

IN THE REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION
AND
IN THE MATTER OF ALLEGED BREACHES OF RULE E3(1) OF THE RULES
OF THE FOOTBALL ASSOCIATION

Mr David Phillips QC, Mr Marvin Robinson, Ms Arshia Hashmi
3 July 2018

BETWEEN

THE FOOTBALL ASSOCIATION

Complainant

and

TONY HENRY

Respondent

WRITTEN REASONS

INTRODUCTION

1. The FA has charged Mr Henry with misconduct contrary to FA Rule E3(1), alleging the misconduct to be an *Aggravated Breach* (Rule E3(2)). The charge letter is dated 4 May 2018. By his Reply Form dated 10 May 2018 Mr Henry admitted the charge and requested a personal hearing. By an email (17 May 2018 [10:30]) Mr Henry wrote that he would not be submitting witness statement but would rely on the contents of what he said during his interview with the FA. However, on 2 July 2018 he served a short document described as “Defence Case and Mitigation Summary.” The personal hearing was held by the Regulatory Commission at Wembley on 3 July 2018. The FA was represented by Mr Paul Renteurs (FA Regulatory Advocate). Mr Henry attended in person and was represented by Mr Mark Knowles (PFA).
2. On his own admission Mr Henry had committed a breach of FA Rule E3 in respect of the remarks made by email on 27 January 2018, and during a telephone conversation on 31 January 2018. The breach of Rule E3 (1) is

an *Aggravated Breach* (Rule E3 (2)) because the remarks included references to ethnic origin and/or colour and/or and/or race and/or nationality. The Regulatory Commission imposed the following orders on Mr Henry -

- (1) An immediate suspension from all football and football related activity for 12 months, running up to and including 2 July 2019.
- (2) Attendance at a FA face to face education course within 4 months.
- (3) A contribution of £2,250 towards costs of the hearing.
- (4) Forfeiture of the £100 personal hearing fee.

THE CHARGE

3. The charge arises out of Mr Henry's position as the Director of Player Recruitment at West Ham United Football Club. The charge letter specifies the Particulars of Charge in the following terms -

It is alleged you made the following improper and/or insulting and/or abusive comments:

- *"We don't want anymore Africans and he's not good enough"*
- *"Erm, no reason. It's nothing racist at all. It's just sometimes they can have a bad attitude. We had problems with Sakho, with Diafra Sakho. We find that when they are not in the team they cause mayhem. It's nothing against the African race at all. I mean, look, there are top African players. There's not a problem with them. It's just sometimes they cause a lot of problems when they are not playing, as we had with Diafra. He's left now and gone to Rennes, so great. It's nothing personal at all"*
- *"No, it's not a slight on African players. I don't know what you are trying to get at here. All I said was ... look we have a great lad in Kouyate, he's brilliant, a great player for us, he's a good lad. But the likes of Sakho have caused mayhem. You know when he's not playing. He always wants a new deal. That's all it was. It was nothing discriminatory at al"*
- *"It's like Italians. How many Italians come and settle in England? As a club we are not discriminatory at all. We're not. It's just ... I think if you've got too many, they all sit together and you know, it just becomes where you can have .. there can be problems. But then you can have problems with English players"*

It is alleged that this breach of Rule E3 (1) is an "Aggravated Breach" as defined in Rule E3 (2), as the comments include references to ethnic origin and/or colour and/or and/or race and/or nationality.

THE DOCUMENTARY EVIDENCE

4. In July 2014 Mr Henry was appointed by West Ham as its Director of Player Recruitment. In November 2017 Mr Henry exchanged emails with David Sullivan (one of the owners of West Ham) concerning the possibility of signing Ibrahim Amadou, a national of Cameroon, who was then playing for Lille. During the course of the exchange Mr Sullivan enquired whether Mr Amadou had a French passport. During his interview with the FA Mr Sullivan explained that the reason for the enquiry related to whether the player would require a United Kingdom work permit and had nothing to do with his ethnic origin or country of birth.

5. On 27 January 2018 an agent whose identity has been redacted in the papers before us wrote to Mr Sullivan offering his services in securing the transfer of Mr Amadou to West Ham. Mr Sullivan directed the offer to Mr Henry. Mr Henry replied (27 January 2018 [19:34]) saying “We don’t want anymore Africans and he’s not good enough.” This is the first of the four statements particularised in the FA charge. Mr Henry accepts that he wrote in those terms.

