

THE DISCIPLINARY COMMISSION

In the matter of

Basketball England

v.

Kestutis Trakelis

Bristol Hurricanes

[CASE NUMBER D182]

THE DECISION AND WRITTEN REASONS OF THE COMMISSION

Disclaimer:

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made. However, the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Disciplinary Commission has carefully considered all the evidence and materials furnished with regard to this matter.

I. INTRODUCTION

1. The Basketball England (the “**BE**”) convened a Disciplinary Commission (the “**Commission**”), via Microsoft Teams on 19 June 2023 to adjudicate upon disciplinary charges levied against Mr Kestutis Trakelis (“**Mr Trakelis**”) (Case number: D182).
2. The Disciplinary Commission was constituted of three members, Mr André Duarte Costa, an Independent appointed Chair, Mr Gerry Daish and Mr Tom Cleeve, Independent appointed Wing Members. The appointed Secretary to the Commission was Mr Colin Hills of Basketball England.

II. THE CHARGES

3. In summary, by Misconduct Charge Notification dated 4 May 2023 (the “**Charge Notification**”) issued by Basketball England against Mr Trakelis, Mr Trakelis was charged with one charge relating to alleged misconduct during a match involving Bristol Hurricanes v. Spartans on 18 April 2023.
4. It was alleged that Mr Trakelis used inappropriate language and/or behaviour that constituted violent conduct towards a Match Official contrary to Rule E5.2 of the Disciplinary Code (“the “**Charge**”).
5. Mr Trakelis was also charged, in the alternative, with threatening behaviour towards a Match Official contrary to Rule E5.2 of the Disciplinary Code (the “**Alternate Charge**”).
6. The Charge Notification referred to the following allegation: “*pushing the match official and/or the use of abusive and/or offensive language*”. (the “**Alleged Behaviour**”).
7. The Charge Notification also referred to the Standard Sanctions and Guidelines.
8. Mr Trakelis was required to submit a response by 14 May 2023. On 18 May 2023, Mr Trakelis completed the Response Pro-Forma and selected option 2. which meant that he pleaded guilty to the Charge and requested a Personal Hearing.
9. However, Mr Trakelis failed to pay the £100.00 hearing fee, therefore his case was dealt as a not guilty plea and considered on correspondence only.

III. THE RULES

10. The Discipline Rules are foreseen in Section 5 of the Disciplinary Code¹.
11. Bearing in mind the charges levied against Mr Trakelis the relevant rule to take into account for the purpose of the present case is Rule 5.2.
12. According to Rule E5.2: *Participants are required to ensure their behaviour is appropriate at all times, and maybe subject to a charge under these rules and regulations where such behaviour falls below the standard expected irrespective as to whether that Misconduct was committed during a game or at any other time.*

IV. WRITTEN EVIDENCE

13. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.
14. The evidence which the BE relied upon in support of the charge consisted of:
 - a) Statement by Mr Stuart Brooks, Referee, undated²;
 - b) Statement by Mr Simon Ellis, Crew Chief, undated³; and
 - c) Statement by Mr Ric Hampton, linked to Spartans Basketball Club, undated⁴.
15. The evidence submitted in defence of the charge consisted of an email sent from Mr Trakelis, the Participant charged and a Player for Bristol Hurricanes, dated 28 April at 14:26⁵.

¹Available at: <https://www.basketballengland.co.uk/integrity/policies/discipline-expected-behaviours/disciplinary-code/>.

² PP. 4-6 of the case bundle.

³ PP. 7-9 of the case bundle.

⁴ PP. 11-12 of the case bundle.

⁵ P. 14 of the case bundle.

