

## **DECISION OF THE FOOTBALL ASSOCIATION APPEAL BOARD HEARING**

**HELD AT WEMBLEY STADIUM ON THE 5<sup>TH</sup> OCTOBER 2015**

### **THE APPEAL OF READING FOOTBALL CLUB**

#### **FA Appeal Board**

Mr Peter Griffiths QC [Chairman]

Mr Roger Pawley

Mr Paul Raven

#### **Appellant**

Reading Football Club

#### **The Decision the subject of the Appeal**

The Decision of the Football Regulatory Commission on the 5<sup>th</sup> August 2015 to impose a fine of £100,000 on Reading Football Club [the Club] for a breach of FA Rule E20 in respect of a pitch incursion at the end of the FA Cup 6<sup>th</sup> Round Replay against Bradford City FC at the Madejski Stadium on 16<sup>th</sup> March 2015. *[The Club had originally appealed also against the Regulatory Commission's earlier finding that the breach had been proved, however, as explained below, that part of the appeal was, with the consent of the Appeal Board, withdrawn].*

#### **Appearances**

Mr Nick De Marco for the Appellant Club

Mr Tom Day for the Football Association

[In Attendance: Mr Robert Marsh of the Football Association]

## **Preliminary Matters**

[a] The Appeal Board was informed that following discussions with both the Football Association and the Football League, the Club and the Football Association had agreed as follows:

**“Upon Reading agreeing to withdraw its appeal on liability and accept that it breached the rule, but continuing to advance its appeal on sanction, the FA place on record that its view is that the fine imposed is at the top end of the available range and may be considered to be excessive; this is a matter for the Panel.**

**The FA also recognise that Reading’s conduct with respect to the Match, whilst not constituting a defence, does constitute mitigation that the Appeal Board can take into account.**

**Finally, the FA sees some force in Reading’s suggestion that any or any part of any fine imposed upon it should be suspended, not least as such a penalty would provide an ongoing deterrent to the club and, more importantly, the fans. Whilst the FA is not in a position to invite the Appeal Board to suspend any or any part of any fine imposed, neither would it discourage the Panel from doing so—it is a matter for the Panel.”**

[b] Prior to the Appeal Hearing itself a short Directions Hearing took place where [i] the above agreement was confirmed, [ii] the late, enforced, substitution of Mr Roger Pawley for Mr Shaun Turner as the FA’s Appeal Board Member was confirmed and agreed to by all parties, and [iii] leave was given to the Club to introduce into evidence at the Hearing the statements of Mr Booth and Mr Eastwood.

### **Grounds of Appeal** *[as refined at the Hearing]*

That the fine of £100,000 on a Championship Club for the pitch incursion was not just excessive but was manifestly so.

Further, that the Regulatory Commission had:

[i] departed so far from the FA's "Guidance for Participants and Clubs on Disciplinary Matters 2014/2015 Season" ["The Guidance"] as to make its decision perverse or manifestly excessive, and

[ii] had imposed a sanction which was disproportionate and/or manifestly excessive in comparison with sanctions applied to Premier League Clubs, and

[iii] in comparison to other cases, and

[iv] failed adequately to give the Club sufficient or any credit for such mitigating features as were present.

*[The above summarises the principal points relied upon---they are not exhaustive of all the points raised by the Club during the Hearing].*

### **The Hearing**

The Appeal Board [having had a prior viewing of the video footage of the pitch incursion] heard first from Mr De Marco on behalf of the Club. He took us through his revised Skeleton Argument dated 1<sup>st</sup> October [which ran to some 18 pages] interspersed with numerous references to the Regulatory Commission's "Decision and Reasons" dated 5<sup>th</sup> August 2015 [a document which ran to some 30 pages and includes very full details of the case which will not be repeated here].