6. That email was passed, probably by the agent, to the Mail Online. On 31 January 2018 Matt Lawton of the Mail Online telephoned and recorded an interview with Mr Henry. During the course of that interview Mr Henry made the following (amongst other) remarks –

Erm, no reason. It’s nothing racist at all. It’s just sometimes they can have a bad attitude. We had problems with Sakho, with Diafra Sakho. We find that when they are not in the team they cause mayhem. It’s nothing against the African race at all. I mean, look, there are top African players. There’s not a problem with them. It’s just sometimes they cause a lot of problems when they are not playing, as we had with

Diafra. He's left now and gone to Rennes, so great. It's nothing personal at all.

No, it's not a slight on African players. I don't know what you are trying to get at here. All I said was ... look we have a great lad in Kouyate, he's brilliant, a great player for us, he's a good lad. But the likes of Sakho have caused mayhem. You know when he's not playing. He always wants a new deal. That's all it was. It was nothing discriminatory at all.

It's like Italians. How many Italians come and settle in England? As a club we are not discriminatory at all. We're not. It's just ... I think if you've got too many, they all sit together and you know, it just becomes where you can have .. there can be problems. But then you can have problems with English players.

These are the second, third and fourth of the four statements particularised in the FA charge. Mr Henry accepts that he spoke in those terms.

7. On the evening of 31 January 2018, having read the email of 27 January 2018 and a transcript of Mr Henry's interview with Mr Lawton, West Ham suspended Mr Henry. On 2 February 2018, without any form of disciplinary hearing and without being given any opportunity to explain himself, Mr Henry was summarily dismissed.

8. Mr Henry was interviewed at considerable length by the FA on 5 March 2018. As noted above, Mr Henry relies on what he said during that interview. The following are extracts from what Mr Henry said –

Well, it's happened, I got a call. It was deadline day at the club, and we were trying to bring in two, possibly three players. We'd already brought in João Mário, the boy from Inter Milan, the midfield player. We were trying like hell to bring in two or three players if we could, because as I said, we'd had all the injuries. All of a sudden we were panic stations, so we needed to bring in players. I got a call from a guy called Matt Lawton.... So I took the call, and that's when he hit me with this discriminatory against players at the club. I honestly didn't know what he was talking about. To be honest, I don't know why I took the call. I didn't know what it was, I just took the call and I wish I hadn't of took it now. He told me about this email that had been leaked, and I

know why it's been leaked. It's been leaked by a football agent to Matt Lawton, and the agent in question has been trying to get me out of the club for a while. So then the story went out, and within thirteen hours I got the sack. I'll be honest, I couldn't believe it. This is the honest truth, on my grandkids' lives. I'm still in shock. I am absolutely in shock at what has happened, because I've got to say, Stephan, I'm the least racist person you will ever meet in your life.

So I have to say, why did nobody say anything to me between the 27th and the 1st Why did nobody say, 'Tony, you shouldn't have said that.' Nobody said anything. What I said was wrong, but I'll tell you my side. As a staff, as a group, that's the word, as a group, we said that we would prefer this January window, and David Moyes would confirm it, we wanted Premier League experienced players. Or British players. We didn't really want even European players, because Moysie, he likes British players anyway. He would have preferred players that can come straight into team. Even players from Spain, Italy or France, they can come in and they can take three or four months to settle. When you're near the bottom of the League, you can't afford that. You can't afford to have players come in and not hit the ground running. Whereas if you can get a Premier League player, if you can get a British player that's played in the Championship, you just hope that they come in, bang, they hit the ground running. So as a team we said we would prefer British or Premier League players, if we could. We tried for various players, it was obviously in the press, the different ones were all gone for. It got very difficult, because we got turned down by different clubs. 'You can't have him, you can't have him, he's not for sale. He's too much money.'

