

IN THE MATTER OF AN ARBITRATION
UNDER RULE K OF THE RULES OF THE FOOTBALL ASSOCIATION
PROCEEDING AS AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

MR MASSIMO CELLINO

Appellant

-and-

THE FOOTBALL ASSOCIATION

Respondent

RULING

1. Following its decision dated 2 October 2017 ("the Decision") the Tribunal made an Order dated 6 October 2017 that stated, among other things, *"with effect from the date of this order, Mr Cellino is suspended for a period of twelve months from all football activity, howsoever that activity may manifest itself and whether his involvement in it arises directly, or through instructions provided by him directly, or indirectly, to others involved in football activity. For the avoidance of doubt, this order includes suspending Mr Cellino from exercising any functions as an officer of any football club governed by the FA with which he is (or may become) concerned during the period of the suspension"* ("the suspension") .
2. This ruling responds to a request made on behalf of the FA that the Tribunal states its reasons for making the Order in those terms, an issue having arisen between the parties as to the date on which the suspension was to take effect.
3. Regulation 8.1.c of the Disciplinary Procedures – Regulations 2015-2016 provides that the Regulatory Commission, and therefore this Tribunal *"...shall have power to impose ...suspension from all or any football activity from a date that [the Tribunal] shall order..."*

4. On 3 October 2017 it was submitted on behalf of Mr Cellino that the suspension should take effect from either 1 February 2017, that being the date on which it was originally deemed to have commenced, or 23 May 2017, that being the date from which Mr Cellino ceased to be involved in any football activities under the jurisdiction of the FA.
5. On 5 October 2017 it was submitted on behalf of the FA that the suspension period ought to run from the date of the Order, rather than any earlier date, for the following reasons:
 - 5.1 No suspension had yet been imposed upon Mr Cellino. The suspension ordered by the previous Appeal Board was stayed, at the request of Mr Cellino, to which stay the FA consented, by an interim order between the parties pending the determination of the present appeal
 - 5.2 The Tribunal had found that a 12 month suspension was the correct sanction, having regard to the seriousness of the deception that was perpetrated and all other relevant factors (see paragraph 78 of the Decision). The length of the sanction was relevant to each of its punitive, protective and deterrent effects.
 - 5.3 To treat the suspension as having started from some earlier date, when no suspension in fact was imposed, would in practice reduce the suspension to one of either 4 months or 7.5 months (depending on which of Mr Cellino's proposed starting dates were adopted). That would undermine the decision of the Tribunal and run contrary to the intended effect of the suspension ordered.
 - 5.4 The interim order was agreed at Mr Cellino's request and on his instigation. To proceed as if a suspension had been imposed, rather

than stayed, in the period covered by the interim order, would be wrong in principle.

- 5.5 There was no basis for treating a suspension as having been imposed by virtue of Mr Cellino's voluntary decision to divest himself of his shareholding in Leeds United F.C. In particular:

5.5.1 Voluntarily refraining from football activity was not the same as being compelled to do so as part of a fair and proportionate sanction for wrongdoing. In terms of sending out the right message, it was important that the suspension was imposed on Mr Cellino.

5.5.2 In any event, Mr Cellino had not, so far as the FA understood the position, refrained from football activity since divesting himself of the shareholding in Leeds. At the hearing on 27 July 2017, Mr Cellino's Counsel indicated that he was "concerned with an Italian Club".

6. In response to those submissions, and in support of the submissions which had been made on behalf of Mr Cellino on 3 October (set out in paragraph 4 above) the following further points were submitted on his behalf on 5 October 2017:

6.1 The Tribunal reduced the period of suspension from 18 months to 12 months (and the fine from £250,000 to £100,000).

6.2 By a Decision made by a previous Appeal Board on 3 February 2017 the length of Mr Cellino's suspension had been reduced to 12 months (and his fine to £100,000).

