

**BLACKPOOL FOOTBALL CLUB**

**Appellant**

**-v-**

**THE FOOTBALL ASSOCIATION**

**Respondent**

---

**APPEAL BOARD DECISION**

---

- 1 On 2 May 2015 supporters of Blackpool Football Club encroached onto the pitch during their home fixture with Huddersfield Town. The game was abandoned. Blackpool were consequently charged with a breach of FA Rule E20 in respect of that encroachment. The facts relating to the charge are set out with admirable clarity in the written reasons of the Regulatory Commission and accordingly are not repeated herein. Further, the principal factual circumstances giving rise both to the charge and this appeal have never been in dispute as between the parties.
  
- 2 On 7 July 2015 the Regulatory Commission found the case proved against Blackpool after an oral hearing. Thereafter on 29 July 2015 the Commission imposed the following sanction, namely that the Club:
  - 6.1 is given a severe warning as to its future conduct;
  
  - 6.2 is fined the sum of £50,000 to be paid in accordance with the The FA Judicial Services terms of payment;
  
  - 6.3 *will play its first home competitive game next season behind closed doors, that is in the absence of home and away supporters. This part of the sanction will be suspended for a period of one year and will be immediately effective in respect of the game following (whether in that current season or the following season) any further pitch incursion that results in a suspension of play whereby the referee directs that players shall leave the field of play;*
  
  - 6.4 shall pay the costs and expenses incurred in respect of the Commission which sum shall be notified by the Club by The FA.

- 3 Further clarification of the sense and ambit of that sanction decision was provided by the Commission in writing on 8 August 2015. For the purposes of this appeal, two aspects of that clarification are of particular note and relevance.
- 4 Firstly, the Commission further identified the specific circumstances in which the Commission regarded the suspended sanction to be implicated, namely:
- i. one or more supporters (either home or away supporters) enter onto the pitch during a match; and
  - ii. play is suspended for any length of time; and
  - iii. the players are removed from the pitch on the instruction of the match referee.
- (the '*revocation conditions*')
- 5 Secondly, pursuant to exchanges of correspondence after the original imposition of sanction, the Regulatory Commission clarified that upon the revocation conditions being met at a subsequent Blackpool home fixture, there was no *additional* requirement that the Appellant Club first be proven to have been in breach of FA Rule E20 in respect of the 'new' incident.
- 6 It is the consideration of the reasonableness and otherwise of there being no need for such a subsequent breach of FA Rule E20 that is at the heart of this appeal.
- 7 In a Notice dated 13 August 2015, Blackpool appealed the sanction imposed by the Commission with the appeal being confined to item 6.3 as detailed hereinabove, namely the suspended sanction of playing one home game behind closed doors. It is contended that the imposition of this suspended sanction on *its particular terms* was both excessive (Appeal Regulation 1.6(4)) and one to which no reasonable body could have come (Appeal Regulation 1.6(3)).
- 8 It was agreed by both parties to this appeal that the Appeal Board should consider matters after consideration of the papers alone without necessity of an oral hearing. Accordingly the Board met on Friday 11 September 2015 to determine this appeal having considered all the documentation placed before them.

