arising out of an incident in the Everton game. NES said that he cannot ensure that he will not react. He said he would try his best not to react. He recognised that he should be a role model but added that he was a representative of thousands of fans and he said that they would not understand it if he did not react to certain situations.

29. Our impression of NES was that he was doing his best to assist us. We concluded that when he stated that the referee was '*fucking us again*', it was an expression used in the heat of the moment, but it was not an attempt to suggest bias. Rather NES was indicating in inappropriate and forceful terms that this was the second occasion on which – in his view – an incorrect decision had been reached this referee against the Club.

30. In our view NES gave answers which were frank even if they were not necessarily helpful to him. For example, he stopped short of saying this will not happen again. His assertion that the Club's fans may not understand if he – as the Head Coach – did not react to a situation in the way that a fan might does not justify abusing a referee. We do not consider that NES was suggesting that such abuse is justified, he was seeking to illustrate the challenges someone in his position faces. Nevertheless, we did not

consider this to be a good point. He is in a position of considerable responsibility and is viewed as a role model and high standards are rightly expected of him.

Sanction

31. Regulation 12 of the Fast Track 2 Regulations states:

“Where a case is not designated as a Standard Case (a “non-Standard Case”), a Standard Penalty will not be offered and, where such a Charge is admitted or found proven, the Regulatory Commission shall have a discretion to impose such penalty as it considers appropriate.”

NES

32. Before we turn to the submissions on sanction by way of background, we should address NES’s disciplinary record in a more detail. There are two relevant matters.

33. First, at a Regulatory Commission hearing on 6 January 2021, NES was ordered to pay a fine of £25,000 and pay £900 towards the costs of the Commission arising out of a post-match media comments following a Premier League Match between Burnley and Wolverhampton Wanderers FC (at that time NES was the Head Coach for Wolverhampton Wanderers FC). In the Written Reasons NES is described as exhibiting a *“worrying and emerging propensity on NES part towards disrespectful behaviour towards match officials”*

34. Second, and more recently, he received a suspended 1 match touchline suspension which was imposed following the decision of the Regulatory Commission on 14 August 2024¹ following a match against Everton. That suspension was suspended until 31 May 2026 and would be activated upon a further breach of Rule E3 before that date. On that

¹ The precise wording of the sanction imposed on that occasion was as follows *“Nuno Espirito Santo is sanctioned with a Standard Touchline Suspension, applicable to all domestic club football, until such time as his Club completes one (1) First Team Competitive Match (FTCM), Category 1 level, in an approved competition. The one (1) FTCM is suspended in full up to and including 31 May 2026. If at any time on or before 31 May 2026 Mr Espirito Santo commits a further breach of FA Rule E3, he will be suspended for one (1) FTCM (in addition to any separate penalty imposed for any such further breach). In the event of any such breach the suspended period of suspension will be activated with effect from the date of the final determination of the proceedings before the Regulatory Commission dealing with the new breaches, in addition to any penalty for the new breaches imposed by the Regulatory Commission.”*

occasion the Regulatory Commission stated in their Written Reasons that “*This was a serious breach, aggravated not only by NES’ previous misconduct record but also because the breach of E3.1 involved, on this occasion, an implication that NFFC had been the victims of biased decisions.*”

35. The FA make the point that the suspended penalty issued in the Everton case must be activated. This is not disputed by NES.

36. With regard to the current matter, The FA submit that the standard penalty for an admitted breach of Rule E3 for conduct including “*abusive/insulting/confrontational behaviour towards a match official*” for non-players is a 1 match touchline ban together with a fine. A denied charge which is subsequently found proven attracts a 2 match suspension.

37. The FA contend that having regard to the misconduct history and, in particular, the very recent previous breach and disregard to the suspended sanction, it is necessary to elevate the sanction above the standard penalty of a 1 match suspension. An uplift from the standard penalty to at least 2 matches, and a significantly higher fine than would apply in a standard case, represents a fair and proportionate sanction.

