

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

BRADFORD PARK AVENUE FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Hearing: 9 June 2021

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Keith Allen Independent Football Panel Member

Andrew Adie Independent Football Panel Member

John Edmunds Judicial Services Coordinator - Secretary

Club:

David Little Director

Paul Armitage Director

The National League:

Mark Ives General Manager

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. Bradford Park Avenue Football (“the Club”) was charged with three breaches of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil four fixtures namely, on 6, 9 and 13 February 2021.
5. By a decision dated the 25 March 2021 (“the Decision”) an independent panel found the Club to be in breach and imposed a sanction of £2,000 per breach giving a total fine of £6,000. 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 16 April 2021 does not specify the grounds of appeal but the League has assumed the grounds relied upon are that the Panel:
 - 6.1 misinterpreted or failed to comply with the regulations relevant to the Decision;
 - 6.2 the Decision was such that no reasonable body could have come;
 - 6.3 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. The Club contends it should be permitted to adduce new evidence namely financial information and reports in respect of the Club's financial situation and which supports the Club's reasoning for not meeting the fixtures. The Club proceeded on the basis that because the League was in possession of financial information submitted by the Club from time to time that same information would be made available to those who were adjudicating upon the charges.
14. Further and in any event the Club contends that it has struggled financially as a result of the pandemic and it reached the decision not to play the fixtures as a result of the absence of grant funding after December 2020 and the inability to access other funds quickly or at all. In particular the Club's financial position can be seen from the fact that it was one of only two clubs to be eventually provided with a grant (£20,000) by Sport England. This was received in March. This is evidence of the Club's perilous finances at the relevant time. The decision not to play the fixtures was based on the potential insolvency of the Club.
15. The season was declared to be null and void on 18 February 2021. The matches for which penalties have been imposed should be treated as though they were not fixtures.
16. The sanction was excessive. To impose a £6,000 fine on the Club when the Club received a grant of £20,000 is clearly disproportionate.

Summary of the National League's Response and Submissions

17. The position of the League is as follows:

- 17.1 the Club did not place its financial information before the Panel to demonstrate financial reasons why it was unable to play the fixtures. It was not the obligation of the League or the Panel to identify previous correspondence or information provided by the Club and decide what should be deployed in support of the Club's case;
- 17.2 there is no reasonable excuse for the Club not having submitted its financial information to the Panel and the application to adduce new evidence should be refused;
- 17.3 in the absence of cogent financial information the Panel was entitled to find that there was no just cause and therefore no defence to the charge;
- 17.4 the effect of the season being declared null and void was to void the results of the season. It does not affect in any way breaches of the Rules which therefore remained subject to disciplinary proceedings;
- 17.5 the Panel imposed a fine of £2,000 for each breach which was less than the lowest end of the guidelines. Such a fine could not be described as excessive. Likewise the sanction of a suspended points deduction could not be described as excessive.

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. In respect of the application to adduce new evidence the Board the application is refused. There is no good reason why the Club did not place financial statements and information before the Panel therefore in the absence of exceptional circumstances there is no basis to admit such on appeal.
21. In respect of the substance of the appeal the Appeal Board finds that the Panel was entitled to reach the Decision. The issue was whether the Club had established that it had just cause for not fulfilling the fixtures. There was no financial information and in particular no forecasts or projections to show whether the Club could have serviced the highly advantageous loans that were available and repayable over 20 years. There was no evidence that the Club even gave serious consideration to such loans. The Panel was satisfied that the Club had not discharged that burden of proof and it was entitled to reach that conclusion. There is no proper basis to the grounds of appeal based upon just cause.
22. Further the Appeal Board considers that when the season was declared null and void the effect of this was to nullify the results for the season. This did not affect the breaches of the Rules and such continued to be subject to disciplinary proceedings.
23. The sanctions imposed were not excessive. The Panel took into account all of the submissions made regarding the circumstances facing the Club. The sanctions imposed were below the lowest level of the relevant guidelines.
24. It is the unanimous decision of the Appeal Board that the appeal is dismissed.

Costs

25. 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.

26. 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 £1600 within 30 days of this decision.

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