

**IN THE MATTER OF THE REGULATORY COMMISSION  
OF THE FOOTBALL ASSOCIATION**

**BETWEEN**

**THE FOOTBALL ASSOCIATION**

**And**

**MR JEFFERSON LERMA**

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**WRITTEN REASONS OF THE REGULATORY COMMISSION**

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Regulatory Commission: Sally Davenport (Chair) – Independent Legal Panel  
Member

Daniel Mole – Independent Football Panel Member

Andrew Adie – Independent Legal Panel Member

Secretary: Michael O’Connor – Lead Judicial Services Manager

Date: 9 December 2021

Venue: Held remotely via Microsoft Teams

Attending: Jefferson Lerma – Player

Richard Hughes – Technical Director, AFC Bournemouth

Sam Shurey – Regulatory Advocate, The FA

David Coote – Match Referee, Witness

Stephen Green – Independent Interpreter

**Introduction**

1. These are the written reasons of the Regulatory Commission that considered the charge against Jefferson Lerma (“JL”)

2. JL is a professional footballer who plays for AFC Bournemouth (“the Club”). JL is a Colombian national and a native Spanish speaker.
3. JL was charged with a breach of FA rule E3 following his dismissal in the Championship fixture between the Club and Coventry City FC that was played on 27 November 2021 (“the Match”).
4. The FA designated the case a Non-Standard case due to the incident occurring outside the jurisdiction of the Match Officials and/or due to the aggressive nature of the alleged conduct.
5. JL denied the charge and requested a personal hearing.

### **The Charge**

6. By letter dated 30 November 2021 JL was charged with a breach of FA rule E3. It was alleged that his language and/or behaviour following his dismissal by the Match Referee David Coote (“the Referee”) in the 68<sup>th</sup> minute of the Match was improper.
7. Following the Match the Referee submitted an Extraordinary Incident Report Form (“the Report”) to the FA on 27 November 2021 in which he stated:

*“After being dismissed on 68 minutes, Jefferson Lerma of AFC Bournemouth initially refused to leave the field pointing aggressively at me and saying ‘fucking ball’ multiple times, and despite being told to do so on at least three occasions, needed to be persuaded by a team mate to do so. Eventually he grudgingly left, but took around a minute to do so. During this time I was surrounded by AFC Bournemouth players who were also complaining.”*

8. A copy of the Report and a link to a video clip of JL’s sending off and its aftermath were sent to JL along with the charge letter.

## **The Response**

9. On 3 December 2021 JL signed Disciplinary Proceedings Reply Form (C), denying the charge. He requested a personal hearing and indicated that he wished to be represented at the hearing by the Club's Technical Director, Richard Hughes.

10. The following were submitted to the FA together with the Reply Form:

- A signed statement dated 2 December 2021 from JL.
- A signed document dated 2 December 2021 from RH.
- Written reasons and decision of the Independent Regulatory Commission in the matter of a wrongful dismissal claim brought by AFC Bournemouth on behalf of Jefferson Andres Lerma Solis and heard on 18 January 2021.
- An email exchange between the Club and the Premier League regarding delegate feedback on a match involving the Club.
- A video clip compilation of two red card offences and their aftermath in two matches played on 23 November 2021 (between Nottingham Forest FC and Luton Town FC and Coventry City FC and Birmingham City FC).

## **11. THE HEARING**

### **Preliminary matters**

12. At the outset of the hearing and in response to a request from Mr Shurey, the Commission clarified two points:

- JL had an interpreter present with him and did not therefore require the services of the independent interpreter Mr Green ("the Interpreter") in order to follow the proceedings generally. The services of the Interpreter were used when JL was questioned by Mr Shurey, Mr Hughes and the Commission.

- Mr Hughes confirmed that he was not attending as a witness and that the signed document that had been submitted contained his submissions on behalf of JL.

