

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

BATH CITY FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Matt Wild Independent Football Panel Member

Andrew Adie Independent Football Panel Member

Michael O'Connor Lead Judicial Services Officer - Secretary

Non-personal hearing: 10 June 2021

Background

1. The general background to this appeal is that as a result of the global pandemic football clubs have been severely affected by the inability to admit fans to matches and have thereby lost substantial parts of their revenue. Government support was provided to clubs in the National League, National League North and National League South in the form of Government grants for the period up to December 2020. However, despite the hopes or expectations of many, the Government decided that financial support thereafter would generally be in the form of loans. That change in the type of financial assistance was met with great disappointment by clubs. There was also a well-publicised and substantial increase in the rate of infection in December 2020 and January 2021, leading to a further national lockdown being announced by the Government on 4 January 2021.
2. On 22 January 2021 the National League (“the League”) temporarily suspended the Step 2 Competition with immediate effect for two weeks until 6 February 2021. It was clear that, subject to any decision being made to end the season early, fixtures after 6 February 2021 would be effective. On 1 February the League circulated to clubs written resolutions the outcome of which would determine whether Step 1 and/or Step 2 clubs would continue the season or whether the season would end and be declared null and void with no promotion and relegation, subject to the approval of the Football Association.
3. On 17 February 2021 the required number of votes were lodged with the League. Step 1 voted against ending the season, whereas Step 2 voted to end the season. The result of the vote was declared on 18 February 2021. During the 12 day period between 6 February (when the temporary suspension of the season ended) and 17 February (when the result of the resolutions to end the season was announced) the Club, and a number of other clubs, failed to play scheduled fixtures.

4. Bath City Football Club (“the Club”) was charged with three breaches of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil three fixtures namely, on 6, 13 and 16 February 2021. One of charges, namely that of 13 February, was withdrawn.
5. By a decision dated the 25 March 2021 (“the Decision”) an independent Panel (“the Panel”) found the Club to be in breach and imposed a sanction of £2000 per breach giving a total fine of £4000. A further point deduction was ordered, 2 points per fixture, although this was suspended on terms that the Club was not found guilty of a breach of Rule 8.39 in season 2021/22.
6. By Notice of Appeal, dated 9 April 2021, the Club has appealed the Decision on the grounds that the Panel:
 - 6.1 failed to give the Appellant a fair hearing;
 - 6.2 misinterpreted or failed to comply with the regulations relevant to the Decision;
 - 6.3 came to a decision that no reasonable body could have come;
 - 6.4 the sanction was excessive.
7. The parties have confirmed they have no objection to the appointment or the composition of the Appeal Board.

Rules

8. Rule 8.39 provides:

Where a match has been postponed for any reason, the two Clubs concerned must agree within the seven (7) days of the postponement a new date (which shall, save in exceptional circumstances, be within 42 days of the original date) and in default the Board is empowered to order Clubs to play on a date it considers suitable. The Competition Secretary shall determine the new date.

Any Club without just cause failing to fulfil an engagement to play a Competition match on the appointed date shall for each offence be liable to expulsion from the

Competition and/or such other disciplinary action the Board may determine, including the deduction of up to a maximum of three points from the offending Club's record, any expenses incurred by the opponents, and a fine.

In the event of a Club being in breach of the previous paragraph of this Rule then the Board may award points to the Club not at fault as if the match had been played and the League table shall reflect the position as if the match had been played with the result awarded by the Board. (underlining added)

9. Appendix A to the Rules sets out the Disciplinary Procedures - Appeals 2020/21.

10. Regulation 2 of Appendix A provides:

The grounds of appeal available to Participants shall be that the body whose decision is appealed against:

2.1 failed to give the Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive.

11. Regulation 10 of Appendix A provides:

New Evidence

10. The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Such application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing and that such evidence is relevant. The

Appeal Board's decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.

