

**IN THE MATTER OF THE APPEAL BOARD OF THE
FOOTBALL ASSOCIATION**

BETWEEN:

BITTON AFC (Appellant)

-and-

WESTERN FOOTBALL LEAGUE (Respondent)

WRITTEN REASONS

1. The Appeal Board conducted a hearing on Tuesday 19 October 2021 to determine an appeal by Bitton AFC ("**the Appellant**") against the decision of the Western Football League ("**the Respondent**") made and notified on 9 September 2021 and appealed by the Appellant in a notice of appeal dated 14 September 2021. The Respondent had determined on 9 September 2021 that the Appellant had contravened rule 14.9 of the Respondent's Standardised Rules.
2. The charge ("**the Charge**") arose from a match between the Appellant and Street FC on Tuesday 24 August 2021 and was that in contravention of rule 14.9 the Appellant had failed to use Competition match balls in the match.
3. The Respondent, having determined that the Appellant was guilty on the charge, as evidenced by a results letter dated 10 September 2021 fined the Appellant £25 which sum was suspended until the end of the season subject to the Appellant complying with rule 14.9. The Respondent also indicated it would be retaining the appeal fee.
4. The appeal hearing was a personal hearing held by MS Teams, the Appeal Board comprising Mr Christopher Stoner QC (Chair), Ms Laura McCallum and Mr Stuart Ripley. Mr Conrad Gibbons of the FA Judicial Services acted as secretary to the Appeal Board.

5. The Appellant was represented by Mr John Langdon, Chairman of the Appellant, whilst the Respondent was represented by Mr Richard Palette, the Vice-Chairman and Chair of the Committee with Mr Malcom Price, the Respondent's Company Secretary also in attendance.
6. The Appeal Board thank Mr Langdon and Mr Palette for their submissions and assistance both during the appeal hearing and in the documents within the Appeal Bundle.
7. The parties were informed by a Decision Letter, sent by email by Conrad Gibbons on behalf of the Appeal Board and dated 19 October 2021, that the Appeal Board had unanimously dismissed the appeal on all grounds, that no order had been made as to costs and that the appeal fee is to be forfeited.
8. The Respondent made an application pursuant to Rule 11.26 of the FA Handbook for written reasons for the decision to be provided. This document contains the written reasons for the Appeal Board's decision.

Background

9. The Appellant played Street FC in a league match on Tuesday 24 August 2021. The match referee's report noted:

"Bitton were only able to provide 2 Mitre Match Fit Footballs on the evening. They said they had notified the league about this and that the league were happy for them to play with Match Official Umbro Football if the 2 Mitre Balls ended up getting lost. Once all the Match Fit Football's had been lost, we had no option but to play with Bitton's training balls. The Street bench weren't best pleased with this option but the players were happy to proceed with the game using the training balls."

10. By a letter dated 27 August 2021 the Respondent wrote to the Appellant's secretary and said:

"It has been reported that Bitton AFC has failed to use competition match balls in their match of Tuesday 24th August 2021 against Street FC in contravention of rule 14.9:

'It is the responsibility of the Club playing at home in each match played under the jurisdiction of the Competition to provide match balls in accordance with any match ball agreement signed by the Company. The official Competition match ball must be used in all Competition matches and pre-match warm-ups.'

Bitton AFC has therefore been charged with the above offence. You may:

- 1. Plead Guilty with or without correspondence and the Board will decide on the outcome.*
- 2. Plead Guilty and request a Hearing to take place before any decision is made.*
- 3. Plead Not Guilty and request a Hearing to take place.*

The club may be liable for any costs incurred by the league of a requested hearing if found proven ..."

11. By an email from Mr John Langdon dated 31 August 2021 the Appellant pleaded not guilty to the charge and requested a hearing, which hearing duly took place on 9 September 2021.
12. At the hearing on the 9 September the Respondent was represented by John Pool, the Chairman of the Respondent, Mr Palette, Mr Andy Radford (the Respondent's Football Secretary), Mr George McCaffery (the Respondent's Fixtures Secretary), and Mr Price. The Appellant was represented by Mr John Langdon and Mr Daniel Langdon (the team manager), whilst the match referee, Mr William Payne, was present and gave evidence as a witness.
13. The Appeal Board, in its bundle of documents, had minutes of the hearing which were dated 12 September 2021. No issue was taken with the accuracy of those minutes. Those minutes record that the referee was asked to give evidence and he was questioned by the Appellant. It was put to him that there were 4 match balls available, but the referee maintained the stance in his match report (recited above), which evidence was accepted by the Respondent.
14. After the referee had left the hearing, the minutes record that Mr Palette on behalf of the Respondent read out 2 emails from the assistant referees. Both were included in our bundle. The first, from Mr Bobby Tutton is dated 2 September 2021 and states:

"Hi Andy

I am writing to you with regards to the Toolstation Prem League match between Bitton vs Street on 24 August 2021.