13. The following paragraphs summarise the evidence and submissions provided to the Commission. They do not purport to cover all the points made. However, the absence of a point or submission in these reasons should not imply that the Commission did not take that point or submission into account when determining the case. For the avoidance of doubt, the Commission carefully considered all the written and video evidence in respect of the case and confirmed at the start of the hearing that it had read all the documents and watched the video footage referred to in paragraphs 8 and 10.

## **THE FA'S CASE**

### **The FA's opening submissions**

14. In opening Mr Shurey indicated that The FA relied on the evidence of the Referee and the video footage. He took the Commission through the Report and said that the video footage seemed to show that some of his teammates had had to push JL away, such was his level of anger. He submitted that the hearing was not about whether or not the decision to award the red card was correct, but about JL's reaction to the card.

### **The Referee's evidence**

15. In response to questions from Mr Shurey, the Referee stated:

- He had re-read the Report and had viewed the video footage (having not done so before submitting it). He had no changes to make to the Report and was content to adopt it.
- In theory a player should leave the pitch immediately on being shown a red card.

- JL initially refused to leave the pitch. He was extremely close and pointing aggressively. His body language and what he was saying were aggressive.
- JL said “fucking ball” multiple times. Asked how certain he was on a scale of 1-10 that that phrase was used multiple times, he said 10.
- He told JL to leave the pitch on at least three occasions, using words such as “You need to go”, “Please go”, “Please leave”.
- Had JL just said “fucking ball”, he would not have taken any action. Such language is commonplace in the game. It was the prolonged nature of it that was the reason for the Report.
- He did not consider JL’s reaction to his dismissal to be typical. He took much longer to leave the pitch than he would have expected. It took him about 1 minute 20 seconds to get to the tunnel.
- To the best of his recollection he had only once reported someone for remaining on the field after he had issued a red card.

16. At Mr Shurey’s request the video footage was played in its entirety (1 minute 36 seconds) and then replayed on a number of occasions, pausing at key points. In response to questions from Mr Shurey on the footage the Referee stated:

- 15 seconds. JL was looking directly at him and questioning him. He could not recall specifically when JL said “fucking ball”, but it was in amongst this.
- JL definitely used those words. It was not another player. There were three different reasons put to him as to why he should not give a red card. JL was saying he got the ball, the Goalkeeper was saying he was too close and another player was saying he was covering.
- 28 seconds. Again he was telling JL he needed to leave. If JL had done so at that point he would not have submitted the Report.
- 38 seconds. He pointed to the tunnel and said again to JL that he needed to leave the pitch. JL made to leave but turned back and pointed in his face. That was not acceptable for the image of the game.
- 44 seconds. JL’s teammates ushered him away as they knew he was likely to get into trouble.

17. In response to questions from Mr Hughes, the Referee stated:

- He accepted that JL's language in itself was nothing extraordinary; it was the prolonged nature of it, coupled with JL's behaviour, that had led him to submit the Report.
- He accepted that it is difficult for a player to process the fact that he has received a red card and leave the pitch instantly. There will be an amount of time required to process what has happened. In JL's case that period was too long.
- JL made a conscious decision to turn back and confront him.
- He accepted that the video footage shows that his own body language was not the best. However, he was not behaving aggressively, just asserting the necessary level of authority.

18. In the course of his questioning Mr Hughes requested that the video footage submitted by the Club be played to the Referee for his views on whether the players dismissed should have been reported to the FA for improper conduct. Mr Shurey objected to this line of questioning on the ground that it was inappropriate to ask a referee in a disciplinary case to comment on events in a different match. The Chair indicated that the Commission was focusing on the charge in this specific case and the Referee should not be asked to give his opinion on a different set of circumstances. She would not permit such a line of questioning. She reiterated that the Commission had watched the footage submitted and was cognisant of the significance that the Club sought to ascribe to it.

19. When Mr Hughes indicated that he had completed his questioning, Mr Shurey submitted that he had not put any alternative language to the Referee for his comments. Similarly, if it was going to be asserted that JL was treated differently to other players, he had not put forward any reason to the Referee for his comments as to why JL was treated differently. Mr Hughes was invited by the Chair to do so if he wished, but he declined to do so, commenting only that it was because of JL's previous treatment that they had asked for this hearing in person.

