

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

MR ANDREAS CHAMBI (Appellant)

-and-

LONDON FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member
Roy Schafer – FA Council Member
Alan Darfi – Independent Football Panel Member

Secretary: Conrad Gibbons – Judicial Services Officer

Date: 10 August 2022

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed under the Disciplinary Regulations – Appeals (“the Appeal Regulations”) of The Football Association (“The FA”).
2. The Appeal Board conducted a paper hearing on 10 August 2022 to determine the appeal by Andreas Chambi (“the Appellant”) against the decision of a Disciplinary Commission conducted by The FA on behalf of the Respondent on

23 June 2022. The Commission consisted of a single member, Mr Michael Cloherty of the National Serious Case Panel. The Commission produced written reasons dated 23 June 2022.

3. The Appellant's club Apoel (UK) FC ("Apoel") submitted a Notice of Appeal on his behalf ("the Notice") on 7 July 2022.
4. The Appeal Board had before it a bundle ("the Appeal Bundle") containing the following documents:
 - Notice of Appeal
 - Written Reasons
 - Response to Notice of Appeal
 - Papers of First Instance
 - The Appellant's Offence History
5. This document constitutes the written reasons for the Appeal Board's decision. The Board considered the entirety of the materials that the parties put before it. If this document does not expressly refer to a particular point, document or submission, it should not be inferred that the Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

6. The charge arose out of a match between the Appellant's team Apoel and Omonia (London) Open Aged FC ("Omonia") which was played on 8 May 2022 ("the Match"). The case was consolidated with a case against the Apoel manager arising out of the Match.
7. Following the Match the Respondent received complaints from the match officials about the Appellant's alleged use of abusive and discriminatory language, as set out below.

8. The Respondent corresponded with Apoel about an alleged confrontation of a discriminatory nature between the Appellant and the assistant referee. On 23 May 2022 Melis Efstathiou (“MS”), the Apoel vice chair, wrote to the Respondent in the following terms:

“I have spoken to our Apoel player Andreas Chambi to investigate the alleged incident above. Andreas said that during the first half there were a number of decisions that he felt unfairly went against our team. At around the 55th minute of the game Omonia scored a goal which was an obvious handball. Andreas thought the assistant referee was in a clear position to see this and told him he must have seen it. The assistant referee ignored Andreas and the goal stood. Andreas then called him a cunt and got sent off. Andreas apologised to me for saying this and said that his frustrations from several decisions not going the teams way got the better of him. I then asked Andreas if he said anything else during the game that called have been interpreted as discriminatory and he said no. I have asked other members of the management committee if they heard and discriminatory comments and they all said no too”.

THE CHARGES

9. On 1 June 2022 the Respondent charged the Appellant with Improper Conduct (including foul and abusive language), contrary to Rule E3.1 of the Rules of The FA (“Charge 1”). It also charged the Appellant with Improper Conduct aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability contrary to Rule E3.2 (“Charge 2”).
10. The charge letter set out the details of the charge in the following terms:

“It is alleged that Andreas Chambi used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1, and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to ethnicity. This refers to the comment(s):

- *“Speak English you fucking foreigner” or similar.*
- *“fuck off you busy cunt, I’m not going anywhere”.*

11. On 7 June 2022 a response was submitted on The FA’s whole game system (“WGS”) which indicated that the Appellant accepted the charges and wanted the case to be dealt with at a non-personal hearing.

FIRST INSTANCE DECISION

12. As indicated above, the case was referred to the FA's serious case panel and Michael Cloherty was appointed to the Disciplinary Commission, sitting alone. The Commission considered the case on 23 June 2022. As stated in the written reasons, the Commission had before it the following documents:

- An extraordinary incident report dated 8 May 2022 from the referee Andreas Anastasiou
- An extraordinary incident report dated 8 May 2022 from the assistant referee Yashar Yekta
- The email dated 23 May 2022 from MS to The FA referred to in paragraph 8 above
- An email dated 8 June 2022 from MS to The FA
- An email dated 15 June 2022 from MS to The FA
- A screenshot of the entry on the WGS

13. The Commission also had video footage submitted by the assistant referee.

14. After considering the evidence the Disciplinary Commission found the charges proven. The written reasons indicate that the Commission took the following factors into account:

- The assistant referee had proved credible evidence that the Appellant had said to him "*Speak English you fucking foreigner*" and called him a cunt.
- The admission of the charge.
- The Appellant's comments were insulting and abusive.
- The comments included a reference to a protected characteristic, namely ethnicity.

