

**IN THE MATTER OF
BASKETBALL ENGLAND**

-v-

**FRANKY MARULANDA
(CASE NUMBER D38)**

**REASONS FOR DISCIPLINARY COMMISSION DECISION
FRIDAY 18th NOVEMBER 2022**

INTRODUCTION

1. These are written reasons for the findings of a Disciplinary Commission ('the Commission'), held on behalf of Basketball England (BE) on Friday 18th November 2022. The Commission met by videoconference (Teams) to consider a misconduct charge against Franky Marulanda (FM), the head coach with Oxford HOOPS Basketball Club (Oxford). The offence is alleged to have taken place during a game ('the game/match') between Oxford and Brighton Bears on 1st October 2022.

PARTIES

2. The Commission members were Anthony Rock (Chair), Kate Lewis and Tom Cleeve (all members of BE's Disciplinary Panel).
3. Rachel Scase, BE's Discipline Manager, acted as Secretary to the Commission.

MISCONDUCT CHARGE LETTER

4. By BE's Misconduct Charge Letter, dated 27th October 2022, the following charge was raised:

Charge (FM) - Disciplinary Code 5.3 - Not acting in the best interests of the game and bringing the game into disrepute.

BE DISCIPLINARY CODE

5. The relevant section of BE's Disciplinary Code (5.3) states:

A Participant is required at all times to act in the best interests of the game of Basketball and shall not act, at the sole determination of The Association, in any way that brings the game of Basketball into disrepute.

CHARGE

6. The charge against FM was raised when it is alleged he allowed an ineligible player (M Wilson) to participate in the game whilst putting an incorrect name (D Branigan) on the team sheet.

PLEA

7. FM made no formal response to the charge so the Commission considered his case as a deny by correspondence.

Note: The Commission considered the charge in some detail and determined that, under the BE Disciplinary Code, it should be considered as a serious case for which written reasons are required.

WRITTEN EVIDENCE

8. The written evidence available to the Commission consisted of:
 - a. E-mail dated 11th October 2022, from BE Senior Delivery Manager to FM.
 - b. E-mail dated 12th October 2022, from FM to BE Senior Delivery Manager.
 - c. E-mails dated 27th October 2022 and 8th and 11th November 2022, from BE Discipline Manager to FM. Request from BE for a response to the charge letter.
 - d. BE's Misconduct Charge Letter (FM), dated 27th October 2022.

SUMMARY OF WRITTEN EVIDENCE

9. The foregoing is a summary of the written evidence provided. It does not purport to contain reference to all the points made. However, the absence in these reasons of any particular point or submission should not imply that the Commission did not take such point or submission into consideration.
10. On 1st October 2022, M Wilson played for Oxford in a game against Brighton Bears. The Oxford Coach, FM, knew that M Wilson was not fully licensed so played him under a different name, D Branigan. On the 11th October 2022, 10 days after the game, BE's Senior Delivery Manager e-mail'd FM informing him that, following an investigation into the playing of an ineligible player, the matter would be referred to the Competitions Review Panel for consideration. A day later on the 12th October 2022, FM responded by e-mail to BE's Senior Delivery Manager owning up to the fact that he had indeed played M Wilson under D Branigan's name. FM accepted that he had no excuse for his actions and pointed out that M Wilson had no idea that he was playing under a false name. FM also expressed shame and remorse for what he had done.

BURDEN OF PROOF/FINDINGS

11. The burden of proof is on BE to prove each case to the appropriate standard. The applicable standard of proof in these cases is the civil standard of the balance of probability, sometimes referred to as the 51% test. The balance of probability standard means that the Commission must be satisfied that the occurrence of an alleged event or events was more likely than not to have taken place.

12. Although FM submitted no formal response to the charge, in his e-mail to BE's Senior Delivery Manager, paragraph 8b above, he admitted that he knowingly played an ineligible player. The Commission determined that this was not something which happened on court during the game. He made a conscious decision, before the game started, to play the player. His actions were clearly meant to deceive the opposition and any match officials involved. The Commission unanimously found the charge against FM of 'not acting in the best interests of the game and bringing the game into disrepute', **proven**.

BE SANCTION GUIDELINES/CATEGORISATION OF THE OFFENCE/DISCIPLINARY RECORD

13. The Commission considered the BE Sanction Guidelines and categorisation of the offence before then hearing FM's disciplinary record.
- a. Sanction Guidelines for the 2022/2023 Season in regard to the sanction of bringing the game into disrepute: a suspension of zero to 365 days, and a fine of between £25-300. Before considering FM's previous disciplinary record, the Commission placed the offence in the High Category of the Guidelines.
 - b. The Commission noted that FM has no previous proven charges of misconduct.

SANCTION

14. Taking into account the BE Guidelines and Regulations, nature of the offence, misconduct record, mitigating and aggravating factors and lack of a formal plea to the charge, the Commission concluded that the following sanction is to be imposed:

FM: to be suspended for 4 matches and to be fined £200.

Comment: due to part of the suspension falling within the Christmas break period, the Commission determined that FM should receive a match based suspension rather than a day based suspension.

Note: the Commission considered in some detail how the 4 match suspension is to be served. For the avoidance of doubt, FM can continue in his day to day coaching role with Oxford. However, on game days, whilst able to support the team as a spectator from within the allocated area for spectators, he is banned from the changing room and is to have no involvement with any basketball activities before, during or after the game. This includes in the hour leading up to tip off and until 20 minutes after the official end of the game.

15. In accordance with BE Regulations there is a right of appeal against the decision.

Anthony Rock (Chair)

Monday 21st November 2022

Tom Cleave

Kate Lewis