During our normal match official briefing on the pitch an hour before kick off, the Bitton manager Mr Daniel Langdon approached us and told Will Payne (referee) that they only had 2 league official match balls having "lost 6 balls in the previous game". Daniel confirmed that he had written to the league who in-turn supposedly gave Bitton permission to use Umbro "match" footballs if the official match balls were lost during the game.

Daniel continued on to say "the league told Bitton they would not be able to receive any new balls due to production issues".

The whole sorry affair ended up causing frustration and anger amongst both players, Street FC staff and spectators on the day. An issue which is the club's responsibility and not the match officials on the date. A statement repeatedly outlined to the Street FC staff from myself as the senior assistant throughout the game. Street FC were infuriated and would not let it lie. A frustration you can understand, but unfortunately Street FC took it out on our team (officials) not the home club.

If you have any further questions, please do not hesitate to contact me..."

15. The second email, from the other assistant referee, Mr Ben Boardman, is dated 1 September 2021 and states:

"Hi Andy

I would like to confirm that I was next to Will Payne (Referee) when Mr Daniel Langdon said to him that the league had given Bitton FC permission to use the Umbro balls as official match balls for the game against Street."

16. In addition to evidence from the match referee and reading the two emails recited above from the Assistant Referees and evidence and submissions from the Appellant, the Hearing Minutes record that at the end of the hearing:

“Richard Palette asked the representatives of Bitton FC if they considered [they] had received a true and fair hearing.

John Langdon confirmed that they had received a fairing hearing and thanked the Committee for the way in which the proceedings were conducted.”

17. By a results letter dated 10 September 2021 the Respondent confirmed to the Appellant the Charge had been proven and that a £25 fine had been imposed, suspended until the end of the season subject to the Appellant complying with Rule 14.9. The Respondent also indicated that the fee for the hearing would be retained and that the Appellant had a right of appeal by lodging an appeal with the FA.
18. Although not part of the decision letter, the hearing minutes record the rationale for the decision in the following terms:

“The Committee was unanimous that this case rested on matters of fact, not opinion, in that it was agreed by all parties (including the club) that there were insufficient competition match balls provided by Bitton FC to enable the match to be completed using such footballs throughout. It was stated by the club and accepted by the Committee that other types of football, including training balls, were provided to allow the match to be completed and in the view of the committee, the effort made by Bitton FC to complete the match together with the absence of previous offences mitigated the sanction.

The club representatives did not dispute the fact that competition match balls were in in use throughout the match and this together with the referee’s evidence were the key factors in the Committee’s decision.

As regards the question of whether or not the referee was told that the Western League had agreed to the use of non-competition match balls, the Committee prefers the evidence of the referee.

The representatives of Bitton FC returned to listen to a statement read by Malcolm Price conveying the above and confirming that a letter would be written in due course confirming the decision and the right of appeal.”

The Appeal

19. The Appellant's Notice of Appeal is dated 14 September 2021. As material, the Notice of Appeal states:

"... the Club wishes to appeal on the following grounds:

- 1. Failed to give the participant a fair hearing;*
- 2. Came to a decision to which no reasonable body should have come;*
- 3. Imposed a penalty, award, order or sanction that was excessive.*

We base this on the fact that that League failed to serve all evidence that they relied on to Bitton AFC prior to the personal hearing and indeed have still not provided evidence to the club. We feel this is totally unfair to the club.

We also feel that having taken the additional evidence into account that they have come to a decision which no reasonable body could have come and ignored the evidence supplied by the club. We have also been denied the opportunity to question the assistant referees on their reports which we feel are inaccurate. By withholding their evidence from the other 2 officials meant the opportunity for the club to consider its position in light of all the evidence, was not available to the club, making not only the decision unfair but also the allocation of some costs, grossly unfair.

In withholding this evidence, the club has not had the opportunity to properly consider the financial implications of accepting the charge rather than the risks involved in challenging the evidence of all three officials which we consider grossly unfair particularly in light of the financial pressures that all clubs are under due to the Covid lockdowns."

