

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

SOUTHPORT FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD REGARDING FAILURE TO FULFILL FIXTURES

Appeal Board:

David Casement QC (Chairperson) Independent Specialist Panel Member

Andrew Adie Independent Football Panel Member

Matt Wild Independent Football Panel Member

Non-personal hearing: 9 June 2021

Background

1. The general background to this appeal is that as a result of the global pandemic football clubs in the National League, National League North and National League South 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 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. Southport Football Club (“the Club”) was charged with one breach of Rule 8.39 of the National League Rules (“the Rules”) for failing to fulfil one fixture namely, on 16 February 2021.
5. By a decision dated the 25 March 2021 (“the Decision”) an independent panel found the Club to be in breach and imposed a fine of £2000. A point deduction was also ordered of 2 points 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 9 April 2021 the Club has appealed the Decision on the grounds that:

- 6.1 the Panel misinterpreted or failed to comply with the regulations relevant to the decision;
 - 6.2 the Panel came to a decision that no reasonable body could have come .
7. The parties have not indicated any 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 had just cause in not playing the fixture. That just cause was in respect of safety concerns that the Club had for its players and staff in circumstances where there was no routine testing available and there was a substantial increase in infection rates. Secondly the Club maintains it had just cause because of the financial impact on other clubs: "We as a Club believe that is (sic)

fundamentally wrong, and wanted to play no part in obtaining points as a result of other clubs' inability to play against us, due to financial difficulties they might be experiencing through no fault of their own."

14. Further when the season was declared null and void that meant that any breaches of any Rules in relation to the season were also voided.

Summary of the National League's Response and Submissions

15. The position of the League is as follows:
 - 15.1 just cause is a question of fact for the Panel to consider given the evidence before it;
 - 15.2 the Club's assertion that it did not play the fixture for safety reasons is unsustainable and does not provide just cause. The protocols that were in operation for the fixtures had been approved by the Government and by The FA. They were the same protocols that the Club had played under since the start of the season. No evidence was placed before the Panel to effectively challenge the use of the protocols as a means of ensuring safety;
 - 15.3 the Club did not assert and provided no evidence to the Panel that it was financially unable to play the fixture. Instead, as quoted above, the Club was concerned for the positions of other clubs. For this reason it is clear that the Club chose, for its own reasons, not to fulfil a fixture which it was able to play.
 - 15.4 the Panel applied the Rules correctly and the Decision was not such that no reasonable body could have reached the Decision.
16. 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

17. 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.
18. There is no basis for the suggestion that the Panel misapplied the Rules or that it came to a decision that no reasonable body could have come. The Club did not place before the Panel any real evidence to show that the protocols in place presented a serious safety issue. The protocols had been approved by Government and The FA on medical advice. The Club had played under the protocols since the beginning of the season. In the absence of proper evidence the Panel was entitled to reject that assertion.
19. The potential financial difficulties relied upon by the Club were not those of the Club itself but those of other clubs. The concern that other clubs were disadvantaged and the Club did not wish to take advantage underscores the ready inference that the Club made a conscious decision that it would not play a fixture that it was well able to fulfil. That is not just cause. The Club was under an obligation under the Rules to play the fixture and not to unilaterally to decide otherwise.
20. 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.
21. It is the unanimous decision of the Appeal Board that this appeal is dismissed.

Costs

22. The Appeal Board has considered the submissions made by the parties in respect of costs. The suggestion by the League 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.

23. 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 £1200 within 30 days of this decision.



David Casement QC (Chairperson)
Signed on behalf of the Appeal Board

Dated 14 June 2021