Also, I was totally wrong, what I said. 'We don't want any more Africans.' What I didn't say, and if I'd have said this it might have blown over, I don't know. What I should have said was, 'We don't want any more Africans because of the African Nation's Cup.' The last one we had, it was there two years ago, we lost four players to the African Nation's Cup, which starts in January, goes through to February. The players go a week before, and they come back a week after the tournament. If any of those players get to the latter stages, you could be missing them for six or seven weeks. In a club like West Ham, you can't afford that. You can't afford to lose four or five players, especially if they're in the first team. That's what I should have said, and I didn't. REDACTED What we kept saying, as a team, we kept saying, 'We'd prefer British players if possible, and prefer Premier League players.' That's what we would have preferred, if we could. We ended up taking Jordan Hugill from Preston. We took João Mário, only because he was a loan and he's a Portuguese lad. I'd seen him when he was seventeen, he's a top player. When I said, 'We don't want any more Africans,' it was only because we didn't want any more African players that would be involved in African Nations. They may take time to settle.

As you see in the article, the main thing was he wasn't good enough.

I just thought, 'It wasn't meant to be racist at all.' Can I just say, at West Ham, I was responsible for bringing in Darren Randolph, Angelo Ogbonna, Arthur Masuaku, Michail Antonio, Edimilson Fernandes, Diafra Sakho, Cheik Kouyaté, João Mário. They're all black players, and they're all players that I thought would be good for us, that would make us better. It was never about, you know, 'Because of their colour we're not taking them.' With a player it's always if they're good enough, if they're better than what we have. I also brought Sofiane Feghouli, who was African, Algeria, and Andre Ayew. I was responsible for bringing all those players, I recommended to sign all those players. Then all of a sudden this story comes out, and I'm a racist. I don't get it. I'm sorry, I can't have it.

There were things that were going on in my life that were really difficult. I think this guy, Lawton, he caught me at the wrong time. I said things that I shouldn't have done, and I regret it, and I'm really sorry for what I've said. It was a really hard time for me, and that is the honest truth.

I mean, I've got to say, though, my use of words was wrong. When I say they were causing mayhem, I just think it was the whole thing. It was deadline day, and I said things that I probably regret saying, and I apologise for it. I've been at Everton, where players have gone berserk, but that could have been English players. You know, I just think players in general, if they're not playing, if they can't get a new contract, sometimes, they can cause a bit of problem.

Whether it's like this at other clubs, I don't know, but in all the time I've been at West Ham, for the first two or three years, we moved to Rush Green, and in the training ground, in the canteen, where the players eat at lunchtime or breakfast, they have round table. There'll be one there, one there, one there, one there. Without doubt, the French players would sit together, the Spanish and Argentinian players would sit together, the English lads would sit together. So, that's not having a go at African players, because they're all French-African, because they sat together, because the English lads sit together as well. José Fonte, who we signed from Southampton, came in, and José was a brilliant lad. He's just gone to China. He was a brilliant lad, and he pulled me one day and said, 'Tony, we have to change the way we do things here.' I said, 'What do you mean?' He said, 'It's wrong. Just look. It's blatant. There, there, there, and there, all the different nationalities, together.' He said, 'At Southampton, we didn't have this.' So, he did it himself. He asked the player liaison guy, Tim De'Ath. He said, 'Can we put a long table, so everyone sits together? This is wrong.' He said, 'We're a team. You don't have that. It's wrong.'

He was right. He was totally right. Saying that, I have to say, the table was

done, and you'd get a few of the players sat together, but then you'd still get-, it could have been Lanzini, Zabaleta, Adrián, Pedro Obiang, all Spanish-speaking ones, and they still sit together. Maybe they just feel more comfortable like that. That wasn't meant about African players. There might have been Ayew, Kouyaté, Arthur, Edimilson Fernandes, all sat together. I wasn't having a go at them, it was just that's the way it was. On one table, you've got Andy Carroll, you've got Sam Byram, Aaron Cresswell, and Mark Noble, sat together. So, José tried to get it where everyone sat together, which I think was a great idea, because we're a team.

All I will say, to both of you, is I am not a racist one bit. I play with black players, as a player. My best mates at West Ham were Pedro Obiang and Michail Antonio, and you can ask any of them. I brought in ten or eleven black players to West Ham. There's no way I'm racist. Yes, I used wrong terminology. I've been in football all my life. Maybe I'm not the most clever. You guys could leave me dead with A-levels. Maybe I've got a bit to learn like that, but I'm not racist.