20. The Appeal was conducted in accordance with the Regulations for FA Appeals which are appended to the Respondent's Standardised Rules. The Appeal Board notes that the 3 grounds of appeal advanced by the Appellant were in accordance with Rule 1.6 (1), (3) and (4).

21. No oral evidence having been permitted to be heard by the Appeal Board, pursuant to paragraph 2.5 of the Regulations for FA Appeals the appeal was by way of a review on the documents contained in the Appeal Bundle, having regard to the helpful submissions of Mr Langdon for the Appellant and Mr Palette for the Respondent.
22. Essentially, the appeal presented to the Appeal Board was that by admitting the evidence of the Assistant Referee's, which evidence had not been supplied to the Appellant before the Respondent Committee's hearing, that hearing was not fair and, further, as a result of taking that evidence into account the Respondent came to a decision that no reasonable body could have reached. There is also the separate ground that the sanction imposed was excessive.
23. When we came to review the evidence and submissions, as the Appeal Board we reminded ourselves that our role was one to review. It was not to substitute our own views for that of the Respondent's committee. Rather it was to consider whether it was unfair to admit the evidence of the Assistant Referee's and, if so, whether that meant the decision reached was one no reasonable committee could have reached. We also had to consider, from the perspective of a review, whether the sanction was excessive: namely that it was one that no reasonable committee could have imposed.

Considerations

24. In addition to the documentation within the bundle, the following points were made to the Appeal Board during the course of the hearing:
- 24.1. Mr Palette, on behalf of the Respondent, informed the Appeal Board, and we accept, that after the evidence in the form of the 2 e-mails from the Assistant Referee's had been read out, the Appellant was asked if it needed more time to consider those emails. This was an opportunity that was turned down by the Appellant, which indicated it was satisfied that it understood them, with Mr Daniel Langdon saying that the officials were lying.

- 24.2. It was accepted by Mr John Langdon during the appeal that the Respondent's committee had asked whether the Appellant had a fair hearing. The Appellant submitted they had answered that they did have a fair hearing, but that was in terms of mannerism and the opportunity to ask questions, but that after the event they were concerned about the evidence that had been submitted during the hearing which they felt was unjust.
- 24.3. It was unclear to the Appeal Board why exactly the Appellant was asserting that the emails from the Assistant Referee's meant there was an unfair hearing and that by taking the Assistant Referee's evidence into account the Respondent's committee reached a decision no reasonable committee could otherwise have taken. Mr Langdon made 3 alternative submissions, 2 of which are identified in the Notice of Appeal:
- (1) Firstly, it was said that the Appellant was denied the opportunity of asking questions of the Assistant Referees. However, the Appeal Board notes the submission was made to the Respondent's Committee that they were lying. The Appeal Board considers it inherently unlikely that they would, under questioning, having agreed they were lying, especially as that would appear to mean the referee, who had been questioned, would also have been lying (a point that was made to the Respondent's Committee by the Appellant, but was a submission that was rejected).
 - (2) Secondly, and in a completely different attack, the Appellant argued a point which the Appeal Board considered to be very unattractive: namely that the Appellant was denied the opportunity of considering its position, such that if 3 officials were taking a particular stance they might not challenge the charge, whereas because they thought it was only the referee there was a *"reasonable chance [the Appellant] could overcome the story"* of one official.
 - (3) In addition, and thirdly, in a point not mentioned in the Notice of Appeal, Mr Langdon said had they been aware of the assistant referee's evidence they would have sought other evidence to counter it. However, what that evidence might have been was not identified in any way.

24.4. On the issue of the sanction being excessive, the Appeal Board noted that Mr Langdon was unaware of the tariff for the fine (which was up to £125). Accordingly, Mr Langdon's submissions were made on the basis he was unaware the Appellant could have been fined up to 5 times the sanction that was imposed, without the sanction being suspended. It appeared that ultimately it was said the sanction was excessive simply because of the current financial climate arising from the difficulties caused by Covid.

24.5. The totality of rule 14.9 reads as follows:

"Three match balls proposed to be used in the match and, if applicable, supplied by the Company under a ball sponsorship agreement must be submitted to and approved by the Referee before the commencement of the match in his/her dressing room.

It is the responsibility of the Club playing at home in each match played under the jurisdiction of the Competition to provide match balls in accordance with any match ball agreement signed by the Company. The official Competition match ball must be used in all Competition matches and pre-match warm-ups."

