

IN A MATTER BEFORE AN INDEPENDENT REGULATORY COMMISSION (IRC)

BETWEEN:

THE FOOTBALL ASSOCIATION (FA)

- v -

MR BARRY DUNN (BD)

REGULATORY COMMISSION MEMBERS

RAJ PARKER (CHAIR) (INDEPENDENT SPECIALIST PANEL MEMBER)

SALLY DAVENPORT (INDEPENDENT LEGAL PANEL MEMBER)

FRANCIS DUKU (INDEPENDENT FOOTBALL PANEL MEMBER)

FA JUDICIAL SERVICES

MICHAEL O'CONNOR (LEAD JUDICIAL SERVICES OFFICER)

APPEARANCES

FOR THE FA

ANDREW PHILLIPS

FOR MR DUNN

PETER COYLE

HEARING IN PERSON at WEMBLEY STADIUM

Reasons for decision given on 31 August 2023

Introduction

1. Following a report from 'Kick It Out', the Football Association ("The FA") was alerted to a tweet dated 15 March 2023 from an account [REDACTED]. Under the caption "*My Dad would be devastated*" it showed a picture of a line of well tended war graves with the caption "*They died...*". Directly underneath it showed a picture of a street with many Muslim men kneeling in an attitude of prayer with the caption "*For this?*".

2. Mr Barry Dunn re-tweeted the post on his twitter account *Barry Dunn 99* on the same day. The account has since been deleted.

3. The FA charged Mr. Barry Dunn (“BD”) with a breach of FA Rule E3 by way of Charge letter issued on 13 June 2023. BD is Head of Academy Football at Millwall FC.

FA RULE E3

FA Rule E3 states the following:

“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 a 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 reassignment, sexual orientation or disability.”

4. The FA alleged that the breach of FA Rule E3.1 is an “Aggravated breach” as defined in Rule E3.2, as it included a reference, whether express or implied, to religion or belief.

5. There was no dispute at the hearing that the tweet was highly offensive, and the aggravated breach was admitted by BD.

6. Initially BD denied the Charge and asked for a personal hearing to determine liability.

7. In his email to The FA of 17 May 2023, BD stated:

“...Having reviewed the offending re-tweet again with the wonderful benefit of hindsight, I can now see how its message would cause offence to people, both within and outside the Islamic faith. As I go on to explain, this was not how I viewed the post on the evening of 15 March. Nevertheless, I can now see that the post’s message is discriminatory and offensive...”

BD further stated:

“On 15 March 2023, I believed the post related to the desecration of War Graves by Muslim extremists – which would have devastated the tweeter’s father, a World War soldier, had he still been alive. I can now see, with proper time to view and reflect, that the two photos are completely unrelated to each other, so taken as a whole the post is unfairly demeaning (and therefore offensive) to the Islamic faith.”(emphasis added)

8. When BD personally addressed the IRC in mitigation however, he said that he did not believe the post related to desecration of war graves by Muslim extremists.

9. An email from BD’s lawyer Mr Coyle on 21 June 2023 to the FA continued to indicate the charge would be contested:

“My client denies the charge under Rule E3.1 because, on a subjective analysis, re-tweeting something under a mistaken understanding of its content and/or intended meaning cannot be deemed improper, threatening, abusive, indecent, insulting or as bringing the game into disrepute. In other words, for conduct to breach Rule E3.1, its impropriety needs to be intentional and not derivative from a mistake. If on my client’s case his conduct did not contravene Rule E3.1, then the question of ‘aggravation’ must fall away under Rule E3.2.”

10. However, having received The FA's reply brief dated 28 July 2023¹, on 10 August 2023 Mr Coyle belatedly admitted (on behalf of BD) the aggravated breach and the matter proceeded to a personal hearing at which the question of BD's state of mind, which is only relevant as to mitigation, and the appropriate sanction were considered.

11. BD addressed the IRC in person. BD said that he was terribly sorry that he had made such a serious mistake. He *'felt sick and could cry'*.

12. His explanation was that he did not intend to re-tweet the offensive material and instead re-tweeted it under a mistaken apprehension as to its meaning and content.

13. The IRC, having heard BD and considered all the material facts, finds that this explanation does not withstand scrutiny. The tweet is plain and obvious in its offensive depiction of the Muslim community. The explanation given in his response to the FA of 17 May (highlighted at §7 above) was, he said at the hearing, simply wrong. The IRC finds his explanation that he did not intend to re-tweet the offensive material and that it was re-tweeted under a mistake as to meaning and content, has not been made out on the balance of probabilities. The IRC finds that it therefore provides no mitigation.

14. On the finding of an aggravated breach of Rule E3 the standard minimum range of time-based suspensions is 6-12 weeks. There are specific exceptions set out in the FA Handbook to this minimum period. These include where the IRC is satisfied that there was no genuine intent on the part of the person charged to be discriminatory or offensive in any way and that they could not reasonably have known that any such offence would be caused -see FA Rule E3.2 *'Standard Sanctions and Guidelines for Aggravated Breaches'* at Appendix 1 of *The FA's Disciplinary Regulations Part A: General Provisions* at page 180 FA Handbook 2023/24. The IRC finds that this exception does not apply on the facts of this case. The IRC finds that BD was familiar with re-tweeting and in fact re-tweeted some 841 times in the 3 years he had the twitter account. The IRC accepts the FA's case that on the balance of probabilities BD, at the very least, recklessly re-tweeted the offensive material.

Sanction

15. A 6-12 match suspension is the minimum recommended range for an aggravated breach of Rule E3 by a player, manager or technical area occupant, subject to the need to impose an overall sanction which is just in all the circumstances. Where the participant does not fall within those categories, an appropriate time-based suspension that is commensurate with the breach may be imposed, having regard to the specific roles and responsibilities of the participant. The IRC has carefully considered the matters submitted in mitigation of sanction by Mr Coyle and the evidence given by BD in person. It gives credit for BD's apology and cooperation, acknowledged by Mr Phillips for the FA, without which the overall sanction would have been more severe.

16. The IRC also notes that the FA did not dispute that this was a 'one off' incident and that BD has a 15 year career in football and a clean disciplinary record. The IRC has also taken account of the numerous character references and other positive statements about his character and work put forward on BD's behalf².

17. It takes into account BD's age (71) and that he has been suspended (on full pay) from his duties at Millwall FC since 15 May 2023.

¹ Which referenced *FA v John Yems (FA Appeal Board)*

² Including from Kenny Brown, Paul Phillips, Bert Dawkins, Darryl LaVictoire, Jayden Tektas

18. There are however aggravating features in this case. Persons who occupy leadership positions of trust and responsibility in the coaching and management of football are role models for many others and have the ability to shape the culture and lead change in and outside of their clubs.

19. This is particularly so when a person is Head of Academy Recruitment at a club and who is involved with players under the age of 18. BD's re-tweet was public and could have been viewed by those he was responsible for, their parents and many others. Social networking websites require particular care and attention.

20. Conduct by persons in positions of responsibility that supports a discriminatory or divisive culture damages the promotion of equality, diversity, and inclusivity in the football community. The FA rightly takes misconduct by such persons very seriously. They are required to act in the best interests of the game at all times.

21. In all the circumstances the IRC imposes the following sanction:

- a. BD is reprimanded and warned as to his future conduct.
- b. BD is suspended from all football club related activity for 8 weeks.
- c. BD is fined the sum of £525 (one week's wage net).
- d. BD will personally attend a one to one FA education course to be advised to him by the FA.

22. The sanction may be appealed in accordance with the relevant FA Regulations.

Raj Parker (Chair)
Sally Davenport
Francis Duku

1st September 2023