

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

~

KHALSA FOOTBALL FEDERATION (APPELLANT)

-v-

MIDLAND FOOTBALL LEAGUE (RESPONDENT)

INTRODUCTION

1. These are written reasons for the findings of an FA Appeal Board which met via videoconference (Teams) on Thursday 4th November 2021. The Appeal Board heard an appeal brought by Khalsa Football Federation (KFF) against a decision of the Midland Football League (MFL).
2. The Appeal Board, all independent members of the FA's Appeal Panel, were Anthony Rock (Chair), Robert Purkiss and Shaun Turner.
3. Conrad Gibbons, a member of the FA's Judicial Services Team, acted as Secretary to the Appeal Board.
4. The Appellant was represented by Mr Gurdawar Dhaliwal, Chairman/Secretary of KFF. The Respondent was represented by Mr Nigel Wood, Secretary of the MFL.
5. This is the decision and written reasons of the Appeal Board. By necessity it is a summary document and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Board carefully considered all the evidence and submissions made in this case. Following notification of the Appeal Board's findings, published on Thursday 4th November 2021, the Appellant requested written reasons.

BACKGROUND FACTS

6. This is KFF's first season playing in the MFL. Prior to this, they were known as Smethwick Rangers FC and for 30 seasons or so played in the West Midlands Regional League (the change of Club name is part of a project to promote Asian participation at the elite level). On 4th September 2021, their manager left the Club causing some turmoil. Later that day, the club informed the MFL

Secretary (Nigel Wood) that they would struggle to fulfil their league fixture against OJM Black Country on Tuesday 7th September, and requested that the game be postponed.

7. In an e-mail dated 5th September 2021, Nigel Wood responded to the Club, stating that whilst they had sympathy with the Club's plight, the MFL's policy is that they expect all games to be played on the arranged date. KFF again contacted the MFL on 6th September 2021, informing them that, having contacted all their players, they did not have enough confirmed numbers to fulfil the game against OJM Black Country. On the same day, Nigel Wood informed KFF that they should now inform their opponents. The Club took this as acceptance from the MFL that the game could be postponed.
8. On the 7th September 2021, the Discipline Secretary of the the MFL (Rob Paterson) e-mail'd a disciplinary charge notice to the Club. The notice informed the Club that they were being charged under League Rule 8.39, failure to fulfil a fixture. It also detailed the possible sanctions if the charge was found proven and the process if the Club wished to appeal or make representation. The notice also set the date of the MFL's disciplinary hearing to consider the case as 15th September 2021.
9. On 13th September 2021, KFF sent an e-mail to Rob Paterson, stating their disappointment that the MFL had decided to charge the Club, and detailing a response for the MFL to consider. On 15th September 2021, a disciplinary sub committee (DSC) of the MFL sat to consider the charge. The DSC found the charge proven and imposed a sanction of a £250 fine and a deduction of 3 league points. The finding, initially communicated to the Club by e-mail on 16th September 2021, included only the fine, making no reference to a deduction of points. The following day, 17th September 2021, the discipline outcome was amended and the Club was informed that, in addition to the £250 fine, they were also being deducted 3 league points. The MFL stated that the e-mail sent on 16th September 2021 was sent in error and should have contained reference to both the fine and the points deduction.
10. The Appeal Board noted that the game was re-scheduled and played on 25th September 2021.

APPEAL GROUNDS/APPEAL BUNDLE

11. The Appellant lodged an appeal on three grounds. The MFL, (1) failed to give the participant a fair hearing; (2) misinterpreted or failed to comply with the rules and or/regulations of the Association and (3) imposed a penalty, award, order or sanction that was excessive. The bundle of documents before the Appeal Board included the original papers considered by the DSC, the KFF Notice of Appeal and the related response from the MFL. The detailed list of documents considered by the Appeal Board is not reproduced in these written reasons.

12. Of note, the Appellant submitted that new evidence should be considered by the Appeal Board. The MFL subsequently confirmed that this evidence, an e-mail from the Club to the MFL dated 13th September 2021, had indeed been considered by the DSC on 15th September 2021. The Appeal Board was satisfied with the MFL response and did not consider this as new evidence.

FIRST GROUND OF APPEAL – FAIR HEARING

13. The Appellant stated that, as the date for the disciplinary hearing was set for 15th September 2021, they did not have time to make a submission to the MFL, and therefore had not received a fair hearing. They also stated that they did not have access to historic cases involving such charges and that no help or advice was available to support them. They were not aware of any exceptions the MFL had made when considering the rule under which they were charged, specifically the reference to “*any club without just cause failing to fulfil an engagement.....*”. The Appellant argued that examples of what constitutes “*without just cause*” should be included in the FA’s Standardised Rules. They highlighted a number of examples where the MFL had agreed to clubs re-arranging fixtures without, in the Appellant’s view, just cause to do so. When questioned, the Appellant stated that, from the disciplinary notice sent to them on 7th September 2021, they were aware of the details of the charge and the possible sanctions if found guilty. They argued that, the dissatisfaction of being charged expressed in their e-mail to the MFL on 13th September 2021, was, at least in their view, a clear indication that they were denying the charge. They accepted that they had never specifically stated that they were either denying or accepting the charge.
14. In the Respondent’s submission, Mr Wood stated that whilst clubs wanted issues to be available and transparent, when it came to specific examples against their own club being in the public domain, they were less supportive. He also commented on those examples which the Appellant had highlighted and where the MFL had agreed to a fixture postponement and change of date.