12. Regulation 21 of Appendix A sets out the powers of the Appeal Board including the power to allow or dismiss the appeal. It further provides at Regulation 21.6 that the Appeal Board has the power to order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.

Summary of the Club's Grounds of Appeal and Submissions

13. Every club was given the same punishment regardless of explanation or justification. This the Club contends supports its ground of appeal that the Club was not given a fair hearing.
14. The Club contends the only concern of the Club directors in reaching the decision not to play the fixtures was the survival of the Club and the discharge of their responsibilities as set out in the Companies Act 2006. There was a very real threat to the Club and its abilities to continue to operate viably. This is just cause and the failure of the Panel to accept it supports the Club's grounds of appeal that the Panel misinterpreted or failed to comply with the Rules in particular in respect of the defence of just cause.
15. The Decision was such that no reasonable body could have come to it. The League itself had suspended fixtures because loans were not seen as a viable option but then resumed fixtures when loans were the only option. The loans were in contravention of the Rules and this was an unreasonable course for the League to take or suggest for clubs.
16. The sanction was excessive in all of the circumstances.

Summary of the National League's Response and Submissions

17. The position of the League is as follows:

17.1 The Club was given a fair hearing and had every opportunity to place its submissions and evidence before the Panel. The Panel looked at each case before it separately and made the appropriate decision based on the facts of each case. One example of that is the withdrawal of one of the charges before the Panel at the hearing. Any similarity in decisions of the Panel reflects the merits of the individual cases;

17.2 Further the Club failed to place any financial evidence before the Panel to enable it to analyse the Club's financial position. The Panel was entitled to conclude that the Club did not have just cause. There is no basis for suggesting the Panel misinterpreted or failed to apply the Rules. Further, there is no basis to suggest the Decision was so unreasonable that no reasonable body could have come to it.

17.3 The sanctions were not excessive given the material before the Panel. The level of fine imposed was below the lowest end of the guidelines.

18. The League reminds the Appeal Board that it is not rehearing these charges but rather is reviewing the decision of the Panel to determine if the grounds of appeal are made out.

Decision of the Appeal Board

19. The Appeal Board only reviews the Decision of the independent Panel, it does not carry out a rehearing. It follows that it does not matter that the Appeal Board might have arrived at a different conclusion on breach or on penalty.

20. The suggestion by the Club that it did not receive a fair hearing because it considers all clubs to have been sanctioned in the same way and with the same penalties, is unsustainable. Any similarity in sanctions imposed by the Panel is a reflection on the

similarity of the breaches involved, namely the failure to fulfil fixtures during that period and the general circumstances that faced all clubs at the time.

21. The Panel was entitled to arrive at the conclusion that it did. The main issue before the Panel was just cause. The Club failed to adduce any financial information to the Panel that would enable the Panel to analyse the financial position of the Club or its ability to service a loan that was available under the Winter Survival Package. That failure on the part of the Club to discharge its burden of proof on a key issue led to the Decision. The Decision was not impeachable on any of the grounds set out by the Club.
22. There is no basis for suggesting the sanctions were excessive. The fines imposed were below the lowest point in the guidelines for these offences.
23. It is the unanimous decision of the Appeal Board that the appeal is dismissed.

Costs

24. The Appeal Board has considered the submissions made by the parties in respect of costs. The suggestion by both parties is that the costs paid by the party that loses the appeal be reduced to take account of the fact that, it is said, normally appeals such as these are not chaired by an independent specialist panel member. That would effectively leave The Football Association to pick up part of the costs in respect of an appeal to which it is not a party.
25. In our judgment it is appropriate for the losing party to pay the costs incurred by the Appeal Board. The Club is therefore ordered to pay the sum of £1300 within 30 days of this decision.
26. The appeal fee is retained.

A handwritten signature in black ink, appearing to read 'David Casement', with a long horizontal stroke extending to the right.

David Casement QC (Chairperson)

Signed on behalf of the Appeal Board

Dated 14 June 2021