15. The Commission imposed the following sanctions:

- A suspension from all football activity for six matches.
- A fine of £75.
- A requirement to complete an online education course prior to the end of the suspension.
- 5 penalty points imposed on Apoel.

NOTICE OF APPEAL

16. On 7 July 2022 ME wrote to the Respondent indicating that he (ie ME himself) wished to appeal against the decision that the Appellant had breached Rule E3.2 on the ground that the Disciplinary Commission came to a decision on the facts of the case which no reasonable body could have reached.

THE APPEAL REGULATIONS

17. Regulation 2 of the Appeal Regulations sets out the grounds on which a participant may appeal a first instance decision. 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.”

18. Regulation 12 of the Appeal Regulations states:

“An appeal shall be by way of a review on documents only...”

19. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal. Regulation 21.6 further provides that the Board has the power to order that any costs, or part thereof,

incurred by the Board shall be paid by either party or be shared by both parties in a manner determined by the Board.

THE APPELLANT'S SUBMISSIONS

20. As indicated in paragraph 16 above, in the Notice ME expressly referred to just one of the grounds of appeal cited in paragraph 15 above, namely that the decision that the E3.2 charge against the Appellant WAS proven was a decision to which no reasonable body could have come.

21. Although not expressly requested to do so, having considered the Notice, the Appeal Board also considered it prudent to decide whether the submissions in the Notice supported an argument that The FA had failed to give the Appellant a fair hearing and/or had failed to comply with the Rules and/or regulations and/or that the sanction was excessive.

22. The Appeal Board understood the Appellant's main arguments to be as follows:

- Apoel and the Appellant had completely refuted the claim that the Appellant had made any comments of a discriminatory nature.
- The Appellant had not admitted the breach and had not accepted the charge. The Appellant and Apoel had no knowledge of the WGS entry and were not privy to the evidence in relation to it.

THE RESPONDENT'S SUBMISSIONS

23. In response to the Notice, the Respondent made the following points:

- It set out the audit trail for the response by WGS-Portal on 7 June 2022, explaining that "WGS-Portal" is the user ID given to changes made by users through the WGS, with the user always being someone associated with the

club in question. Someone associated with Apoel must have accepted the charge.

- Aside from the emails from ME stating that the Appellant denied making any comments of a discriminatory nature, there was little evidence from Apoel to dispute the allegation. In contrast, the case pack included first-hand accounts from the referee and the assistant referee.
- The sanction imposed fell within The FA sanction guidelines and was not excessive.

LEGAL TEST

24. Regulation 12, cited in paragraph 18 above, makes it clear that the task of an Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.

25. Guidance on how this review should be carried out is to be found in previous cases, including:

(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 2018, 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’.”

26. Accordingly, the Appeal Board applied the following principles in its approach to the appeal in this case:

- An appeal proceeds by way of a review of the decision of the Disciplinary 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 Disciplinary Commission simply because the Board might itself have reached a different decision at first instance.
- If the Disciplinary Commission has made findings of fact which it was reasonably open to it to make, the fact that the Appeal Board might have made different findings is irrelevant.
- The Appeal Board must be slow to interfere with the Disciplinary Commission’s findings of fact and evidential assessments. Evidential assessments of the Commission should only be interfered with if they are clearly wrong or if wrong legal principles were applied.
- The only scenario in which an Appeal Board is likely to interfere with a finding of fact by a Disciplinary Commission is where there is no proper evidential basis for the finding and/or where the evidence was overwhelmingly contrary to the finding.

