

IN THE MATTER OF A FOOTBALL
ASSOCIATION APPEAL BOARD

BETWEEN:

MR. MICHAEL HODGES

and

SURREY FOOTBALL ASSOCIATION

WRITTEN REASONS AND DECISION OF THE APPEAL BOARD
FOLLOWING THE HEARING ON 11th OCTOBER 2021

1. These are the written reasons for a decision made by an Appeal Board (“the Board”) which sat via videolink on 11th October 2021.
2. The Appeal Board members were Mr. Simon Parry, (Chairman, and Independent Legal Panel Member), Miss Laura McCallum (Independent Legal Panel Member) and Mr. George Dorling (Independent Football Panel Member).
3. Mr. Conrad Gibbons of the FA Judicial Services Department acted as Secretary to the Board.

CHARGE AND FIRST INSTANCE PROCEEDINGS

4. By letter dated 5th July 2021 Surrey FA (“the Respondent”) charged Mr Michael Hodges (“the Appellant”) with a breach of FA Rule E3 Improper Conduct Against a Match Official (including abusive language/behaviour). It was alleged that the Appellant called the club assistant referee of Dorkinians Youth u12 Greens a “cheat” during the fixture involving the Appellant’s team, Woking Town.
5. The matter had been investigated by Richard Garland of the Respondent FA and a bundle of evidence prepared. The principal evidence against the Appellant was contained in the Report of the Match Referee who recorded *“In the dying seconds of the game the Woking blues manager had a go at the Dorkinians linesman accusing him of cheating and went right up towards him, to angrily make his*

case”. The Report then went on to record a separate incident involving players as the Referee was leaving the ground. Nothing in that part of the Report alleged misconduct on the part of the Appellant. Further, the Respondent relied on a witness statement of Dr. Massimo Barcellona, the club assistant referee. The relevant section of his statement recorded “*In the last couple of minutes of the match, the ball came off the pitch on the side of the pitch where I was acting as Assistant Referee. Given that I was having to watch my step, as the management team of Woking Town Blues were for most of the second half standing right on the line, I did not see which team should be awarded the throw in. I notified the Referee, who had already decided to award the throw in to Dorkinians Youth Green. At this point, (sic) who I believe to be the manager of Woking Town Blues (tall and with black skin), came towards me and stated that I was a cheat. I at no point felt any threat of violence and there was no escalation of the incident on either part.*” Three child players from Dorkinians also provided witness statements in which they alleged hearing the Appellant call the assistant referee a cheat.

6. The Appellant provided a witness statement to the investigation. The relevant section of his statement recorded “*Concerning the cheating – yes, he did – with minutes to go before the game in the opposition (sic), we had a throw-in which came off one of their players, and when asked why he did not flag, he said that the ref had given it the other way – before he put his flag up, so there was no need to raise it. So I dispute anything was said angrily, nor did we need to move towards him as we were standing on (sic) five yards from him where the coaches were instructed to stand*”. Within the Appellant’s statement appeared to be a further statement or

observation from the Woking Town Assistant Manager, Adrian Sutherland, which recorded “*I can remember that you said the linesman was cheating over a throw in decision, but you certainly did not approach him or use any aggressive gestures towards him*”.

7. The Appellant denied the Charge and elected a personal hearing. On 16th August 2021 a Discipline Commission appointed by the Respondent heard the case. The Commission comprised Mr Glenn Moulton (Independent Chairman), Mr Ray Marley (Independent Member) and Paul Mallon (Surrey FA Member). The hearing took place via Webex. Those giving live evidence before the Commission were the Match Referee and the Appellant. All other evidence was considered on the papers. The club assistant referee, regrettably, failed to attend the hearing. The Commission found the case proven. Following mitigation and confirmation of the Appellant’s previous lack of misconduct findings, the Commission imposed a sanction of a three-game ground ban, a fine of £50 and a requirement to complete the FA’s Respect course.