38. On behalf of NES, Mr Rawlinson submitted:-

- a. The reaction of NES needed to be viewed in the context of the fact that the Key Match Incidents Panel which reviewed the MGW sending off-incident concluded that the decision was wrong (NB we note this a decision by a majority of 3:2). Accordingly, objectively the decision was wrong and that mitigates the seriousness of the offence. In a nutshell, the grievance at the decision made to send off MGW was merited.
- b. In the period between the January 2021 charge and the index incident, NES had presided over approximately 143 Premier League matches. Therefore, overall the episodes of misconduct involving NES are rare and relate to approximately 2% of the games he has been actively involved in.
- c. The Commission should have regard to reality of the impact of the activation of the suspension from the previous breach in determining the sanction in this case.

- d. That the approach impressed upon us by the FA effectively a submission that the starting point is a 3 match ban which is reduced to 2 matches to take account of the mitigation available to NES – namely the admission of the charge together with his remorse.
- e. That would still result in an effective touch line ban of 3 games (when added to the activated suspended ban). The overall effect of that approach is disproportionate.
- f. We should impose the lowest punishment which would achieves the purposes of the regulatory regime. That could be achieved by a lesser sanction.

39. In our view, from time to time, referees will make decisions with which participants will strongly disagree. Participants cannot respond to such situations in an abusive manner. We accept that the referee gave a visual sign in the immediate aftermath of the incident which indicated that MGW had not committed a foul. Whilst that created an impression that no further action can be taken, in the modern game it cannot be assumed that an initial indication from a referee is the final decision on a matter. Their preliminary view might well be revised on consultation with the assistant referee or the video assistant referee. NES accepted that he is a role model. His response to the referee's decision to issue a second caution to MGW was unacceptable. It presented a poor image of the game. It reinforces the impression that it is acceptable to abuse referees.

40. In our view the approach impressed upon us by Mr Phillips on behalf of the FA was measured and reasonable. He did not suggest that the starting point was a 3 match touchline suspension which should be reduced to a 2 match suspension to take account of mitigation. Rather, he suggested that given that the standard sanction for an admitted breach of this sort was a one match touchline suspension, it was proportionate for the standard penalty to be increased to reflect NES's prior conduct. In our view, NES's prior breaches are unquestionably an aggravating feature of the case. The logic of the Mr Phillips submission is in our view compelling.

41. In our judgement:-

- a. This was correctly treated as a non-standard case given NES's recent prior breach.
- b. Had NES not been subject to a prior sanction arising out of his conduct following the Everton game this would have been treated as a standard case and he would have received a one match touch line ban if he had accepted the charge.
- c. Given that this is a non-standard case and taking account of his prior record of two previous breaches of Rule E3 it is appropriate that a greater sanction should be imposed upon him for this breach.
- d. We consider that a 2-match suspension is an appropriate and proportionate footballing sanction on the facts of this case.

42. We also consider that it is necessary and proportionate to impose a financial penalty.

In that regard:

- a. NES has previously been subject to financial sanctions of £25,000 and £40,000 for breaches of Rule E3 in 2021 and 2024 respectively.
- b. We have had regard to NES's footballing income. We do not set out this detail in our reasons but it is included within the material before us.
- c. But for his acceptance of the charge, his immediate remorse and genuine apology, which was reiterated to us, we would have imposed a fine of £75,000.
- d. In the circumstances, and taking account of the mitigation available, in our judgement we consider that it is appropriate to impose a fine of £55,000.

43. NES will pay the hearing fee of £100.00. Otherwise, we have concluded that there should be no order as to costs.

44. Finally, so far as NES is concerned, in the course of submissions we heard argument as to whether we might suspend all or part of the footballing sanction on NES. We accept that this breach was different in character to the previous two breaches which concerned post-match media interviews. However, after careful thought, we are not satisfied that the difference between those two earlier charges and the current matter (which concerned misconduct during the game) is a clear and compelling reason to suspend all or part of the sanction.

