

**IN THE MATTER OF THE REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION**

BETWEEN:

THE FOOTBALL ASSOCIATION

-and-

JOSE MOURINHO

**DECISION AND WRITTEN REASONS OF THE
REGULATORY COMMISSION**

Regulatory Commission: Ifeanyi Odogwu - Independent Legal Panel Member
 Mick Kearns - Independent Football Panel Member
 Bradley Pritchard - Independent Football Panel Member

Secretary: Paddy McCormack - Judicial Services Manager

Date: 31 October 2018

Introduction

1. Jose Mourinho (“JM”) is the manager of Manchester United FC (“MUFC”). By charge letter dated 16 October 2018, JM was charged with misconduct for a breach of FA Rule E3 in respect of language that he used following the Premier League fixture on 6 October 2018 between MUFC and Newcastle United FC (“NUFC”).
2. The charge alleged that JM’s language after the end of the fixture, as captured by the broadcast camera, was abusive and/or insulting and/or improper, contrary to Rule E3. The case was designated a ‘Non Standard Case’ by The Football Association (“The FA”) due to the unusual nature of the Misconduct. The case was determined by a Regulatory Commission at a non-personal *fast track* hearing on 31 October 2018.

Background facts

3. It is either expressly agreed between The FA and JM, or not seriously in dispute, that JM was under close scrutiny from the media in the lead up to the fixture between MUFC and NUFC. The match took place at MUFC's home ground, Old Trafford, and ended with MUFC winning the fixture 3 - 2. At half time, MUFC were 2 goals down, however they went on to win the fixture in the second half; their 3 goals were scored in the 70th, 76th, and 90th minutes respectively. Naturally, this was perceived to be a 'dramatic' end to the fixture.
4. As JM left the field of play after the end of the fixture, he was followed by a broadcast camera along the touchline. By reference to the video clips provided to the Commission, at the start of Clip 1, JM can be seen gesturing using a clenched fist whilst making an inaudible comment. For the majority of 00:00-00:03 seconds he does not look into the camera. At 00:04 seconds on Clip 1 JM can be seen to make another inaudible comment, this time he briefly glances towards the camera lens. This can also be seen at 00:11 – 00:16 seconds of Clip 2.
5. The FA instructed Mr Pedro Xavier, an expert in the translation and interpretation of lip reading of colloquial Portuguese language, to provide his opinion on the words used by JM as shown on the video footage. In his expert report dated 10 October 2018 and relied upon by The FA, he states that the words used by JM were “Vós sois uns filhos da puta”, repeated twice. Mr Xavier states that the literal translation of these words in English is “sons of a whore”. He described the phrase as “highly offensive, especially if the people involved are not close. Among friends (normally men) it can occur as a joke or a teaser. In a professional context it is absolutely offensive.” He added that it is a “typical expression used when people are angry”.
6. Mr Xavier concluded, “Language is a very complex matter and it can be assessed in many ways and interpreted differently by different kinds of people. Every language has its own common expressions and in the Portuguese language, the words used by Mr Jose Mourinho are common during a moment of anger or as a hit back for a

problematic event but in any instance they are considered highly inappropriate and unprofessional”.

7. In reply to the charge, JM served his own expert report from Simao Valente, an Assistant Professor at the University of Lisbon and an expert in the Portuguese language, including colloquialisms. Mr Valente interpreted the words used by JM to be “Vão levar no cu, filhos da puta”, repeated twice. He translated these words to mean “Go take it in the arse, sons of the whore” in the literal sense, and “Fuck off you sons of bitches” or “Fuck off you arseholes” as an idiomatic translation.
8. Mr Valente considered that an idiomatic translation was not entirely adequate or accurate to interpret what is occurring from the broadcast footage, and that context is essential. In this context, Mr Valente described that JM had just won a match which had been more difficult than anticipated, after a difficult start of the season in which he had been subjected to significant criticism in the media. The victory was vindication. JM was clearly celebrating it, without aiming the words at anyone in particular. He opined that it was common for Portuguese people to express feelings of vindication or success after long suffering by using such phrases without them being directed to anyone in particular. Mr Valente referred to a headline from a popular Portuguese football newspaper which read “Mourinho celebrated the victory over Newcastle in good Portuguese” to support this point, adding that ‘good Portuguese’ was akin to saying ‘Queen’s English’ and therefore the newspaper was being ironical and light-hearted about the situation, which warranted a joke.
9. In Mr Valente’s opinion, the most accurate contextual translation of JM’s words were “fuck yeah” or “hell yeah”, spoken in a celebratory manner. He did not consider the words used in the context to be abusive, insulting or improper. He would understand the person to be very happy about something good that had just happened to them against all odds. He added that the typical Portuguese person would not feel insulted or offended and in Portuguese there are no words considered universally or intrinsically improper or offensive in itself, rather it all depends on how, where and when those words are used. The use and perception of swear words in Portuguese is different to English. He would describe the phrase as rude, but not improper in the English sense, in

that he would not expect them to occur in a business meeting with new clients (old ones, possibly) but would not be improper on a football field.

