

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

Case ID : 10436747M

**BETWEEN :**

**NICK DAVIES**

**Appellant**

**and**

**MANCHESTER FA**

**Respondent**

---

**DECISION AND REASONS**

---

**Warning to the reader of this document. This document contains reference to offensive and/or discriminatory language.**

**Appeal Board constitution.**

Abdul S. Iqbal QC (Chair – Legal Panel member)

Terry Angus (Football Panel member)

Chris Reeves (FA Council member)

Hayley Mather (Secretary to the Appeal Board)

Nick Davies appeared before the Appeal Board and represented himself.

Andrew McNulty appeared on behalf of the Respondent

Date of appeal hearing : 2/12/21

1. This document sets out the written reasons for the findings of an FA Appeal Board which sat on Thursday 2<sup>nd</sup> December 2021.
2. The Appeal Board met to hear an appeal brought by the Appellant against a decision of a non-personal Disciplinary Commission (“the Commission”) sitting in respect of disciplinary proceedings brought by Manchester FA against Nick Davies (“ND”).
3. This is the decision and written reasons of the Appeal Board. Necessarily, this is a summary document. It is not intended to be a record of all submissions and evidence adduced.
4. For the avoidance of doubt, the Appeal Board carefully considered and took into account all the evidence and submissions made by the parties in this case.

### **(1) The charges.**

5. By “*misconduct charge notification*” dated 4<sup>th</sup> August 2021 the Manchester Football Association (“Manchester FA”) alleged that ND during a match (“the match”) between Turnpike Pirates FC and Swinton Poets FC on 9/5/21, acted in an improper way by using abusive or insulting words towards an opposing player.
6. Manchester FA alleged that ND (whilst playing for Turnpike Pirates) had used abusive language including the words “*either Wade is a faggot or his boyfriend is*” towards Wade Malone (an opposing player).
7. Accordingly, Manchester FA charged ND with :
  - i. Improper conduct (including foul and abusive language) on 9/5/21 contrary to rule E3.1 of the Rules of the Football Association ;
  - ii. Aggravated improper conduct (reference to a person’s sexual orientation) on 9/5/21 contrary to rule E3.2 of the Rules of the Football Association.
7. ND denied the charges in correspondence with Manchester FA.
8. ND had the option of requesting a personal hearing. The proforma document to be used by ND or his representative to respond to the charges specifically gives the option of attending a disciplinary hearing to contest the proceedings and to give oral evidence before the Commission<sup>1</sup>.
9. ND chose not to request a personal hearing but opted for the Commission to consider

---

<sup>1</sup> See page 22 of 52 of the appeal bundle for the document.

the charges in his absence at a non-personal hearing and on the written evidence placed before the Commission.

10. Accordingly, the totality of the evidence was considered by Lydia Banerjee (Independent Chair) sitting alone as the Commission.

11. The Appeal Board read the document entitled “WRITTEN REASONS” dated 24 September 2021 prepared by Lydia Banerjee that sets out the reasoning, factual findings and sanction imposed by the Commission in this case<sup>2</sup>.

12. The Commission found both of the charges proved on the balance of probability.

13. The Commission imposed the following sanction :

- i. A 6 match suspension from all football activity ;
- ii. Compulsory attendance of an online FA Education Course to be completed before the time-based suspension is served. Whereby the Participant fails to comply with the order, a Sine-Die suspension shall be imposed until such time the Participant becomes compliant with the order of the Disciplinary Commission ; and
- iii. A warning as to future conduct.

14. In addition, Turnpike Pirates FC received 5 club disciplinary points.

## **(2) Grounds of appeal.**

15. ND relied upon the following ground of appeal<sup>3</sup> in relation to the finding of misconduct.

**Ground 1. “The Commission came to a decision on the facts of the case which no reasonable body could have reached”.**

16 . In summary, ND made the following submissions in support of the appeal :

- i. His evidence was and remained that there had been no incident involving him where homophobic language was used ;
- ii. The Swinton Poets evidence implicating ND was either dishonest or they had mistakenly identified ND as the maker of those homophobic comments ;
- iii. The factual findings of the Commission were against the weight of the evidence ;

---

<sup>2</sup> Pages 49 to 52 of the appeal bundle.

<sup>3</sup> Pages 3 to 4 of the appeal bundle.