20. In response to questions from the Commission, the Referee reiterated that he was certain that the words “fucking ball” had been used. He could not now be certain how many times the phrase was repeated, but it was at least 2 or 3 times.

## **JL’S CASE**

### **JL’s written statement**

21. In his statement dated 2 December 2020 JL stated:

- He was shocked to be given a red card as he thought he had won the ball.
- He thought the decision would be reassessed, particularly as the Assistant Referee had a much clearer view and had not raised his flag.
- He became frustrated at the Referee’s reluctance to consult his fellow match officials and approached him to obtain an explanation for his decision.
- The Referee would not give him an explanation and consistently pointed in his direction and in his face.
- He strongly disagreed with the Referee’s comment about the language used. He knew personally that he did not say what the Referee alleged.
- He found the Referee’s attitude and his actions extremely arrogant.
- At no stage was he trying to question the Referee’s integrity.
- After the Referee had pointed in his face on several occasions he realised that there was no point in trying to engage with him any further and left the field of play.
- Significant decisions have consistently been given against him on numerous occasions while playing in the Premier League and Championship.

### **JL’s oral evidence**

22. In response to questions from Mr Hughes, JL stated:

- He was shocked to be given a red card. He was not the last man.
- He just wanted to ask the Referee why he had been dismissed.

- He kept asking the Referee “why?”
- The Referee’s attitude towards him was very negative.
- Referees have the authority and players don’t.
- The time between him being issued with the red card (10 seconds on the video) and the time when he started to walk off the pitch (49 seconds) was not a lot of time.
- He was asserting his rights. He thought the Assistant Referee might help because he had the best view of the incident.

23. In response to questions from Mr Shurey, JL stated:

- Looking at the red card incident now he thought it was perhaps correct, but at the time he thought he had got the ball and was not the last man.
- He expected the Referee to consult with his Assistant because he was in the right position and had the best view. The Assistants are there to be used.
- Asked repeatedly whether the decision had made him angry, he said no, he had just been frustrated. His expression was not one of anger, he was just trying to put his case to the Referee, who was ignoring him and disrespecting him. He deserved an explanation for the red card.
- There should be mutual respect. He just wanted the Referee to listen to him and treat him as an equal. The Referee was pointing at him, which was disrespectful. The Referee should set an example to the other people on the pitch.
- From his point of view, pointing at the Referee was not aggressive. He did not accept that he had done anything wrong; it was just a natural reaction.
- Taken to paragraph 11 of his statement which refers to the Referee being “extremely arrogant”, he again said that the Referee had not made him angry, just frustrated.
- Asked if the game was significant, he said that all games were important. The team had been in second place and challenging for promotion. He had been upset because his teammates were going to have to play with ten men and they drew a game that was impossible for them to draw.



- He did not hear the Referee's words when he told him to leave, just saw his gestures.
- Shown the video footage at 36 seconds when he turned away, and in response to the suggestion that he could have left at that point, he said that he had wanted the Referee to give him an answer.
- In response to the suggestion that the video footage at 40 seconds clearly showed that he was feeling angry, he said that was a matter of opinion; because the image was stopped you could make it say what you wanted.
- He did not say "fucking ball". He just said "play the ball". In answer to the question whether the Referee was mistaken or lying, he said that the Referee must be lying because he did not use the term "fucking ball" at any time.
- In response to the suggestion that the video footage at 44 seconds showed that he was so angry that his teammates had to push him away, he again denied being angry, repeating that he was just frustrated. It was a normal reaction from his teammates to encourage him to leave. In response to the suggestion that he would have stayed on the pitch had he not been ushered away, he said that was not the case because he knew that the Referee was not going to change the decision.
- He did look back at the Referee as he was leaving, but he did not say anything.

24. In response to questions from the Commission, JL stated that he could not recall anything specific happening at around 40 seconds to make him turn back and confront the Referee.