Relevant Rule

10. The applicable FA Rule E3(1) states:

“A Participant shall at all times act in the best interest 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.”

Procedural issue

11. The Commission were required to provide a ruling on a procedural issue. The FA responded to JM’s reply to the charge with further written submissions, and evidence, pursuant to Regulation 19 of the Disciplinary Regulations (at p205 of The FA Handbook 2018-2019). JM made an application to respond to The FA’s response. There is no further right for JM to respond provided for within the Fast-Track Regulations, however in the circumstances of this particular case, the Commission considered its powers to regulate its own procedure under Regulation 6 of the General Provisions, and was mindful of Regulation 4 of the General Provisions which state *“...in the interest of achieving a just and fair result, procedural and technical considerations must take second place to the paramount object of being just and fair to all parties.”* We considered that a fair analogy could be drawn from Regulation 10 of the Non-Fast Track Regulations that provides that where The FA submits a response to a Reply, the Participant charged is provided with a further opportunity to respond to the material submitted. By way of a short deadline, given that these were still Fast Track proceedings, we therefore granted JM’s application to be afforded the opportunity to respond only in writing to any new points raised by The FA’s response.

Case Outline

12. The Commission were greatly assisted by the detailed submissions from JM via MUFC, and from The FA. It is not necessary to rehearse every point for the purposes of these written reasons. The following is a brief summary of the principal submissions

and evidence placed before the Commission. The absence of any particular point or submission in these reasons should not imply that the Commission did not take it into consideration. For the avoidance of doubt, the Commission carefully considered all submissions and evidence in respect of this case.

The FA

13. The FA submits that the comments made by JM were abusive, insulting, and improper, even on the translations relied upon by JM in his expert report. Whilst The FA's case is that the comments satisfied each of the aforementioned ingredients, they reminded the Commission that we need only be satisfied that the comments were either abusive or insulting or improper in order to find a breach of Rule E3 occurred. The terms should be given their natural and ordinary meaning applying an 'objective bystander test'.
14. The FA contended that the words need not be directed at any particular individual or group, although they refuted the argument that JM's comments were not directed at anybody because they say the recipients of JM's comments were the viewers watching the broadcast footage.
15. It was argued that where comments are prima facie, objectively abusive and/or insulting, it does not require a Commission to have to go on to consider the context in which they were used for the purposes of determining whether a breach has occurred. Once a Commission is satisfied that the comments meet any of the elements of Rule E3 as alleged, then context, in the same way as intention, would only become relevant to any mitigation. Furthermore, and notwithstanding The FA's submission above, they did not accept Mr Valente's opinion that the context in which JM used the words indicated, on the balance of probabilities, that they were not abusive or insulting. The FA relied upon the agreed position that winning the game in such dramatic circumstances would be perceived as silencing JM's critics and a reasonable conclusion to draw is that the comments were in fact directed towards those very critics. Furthermore, whilst JM's expert may have expressed a view as to whether the words are abusive/insulting/improper, The FA submitted that this question, in relation to FA Rule E3, was a matter for the Commission.

16. It was clear from their submissions that The FA's alternative argument was that even if the words were used for some other reason as suggested by JM, directing the comments down the camera lens, as they say he did, would still amount to a breach because he had used improper language. The FA submit that this is not a departure from their approach on how industrial language which takes place on the pitch is dealt with, citing decisions in *FA v Wayne Rooney (2011)* and *FA v Pontus Janssen (2018)*.

JM

17. JM accepts the words ascribed to him by The FA's expert witness. It is submitted that the words used by JM were a personal, inwardly-directed expression of relief, happiness and determination. It is argued that the words mouthed by JM were entirely inaudible, were directed to no-one, were comprehensible only to a person possessed of sufficient lip reading skills and a deep expertise in Portuguese colloquialisms. JM submits that it is necessary for the Commission to consider whether any body was actually insulted, abused and/or offended by the words used in order to determine whether there has been a breach of Rule E3(1).
18. Even if words used by JM were comprehensible to the broadcast audience, JM submits that the words were not abusive and/or insulting and/ or improper when considered in its context. Contrary to The FA position, he argued that the context is key and we must consider the context in which the alleged words were used when determining whether there has been a breach of Rule E3(1). The context is not therefore consigned solely to the question of mitigation as contended by The FA.
19. With regards to whether the language used was 'improper' JM specifically addresses this point by stating that FA Rule E3(1) does not prohibit "improper words" rather it refers to improper 'acts', therefore there is no regulatory basis for this aspect of the Charge. Rule E3(1) expressly provides that for "words" to fall within the scope of the rule, they must be "...threatening, abusive, indecent or insulting...". Following this construction of FA Rule E3(1) through and applying it to the present case, JM argues The FA must prove that (a) the language used was in fact "abusive" and/or "insulting"

(it being noted that The FA did not contend in this case that the words are “indecent” or “threatening”); and (b) that the words had such effect.