45. The decision to suspend the suspension following the breach after the Everton game was predicated on the basis that the threat of the activation of the suspension would have a deterrent effect. That proved not to be the case given that within 39 days of that Commission hearing NES was before a different Commission for breach of the same rule albeit in different circumstances. In all the circumstances we are satisfied that there is no clear and compelling reason to suspend all or part of the punishment.

46. Accordingly, after completion of the 1 match suspended suspension which has been activated by this breach, NES will serve a further 2-match touchline suspension from first team football.

MGW

47. The FA submits that *'any dubiety as to whether MGW was to be sent off, or whether the Referee's decision has latterly been deemed as correct or incorrect is of no consequence to sanction. The player ought to respect the Referee's decision at all times, no matter what impression they may have been given or how strongly they feel that it is incorrect.'* We agree with this sentiment. Indeed, MGW's evidence to us indicates that he agrees too. We repeat the observations at paragraph 39 above which equally to MGW as well.

48. The FA submits that the automatic suspension for a Premier League player who commits a sending-off offence of *"using offensive, insulting or abusive language and/or gestures(s)"* is a 2-match suspension.

49. Accordingly, the FA submit that had it been within the jurisdiction of the Referee to send MGW off for acting in the manner he did and for using the words he accepts he used, he would have automatically received a 2-match suspension.

50. MGW accepted during the course of his evidence that his conduct would have merited a red card in and of itself.

51. In the circumstances, the FA submits that the appropriate starting point is an immediate sporting sanction of 2-matches. On account of the admission and any relevant mitigation, this may be discounted to an immediate 1-match suspension.
52. The FA referred us to and relied upon the decision in The FA v Virgil Van Dijk. In that case the Regulatory Commission was considering a very similar charge to that admitted by MGW. In Van Dijk, the Regulatory Commission endorsed The FA's rationale for an appropriate starting point of 2 matches. Mr Van Dijk pointed towards the Referee and used the words "*fucking joke*". On that occasion, a 2 match starting point was taken, with a reduction of 1 match for the admission of the charge. A substantial financial penalty was also imposed in that case.
53. On behalf of MGW, Mr Rawlinson submits that he has powerful mitigation. He has no previous misconduct offence on his record. He showed genuine remorse which was expressed to the referee shortly after the game and reiterated to the Commission. This is indisputable.
54. In our view the approach impressed upon us by Mr Phillips on behalf of the FA was once again measured and reasonable. We think the Van Dijk case is a useful parallel. We would have imposed a 2-match suspension. However, having regard to the substantial mitigation imposed we reduce that to 1 match.
55. In addition, we consider a financial sanction is appropriate. In that regard:
- a. We have had regard to MGW's footballing income. We do not set out this detail in our reasons but it is included within the material before us.
 - b. But for his acceptance of the charge his immediate remorse and genuine apology we would have imposed a fine of £30,000.
 - c. Having regard to the mitigation in our judgement it is correct to impose a fine of £20,000.
56. MGW will pay the hearing fee of £100.00. Otherwise, we have concluded that there should be no order as to costs.

Conclusion

57. In the circumstances we have reached the following decision with respect to NES:-

- a. NES shall be subject to a touchline suspension until such time as the Club has completed 2 Category 1 First Team Competitive Match in an approved competition.
- b. He is fined £55,000.
- c. He will pay the hearing fee of £100.

58. For the avoidance of doubt, the sanction referred to in paragraph 57(a) above will be served after completion of the suspended sanction imposed on NES on 14 August 2024 which was activated by this breach.

59. In the circumstances we have reached the following decision with respect to MGW:-

- a. MGW is suspended from all domestic club football until such time as the Club has completed 1 Category 1 First Team Competitive Match in an approved competition.
- b. He is fined £20,000.
- c. He will pay the hearing fee of £100.

60. These decisions are subject to any appeal as provided for by the Appeal Regulations.

Dominic Adamson KC

Bradley Pritchard

Mick Kearns

17 October 2024