**Submissions on behalf of the FA:**

25. In his oral submissions Mr Shurey stated:

- Whether the red card decision was correct or not was irrelevant. In any event the Club were not disputing it.
- The two incidents in other games which had been highlighted by Mr Hughes on behalf of JL were irrelevant. The fact that they did not result in a charge did not legitimise JL's conduct.

- There was no evidential basis for the suggestion that the Referee had acted in bad faith and it was an ill-judged submission.
- If JL believed, albeit erroneously, that the officials and authorities were out to get him, that could explain his over-reaction to the red card.
- The Referee's evidence was honest and fair. He was 10/10 certain that JL had used the words "fucking ball".
- There was lots going on but it was clear from the video footage that JL was swearing and that he was coming back and pointing aggressively.
- No alternative had been put to the Referee in terms of the language used by JL.
- The Club had not advanced any reasoning as to why the Referee might be mistaken, much less dishonest. There was no reason for him intentionally to treat JL any differently.
- The video footage was telling. JL became visibly angry and there was a clear point of escalation. He had multiple opportunities to walk away but did not do so. His own teammates had to push him away and he was gesturing as he left.
- JL's refusal to accept that he was angry was unrealistic and undermined his credibility.
- In summary, JL's language and behaviour were clearly confrontational and improper.

### **Submissions on behalf of JL**

26. Mr Hughes indicated that he relied on his document dated 2 December 2020 in which he stated:

- Upon review the Club accepted that the decision to award the red card was correct.
- The Referee was unduly hasty in reaching his decision without consulting his colleagues.
- A player's immediate natural reaction when shown a red card is to ask for an explanation.

- Instead of attempting to diffuse the issue, the Referee pointed in JL's direction in an unnecessarily aggressive manner.
- JL's reaction showed no greater disrespect for the Referee than the Referee had displayed towards him.
- The Club has raised the inconsistency and poor standard of Refereeing with the hierarchy of the PGMOL on a number of occasions. This inconsistency is evidenced by the different treatment of two other players sent off in Championship matches on 23 November 2021.
- JL has been the subject of a series of wrongful decisions and the Club strongly believed he has suffered at the hands of both match officials and the football authorities since arriving in England.
- JL is a physical player with a high level of commitment, but one who tries his best to keep within the laws and spirit of the game. He is well liked and respected among his teammates and is a dedicated professional who has always shown a positive attitude in his professional and personal life.

27. In addition, Mr Hughes made the following points in his oral submissions:

- It was wrong to call JL non-credible; he had answered the questions put to him to the best of his ability.
- JL was a family man, a club record signing. On two occasions decisions of match officials had proved to be incorrect.
- 39 seconds between the red card and starting to walk off was not disproportionate.
- The Referee had acknowledged that he did not react in the best of manners and that the language alleged to have been used, even if it had been used, was commonplace and not an extraordinary incident.
- JL had been on the receiving end of poor treatment. One did not have to go back far for examples of incidents that were unusual/inappropriate and it was important to compare them with JL's case.

## **Relevant Rules**

28. FA Rule E3(1) states:

*“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.”*

## **Decision on liability**

29. The applicable standard of proof for this case is the balance of probability.

30. The Commission had the benefit of clear video footage of the sending off and the subsequent events, albeit that the actual words used by JL and the Referee were not audible.

31. The Commission reminded itself that its focus was on the events that followed the red card and that the appropriateness or otherwise of the red card was irrelevant. It also reminded itself that the charge was one of improper language and/or behaviour.

32. The Commission found the Referee to be a credible witness. He was clear about what he had heard JL say and gave a clear explanation for the reasoning behind the submission of the Report. He acknowledged that his body language could have been better, but the Commission did not consider that there was anything in his behaviour that would have justified JL's reaction.

33. The Commission did not find JL's insistence that there was no change in his behaviour and that he was simply frustrated to be credible, nor his suggestion that pointing a finger in the Referee's face was a natural reaction and acceptable. It noted that he could not put forward any reason for the escalation of the situation around the 38 second mark. However, when assessing JL's evidence the

Commission took account of the fact that he was communicating through an interpreter and that at times the nuances in Mr Shurey's questioning may not have been understood.