MR HENRY'S ORAL EVIDENCE

9. Mr Henry's evidence was consistent with and to a great extent repeated what he had said during the course of his FA interview. The overarching theme of what Mr Henry said was that the words complained of by the FA did not represent his true thoughts, were spoken unthinkingly and in haste. He emphasised that he was not a racist and had adopted no discriminatory policies at West Ham, or at all. Mr Henry told the Commission that he recognised that he accepted that the words that he had used were *totally wrong* and he reiterated his apology for having used them.
10. In support of his denial of discriminatory policies Mr Henry pointed to the fact that during his 3 ½ years at West Ham he had brought in 14 black or African players. He told us that during his playing career he was close friends with a number of his black team mates. He gave details of his domestic circumstances, both his children having married women of

Chinese ethnic origin.

11. Mr Henry made clear that his priority in selecting players for West Ham was to choose the best. The ethnic origin was immaterial. The policy was to select players with Premier League experience, so as to avoid the lengthy period of settling in that had been found to be necessary with some players coming from overseas. The reason that the approach concerning Ibrahim Amadou had been rejected both in November 2017 and in January 2018 was because the player was not good enough. Mr Henry made the point that the relevant emails demonstrated that quality was a relevant feature.
12. Mr Henry explained the reference to African players by repeating what he had said in his FA interview about the African Cup of Nations. (We note that a similar observation was made by David Moyes in his FA interview.) The practical difficulty caused to a club such as West Ham by losing key players for (potentially) several weeks necessitated it to limit the number of such players. Mr Henry asserted that this was not a discriminatory policy but simply common sense to achieve a balanced team. Mr Henry explained that by that stage in the season, given West Ham's position in the league, the policy was to recruit players with established Premier League experience. It was not put to him in cross-examination that this policy included discrimination against foreign nationals. We therefore interpret this evidence as speaking to a policy for this particular transfer window to recruit players with Premier League experience of whatever nationality.
13. Mr Henry explained that Diafra Sakho had become disenchanted with playing in England and that he wanted to return to France. He blamed

Mr Henry for the fact that West Ham was not willing to release him, so that his hitherto good relations with Mr Henry were soured. That was advanced as an explanation for the comment about *mayhem*. Mr Henry asserted that notwithstanding his use of *they* he intended no more than a reference to Mr Sakho, and had not intended to make a general characterisation of all African players.

14. Mr Henry explained that the day that he was telephoned by Mr Lawton was not only the final day of the transfer window but was also at a time when he was under considerable pressure for domestic reasons. His grandson had been born prematurely and Mr Henry just wanted to be with his family. If he had had a less demanding job he would have taken time away from work. He therefore did not do justice to himself in the telephone conversation with Mr Lawton.
15. As well as being cross examined about the use of the word *they* Mr Henry was cross examined about the generalisations that he had made about Russian players and Italian players. It was put to him that he was characterising an entire ethnic group by reason of his personal or anecdotal experiences. Mr Henry explained that the history of the Premier League demonstrated that Russian players did not settle, and regularly wished to return to Russia. That assertion was not challenged in cross examination. Indeed, it was supported by Mr Knowles (in what was a small piece of evidence) in his closing submissions.
16. Mr Henry provided the Commission with details of the effect that the publicity had had on him and on his family. He had not worked since being dismissed by West Ham. He has only limited savings. The family home is mortgaged and will have to be sold. Mr Henry has worked in

football for 44 years, and had established a positive reputation. Both the career that he loved and the reputation are now lost to him.

THE FA's CASE

17. The FA's case was that Mr Henry had made serious discriminatory remarks. He was an experienced man who held a responsible position in the public eye. This, the FA submitted, was a very serious case indeed. The FA referred us to the decision of the Independent Regulatory Commission in the case of Neil Juggins. It submitted that the Mr Henry's case was of a more serious character than that of Mr Juggins'.

