

**APPEAL BOARD OF THE FOOTBALL ASSOCIATION**  
**BETWEEN:**

**ADAM PEARCE (Appellant)**

**-and-**

**THE STAFFORDSHIRE FA (Respondent)**

**DECISION OF THE APPEAL BOARD**

**BRIEF INTRODUCTION**

1. The Appeal Board conducted a hearing on Wednesday, 18 May 2022, to determine an appeal by the Appellant, against the decision of a Disciplinary Commission, made on 9 March 2022.
2. In light of the ongoing pandemic, this hearing was conducted over Microsoft Teams, without objection from any party.

**THE APPEAL BOARD**

3. The members of the Appeal Board were:

- Lawrence Selby (Chair);
- Laura McCallum;
- Alban Brahimi.

4. No objection was raised concerning the composition of the Appeal Board.

5. The Secretary of the Appeal Board was Conrad Gibbons, Judicial Services Officer and whose assistance was greatly appreciated.

## **ATTENDEES**

6. The Appellant attended the hearing and represented himself.

7. The Respondent was represented by Vicky Collins, Discipline Officer for Staffordshire FA.

8. The Appeal Board is grateful to both Mr Pearce and Ms Collins for their submissions and assistance both during the appeal hearing, and in the documents within the Appeal Bundle.

## **BRIEF BACKGROUND FACTS**

9. At the material time, the Appellant was the manager of Wolverhampton Casuals FC.

10. At 23.03, on 22 January 2022, the following tweet was posted by a Kyle Patterson:

‘Honestly mate what is going on with this officiating?’

11. At 23.07, Adam 'Sav' Pearce posted the following reply to Kyle Patterson and four others:

'Ref we had today was nothing short of a mongole. They get worse by the week'

## **FIRST INSTANCE DECISION**

12. On 1 February 2022, the Respondent charged the Appellant with breaches of:

- (a) FA Rule E3.1 - Improper Conduct (including foul and abusive language);  
and
- (b) FA Rule E3.2 Improper Conduct aggravated by a person's Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability.

13. In the briefest of terms, the allegation was that the Appellant's tweet was, on its face, a breach of E3.1, aggravated by reference to race, nationality or disability.

14. Following a hearing, conducted on 9 March 2022, the Commission found the matter proven and passed the following sanction:

- (a) An 8 match ground ban;
- (b) A fine of £75;
- (c) A requirement to complete an education course, within 4 months of the decision.

[NB. At some point, these sanctions were stayed, pending the outcome of this appeal.]

## THE APPEAL REGULATIONS

15. Regulation 2, of the “Appeals - Non-Fast Track” Regulations, sets out the grounds upon which the Appellant may appeal the first instance decision(s) – they are:

*“... the body whose decision is appealed against:*

*2.1 failed to give that 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.”*

16. Regulation 12 states:

*“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”*

[NB. No application for leave to present new evidence was made in either the Notice of Appeal or the Response.]

17. Regulation 21 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.

## **SUBMISSIONS (INTRODUCTION)**

18. Following is a summary of the principal submissions made to the Appeal Board.

19. 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 Appeal Board did not take such point, or submission, into consideration when it considered the matter.

20. For the avoidance of doubt, the Commission carefully considered all the materials provided, and submissions made, with regard to this case

21. On his own behalf, the Appellant submitted that the Disciplinary Commission had:

- Ground 1: failed to give the Appellant a fair hearing; and/or
- Ground 2: come to a decision to which no reasonable such body could have come; and/or
- Ground 3: imposed a penalty, award, order or sanction that was excessive.

22. Following a preliminary discussion, the parties agreed to make submissions on Grounds 1 and 2, first, and, subject to the Appeal Board's decision on these Grounds, make submissions on Ground 3 - Sanction, thereafter.

## **SUBMISSIONS ON GROUNDS 1 & 2**

### **Ground 1**

23. On his own behalf, the Appellant submitted that he did not have a fair hearing, before the Disciplinary Commission.

24. These submissions may be summarised as follows:

- (a) The Commission had made up its mind before the hearing started;
- (b) The Appellant's questions were not answered by the Commission;
- (c) The Commission was not independent, as it had been appointed by the FA;
- (d) The Appellant was unhappy with how the Commission had reached its decision and how it had treated him;
- (e) The Commission did not consider, either properly or fairly, the Appellant's evidence.