20. In an alternative argument, JM contends that the Charge is entirely out of step with The FA’s longstanding approach of taking no action in analogous cases where a Participant swears in or around the field of play. Therefore, JM had a legitimate expectation that such charges would not be brought. To underline this point, JM set out a Schedule selecting several illustrative examples where high-profile Participants have been captured on broadcast camera using profanities in a variety of match and post-match scenarios, yet were not charged.

Decision

21. The applicable standard of proof for this case is the balance of probability. The balance of probability standard means that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not. Notwithstanding the standard of proof, as is common ground, the burden remained on The FA to prove the charge against JM.
22. It was not in dispute between the parties that JM had been seen on broadcasted footage using Portuguese profanity, including the words “...filhos da puta”, repeated twice. It was agreed by both experts that the literal translation of “filhos da puta” into English is “...sons of a whore”. The Commission noted that JM accepted the words ascribed to him by The FA’s expert, Mr Xavier, who is an expert in translation and interpretation of lip reading, whereas Mr Valente does not mention any lip reading expertise in his report or curriculum vitae. We also noted there were slight differences between the experts as to what words preceded “filhos da puta”. We accept Mr Xavier’s interpretation given his expertise and JM’s concession, however we note from the idiomatic translation of “Vão levar no cu, filhos da puta” from Mr Valente that this does not materially differ from Mr Xavier’s opinion as to the meaning of the words in general terms. It was also common ground that the charge related solely to the use of this language, and not any gestures made by JM.

23. In our assessment, the relevant issues in dispute that were determinative of the charge were:

- (1) What is the appropriate test to determine whether JM breached Rule E3(1); the ‘objective bystander test’ or is it necessary for somebody to be actually insulted, abused and/or offended by the words JM used?
- (2) What is the proper construction of FA Rule E3(1) insofar as it relates solely to language? Does ‘improper words’ fall within the scope of the Rule?
- (3) What is the translation of JM’s repetition of the words “Vós sois uns filhos da puta” or “Vão levar no cu, filhos da puta”?
- (4) Subject to our findings on the above issues, did JM’s language constitute an abusive and/or insulting and/or improper act so that it was in breach of FA Rule E3?
- (5) If JM’s language was a breach of FA Rule E3, did he nevertheless have a legitimate expectation that the use of profanity will not be deemed by The FA to be an act of misconduct contrary to the Rule so as to be an available defence?

Appropriate test

24. There is no specification within Rule E3 that suggests there must be at least one recipient of abusive, threatening, abusive, indecent or insulting words. The Commission had little difficulty in determining that the appropriate test is clearly an objective one, commonly known as the ‘reasonable observer’ test. In other words, we were to consider how the words used would be perceived by a reasonable observer. That is entirely consistent with how the test had been previously applied. A requirement in every case to identify somebody who was actually insulted, abused and/or offended by words used in order to determine whether there has been a breach of Rule E3(1) would lead to absurd and illogical consequences.

Construction of FA Rule E3

25. Similarly, the Commission considered JM's argument that 'improper words' did not fall within the scope of Rule E3(1) as flawed. Notwithstanding Rule E3(1) does expressly prohibit "threatening, abusive, indecent or insulting" words or behaviour, the Rule is clearly not restricted to only such words or behaviour. There could be no logical justification for adopting such a restrictive approach. In any event, it is clear that a proper construction of Rule E3 is that a Participant must (1) at all times act in the best interest of the game, and (2) shall not act in any manner which is improper or brings the game into disrepute, or (3) use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour. To 'act in a manner which is improper' clearly covers a range of conduct giving The FA a broad discretion as to what it would consider to fall below expected standards of behaviour, and in turn amount to improper conduct. That would clearly encompass using language that is improper. The expressly prohibited words or behaviour under (3) above is a distinct and alternative self-contained category within the Rule. Again, this approach to construction of FA Rule E3 has been consistently adopted in previous decisions of this Commission.