- 9 There is no suggestion made by the Appellant that the imposition of a suspended sanction making provision for the potential to play a game behind closed doors was in itself unreasonable or excessive in principle. Moreover, the Appellant at paragraph 25 of the Appeal Notice, observes that the sanction was both "legitimate and reasonable".
- 10 The question for this Board is whether on its present terms of construction the sanction is excessive and/or unreasonable. The Board reminded itself that the proof of such contention falls on the Appellant.
- 11 Any sanction has to be imposed in such a way so as to be both clear and fair. Whilst sympathising with the Regulatory Commission's obvious wish to ensure that the suspended sanction was promptly activated in the event of a further pitch encroachment, the Board were concerned that the construction of the revocation conditions had not achieved the clarity of understanding that is required.
- 12 At paragraphs 32, 33 and 36 of the Notice of Appeal, the Appellant detailed various factual circumstances in which it is arguable that the revocation conditions would be satisfied in circumstance where there would be no culpability on the part of the Appellant. The Board in their deliberations speculated as to others. The Board see a very real force in the Appellant's contention that, as presently drafted, the sanction has the potential to punish without the right to a hearing or there having been any fault.
- 13 To allow a sanction to become activated in such circumstances would be unfair. There would be the implementation of future punishment in circumstances where there had been no fault or wrongdoing on the part of the punished party. Further, to allow such a course of events in the future would be to deny the Appellant its right under the FA Regulations to seek to defend its actions concerning those subsequent events in the context specifically provided for by FA Rule E21. Put shortly, the Board can envisage certain circumstances in which events would take place in the future that brought about serious punishment to the Appellant Club where they had not been culpable and had been denied their opportunity under the Regulations that govern the sport to have a fair hearing as to that culpability or otherwise.
- 14 The Board gained further support for its conclusions in this regard from the realistic approach taken by The Football Association in their Response to Notice of Appeal dated 1 September 2015. Therein, The FA observed that "... *the suspended*

*sanction in its current form can be activated in circumstances where the Appellant may have no culpability, but is nevertheless unable to rely upon the defence [pursuant to FA Rule 21] in order to prevent its activation."*

- 15 Accordingly the Board considers that the suspended sanction as presently drafted is one that necessarily gives rise to potential consequences that were perhaps not envisaged in their entirety by the Regulatory Commission. Be that as it may, for the reasons stated hereinabove the Board finds that the suspended sanction the subject of this appeal is unreasonable and excessive in its present form. Accordingly the appeal is allowed.
- 16 The question then arises as to how the proper principle of the sanction can be implemented by the redrafting of the sanction so as to be both fair and reasonable.
- 17 The Football Association invited the Appeal Board to consider whether it was possible to "*set out a list of conditions which might limit the effect of the suspended sanction so that in situations beyond the Appellant's control it is consistent with the policy behind the defence under FA Rule E21*". The Board considered that proposition and is satisfied after some considerable debate that a 'list' of clear and sufficiently exhaustive 'conditions' cannot be compiled so as to satisfactorily deal with a number of various possible factual scenarios. In addition, the Board had very much in mind that the conditions would have to be of a type where fault was unequivocally at the Appellants door, so that there could be no 'unfairness' in denying the Appellant Club its right under FA Rule E21. The inability of the Board to compile an adequate list of conditions speaks very much in support of the concern as to the lack of clarity that presently exists with the suspended sanction in its present form.
- 18 The Board are of the view that procedural fairness is restored by redrafting the suspended sanction provision as imposed by the Regulatory Commission in the following terms, namely:
- i. Blackpool FC is obliged to play its next first team competitive home match behind closed doors (the 'sanction');
  - ii. The sanction is suspended for 12 months (the suspension period);

- iii. The sanction shall come into force in the event that during the suspension period Blackpool FC commits an offence that is subsequently admitted or proven to have been a breach of FA Rule E20 (b).
- 19 The Board limit the implementation of the sanction to a subsequent offence under FA Rule E20(b) alone, as it is conduct under that provision, and not that under FA Rule E20(a) that is relevant to the facts of this appeal.
- 20 The Board appreciates the Regulatory Commissions concerns that the requirement to have a subsequent proven breach of FA Rule E20 will necessarily 'delay' the implementation of any potential sanction. That is a concern that is shared by the Board. However, the Board considers that such a concern should not be at the expense of the procedural fairness of all the parties concerned in this case.
- 21 The Board also notes that if the sanction were to remain in its present form, The FA would be powerless in the governance of the sport to intervene if they took the view that the subsequent events apparently satisfying the revocation conditions were of a kind that did not render the Appellant Club culpable. In contrast, in its redrafted form the Appellant not only has the right of protection specifically provided for by FA Rule E21, but the Board also notes that The FA would be highly unlikely to charge Blackpool in circumstances where The FA regarded that club to have been without culpability.
- 22 Accordingly the appeal is allowed with the amendment to the sanction in the terms detailed herein. There is no order as to costs and the appeal fee is to be returned.

Richard Smith QC

Alan Jones

Thura Win

September 2015