34. The Commission noted the conflict between the evidence of the Referee and JL as to the words used by JL, specifically whether JL said "fucking ball" or "play the ball". The video footage was of no assistance. It noted the Referee's certainty that the word "fucking" was used, his acceptance that its use is commonplace in football and his statement that he would not have reported JL for his language alone.

35. The Commission decided that JL's conduct following his dismissal, taken in the round, was improper. In reaching this decision, it found as follows:

- JL was initially calm when he approached the Referee and spoke to him following the red card.
- It is common for players not to leave the pitch immediately on being shown a red card and to seek an explanation for it. The time lapse between the red card and JL being ushered away by his teammates was not of itself unacceptably long.
- JL repeatedly questioned the Referee.
- The Referee pointed towards the tunnel on several occasions but JL did not leave the pitch.
- At around 38 seconds on the video clip JL's demeanour changed. He had appeared to be leaving the pitch but turned back, approached the Referee and pointed with his finger towards the Referee's face. At that point his manner noticeably shifted from "frustrated" (to use JL's own word) to angry and aggressive and his behaviour overstepped the mark.
- JL could not point to any external factor that had led to the escalation of the situation.
- JL's teammates had to usher him away from the Referee and push him towards the tunnel. Had they not done so he might well not have left the pitch.

- JL was clearly still unhappy as he was leaving the pitch, gesturing towards the Referee.

36. The Commission noted the Club's wider concerns regarding inconsistent treatment between matches and a possible agenda against JL. It had considered the materials submitted in that regard. However, it reminded itself that its role was to focus on the incident in the Match and the charge resulting from it and to decide whether the burden of proof had been satisfied in the specific case before it. It was not its remit to consider wider issues.

### **Sanction**

37. The parties were invited to address the Commission on sanction and aggravation/mitigation.

38. At Mr Shurey's request, the Secretary read out JL's disciplinary record:

- A red card for two yellow cards in a match against Aston Villa FC on 1 February 2020 for which he received a 1 match suspension.
- A misconduct charge for biting an opponent in a match against Sheffield Wednesday FC on 3 November 2020 for which he received a 6 match suspension and a £40,000 fine.

39. For the avoidance of doubt the Secretary clarified that the red card received by JL in a match against Luton Town FC on 17 January 2021 had been overturned by a Regulatory Commission and should not be taken into account.

40. Mr Shurey then made the following submissions:

- This was a non-standard charge due to it being outside the jurisdiction of the match officials and because of its aggressive nature.
- The standard penalty for a contested E3 charge at this level of the game would be £3,000.

- The sanction should be significantly above the standard penalty due to JL's previous record and the nature of the conduct, namely aggressive behaviour.
- Should a financial penalty be imposed, JL's income from football should be taken into account.
- The Commission should make an order as to costs.

41. Mr Hughes said that any sanction would be harsh in itself and stated that he had no further submissions to make.

42. As indicated in paragraph 4, the case was designated as a Non-Standard case. The Commission therefore had complete discretion when it came to sanction.

43. The Commission decided that it was appropriate to impose both a sporting and a financial sanction. In deciding the level of sanction it took account of the fact that JL's conduct was not initially improper and that it had been aggressive for a relatively short period of time. The Commission took account of JL's record, including a relatively recent serious misconduct charge. In all the circumstances a sporting penalty as well as a fine was appropriate. The Commission took account of JL's earnings from football. It noted the points made by Mr Hughes in mitigation but did not consider that they were sufficient to reduce the penalty imposed.

44. The Commission made the following order:

- JL is suspended with immediate effect until such time as the Club has completed 2 (two) first team matches in approved competitions.
- JL is fined £4,000.
- JL must pay a contribution of £900 towards the costs of the Commission.

Sally Davenport

Daniel Mole

Andrew Adie

14 December 2021