MR HENRY's CASE

18. Mr Knowles began his submissions by reminding the Commission of the Premier League requirements for a minimum number of eight English qualified players. He submitted that it was therefore an inherent requirement of the regime that clubs should be conscious of the nationality of their players. Any responsible recruitment process therefore requires that nationality be borne in mind. It is therefore rational and not discriminatory to consider the nationality of a player.
19. Mr Knowles submitted that the fact that Mr Henry had recruited 14 black or African players during his 3 ½ years at West Ham demonstrated conclusively that he had not adopted a discriminatory recruitment policy. That, he submitted, showed that the remarks made by Mr Henry were not a true reflection of the man. Mr Knowles submitted that the words used were not a reflection of Mr Henry's attitude.
20. Mr Knowles reminded us of Mr Henry's career which he described as faultless. He had been a player for many years and after that an agent,

and finally responsible for recruitment at West Ham. Mr Henry had been involved in football for 44 years without any question about his behaviour or his standards. This incident had been a disaster for him: he had lost his job, his reputation and had no immediate prospects of employment. The financial consequences were serious.

21. Mr Knowles submitted that the conduct in Mr Juggins' case was more serious than Mr Henry's conduct. He reminded us that Mr Henry had been unemployed for five months, which he characterised as being effectively suspension.

DISCUSSION

22. Mr Knowles submitted that the central question is whether the FA has proved to the civil standard that the words used accurately reflect the attitude of Mr Henry. We prefer to frame the question as being whether the FA has proved that the words used were discriminatory on the grounds of ethnic origin and/or colour and/or and/or race and/or nationality.
23. The Commission considered that Mr Henry gave evidence in a straightforward manner. We considered him to be a truthful witness – indeed some of his evidence was not helpful to his case. We are satisfied that it was not crafted or rehearsed: Mr Henry spoke as he thought.
24. The Commission accepts Mr Henry's unchallenged evidence that during his time as a player some of his closest team mates were black. Similarly, we accept his unchallenged evidence that during his 3 ½ years at West Ham Mr Henry recruited 14 black/ African players. Those facts, together with our impression of Mr Henry as a witness, lead us to find that Mr

Henry had not adopted a discriminatory policy of recruitment at West Ham.

25. Nevertheless the words used were serious because of the inevitable impression that they created. The only objective interpretation is that Mr Henry was adopting a discriminatory recruitment policy at West Ham. Mr Henry is responsible for the words that he used, and is therefore responsible for the effect that they created. Further, although we consider that the recruitment policy was not discriminatory, the Commission concludes that the remarks made by Mr Henry about national characteristics, which were repeated in evidence, demonstrate an unacceptable willingness to make general national characterisation based on individual experience or anecdotal evidence.

DISPOSAL

26. The Commission has taken into account all the matters urged on us by Mr Knowles. The FA confirmed that Mr Henry had no record of misconduct within the relevant time range of his disciplinary history as a *Participant* in football. This was an isolated occurrence by a man who for 44 years had led a faultless professional life. The personal consequences have been severe: Mr Henry has lost a job that he loved, he has lost his livelihood, and he has lost his reputation. Those are significant penalties. Mr Henry has cooperated fully with the investigation, admitted his guilt at the first opportunity, and has made profuse apologies.
27. Nevertheless the words spoken were serious, as is demonstrated by West Ham's swift decision to distance itself from someone who had been a trusted and well-regarded employee. The Commission was satisfied that

the seriousness of the transgression had to be marked by a period of suspension. Notwithstanding the mitigating factors that we have recorded in paragraph 26, the shortest period that is appropriate is one of 12 months: that is what we impose. Mr Henry must also attend a FA face to face education course within 4 months.

28. We have taken into account the financial consequences of Mr Henry's conduct, which we recognise to be severe. In those circumstances we do not consider it to be appropriate to impose any fine. We do, however, consider that Mr Henry should make a contribution to the costs incurred by the FA, which we assess in the sum of £2,250. In addition Mr Henry must forfeit the sum of £100 which he has already paid on account of the personal hearing fee.

CONCLUSION

29. The Commission orders that -
- (1) Mr Henry shall be suspended immediately from all football and football related activity for 12 months, running up to and including 2 July 2019.
 - (2) Mr Henry shall attend a FA face to face education course within 4 months.
 - (3) Mr Henry shall make a contribution of £2,250 towards costs of the hearing.
 - (4) Mr Henry shall forfeit the £100 personal hearing fee.



David Phillips QC
9 July 2018

Marvin Robinson

Arshia Hashmi