APPEAL PROCEEDINGS

8. By written Notice, the Appellant seeks to challenge the original decision. The available Grounds of Appeal to an Appellant are set out in the FA Disciplinary Regulations at Section C2. The grounds are that the body whose decision is appealed against:

- a) failed to give that Participant a fair hearing; and/or

- b) misinterpreted or failed to comply with the Rules and regulations of The Association relevant to its decision; and/or
 - c) came to a decision to which no reasonable such body could have come; and/or
 - d) imposed a penalty, award, order or sanction that was excessive.
9. The following is a summary of the principal submissions provided to the Board. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point or submission should not imply that the Board did not take such point or submission into account when the members determined the matter. For the avoidance of doubt, the Board carefully considered all the evidence and materials provided to it.
10. The Notice of Appeal set out four bullet points:
- *The accusation charged at me was against a specific incident at the close of the game between myself and the linesman.*
 - *The documentation sent on the case appears to cover the whole game – and that content should not be part of this evidence. The entire narrative is a deliberate attempt to support the accusation and show behaviour consistent with the outcome. Only facts and points relevant to the case should have been included. It, therefore, does not give the concept of a fair hearing.*
 - *There has been an attempt to represent my behaviour overall, a bias towards these actions of the team due to my behaviour and an implication that I encourage this*

behaviour amongst the children. So, therefore, I am guilty of this action because that's how they and I behave.

- *I was not abusive to the linesman, nor did I swear and shout or call him a cheat.*

11. The Notice went on to outline twelve points on the Appellant's behalf. We do not propose to rehearse them again. They amount to observations on the evidence and, in essence, a denial of the conduct alleged. Whilst the Appellant's Grounds of Appeal do not specify the particular grounds upon which he appeals this decision we invited him to present his oral submissions by reference to the available grounds.
12. The Board also heard briefly from Mr David Millar, Head of Discipline & Governance for the Respondent and also from the Chairman of the Disciplinary Commission, Mr Moulton, who expanded on the Written Reasons where necessary.

GROUND 1 – FAIR HEARING

13. The Appellant asserts that the proceedings were unfair as there was material before the Commission that was irrelevant to the specific charge and thus painted an unfair picture of him and/or the club. Such material, he says, was prejudicial and could not be put out of the mind of the Commission. The Appellant is correct that there are references to incidents over and above the specific incident of misconduct. Ideally, such material should not have been included within the bundle of evidence that went before the Disciplinary Commission. However, there was no suggestion that the

Appellant had ever contacted the Respondent in advance of the hearing to seek to have the bundle redacted to exclude any irrelevant material. We note that the Appellant told us during his oral submissions that he had not taken the proceedings particularly seriously nor read the papers with much care. In our judgment, he cannot now complain that he did not have a fair hearing when he took no steps to raise objection to the material to be presented at the hearing.

14. In any event, we have had the benefit of seeing the Written Reasons of the Commission and hearing from Mr Moulton on this point. In those reasons it is clear that the irrelevant material was properly disregarded by the Commission and they expressed that to the Appellant at the very start of the hearing. At paragraph 5 of the Written Reasons it records “*The Commission noted that the charge was only in relation to the allegation that HODGES called the opposition assistant referee (BARCELONA) a cheat. The Commission stressed that all other matters of potential misconduct would be entirely disregarded and would form no part in their decision making.*” In our judgment, the Commission properly directed itself to the relevant evidence and disregarded the irrelevant evidence. We are entirely satisfied that the Appellant’s hearing was fair. Accordingly, this ground of appeal fails.

GROUND 2 – FAILURE TO COMPLY WITH RULES

15. During oral submissions it became clear that the Appellant did not seek to pursue any complaint under this heading. Having reviewed the material

before us, we are satisfied that the Respondent complied with all relevant Rules and Regulations of the FA in the disciplinary process.

GROUND 3 – UNREASONABLE DECISION

16. The thrust of the Appellant's case is that he did not call the assistant referee a cheat and the decision of the Commission to find that he did was wrong. The Appellant challenges the Commission's findings of fact. However, we remind ourselves, as we reminded the Appellant, that the appeal procedure is not a re-hearing of the evidence, it is a review of the decision of the original Disciplinary Commission. It is not for us to assess the evidence afresh and come to a conclusion on what we would have found. The threshold for challenging findings of fact on appeal is a high one. Such challenge will only succeed if the findings of fact are plainly wrong. Trite law as it may be, we remind ourselves that the Commission hearing the live evidence of the witnesses before it was best placed to judge the credibility and accuracy of that evidence. For the most part, the Appellant's submissions were a repetition of the evidence and submissions that he had given, or should have given, at first instance and did not contain any focussed demonstration of how the Commission's findings were plainly wrong.