- iv. The match official did not hear words alleged against ND and this was not given any or any sufficient weight by the Commission ;
  - v. The Commission had not considered all of the written evidence submitted on behalf of ND ;
  - vi. Two Swinton Poets players referred in their written evidence of a separate complaint of homophobic abuse by one of their players that was ultimately found proved. This may be indicative of a motive for them to lie about any Turnpike Pirates player (including ND);
  - vii. Delay had been caused by Manchester FA. Witness statements were submitted on behalf of ND to the Manchester FA on 25/5/21. Those statements focussed on the description of the perpetrator from Swinton Poets players and/or staff that Turnpike Pirates staff believed could relate to a different player (Matthew Connelly). It was only on 13/7/21 that Andrew McNulty of the Manchester FA confirmed the suspect had been identified by Swinton Poets FC as ND by use of a group team image of Turnpike Pirates players ;
  - viii. The new evidence added context and weight to the appeal submissions.
17. The Appeal Board read all of the above material and considered it with care.

### **(3) Application to introduce new evidence.**

- 18, As an initial application, ND sought to introduce new evidence before the Appeal Board.
19. The new evidence sought to be introduced consisted of :
- i. Statement of Paul Lowry<sup>4</sup> (unsigned and undated). This statement dealt with issues that arose in the match generally and in particular a (separate) incident involving the Swinton Poets player wearing the number 15 shirt ;
  - ii. Martin Atkinson<sup>5</sup> (unsigned and undated). This statement dealt generally with the alleged behaviour of Swinton Poets players during the match. It contained no direct evidence relating to the alleged incident involving ND that led to the finding of misconduct ;

---

<sup>4</sup> Pages 6 to 7 of the appeal bundle.

<sup>5</sup> Pages 8 to 9 of the appeal bundle.

- iii. Chris Rice (signed and dated 18/10/21). This statement dealt mainly with the behaviour of both sets of players during the match. It contained a little evidence about the alleged misconduct levelled at ND. The statement contended that ND had already been substituted by the time of the alleged incident that is the foundation of the misconduct finding.

20. The Appeal Board considered Regulation 10 of the “*Appeals – non-fast track*” regulations insofar as it relates to new evidence in such an appeal :

*“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.”*

21. The Appeal Board had concerns as to why such evidence had not been presented to the Commission. It was plainly available to ND at the time the Commission dealt with the case at first instance.

22. In addition, the Appeal Board concluded the new evidence had very limited relevance to the issues the Commission and the Appeal Board had to determine.

23. Nonetheless, in order not to limit the ambit of the appeal submissions, the Appeal Board allowed the introduction of the new evidence so that ND could rely upon those aspects he submitted had relevance to the appeal.

#### **(4) Manchester FA response to the appeal grounds.**

24. The Appeal Board had before it the following documents in response to the lodged grounds of appeal :

- i. Response from Manchester FA<sup>6</sup> ;

---

<sup>6</sup> Page 13 of the appeal bundle.

- ii. Response from Lydia Banerjee<sup>7</sup> (Independent Chair of the Commission).

25. The Appeal Board read all of the above material and considered it with care.

**(5) The oral appeal submissions.**

26. The Appeal Board gave ND the opportunity to make any further oral submissions he wished to. ND did so.

27. ND emphasised all those aspects of the written grounds of appeal and submitted that in all of the circumstances the findings of fact made by the Commission were on the facts of the case ones which no reasonable body could have reached.

**(6) The Appeal Board's findings.**

28. The Appeal Board considered the submissions made on behalf of the Appellant and the Respondent.

29. The function of the Appeal Board is to exercise a supervisory jurisdiction in relation to the Disciplinary Commission.

30. Accordingly, the Appeal Board applies the following principles in its approach to the grounds of appeal :

- i. An appeal such as this proceeds by way of review of the decision of the Commission. It is not a rehearing of the evidence and arguments at first instance ;
- ii. It is not open to the Appeal Board to substitute its own decision for that of the Commission simply because the Board might themselves have reached a different decision at first instance if seized of the case at first instance ;
- iii. If the Commission has reached findings of fact which it was reasonably open to the Commission to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant ;
- iv. The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Commission. Evidential assessments of the Commission should only be interfered with if they are clearly wrong (“Wednesbury” unreasonable<sup>8</sup> and/or

---

<sup>7</sup> Pages 14 to 15 of the appeal bundle.

<sup>8</sup> A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it.

irrational and/or perverse) or if wrong legal principles were applied to the making of those factual findings ;

- v. The only likely scenario for the Appeal Board to interfere with factual findings of the Commission is where there is no proper evidential basis for a finding of fact that that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made ;
- vi. The test for the Appeal Board in determining whether the Commission acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review ;
- vii. Any Appellant who pursues an appeal on the ground that a Regulatory / Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome ;
- viii. The Appeal Board ought to accord the Commission a significant margin of appreciation when considering matters such as evidential assessments, factual findings and any exercise of discretion by the Commission.