25. In response, Staffs FA submitted that the Appellant did have a fair hearing, before the Disciplinary Commission, and the following are a summary of those submissions:

- (a) The Commission adopted an inquisitorial approach to the hearing and asked the Appellant questions to clarify what he had written and said – this is a proper approach and demonstrative of the fact that the Commission had not pre-judged the matter.
- (b) Most of the hearing consisted of the Appellant making oral representations, which repeated his written submissions; asking questions; and putting his views across – notwithstanding, it is not for the Commission to answer questions; its role is to ask questions;

(c) The Commission consisted of independent members, appointed by the FA – as such, this point was misconceived;

(d) & (e) It is clear from its Written Reasons that the Commission reached its decision based on all of the evidence before it and, in doing so, had treated the Appellant with both fairness and courtesy.

## **Ground 2**

26. The Appellant submitted that the Commission had come to a decision to which no reasonable such body could have come.

27. These submissions may be summarised as follows:

(a) There was no improper conduct by the Appellant – as Twitter had not removed his tweet, how could it be a breach of the FA Regulations;

(b) The word “mongole” was a German word and not known in English, and therefore could not be offensive;

(c) The Appellant’s words had been misinterpreted by the Commission;

(d) The Appellant was not a racist and apologised if his words had been taken in the wrong context.

28. In response, Staffs FA submitted that the Commission had not come to a decision to which no reasonable such body could have come.

29. These submissions may be summarised as follows:

(a) The “twitter point” was considered by the Commission and referred to in the Written Reasons;

- (b) The word “mongole” could be used as a pejorative term to reference disability – furthermore, the Appellant had failed to give a satisfactory answer as to what his intention was, when posting the tweet;
- (c) Even if it were acceptable to use the word “mongole” in other countries, as suggested by the Appellant, that does not mean that it would be acceptable to use it in a derogatory, abusive, or insulting way, in this, or any other, country – the Commission found that this was the way in which the Appellant intended to use the word.
- (d) It was not for the Commission to determine whether the Appellant was a racist – what the Commission had to determine was whether using the word “mongole” was (i) foul and / or abusive; and (ii) if so, whether it was aggravated by reference to race, nationality or disability. It had done so.

## **LEGAL TEST FOR ALL GROUNDS**

30. As is clear from Regulation 12 (supra), the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

31. Guidance on how this review should be carried out is to be found in, inter alia:

- (a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

*“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is*



*unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission's decision as unreasonable."*

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

*"It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to 'second guess' the Commission; ...*

*... We are permitted to 'intervene' only when there has been an error or principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone 'plainly wrong'."*

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

- 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;
- 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 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;

- 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 and/or irrational and/or perverse) or if wrong legal principles were applied to the making of those factual findings;
- 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 has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- 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;
- Any Appellant who pursues an appeal on the ground that a Regulatory 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.

## **DISCUSSION ON GROUNDS 1 and 2**

33. In accordance with the principles set out, immediately above, the Appeal Board retired to consider the parties’ submissions.

### **Ground 1**

34. The Appeal Board had little difficulty in preferring the submissions of the Respondent and, accordingly, concluding that the Commission had, at all times, afforded the Appellant a fair hearing.

35. The Appeal Board was fortified in its view for, inter alia, the following reasons:

- The Written Reasons were thorough, and demonstrate the care that the Commission exercised in ensuring a fair hearing, before reaching its decision.
- It is not for the Commission to answer questions – its role is to hear evidence; ask questions to clarify any points and, thereafter, reach a decision. This is precisely what happened in this case.
- The Commission was, clearly, independent.
- In light of the Appellant's conduct, having been informed that his appeal had failed, it is likely that the Appellant would be unhappy with any/all decisions that were adverse to him – although entirely understandable, this is not a proper basis for complaint.
- It is clear that the Appellant supplied a large quantity of material to the Commission, both in writing and orally – it is equally clear that the Commission considered all of the evidence before it when reaching its decision.

## **Ground 2**

36. The Appeal Board had little difficulty in preferring the submissions of the Respondent and, accordingly, concluding that the Commission had, at all times, afforded the Appellant a fair hearing.

37. The Appeal Board was fortified in its view for, inter alia, the following reasons:

- In determining whether the Appellant's tweet constituted a breach of E3.1 and E3.2, it is wholly irrelevant whether or not Twitter had removed the tweet – the Appeal Board entirely agrees with the Commission with the following, taken from its Written Reasons:

“The fact that Twitter has taken no action does not prevent the FA from investigating and taking appropriate action in accordance with its rules.”