V. THE STANDARD OF PROOF

16. In accordance with Rule 7.6 of the Disciplinary Code: *The applicable standard of proof will be the civil standard of the balance of probability unless stated elsewhere in the applicable regulations.*
17. Therefore, the applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

VI. FINDINGS & DECISION**A. GENERAL CONSIDERATIONS**

18. The Commission reminded itself that the burden of proving a charge falls upon the BE.
19. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission to consider. We must assess the credibility of the witness (that is whether a witness is attempting to tell the truth) and the reliability of the witness (that is whether, even though a witness may be attempting to tell the truth, their evidence might not be relied upon).
20. Where there are discrepancies between witnesses, it is for us to decide which witnesses to accept and which to reject. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the discrepancy is important. Having considered which evidence we accept and reject, we then must decide if, on the balance of probabilities, the alleged breach of the Disciplinary Code is established.
21. In assessing liability, the Commission was mindful of the issues to be determined in the present case. The issues were whether the Commission was satisfied to the requisite standard that the evidence before it proved that the Alleged Behaviour constituted:
- a) Violent conduct towards a Match Official contrary to Rule E5.2 of the Disciplinary Code for the purposes of the Charge; and, in the alternative, if not proven
 - b) Threatening behaviour towards a Match Official contrary to Rule E5.2 of the Disciplinary Code for the purposes of the Alternate Charge.

B. FINDINGS

22. In the present case the allegation was that Mr Trakelis, the Participant charged and a Player for Bristol Hurricanes, used inappropriate language and/or behaviour that constituted violent conduct towards a Match Official.
23. According to the evidence provided to the Commission the allegation was that Mr Trakelis pushed the match official and/or the used abusive and/or offensive language.
24. The Commission noted Mr Trakelis' statement, according to which he stated the following: *"I run towards reff and I did shout that this is not acceptable because he was like 2m away from incident and he seen it clearly, all our team was off a bench and companing about it. Reff gave me technical foul and I was really frustrated about whole situation and push him a bit and said is he happy now to be pushed like we were all game, I was given second technical foul and sent off a game. I did use swear words as well."*
25. Following from Mr Trakelis' admittance of the offence, the Commission, having established his liability in respect of the allegation by considering his admittance and the evidence tendered, concluded that, on the balance of probabilities, Mr Trakelis committed the Alleged Behaviour and moved on to consider the appropriate sanction to be imposed for the offence.
26. As a result of the aforementioned, the Commission found, on the balance of probabilities, the Charge proven.
27. Having established the above, the Commission then reminded itself that apart from the Charge, an Alternate Charge was also issued against Mr Trakelis. An alternate charge is where an individual has been reported for a matter of Misconduct and BE can raise an alternate charge (second charge) which is a lesser charge. If the individual can successfully deny the higher charge, *i.e.* the Commission finds the charge not proven or the individual is acquitted on formal and/or procedural defects, the alternate charge (lesser) is then considered and depending on the Participant's response, the outcome is decided. The alternate charge will only be considered however if a Commission finds that the main charge is not proven. Therefore, as the Commission found the Charge proven it did not proceed to consider the Alternate Charge.

VII. SANCTION

28. The Commission was guided by the BE Sanction Guidelines for Serious Cases and relevant BE regulations in force when deciding on the sanction.
29. The Commission was informed about that Mr Trakelis had a previously unblemished disciplinary record.
30. With respect to aggravating factors, the Commission considered Mr Trakelis' refusal to abandon the court and adjacent areas as well as his persistent behaviour translated into the expression of abusive and foul language towards the Match Official. Although the recipient of the language and/or behaviour of Mr Trakelis was the Match Official, which constituted itself an aggravating factor, it is already reflected on the sanctions to be imposed as per the recommended sanction guidelines. For this reason, this fact should not be taken into account for the purpose of aggravating the sanction.
31. In relation to mitigating factors, the Commission considered Mr Trakelis' disciplinary record and his admittance of the offence.
32. Having considered all the circumstances in the case, the sanction guidelines and the aggravating and mitigating factors present, the Commission considered that this case fell within the Mid Category and imposed the following sanction:
- a) A 2-year suspension from all basketball activity to be backdated to the date of the imposition of the Interim Suspension Order; and
 - b) A £150.00 fine;

VIII. RIGHT TO APPEAL

33. This decision is subject to the right of appeal under the relevant appeals procedure provided for in the Disciplinary Code.

André Duarte Costa

Gerry Daish

Tom Cleeve

23 June 2023