

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

CHIPPENHAM TOWN FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Hearing: 11 June 2021

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Matt Wild Independent Football Panel Member

Andrew Adie Independent Football Panel Member

Christine Ohuruogu Judicial Services Officer - Secretary

Club:

Stephen Harvey QC Counsel

Johan Brooke Counsel

Neil Blackmore Chairperson

John Applegate Vice Chairperson

Derek Crisp Secretary

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 Step1 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. Chippenham Town Football Club (“the Club”) was charged with four breaches of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil four fixtures namely, on 6, 9, 13 and 16 February 2021.
5. By a decision dated the 16 March 2021 (“the Decision”) an independent panel found the Club to be in breach and imposed a sanction of £2000 per breach giving a total fine of £8000. Further a points 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 7 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. The Club contends that it agreed to commence the season on the basis of a representation from the League that grant funding would be available to compensate for the loss of gate receipts if fans were excluded. When it became clear in December 2020 that future funding would in the form of loans the Club concluded that to take a sizeable loan from the Sport England Sports Winter Survival Package was not appropriate. As set out in the Notice of Appeal, the Club contends that to take such a loan "for an unknown period would not only have been reckless, if not fraudulent, but would have put the Club's long-term future at risk."
14. The Club seeks permission to adduce new evidence in the form of financial documentation that was not placed before the Panel. The information shows, says the Club, the precarious nature of the Club's finances and the reasonableness of the Club's decision not to play the fixtures hence that the Club had just cause.
15. The Club also asks how clubs can be charged for not fulfilling fixtures if a season is declared "null and void" and therefore officially did not take place.
16. The League has not proved that the Club acted "without just cause." During the course of oral submissions the Club developed this point. It accepted that the burden of proof rested upon the Club to establish just cause on the balance of probabilities. However it stressed that several times it ask the League to explain why it did not consider the

Club had just cause. The League did not engage with those requests. Had there been proper engagement the Club would have produced more evidence of the kind required by the League to address the issue.

17. The sanction is excessive. The action the Club took was merely to stave off what would have been a worse financial position through incurring deeper levels of debt.

Summary of the National League's Response and Submissions

18. The position of the League is as follows:

- 18.1 the burden of proving just cause rested upon the Club and it failed to produce proper evidence to persuade the Panel on that central issue. The Panel was entitled to come to the Decision;
- 18.2 the application to adduce new evidence is objected too. The Club has not provided reasons as to why it was not placed before the Panel;
- 18.3 the effect of the season being declared null and void was to nullify the results of the fixtures. It did not affect in any way breaches of the Rules which remained subject to disciplinary proceedings;
- 18.4 it is not for the League to discuss or debate charges with a club once the charges letter are issued. It was for the Club to respond to the charge with all of the evidence that it wished to rely upon;
- 18.5 the Panel took into account all of the circumstances, the submissions and evidence that were before it in respect of sanction. The sanction was less than the guidelines provided for and cannot be said to be excessive.

19. 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

20. 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.
21. The Club did not place detailed financial information save orally in respect of some figures for the cost of undertaking the fixtures. The Club accepted that it did not, even orally, provide the equivalent of forecasts or projections for the following years to show whether or not the Club could afford to service a loan. In short the Club did not adduce evidence to show the impact of playing the fixtures on its solvency or financial viability. The Club rested upon mere assertions as to its financial viability and the Panel clearly regarded the evidence as insufficient to show just cause. The Panel was entitled to arrive at that conclusion.
22. The Club has adduced no reasons as to why it did not adduce the new evidence before the Panel. For that reason alone the application must be rejected in the absence of exceptional circumstances. In any event the evidence that is sought to be adduced does not address the question of forecasts/ projections for the following years and the ability of the Club to service a loan on the terms available.
23. 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.
24. The grounds of appeal are not made out in respect of breach. The Club did not demonstrate just cause before the Panel and there is no basis to consider that there was a failure to provide a fair hearing, that the Panel misapplied or misinterpreted the

Rules or that it reached a decision that was so unreasonable that the no such body could have come to it.

25. The Panel took into account all of the circumstances. The sanction imposed was less than the guidelines. There is no basis to suggest the sanction was excessive.
26. It is the unanimous decision of the Appeal Board that this appeal is dismissed.

Costs

27. 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.
28. 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.
29. The appeal fee is retained.



David Casement QC (Chairperson)

Signed on behalf of the Appeal Board

Dated 14 June 2021