- The Written Reasons make clear that the Commission explored with the Appellant his use of the word “mongole”, and, thereafter, made a finding of fact:

“6.11 Adam Pearce did not accept the term ‘mongole’ could be related to the term used to describe a disability. He said it is spelt differently. However, we do not consider the difference in spelling is significant. Describing someone as a ‘mongol’ could mean a person with a disability or a person from a certain race or nationality. Adam Pearce was asked whether the referee was Mongolian. He said he did not know. The tweet was not a factual one. Even if it was, we do not accept it would have been necessary to refer to nationality or race if it was meant to signify support. It was meant to express disdain about the referee. For these reasons we find, on a balance of probabilities, that it referred to disability or race or nationality.”

In the opinion of the Appeal Board, there can be no criticism of this approach or decision.

- It is clear from the Written Reasons that the Commission had not misinterpreted the Appellant's words – if anything the Commission had been charitable in affording the Appellant an opportunity to explain the context of usage.

The fact that the Appellant was unable to do so, and before the Appeal Board contradicted his evidence before the Commission (ie whether he was referencing

(a) a Darts Match – before the Commission; or (b) an Aston Villa game – before the Appeal Board) was also telling.

- The Commission was quite correct in concluding that (a) it did not have to determine whether the Appellant was a racist; rather (b) it had to determine whether using the word “mongole” was (i) foul and/or abusive; and (ii) if so, whether it was aggravated by reference to race, nationality or disability, which it had done.

Furthermore, it could not be said that these findings were outside the scope of a reasonable tribunal.

## **FINDINGS ON GROUNDS 1 and 2**

38. The Appeal Board came to the following, unanimous, conclusions:

- Staffs FA were plainly correct in bringing the charges;
- The Commission had plainly considered all the relevant material in coming to its findings of fact;
- There was nothing to suggest that the Commission had erroneously considered any irrelevant material in coming to its findings of fact;
- It was for the Commission to apply due weight to the evidence, and it had done so appropriately;
- The issues identified by the Commission in its “Written Reasons” and the detailed considerations, therein, demonstrate that the Commission applied its mind, both appropriately and correctly, to the relevant issues;

- The decision reached by the Commission was entirely within the boundaries of reasonable decisions available to a Commission;
- Accordingly, the appeal on Grounds 1 and 2, must be dismissed.

39. In light of the above, the parties were invited to address the Appeal Board on Ground 3 - Sanction.

### **SUBMISSIONS ON GROUND 3**

40. In essence, and without wishing to do him any disservice, the Appellant's submission was that any sanction would be excessive, as he did not believe he had done anything wrong, and could not believe that (a) the Disciplinary Commission had found the case proven; and (b) thereafter, the Appeal Board had dismissed his appeal on Grounds 1 and 2.

41. On behalf of the Respondent, Ms Collins, graciously, declined to make any submissions on this Ground.

### **DISCUSSION ON GROUND 3**

42. The Appeal Board retired to consider the submissions on Ground 3 - Sanction.

43. The Appeal Board considered the Sanction Guidelines Table for 2021/22 and, in particular, the sentencing ranges for this offence.

44. Thereafter, the Appeal Board considered the Written Reasons and the sanction imposed by the Disciplinary Commission, which was towards the bottom of the relevant scale.

45. Finally, Appeal Board noted the Appellant's inability to highlight any proper reason as to why the sanction was excessive.

### **FINDINGS ON GROUND 3**

46. The Appeal Board came to the following, unanimous conclusions:

- There was no basis to suggest that the sanction was excessive;
- Accordingly, the appeal on Ground 3 must be dismissed.

### **COSTS**

47. In light of its findings, the Appeal Board heard from the Appellant on the question of Costs.

48. The Appellant was less than forthcoming in offering assistance to the Appeal Board, and repeated more than once that he would not pay any costs.

### **CONCLUSION**

49. In summary, the Appeal Board:

- Dismissed the Appeal on Grounds 1 to 3;
- Ordered the stay on the sanctions imposed by the Disciplinary Commission to be lifted, immediately.

50. In addition, the Appeal Board made an order as to costs in the sum of £250.

51. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Signed:

22 May 2022

A handwritten signature in blue ink, appearing to be 'L. Selby', with a large, stylized initial 'L' and a trailing flourish.

Lawrence Selby

[for and on behalf of the Appeal Board]