

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

SOUTHPORT FOOTBALL CLUB

Appellant

-and-

THE NATIONAL LEAGUE

Respondent

DECISION OF THE APPEAL BOARD REGARDING MISINFORMING THE LEAGUE

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

Introduction

1. This is an appeal by Southport Football Club (“the Club”) from a decision dated 25 March 2021 (“the Decision”) of the independent panel (“the Panel”). The Club was charged with a breach of National League Rule 4.2 and was sanctioned under Rule 4.6, namely a fine of £2000.
2. The charge was set out in the letter from the League dated 29 January 2021. It begins by stating “It has come to our attention that the Club has misinformed the League regarding a Covid Test.” (underlining added) After citing the relevant Covid Board Directive and the Membership Rule 4.2 it proceeded to state “I am obliged, therefore, to charge your Club with a breach of membership Rule 4.2 for failing to properly report COVID-19 events as prescribed in protocols and Club Process Flow charts by

misinformation." (underlining added). It is not clear from the charge letter what exactly it was that was misinformed. We will return to that point.

3. On 28 December 2020 the Club was to play away against AFC Fylde. The day before the fixture the League received an email from James Tedford at the Club relating to two players at the Club that were reporting symptoms of Covid-19. The players were not identified at that stage. The League requested evidence of test bookings and these were provided identifying the players as David Morgan and one other. The tests were to take place on 27 December. Shortly thereafter the League was informed by the Club that the test for David Morgan had been moved to the morning of 28 December. The fixture with AFC Fylde was postponed given the period required to obtain the return of the PCR tests.
4. There was a disagreement between the Club and AFC Fylde as to the date for the postponed fixture. AFC Fylde wanted to play 24 hours later. Colin Peake of the League suggested it should be held on 30 December. The Club suggested it should be played a week later, on 4 January. We have read the correspondence passing between the Club and AFC Fylde that has been included in the bundle and we note there was some unnecessary heat generated in that correspondence.
5. News of the test result for Mr Morgan was not provided to the League by 1pm on 30 December and there was no alternative but to postpone the 30 December postponed fixture. Early on 2 January the League received a screen shot of the test result for Mr Morgan but it showed a test date of 30 December and not 28 December which was the only date reported for a test by the Club at the time. The League requested an explanation but none was provided. It is said by the League that Mr Peake was concerned that the Club was not truthful about the testing and the tone of the earlier emails were an indication that the Club did not want to play the rescheduled date set by the League, namely 30 December.
6. In the Club response to the charge letter it asserted that Mr Morgan had attended for a test on 27 December but was told to come back the following day. He returned to do a

test on the following day, 28 December, and undertook the test but the test result was not sent to him. He chased in order to obtain the result but he did not receive it. He therefore attended again on 30 December for a further test which he did receive on 2 January. That was then provided to the League. In response to the charge letter the Club provided screen shots of Mr Morgan's appointments showing he booked himself in for tests on 27 and 28 December and also on 30 December. Those screenshots show his name. In addition the Club has provided two test receipts showing two tests were conducted. The full name of the person receiving the test is not shown, although it does say "David" on each, and the date of the test is not set out.

7. The Decision stated this "A detailed chronology of events noted by Colin Peake was included in the documentation. Copies of two Test Receipt Cards were supplied by the club but unfortunately the cards did not contain information as to the date on which these tests were taken. No doubt the bar codes on the Test Receipt Cards would confirm the timings of the tests. Extracts showing two Appointment booking confirmations were provided showing a booking for 27th December at 5pm to 5:30 and one for 28th December between 9 and 9:30am."

Rules

8. The Rules provide as follows:

4.2 Save where specifically provided otherwise in these Rules, the Board shall have power to apply, act upon and enforce these Rules and shall have jurisdiction over all matters affecting the Company or the Competition including any not provided for in these Rules. The Board shall also have the power to issue an order or instruction, by way of a Board Directive, in the best interest of the Competition, on any matter not provided for in these Rules, with which Clubs must comply or be subject to sanction under Rule 4.6, save where any such Directive is inconsistent with a Rule or Regulation of The FA, in which event the Directive will not create a binding obligation on Clubs.

4.6 If a Club fails to comply with a Board Directive within fourteen days of notification of such order or instruction, or within fourteen days of an operative date specified in that order or instruction, it shall not be allowed to play or take part in the business of the Company until the expiry of 7 days from the day the order or instruction is complied with.

8.7 The Board may change any Competition fixtures during the season to suit the overall interests of the Competition and shall have the power to decide whether a ground is suitable for Competition matches and to order a Club whose ground is deemed unsuitable to play its home matches at an alternative suitable ground.

Summary of the Club's Case

9. The Club contends that it has not misinformed the League of any matter. It has asserted and provided documentary evidence that Mr Morgan booked tests for 27 and 28 December. It is asserted that he did not receive the result from the test on 28 December so as to be able to inform that League of the outcome of that result. He therefore undertook another test on 30 December the result of which he informed the League as soon as he received it.

10. The Club contends that the Decision was unreasonable such that no reasonable body could have come to it.

Summary of the League's Case

11. The League contends that the Panel was entitled to reach the decision that it did taking into account all of the correspondence and the failure of the Club to explain in advance of the charge that the test in respect of 28 December had not been received at all and that a separate test was undertaken on 30 December. It was only after the charge was received that the Club gave its present account of events.

Findings of the Appeal Board

12. The charge is really one of an allegation of dishonesty in respect of Mr Morgan and/or the Club. The charge was not one of *failing* to inform the League of something but of *misinforming* the League of something. In short, telling the League something that was factually incorrect. The charge was not specific as it ought to have been but the Panel appear to have taken that, given Mr Peake's chronology of events and his comments about being concerned about the Club being truthful¹, to mean that the Club stated Mr Morgan undertook a test on 28 December but he did not.
13. It is well established in the case law and the general approach of disciplinary bodies that the more serious the allegation the more improbable is the allegation. Put another way, in making an allegation of dishonesty the party alleging it must adduce stronger evidence to meet the balance of probabilities test than say an allegation of mere negligence or failure to do something.
14. However, in the present case the Club has adduced documentary evidence to support its contention that the player booked a test for 27 and 28 December. That shows not only persistence in obtaining a test and that he was booked in to have a test on 28 December. The receipts, although undated, are consistent with Mr Morgan having two tests, namely 28 and 30 December. The fact that the Club did not explain the position fully is insufficient to give rise to an adverse inference against the Club and certainly not an inference strong enough to support a charge based on dishonesty.
15. The Appeal Board has taken into account all of the submissions by the parties and in particular the reminder by the League that the ground relied upon by the Club is a high hurdle. However, on the evidence that was before the Panel we do not consider it was reasonably entitled to find the charge to be made out. Further the Panel does not appear to have reminded itself of the principle that the more serious the allegation the more cogent the evidence that would be required from the League to prove its case.

¹ Eg Appeal Bundle page 25 kk and ll, page 27 para 21

The Appeal Board finds that the Decision was such that no reasonable body could have come to it and the appeal is therefore allowed.

Conclusion

16. For the reasons set out the Decision is set aside and the appeal is allowed. The League is ordered to pay the costs of the Appeal Board in 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