31. The Appeal Board considered whether the Commission’s decision was Wednesbury unreasonable or irrational or perverse.

32. Based on the evidence before the Commission, the Appeal Board unanimously found that the Commission’s decisions were reasonable and/or rational for the following reasons :

- i. The Commission applied the correct burden and standard of proof to the findings of fact it reached ;
- ii. The Commission had before it evidence from three witnesses (Wade Malone<sup>9</sup>, Danny Bradbury<sup>10</sup>, and Louis Briggs<sup>11</sup>) that contended a Turnpike Pirates player wearing the number 4 shirt had used homophobic language towards Wade Malone on two separate occasions ;
- iii. The Commission noted that the match official had not heard the phrase “*get up you*

---

<sup>9</sup> Page 27 of the appeal bundle.

<sup>10</sup> Page 28 of the appeal bundle.

<sup>11</sup> Page 29 of the appeal bundle.

*faggot*” and the fact he had not heard it cast some doubt upon its use. Accordingly the Commission concluded on the balance of probability that the use of the phrase was not proved on the evidence<sup>12</sup> ;

- iv. The Commission concluded on the balance of probability that the second alleged incident involving the phrase “*either Wade is a faggot or his boyfriend is*” “ had not been made at a time when the match officials would have been expected to have heard those words ;
- v. The evidence of Wade Malone (to whom the offending words were allegedly directed) was supported by the evidence of the other two Swinton Poets players named above;
- vi. Although the evidence filed by the appellant ND and on his behalf before the Commission and evidence introduced as new evidence before the Appeal Board sought to prove a negative, namely that ND did not use those words and no such words had been heard by any of his witnesses, inevitably it would be impossible for witnesses to overhear every conversation during such a match ;
- vii. It was noted by the Commission (appropriately) that the evidence fell on partisan lines;
- viii. In the circumstances, the Commission was entitled on the evidence before it to conclude on the balance of probability that the Turnpike Pirates player number 4 had used the second phrase towards Wade Malone during the match ;
- ix. In relation to the identification of the Turnpike Pirates player wearing the number 4 shirt, ND could not clarify what number he wore during the match. Nor could he produce a team sheet for the match that would indicate the identify of players and the corresponding team numbers they wore in the match ;
- x. The evidence suggested that the offending player (number 4) was substituted shortly after he made the offending remarks<sup>13</sup> ;
- xi. The new evidence of Chris Rice asserted that ND had already been substituted (towards the end of the match) by the time of the alleged incident. It is difficult to understand how Chris Rice can come to such a conclusion if he cannot identify the precise incident complained of by Wade Malone and his supporting witnesses ;

---

<sup>12</sup> Paragraph 13a of the written reasons.

<sup>13</sup> See for example the evidence of Louise Briggs at page 29 of the appeal bundle.



- xii. However, the evidence of Chrs Rice tended to support the correctness of the identification of ND as the offending player because he confirmed that ND was one of the players that was substituted towards the end of the match ;
  - xiii. The ultimate identification of ND as the primary suspect in the investigation came from the circling by Swinton poets witnesses of ND's face on a team photograph<sup>14</sup>. ND contended that only 4 of the 14 players on that photograph played in the match with Swinton Poets. This fact itself supported the correctness of the identification of ND as the offending player ;
  - xiv. In the circumstances, the manner of identification of ND was a fair process that was not indicative of or susceptible to bias or error on the part of identifying witnesses ;
  - xv. The initial identification of Matthew Connelly as the suspect was not by Swinton Poets witnesses but unilaterally by Turnpike Pirates themselves on the basis of the description given by Swinton Poets witnesses of the offending player ;
  - xvi. When ND was identified as a suspect, Turnpike Pirates were afforded ample time to investigate these issues further. Any delay had not caused any or any significant prejudice to ND ;
  - xvii. The Commission had plainly considered all relevant written material in coming to its findings of fact ;
  - xviii. It was open to the Commission to apply due weight to that evidence which was submitted in writing. The Commission did so appropriately ;
  - xix. The issues identified by the Commission in the "written reasons" document and the detailed considerations demonstrate that the Commission appropriately applied its mind to the relevant issues ;
  - xx. Accordingly the Appeal Board concludes that the appeal should be dismissed on the basis that the decision reached by the Disciplinary Commission was one which was within the boundaries of reasonable decision available to the Disciplinary Commission.
33. The sanctions imposed by the Commission are to remain. The appeal fee is to be retained. There is no order as to costs.

---

<sup>14</sup> See page 36 of the appeal bundle.

34. The Appeal Board's decision is final and binding on all parties.

ABDUL S. IQBAL QC

TERRY ANGUS

CHRIS REEVES

8<sup>th</sup> December 2021