24.6. The Charge the Respondent advanced was on the basis of the second of the 2 paragraphs which make up the Rule. The Respondent's position was that the non-official Competition match balls had been used during the match and this was not in dispute. Accordingly, the Respondent's stance was the charge was proven. By contrast, it was plain that the Appellant had been arguing from the perspective that it only needed 3 official Competition match balls and if they were all lost then, in essence, any ball could be used to finish the match. The Appeal Board noted there was no appeal by the Appellant on the basis that the Respondent had misinterpreted Rule 14.9.

24.7. In this context, it was the Respondent's stance that the evidence of the Assistant Referee's was not relevant to the charge of whether non-Competition match balls had been used in the game between the Appellant and Street FC.

Conclusions

25. The Appeal Board, taking into account the documents contained in the Appeal Bundle, the submissions made to it and its role as a Board reviewing the decision made by the Respondent's committee concluded, unanimously:

25.1. That the allegation that the hearing was unfair was not established. In circumstances where the Appeal Board accepted that the Appellant was asked if it needed some time to consider the emails from the Assistant Referees, but elected not to take such time, instead indicating that the Assistant Referee's were lying, the Appeal Board does not consider it was unfair to admit the evidence.

25.2. In concluding that by admitting the evidence of the Assistant Referee's the fairness of the hearing was not undermined the Appeal Board also noted:

(a) that the Appellant specifically confirmed at the end of the hearing before the Respondent's Committee that it considered there had been a 'true and fair hearing';

(b) that during the appeal the reasons advanced for why it was said the admission of the Assistant Referee's evidence meant there was not a fair hearing were inconsistent and unsubstantiated. In the absence of any suggestion why, the Appeal Board considers it inherently improbable that the Assistant Referees would have changed their evidence when questioned, especially given the Appellant's stance that they were lying and the Appeal Board does not fully understand the apparent stance that the Appellant was prepared to argue the Referee was lying, but may have taken a different view and accepted the Charge if it had known the Referee and the Assistant Referee's evidence was consistent;

(c) The Appeal Board also notes the Assistant Referee's evidence primarily (and in the case of Mr Boardman, exclusively) goes to the question of what or was not said by the Respondent prior to the game as to the use of non-Competition match balls, which did not appear to be evidence that was central to the evidence before the Respondent's committee.

26. Accordingly, the first ground of appeal falls to be dismissed.
27. The Appeal Board considers that the second ground of appeal is inextricably linked to the first ground: both grounds turned on the admission of the Assistant Referee's evidence. Having determined that it was not unfair for the Respondent to have admitted that evidence, in the absence of any or any compelling reason why *in any event* that evidence rendered the decision one no reasonable committee could have made, the Appeal Board did not consider the ground of appeal to have been established.
28. Indeed, the Appeal Board doubts that the Assistant Referee's evidence formed other than marginal evidence. Whilst the Appeal Board accepts that the Appellant could not gainsay what is recorded in the Hearing Minute as being the committee's rationale, the Appeal Board notes that the Assistant Referee's evidence is not mentioned. Of course, this is in the context of the Respondent's stance being that the charge was established as a breach of, effectively, the last sentence of rule 14.9, namely ignoring the number of Competition match balls there were, but rather concentrating on the simple fact that non-Competition match balls were used. The Appeal Board again notes that it was no part of the Appellant's case that the rule had been wrongly applied or interpreted by the Respondent.
29. Accordingly, the second ground of appeal also falls to be dismissed.
30. Finally, there is the appeal against the sanction which was said to be excessive. This ground of appeal was hopeless, with no rational objective basis being advanced as to why a suspended fine of £25, in the context of a tariff of a fine up to £125, allied to the forfeiture of what was called the 'appeal fee' was excessive or, indeed, in any way unreasonable.
31. The Appeal Board noted with disappointment that during submissions, Mr Langdon for the Appellant was actually unaware of the tariff for a breach of rule 14.9 despite the fact he was submitting that what had been imposed was excessive. Unfortunately, the Appeal Board felt it was left with no more than a submission that Mr Langdon personally felt the fine was excessive given the financial constraints facing clubs in the wake of the pandemic. The Appeal Board has considerable sympathy with the financial issues it is sure a club such as the Appellant is facing, but that does not begin to explain why it might be said the sanction, in the context of the tariff, was excessive.
32. Accordingly, the third ground of appeal also falls to be dismissed.

33. In all the circumstances, the Appeal is dismissed. The Appeal Board considers that in all the circumstances no order for costs is appropriate, but the Appellant must forfeit the appeal fee.

Christopher Stoner QC

Laura McCallum

Stuart Ripley

26/10/2021.