It very soon became apparent to the Appeal Board that whereas the Club were not disputing that they had been in breach of Rule E20 they were nevertheless not accepting the Regulatory Commission's description of the extent of their failure in respect thereof. Mr De Marco, so far as the number of stewards

available on the day was concerned, took issue with phrases such as “well short of”, “nowhere near the necessary level”, and the like used by the Commission in their “Decisions and Reasons” which he argued did not “square” with the evidence before the Commission. Mr Day, when asked directly by the Chairman as to the position of the FA took on this “guilty but” situation which had developed, responded that in the opinion of the FA the Club’s culpability could not be classed as “gross”----the Club had been negligent in respect of their provision and deployment of stewards on the day but not grossly so, and, further, as the FA had already, in effect, acknowledged [i.e. in the pre-hearing agreement] there were mitigating features contained in the evidence before the Commission which could properly be viewed as tending to reduce the Club’s overall culpability. The Appeal Board’s assessment of the Club’s culpability in respect of their breach of Rule E20 [taking into account such mitigating features as were present] is set out in paragraph 13 of “The Appeal Board’s Decision and Reasons”.

Mr De Marco then developed his principal points referring to the “Guidance” and to the three previous cases in which there had been pitch incursions: the “Blackpool Case” heard in 2015, the “Aston Villa Case” heard in 2015, and the “West Ham Case” heard in 2010. He submitted that in comparison with the sanctions imposed in those cases the sanction of £100,000 imposed on the Appellant Club by the Regulatory Commission was so “out-of-line” as to render it obviously excessive. He reminded the Appeal Board that in order to succeed in this appeal the Club only had to satisfy the Appeal Board that the sanction imposed was “excessive”----there was no necessity to establish that it was “manifestly” so.

Mr Day responded relatively briefly echoing, in a balanced way, the FA’s position as set out in the pre-hearing agreement. He reiterated the points, well founded in the Appeal Board’s view, that [i] any mass pitch incursion, even if predominantly friendly, is, potentially, a very dangerous occurrence ----hence the vital need for clubs to commit resources and deploy them in a non-negligent manner to discharge their duties under the Regulations and [ii] that an element of deterrence is a perfectly proper consideration for any Regulatory Commission.

## **The Appeal Board's Decision and Reasons**

1. The Appeal Board, after carefully considering all the submissions made and all the relevant material before the Board, were unanimous in concluding that the sanction imposed by the Regulatory Commission on the Appellant Club was excessive and that the same should be significantly reduced. The Appeal Board were also unanimous in determining that the appropriate sanction which should be substituted and imposed on the Club was : [1] a warning as to the necessity to comply with their duty in respect of pitch incursions under FA Rule E20 in the future, and [2] a fine of £40,000. [The Appeal Board considered whether any or all of this fine should be suspended and concluded, unanimously, that it should not]. The Appeal Board's reasons are set out below under appropriate headings for ease of reference.

### **Seriousness of a Mass Pitch Incursion / Culpability of a Club**

2. The Appeal Board considered that there are two key factors to be considered when determining the appropriate sanction which should be imposed on a Club for breaching its duty under FA Rule E20 in respect of a mass pitch incursion, namely [a] the overall seriousness of that incursion and [b] the Club's culpability therefor.

### **Seriousness of a Mass Pitch Incursion**

3. The Appeal Board considered that the factors which would normally fall to be considered whenever a Regulatory Commission or Appeal Board was endeavouring to assess the overall seriousness of a mass pitch incursion would include [but would not necessarily be limited to] : whether the incursion was predominantly friendly or hostile, the number of incursions included in the charge and at what point in the game they occurred, whether the game was televised and, importantly, the consequences of the incursion-----i.e. did the game have to be abandoned? did violence ensue? were there significant injuries?

4. The Appeal Board wish to make it clear that *any* mass pitch incursion, in its view, even if the same could be considered predominantly friendly [as oppose to openly hostile] is potentially a very dangerous occurrence and that any Club held to be in breach of Rule E20 in respect thereof should expect significant sanctions to be imposed even in the absence of such serious consequences as are canvassed in the preceding paragraph.

