

Insights

CHECK COMPLETE: ARTETA DECISION CONFIRMS STRONG CRITICISM MIGHT NOT BE MISCONDUCT UNDER FA RULES

EVEN FOR A VAR "DISGRACE"

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SUMMARY

Earlier this month, a Regulatory Commission issued a significant decision limiting the scope of liability for misconduct under the FA Rules. In dismissing the FA's charge against Arsenal FC manager Mikel Arteta, the Regulatory Commission confirmed that subject to certain limits and in the right context, the rules of the game allow for criticism of decisions, even if expressed in strong terms.

In this blog, we consider the implications of the ruling for the right to voice criticism within the bounds of the FA rules.

The Football Association v Mikel Arteta

BACKGROUND

On 4 November 2023, Arsenal FC lost to Newcastle United FC at St James' Park, a match in which the winning (and only) goal was confirmed after a complex four-minute review by the Video Assistant Referee (VAR) covering three separate incidents leading up to the goal. Arsenal FC's manager Mikel Arteta admitted that he was highly emotional about the goal being awarded, because in his view the VAR was wrong to allow the goal to stand, took too long to conduct and was ultimately inconsistent with video footage. Expressing his frustration with the result, Mr Arteta claimed (amongst others) that he had been "*wasting his time*", that the decision to award the goal was "*embarrassing*" and "*an absolute disgrace*" and that the outcome made him feel "*sick*".

The FA charged him with a breach of FA Rule E3, claiming that the comments were insulting towards match officials and/or detrimental to the game, and/or had brought the game into disrepute.

The Regulatory Commission disagreed. In dismissing the charge, the Commission held that Mr Arteta's words did not constitute misconduct, but rather amounted to permissible criticism of the standard of refereeing and VAR decision-making in the Premier League.

THE DECISION

At the outset, the Regulatory Commission confirmed (and the FA itself conceded) that there is *"nothing per se objectionable in a Participant expressing disagreement about the decision of a match official or saying that a decision was wrong, even if expressed in strong terms"*.

Indeed, this is not the first time that a disciplinary or judicial body accepted that refereeing decisions and standards can legitimately be criticised.

In *PSG and Neymar v UEFA*, Neymar's remark that a decision to award a penalty to the opposing team after being cleared by VAR was a *"disgrace"* prompted CAS to affirm that *"it must be admissible for such decisions to be discussed controversially, even more so if they are match-deciding. If one wants football to stir emotions, people must also have the freedom – of course within certain limits – to discuss such match-deciding decisions, even with emotions riding high"*.

The fundamental question is, however, whether the conduct in question *"crosses the line"* from acceptable disagreement into the realm of insulting comments which offend match officials or affect the reputation of the game. Although there are no hard and fast rules about where the line is drawn, the Regulatory Commission gave useful guidance as to how the question may be approached by future disciplinary panels.

First, it confirmed that the standard is objective, the question being whether the conduct is objectionable from the perspective of a *"reasonable bystander"*, who is a *"typical follower of English Premier League football"*, and *"appraised of all relevant facts of circumstances relating to the conduct/utterance"*. In this case, the reasonable bystander was taken to be aware that the VAR processes were still less than perfect and in need of further improvement.

The reasonable bystander will also be taken to be aware of the context which, in the view of the Commission, is *"everything"*. It was relevant, for example, that Mr Arteta had attended a meeting with the PGMOL and representatives of the Premier League to discuss the inadequacies of the VAR process just two days prior to the match. It was also relevant that those inadequacies resulted in a high profile failure in the game between Tottenham Hotspur and Liverpool just over a month before Mr Arteta voiced his frustration. Although the subjective mindset of the individual is irrelevant, the objective context in which the comments are made (such as the relevant aspects of the Premier League, the question to which the comments respond and the issues addressed) will play a part in assessing whether the line has been crossed.

Second, it seems implicit in the Regulatory Commission's decision that words involving personal criticism of match officials will be more likely to *"cross the line"* than comments about decisions,

refereeing systems or the game generally. In this instance, the Regulatory Commission's view was that Mr Arteta's words were not directed at match officials personally, but rather at the inadequacies of the VAR system and processes more generally. However, the Commission remarked that if the same word ("*disgrace*") that both Mr Arteta and Neymar used to describe a decision was in fact used to refer to the behaviour of a match official instead, that might as well be viewed very differently.

In fact, personal criticism about the competence or integrity of match officials will be more harshly penalised even if no inflammatory language is used. When Frank Lampard (then Everton FC's manager) suggested implied bias against his team on the part of the match referee after Everton had not been awarded a penalty against Liverpool ("*I don't think you get [penalties] here and, I think, probably if it's Mo Salah at the other end, I think he gets a penalty [...]. But we, you don't get them here*") he was charged with a breach of FA Rule E3 and received a £30,000 fine. Likewise, Jose Mourinho was subject to a £50,000 fine for a breach of FA Rule E3 when, as Chelsea FC's coach at the time, he suggested that the match referee had been bias against Chelsea by not awarding a penalty in their favour ("*be honest with us and give us what you have to give, and it's a big penalty*").

LOOKING FORWARD

The decision of the Regulatory Commission also raised challenging questions about how liability for misconduct in this area might develop in the future.

Interestingly, the Commission noted that when it comes to insults directed at match officials, the high profile status of the individual in question is irrelevant: words are either insulting or they are not, regardless of whether they are delivered by a well-regarded manager or a lower profile individual. However, the same is **not** true when it comes to comments alleged to have been detrimental to the game. Although the Commission did not have to decide the point, it noted that "*a situation could arise where the actions of a high-profile individual might have [...] a sufficiently widespread negative impact on the image of the game or the wider interests of football [...] so as to bring the game of football into disrepute or to amount to conduct that is detrimental to the best interests of the game, while the same actions committed by another individual might not reach that threshold.*" The Commission also left open the "*interesting question*" of whether the manner in which words are delivered, rather than the words themselves, can amount to a breach of FA Rule E3.

It would be interesting to see how the application of FA Rule E3 will develop to accommodate these challenges. In the meantime however, one thing is clear: provided that it is expressed in a reasonable and appropriate manner, the rules of the game allow for criticism of refereeing decisions. The dismissal of the charge against Mr Arteta serves as a useful reminder that, subject to certain caveats, managers will not be guilty of misconduct for expressing firmly held views even with emotions riding high.

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