SECOND GROUND OF APPEAL – MISINTERPRETED OR FAILED TO COMPLY WITH THE RULES AND/OR REGULATIONS OF THE ASSOCIATION

15. In regard to the second ground, the Appellant submitted that any points deduction should have been taken from the game against OJM Black Country and not from an unrelated fixture. No minutes had been produced by the DSC, and the Appellant felt that there was confusion as to how, when or who made the decision to award the points deduction in addition to the fine. They queried whether the DSC decision was taken on the 15th September 2021, or was it highlighted by someone else the following day and the sanction subsequently amended. The Appellant agreed that once the club had been charged the regulations and rules of the Association had to be applied.
16. The Respondent submitted that the Appellant had been afforded every opportunity to make a submission prior to the disciplinary hearing. The disciplinary charge notice detailing the timeframe

for submissions was, he thought, taken directly from the FA's Standardised Rules. He accepted that some of the wording around the 7 day submission was ambiguous, but felt that the MFL was not in a position to make changes to FA Regulations. **Note:** the wording in question is, "*if your club wishes to dispute the charge, then you must submit your case in writing, to be received at least 7 days prior to the date of the meeting*". As the disciplinary hearing was set for 15th September 2021, the Club believed, having received the disciplinary charge notice on the 7th September 2021, that they only had one day to dispute the charge and submit their case in writing.

THIRD GROUND OF APPEAL – IMPOSED A PENALTY, AWARD, ORDER OR SANCTION THAT WAS EXCESSIVE

17. In regard to the third ground, the Appellant accepted the fine imposed but argued that to also impose a 3 point deduction was excessive. Again, the Appellant said that the points should have been taken from the game against OJM Black Country and not from an unrelated fixture.
18. The Respondent said that he was confused by the Appellant's statement in regard to the points deduction and an unrelated fixture. No other individual club had been advantaged by the 3 point deduction. When questioned, Mr Wood, who has been Secretary of the MFL for 15 years, could not recall a case of this kind when a points deduction had not been enforced (probably 50-60 cases during that time). He felt that the MFL had been consistent in their approach to such cases and that a points deduction was right.

FINDINGS OF THE APPEAL BOARD

19. The Appeal Board having considered submissions made on behalf of the Appellant and the Respondent make the following observations.
20. The role of the Appeal Board is to exercise a supervisory jurisdiction. It is not the role of the Appeal Board to substitute its own decision for that of the MFL simply because it would have made a different decision at first instance. Therefore, the Board must apply the following principles to the grounds of appeal:
 - a. An appeal such as this proceeds by way of review of the decision of the MFL, it is not a re-hearing.
 - b. It is not open to the Board to substitute their decision for that of the MFL simply because the Board might themselves have reached a different decision. If the MFL has reached a decision which it was open to them to reach, the fact that the Appeal Board might have reached a different decision is irrelevant.
 - c. The Appeal Board should be slow to intervene with evidential assessments and factual findings made by the MFL. It should only be interfered with if they are clearly wrong or if

wrong principles were applied. This is likely to be where there is no evidential basis whatsoever for a finding of fact that had been made, and/or where the evidence was overwhelmingly contrary to the finding of fact that had been made.

21. In their determination, the Appeal Board unanimously dismissed the appeal for the following reasons:
 - a. The Club were given the opportunity to make representation, personal or written, to the DSC before the 15th September 2021. Indeed, in their e-mail of 13th September 2021, the Club did submit a response to the charge, and this response was considered by the DSC.
 - b. Whilst acknowledging that the details contained in the disciplinary notice, sent to the Club on 7th September 2021, were in some areas ambiguous, the Board was satisfied that the MFL had applied and conformed to the rules and/or regulations of the Association.
 - c. The sanction imposed on the Club, whilst considered by the Appeal Board to be high, was not excessive.
22. Although not expressly pursued by the Appellant, the Appeal Board also considered the other possible ground of appeal: came to a decision to which no reasonable such body could have come. On this ground, the appeal also failed.
23. The sanctions imposed by the MFL are to remain. The appeal fee is to be retained and there is no order as to costs.
24. The Appeal Board's decision is final and binding on all parties.

RECOMMENDATIONS/OBSERVATIONS OF THE APPEAL BOARD

25. It is unusual for an Appeal Board to make specific observations/recommendations resulting from an appeal of this nature. However, the Appeal Board feel that it may be of some use for all parties, including the Football Association, for their observations to be documented.
26. In this instance, communication between the Club and the MFL could have been better. Neither party clearly communicated their position or what they were seeking to achieve. Such communication would have probably negated a first instance disciplinary hearing, and certainly a subsequent appeal. The MFL, in particular, are recommended to review their process as to how such issues are dealt with in the future. Informing a club early on that they are liable to a heavy fine, and a possible points deduction if found guilty of such a charge, would go a long way in encouraging the club to act before taking the 'ultimate' decision not to fulfill a particular fixture.

27. Wording of the disciplinary notice in regard to 7 day submissions should be reviewed. It is not clear if this is standard wording detailed in the FA's Standardised Rules, or leagues have the ability to amend their own wording. In this regard, the MFL may wish to review how and when they agree dates for disciplinary hearings, affording clubs time to respond.
28. Whilst extra work may be required by the MFL, consideration should be given to documenting in greater detail the findings of a disciplinary sub committee; accepting that this may also apply to other sub committees. As a minimum, the recording of mitigating and aggravating factors in regard to a specific charge should be considered.
29. By far the biggest concern for the Appeal Board is in relation to the default setting adopted by the MFL of applying a points deduction to every case involving clubs not fulfilling a fixture. Clearly, when considering a charge in relation to League Rule 8.39, they take no account of any mitigating or aggravating factors. The Rules state that points *may* be deducted, not *will* be deducted, and this should be used as a mechanism for distinguishing between minor cases and those of a more serious nature. Moving forward, the MFL is recommended to review their current approach to such charges.

Anthony Rock (Chair)

Robert Purkiss

Shaun Turner

Monday 8th November 2021