- The test for the Appeal Board in determining whether the Commission acted irrationally and/or perversely 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.
- The principles set out above apply equally to the question of whether the Disciplinary Commission applied an excessive sanction. The Appeal Board cannot interfere with the sanction applied unless it was manifestly unreasonable and/or the Commission failed to determine the sanction in accordance with the relevant sanction guidelines.

DETERMINATION

27. The Appeal Board considered the parties' submissions in accordance with the principles set out above.
28. The Appeal Board noted that while ME maintained that the charge had never been accepted, the Respondent had provided an explanation for how the WGS works. Having received that information, neither ME nor the Appellant reverted to The FA with any further information that would suggest a fault in the WGS or an error on the part of the Respondent (or indeed Apoel).
29. It further noted that although the emails from ME said that the Appellant denied using discriminatory language, there was no first-hand evidence from the Appellant himself and no direct comments on the statements of the match officials. Specifically there was no direct response to the assertion by the assistant referee that the Appellant had said to him *"speak English you fucking foreigner. Get a job you fucking cunt"* and *"fuck off you busy cunt, I'm not going anywhere"*.
30. The Appeal Board was surprised at the lack of engagement by the Appellant. He did not provide any personal response to the charge, which the Appeal Board would have expected if he wished it to be dealt with as a denied charge, and had

played no part in the appeal process. There was no application to adduce new evidence on appeal.

31. Having read the written reasons, the Appeal Board was satisfied that the Commission had considered all the material before it, including the three emails from ME, notwithstanding the fact that the charge had been accepted.
32. The Appeal Board had little difficulty in concluding that the Disciplinary Commission had afforded the Appellant a fair hearing and that the correct process had been followed.
33. As indicated above, the hurdle which an Appellant must overcome to succeed on appeal with an argument that the decision was unreasonable is a high one. It is not enough to say that the Disciplinary Commission was wrong in its assessment of the evidence or that the Appeal Board might have come to a different conclusion. The assistant referee set out in his contemporaneous statement what the Appellant said to him during the Match. The Commission had before it only a bare denial that the Appellant had used discriminatory language (and no explanation whatsoever from the Appellant personally). While noting that one of the factors taken into account by the Commission was the acceptance of the charge, the Appeal Board also noted that the Commission expressly found that the assistant referee had given credible evidence of what was said and that the Commission had found the remark to be discriminatory, as well as insulting and abusive. The Appeal Board reminded itself that the test to be applied by a Disciplinary Commission is an objective one (commonly known as the “reasonable observer test”), as set out in previous Regulatory Commission and Appeal Board decisions, including *The FA v Luis Suarez* (30 December 2011), *The FA v Nicolas Anelka* (3 March 2014), *The FA v Tom Pope* (9 September 2020) and *The FA v Edinson Cavani* (31 December 2020). On that basis the Appeal Board was satisfied that the Disciplinary Commission was entitled to find that the aggravated charge was proven and concluded that the decision was within the boundaries of reasonable decisions available to a Commission.

34. In terms of sanction, the Appeal Board reminded itself that its task was not to consider the penalty that it would have imposed if it had been sitting at first instance, but rather to determine whether the sanctions imposed by the Disciplinary Commission were excessive in the sense that they were outside the range of penalties that were properly open to that Commission. The Appeal Board concluded that the sanction imposed by the Disciplinary Commission was one that was properly open to it. The Commission had no mitigating evidence before it. The six-match suspension was within the sanction ranges set out in the sanction guidelines and was not excessive. The Appeal Board therefore had no reason to interfere with the sanction.

35. CONCLUSION

36. The appeal against the decision of the Disciplinary Commission is dismissed for the reasons set out above. The penalties imposed by the Commission stand.

37. The Appeal Board considers that in all the circumstances, particularly the Appellant's lack of engagement, the Appellant should make a contribution to the costs of the appeal, limited to £100.

38. The Appeal Board's decision is final and binding on all parties and there is no further right of challenge.

Sally Davenport

Roy Schafer

Alan Darfi

17 August 2022