

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

SLOUGH TOWN FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD

Hearing: 10 June 2021

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Matt Wild Independent Football Panel Member

Andrew Adie Independent Football Panel Member

Michael O'Connor Lead Judicial Services Officer - Secretary

Club:

Kerry Underwood Solicitor

Mike Lightfoot Chairman

Kay Lathey General 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 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. Slough Town ("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 25 March 2021 ("the Decision") an independent panel ("the Panel") found the Club to be in breach and imposed a sanction of £2000 per breach giving a total fine of £8000. 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 8 April 2021 the Club has appealed the Decision on the grounds that the Panel:
 - 6.1 Misinterpreted or failed to comply with the regulations relevant to the Decision;
 - 6.2 Came to a decision 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 raises an application for permission to introduce new evidence including financial information that was not before the Panel.
14. The Club contends that it was initially stated by the League that funding by way of grant would be available to compensate for the loss of gate receipts. That position changed in December when further funding was by way of loan. The representations in respect of funding were misleading, even if not deliberate.
15. There is no definition of what is meant by just cause. It is contended that the term just cause refers to a standard of reasonableness used to evaluate a person's actions in a given set of circumstances. The Panel failed to have an appropriate definition in mind when it made the Decision. The League was suspended for two weeks. It follows that if just cause existed for the League to suspend on 22 January, nothing changed thereafter in terms of funding and just cause remained at the restart on 6 February. It is therefore unreasonable to punish clubs for refusing to play when the League effectively admits there was just cause for them to do so.
16. Further, given the rising rates of infection, in particular in Slough, the unnecessary risk to health in playing the fixtures without testing could not be justified by the Club. That combined with the financial impact on the Club which was obvious, as with all clubs, provides clear just cause not to have played the fixtures.

17. The season was declared null and void. It is unreasonable to punish clubs for fixtures that have effectively been struck from the record.
18. In explaining the financial difficulties of the Club it states that its board did not have the resources to fund the fixtures, it does not have a wealthy benefactor and whilst it “considered playing the U23s whilst furloughing the first team players, but this seemed morally wrong for the reasons stated above.” The Club further states “We have been entrusted with the guardianship of the long established and well supported club and were not prepared to put it in jeopardy to merely play out a few more games when it appeared most likely that null and void would be the outcome. Money would therefore have been wasted.” In all the circumstances the sanctions imposed are excessive.
19. There is no challenge to the points deduction, subject to the points set out above that there was no breach at all, however the fine was excessive. There should be consistency and the fine should also be suspended.

Summary of the National League’s Response and Submissions

20. The position of the League is as follows:
 - 20.1 what amounts to just cause is a question of fact for the Panel to determine. It is not for the Club to make a unilateral decision as to its meaning. There is nothing to suggest that the Panel applied the wrong test in arriving at the Decision;
 - 20.2 the test of unreasonableness as an appeal ground is a high hurdle for the Club to overcome. It does not matter that the Appeal Board might have come to a different decision;
 - 20.3 in respect of its financial position the Club did not place financial information and documentation before the Panel;

- 20.4 the Government loans that were on offer from the Sport Winter Survival Package had been approved by the League. The Club failed to demonstrate why it did not avail itself of the loans that were on advantageous terms;
 - 20.5 the health risk was addressed by the protocols that had been in place since the beginning of the season and which had been approved by the Government and The FA. No evidence was provided by the Club to the Panel to challenge the sufficiency of those protocols;
 - 20.6 the temporary suspension of the season by the League was not based on any decision by the League that there was just cause. The League has never said there was just cause not to play these fixtures.
 - 20.7 the sanction was not excessive. The Panel took into account all of the relevant circumstances and imposed a fine that was less than the guideline range.
21. 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

- 22. 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.
- 23. No proper explanation was given as to why the new evidence including the financial information was not provided to the Panel. On the basis of Regulation 10 and in the absence of exceptional circumstances, the application for permission is refused.

24. The effect of the season being declared null and void was to nullify the results of the games that were played. It had no effect at all on disciplinary offences which remained subject to potential proceedings. Any wider interpretation is unsustainable as a matter of objective interpretation.
25. The Club's case on just cause is based upon the risk to health as a result of the increased rate of infection and also the financial impact of playing further fixtures without grant funding would have on the Club. The Club failed to provide financial information to the Panel to show why it was unable to meet its fixtures. Further the Club failed to provide evidence to demonstrate the insufficiency of the health protocols that were in operation for games and which had been operated since the beginning of the season. It is noted the protocols were approved by the Government and The FA on medical advice.
26. It is the unanimous decision of the Appeal Board that the 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 £1300 within 30 days of this decision.
29. The appeal fee is retained.

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