17. The Commission's findings are set out at paragraphs 11-17 of their Written Reasons. They are:

11. The Commission were mindful of the passage of time since the incident.

12. It was noted that the reports (written and verbal) received from DREW were consistent and clear. HODGES was identified as having accused BARCELLONA “of cheating”.

13. The Commission noted that the written statements provided by the individuals from Dorkinians were generally consistent with the report submitted by DREW. It was noted that BARCELLONA had made a clear statement confirming the allegation. The Commission observed that this was supported by [REDACTED], [REDACTED] and [REDACTED]. MAYES had not heard the comment but stated that it was reported to him later.

14. The Commission noted that HODGES appeared to accept the charge in his written statement – “Concerning the cheating – yes, he did” – and that he was very clear during the hearing that he had made such an accusation.

15. The Commission noted that SUTHERLAND had stated (as part of HODGES’ statement) “I can remember you said the linesman was cheating over a throw in decision”.

16. The Commission disregarded any suggestion that HODGES had been threatening towards any person on the day of the game.

17. Following careful consideration of the available evidence, the Commission unanimously agreed that the charge had been proven. The Commission agreed that the evidence to support the charge was overwhelming and that HODGES’s conduct towards a match official had been improper.

18. In our judgment, the Written Reasons demonstrate perfectly clearly and succinctly the Commission’s findings of fact and that which they found to be credible evidence. There is nothing in the Commission’s reasoning that can be described as plainly wrong. Whilst the Appellant disagrees with their conclusion, that is not sufficient to establish a ground of appeal. Accordingly, this ground of appeal also fails.

GROUND 4 – EXCESSIVE PENALTY

19. The Commission’s approach to sanction is set out at paragraphs 20 - 25 of

the Written Reasons:

20. The Commission agreed that the offence fell within the 'mid-range' of the FA's recommended sanctions.

21. The Secretary confirmed HODGES' previous 'clean' disciplinary record.

22. The Commission observed that HODGES had denied the charge and were concerned that this demonstrated a lack of appropriate insight and remorse. Whilst the Commission agreed that it appeared to be a 'spur of the moment' comment, they were deeply concerned that HODGES had since continued to state that BARCELONA had cheated. There was no evidence that HODGES had appropriately learnt from the incident or the subsequent misconduct process. It was observed that there was no evidence to suggest that HODGES had apologised at any stage.

23. The Commission were unable to establish any evidence of a reasonable excuse for publicly accusing BARCELONA of cheating. The Commission noted that this was an U12 match, and that HODGES held a position of greater responsibility as Manager. It was noted that the documentation also suggested that HODGES was the club Chairman and Secretary. The Commission were concerned at the example that this misconduct set to others.

24. The Commission noted the range of recommended sanctions and carefully considered proportionality and the impact of the sanction on HODGES and his club.

25. The Commission unanimously agreed that HODGES should be suspended from all football for a period of 3 games (ground ban), that he should receive a fine of £50 and that he must complete the FA's online RESPECT course.

20. The Appellant contends that the sanction is excessive. Again, it is not for us to consider what sanction we would impose. Our task is to review the original Commission's approach and reasoning. In our judgment, the Commission had proper regard to the sanction guidelines, the previous good character and the aggravating features of the case. The Commission was entirely correct in its assessment of the aggravating features. Indeed, during the course of discussion during the Appeal, the Appellant told us that he did

not see that it was a more serious case for a person in a position of responsibility, such as himself, to call a match official a cheat than a player to do so. Once again, the Written Reasons demonstrate perfectly clearly and succinctly the Commission's approach to sanction. We are entirely satisfied that the sanction imposed was just and proportionate in all the circumstances of the case. Accordingly, this ground of appeal also fails.

21. Therefore, this appeal fails on all grounds and is dismissed. The appeal fee shall be forfeited. We make no order as to costs.

Mr. Simon Parry (Chairman)

Ms. Laura McCallum

Mr. George Dorling

28th October 2021