- 6.3 Mr Cellino has not been a director of, or involved in any way in, any football club sanctioned by the FA since 23 May 2017 when he divested his interest in Leeds United.
- 6.4 Had Mr Cellino not appealed the original decision his suspension would have commenced on 1 February 2017 and expired on 31 July 2018. He was entitled to appeal that decision and was successful in reducing the sanction imposed to one that would have expired far earlier (31 January 2018), had a proportionate sanction been applied.
- 6.5 The parties co-operated to have Mr Cellino's appeal determined before the suspension commenced, and so it was, albeit the decision was promulgated shortly after it would have commenced. The previous appeal board, having reduced the period of suspension to 12 months, provided that the period would commence on 18 February 2017 and expire on 17 February 2018.
- 6.6 Mr Cellino then brought his Rule K arbitration on grounds, amongst others, of bias in relation to the composition of the original Appeal Board. The FA ultimately, after significant delay on its part, compromised that arbitration, agreeing to a fresh appeal and to Mr Cellino having his wasted costs of the previous appeal. The fresh appeal was not heard until 27 July 2017, and the draft decision circulated on 2 October 2017.
- 6.7 There could be no sensible suggestion by the FA that Mr Cellino delayed the outcome of his appeal or that he was not entitled to the fresh appeal hearing. On the contrary, by consenting to a fresh appeal hearing The FA's position must be that Mr Cellino's appeal was only properly heard in July 2017, and disposed of in October 2017, when it could have been disposed of in February 2017.

6.8 As such, any suggestion that the suspension period should not commence until the hearing or determination of this appeal would be unfair to Mr Cellino. It would mean that his suspension would not be lifted until after the period imposed by the Regulatory Commission (which had been reduced) and substantially after the period imposed by the previous appeal board. Mr Cellino would, in effect, be punished for having successfully exercised his right to appeal. That could not be fair.

6.9 It was accepted that, to the extent that it was argued that Mr Cellino had obtained some benefit from the period of suspension being stayed, that period of benefit could be taken into account in determining the start date of his suspension. Hence, whilst it was open to the Appeal Board to determine the period of suspension should commence on 1 February 2017, it was accepted that the period between that date and 27 May 2017, during which Mr Cellino benefitted from the suspension of the penalty by his continued involvement in FA sanctioned football, could be fairly taken into account.

6.10 However, in circumstances where Mr Cellino's appeal could and should have been determined before 27 May 2017 but was not, because of the previous flawed hearing and also because The FA then delayed matters for a number of months before agreeing to compromise the Rule K arbitration, and in circumstances where Mr Cellino had not participated in any FA sanctioned football activity since 27 May 2017, it would be wholly unfair for his suspension to commence on any date after 27 May 2017.

6.11 Finally, at paragraph 5(b) of his email, Mr Coltart QC stated that: "In any event, Mr Cellino has not, so far as the FA understands the position, refrained from football activity since divesting himself of the shareholding in Leeds. At the hearing on 27 July 2017, Mr Cellino's counsel indicated that he was "concerned with an Italian Club". Neither

the Regulatory Commission nor the Appeal Board had imposed any sanction preventing Mr Cellino from being involved in a foreign football club, and nor did they have the jurisdiction to do so. Rather, there was a procedure by which the FA could (rather than must) ask FIFA to promulgate a worldwide sanction, and it was then a matter for FIFA to decide whether to do so. It was therefore wholly irrelevant to the start date of the suspension imposed by the Appeal Board whether or not Mr Cellino had become concerned with an Italian club.

7. Having considered all the above submissions with care, the Tribunal has no hesitation in accepting the submissions advanced on behalf of the FA as being correct and rejecting those advanced on behalf of Mr Cellino for the following reasons:

- 7.1 Any period of suspension should run from the date on which it is imposed save for exceptional circumstances and/or where that would result in unfairness. There were and are no material exceptional circumstances in this case and no unfairness has been or will be caused.

- 7.2 The fact that Mr Cellino conducted his commercial affairs so that he ceased to be “involved in any football club sanctioned by the FA since 23 May 2017”, that being in effect the end of the 2016-2017 season, is not relevant to the decision or to any issue of fairness to him.

- 7.3 The decision made by the previous Appeal Board was not relevant to the decision and has not been the cause of any effective period of suspension or of any unfairness to Mr Cellino.

- 7.4 The fact that the period of suspension which was originally imposed would have been due to expire on 31 July 2018, after Mr Cellino would have served 18 months of suspension, had he not appealed that original decision, was not relevant to this decision and could not be the cause of any unfairness to him.

7.5 If it was being contended that Mr Cellino would suffer unfairness as a result of the 12 month period of suspension being served over a later period than would have been the case had his effective appeal been heard at any earlier date, there was no evidence to support that contention and it was rejected.

7.6 It is accepted that any past or continuing involvement by Mr Cellino in Italian football is irrelevant to the considerations of this Tribunal. It is also irrelevant to the date from which the period of suspension which we impose should run.

8. In the opinion of the Tribunal, for the sanction of suspension to be effective in respect of football clubs regulated by the FA the period needs to commence from 6 October 2017, the date on which the Tribunal made its Order.

Edwin Glasgow QC

Charles Flint QC

Jane Mulcahy QC