Translation of "Vós sois uns filhos da puta" or "Vão levar no cu, filhos da puta"

26. There was no meaningful dispute between the parties as to what words the video footage captures JM using. JM expressly accepts mouthing the words ascribed to him by The FA's expert. The crux of the case relates to the translation and interpretation of JM's language. The competing submissions from The FA and JM were premised on their own expert evidence.
27. A central contention was the relevance of context. The FA argue that as the comments are prima facie, objectively abusive and/or insulting, the context in which they were used are not relevant for the purposes of determining whether breach has occurred but only for mitigation. This simply cannot be the correct approach in this case. Firstly, The FA's own expert concludes in his report that "language is a very complex matter and it can be assessed in many ways and interpreted differently by different kinds of people". Given such complexities, the scope for different interpretation, and the fact that we are

being invited to interpret and make a finding on a foreign language, the context is pertinent to our consideration of the reasonable bystander test. Secondly, expert opinion before this Commission was that there are no Portuguese words considered universally or intrinsically improper or offensive in and of itself. Rather it all depends on how, where and when those words are used. To this extent, the use and perception of swear words in Portuguese is considerably different to English. The FA could not simply, and boldly, assert that JM's words were *prima facie*, objectively abusive and/or insulting and/or improper without consideration of the context in which they were used.

28. Mr Valente's opinion was that the contextual translation of "fuck yeah" or "hell yeah", spoken in a celebratory manner, was the most accurate for those reasons. We could see no reason to reject his evidence. The burden is on The FA to prove their case and their expert, Mr Xavier, did not provide a contextual translation. Indeed, he did not address context meaningfully, if at all, in his report. His evidence on the offensiveness of the words did not specifically address the actual context of their use. It did make reference to situations where the words used are specifically targeted at another identifiable person however we did not consider this to be probative in this case. Further, a section of Mr Xavier's report appeared contradictory in relation to the phrase where he stated, "Among friends (normally men) it can occur as a joke or a teaser", as in his conclusion Mr Xavier states, "...but in any instance they are considered highly inappropriate and unprofessional." Mr Xavier also did not consider, or at least did not address within in his report, the words used in the context of professional football. Whilst profanity is of course not to be condoned, it is commonplace in football and spectators who view matches in stadia or on television frequently do hear or interpret Participants swearing. The FA had the opportunity upon receipt of Mr Valente's report to specifically put these matters to their expert for his opinion, particularly as The FA did exercise their right of response with detailed submissions and relied upon new evidence.
29. In the absence of competing expert evidence on the significance of context when translating "*Vós sois uns filhos da puta*" or "*Vão levar no cu, filhos da puta*", we accepted Mr Valente's considered opinion that the contextual translation of "fuck yeah" or "hell yeah" was the most accurate in these circumstances.

Breach of FA Rule E3

30. In our assessment, it is necessary for the Commission to consider not just the words in a vacuum but to consider whether, viewing the matter in context and taking into account the specific facts and circumstances involved, the words as translated were insulting and/or abusive and/or improper. It seems reasonable to assume that an objective person would be someone who we presume to be of reasonable fortitude. It would also be reasonable to assume the objective person is an informed bystander, appreciating the prevalence of profanity in football, the dramatic conclusion of the fixture and the particular circumstances of the scrutiny surrounding JM in this fixture.
31. We find that JM was celebrating victory without aiming the words at anyone in particular. His words were inaudible. We do not accept that he shouted the expression, as stated by Mr Xavier in his report. JM repeats the words, first looking away and then the second time we do accept that he is seen briefly glancing towards the lens of the broadcaster's camera. The words mouthed were a Portuguese colloquial profanity. Thus, the objective person would have had to lip read JM's mouth and interpret Portuguese colloquialisms to accurately decipher the comments.
32. Even if the objective person was able to decipher the language JM used, which is highly debatable, we accept Mr Valente's evidence that a typical person fluent in Portuguese colloquialisms would not feel insulted or offended from what they saw or interpreted from the footage, rather would understand JM to be very happy about something good that had just happened to him against all odds. He opined that it was common for Portuguese people to express feelings of vindication or success after long suffering by using such phrases without them being directed to anyone in particular.
33. Similarly, we did not consider the simple use of profanity of itself to be improper in this context so as to breach FA Rule E3. These issues turn on factual nuances that present itself on a case by case basis, and this decision should not be interpreted as authority for a general principle that swearing alone could not breach FA Rule E3 in any scenario. In this case, JM was celebrating victory following a significant and dramatic conclusion to the game, without aiming the words at anyone in particular, the comments were inaudible, said in another language, and even if a Portuguese speaker

could decipher what was said by lip reading, this translated to “fuck yeah” or “hell yeah” which we find is not improper in the context and manner in which it was said.

34. We do not consider JM’s language constituted abusive or insulting or improper act so that it was in breach of FA Rule E3, therefore on the balance of probabilities the charge is unanimously not proved. Consequently, it was superfluous to go on to consider the remaining issue of legitimate expectation.
35. This decision may be appealed in accordance with the relevant Regulations within The FA Handbook.

Ifeanyi Odogwu (Chairman),
Mick Kearns
Bradley Pritchard

5 November 2018