### **Culpability of a Club**

5. The Appeal Board considered that a Club's culpability for breaching Rule E20 in respect of a mass pitch incursion could range on a sliding scale from [1] the most serious [for example a deliberate decision not to provide the necessary resources for financial reasons], to [2] a reckless disregard in respect of the Club's duties, to [3] gross negligence, to [4] negligence simpliciter, down to, finally, [5] a situation where a club has marginally failed to avail itself of the "due diligence" defence set out in Rule E21.

### **The status of "The Guidance" in respect of Mass Pitch Incursions**

6. On pages 9 and 10 of "The Guidance" the Football Association sets out maximum sanctions which are available to Regulatory Commissions in respect of certain types of breaches of Rule E20-----for Premier League Clubs the maximum fine which can be imposed for such specified offending is £250,000; for Championship Clubs the maximum fine is £50,000.
7. The Appeal Board considers that the Regulatory Commission was correct in stating [at paragraph 60 of its Reasons] that "it is crystal clear that this Regulatory Commission is not *bound* by those maximum sanctions as if they were or were to be treated as part of the rules making a higher sanction unavailable to us.....the Guidance is expressly given in relation

to specifically identified types of offences under Rule E20 which do not include pitch incursions.”

8. The Appeal Board wishes to emphasise that, depending on the seriousness of a future mass pitch incursion coupled with the culpability of a club in respect thereof, it would be open to a Regulatory Commission to impose on a Premier League Club a fine far exceeding the £250,000 and on a Championship Club a fine far exceeding the £50,000. The Appeal Board invites the Football Association to consider making this clear in the next issue of the Guidance.

### **Has “The Guidance” *any* relevance?**

9. In the Appeal Board’s view the relevance of the scale of sanctions set out on pages 9 and 10 of “The Guidance” is that they are a reminder of the principle that for any given specified breach the level of sanction to be imposed will depend, inter alia, on the status of the offending Club----- a Premier League Club being liable to a sanction some five times more severe than for a Championship Club for the same or similar breach. This principle obviously reflects the massive differential in income between the Premier League on the one hand and the Championship on the other.
10. The Appeal Board have difficulty in seeing that this principle was considered sufficiently or at all by the Regulatory Commission when they determined that the fine of £100,000 was appropriate for this breach by a Championship Club. It would equate to a fine in the region of £500,000 for a Premier League Club.

### **The Blackpool, Aston Villa and West Ham Decisions**

11. The Appeal Board note that the Regulatory Commission had some [but not all] of the details of these previous decisions before them and that they did [at paragraph 67 of their Reasons] recognise the principle that “where there is an established range of penalties for broadly

comparable offences of a particular type which can be seen from previous decisions of FA Regulatory Commissions and Appeal Board, there need to be special circumstances to make it fair to go outside that range". The Appeal Board is also inclined to agree with the Regulatory Commission's observation that "there is no such established range in cases of this type".

12. The Appeal Board considered with care all the points made on behalf of the Appellant Club in respect of these three decisions. It is not necessary to set out the detailed facts of the same save to say that the Appeal Board found the Aston Villa decision the most germane.

#### **The Appellant Club's Culpability and the fine of £40,000.**

13. The Appeal Board unanimously assessed the culpability of the Appellant Club at the negligent level [see paragraph 5 of these Reasons]. In arriving at this assessment the Appeal Board did not ignore the steps which the Club in fact took and for which they were commended.
14. The Appeal Board further unanimously determined, in the absence of any *established* range of penalties for this type of offending, that the financial sanction which should be imposed on the Appellant Club in substitution for the £100,000 originally imposed should [a] reflect the Appeal Board's views as expressed in paragraph 4 of these Reasons and [b] should also include an element of deterrence.

Peter Griffiths QC

7<sup>th</sup> October 2015



