

IN THE MATTER OF A FOOTBALL ASSOCIATION
APPEAL BOARD

BETWEEN:

MR. DELROY HURST

and

LONDON FOOTBALL ASSOCIATION

WRITTEN REASONS AND DECISION OF THE APPEAL BOARD
FOLLOWING THE HEARING ON 20 APRIL 2022

1. These are the written reasons for a decision made by an Appeal Board (“the Board”) which sat via videolink on 20 April 2022.
2. The Appeal Board members were Mr. Simon Parry, (Chairman, and Independent Legal Panel Member), Mr. Paul Tompkins (FA Council Member) and Mr. Greg Fee (Independent Football Panel Member).
3. Ms. Vicky Collins of the Staffordshire County FA acted as Secretary to the Board.

CHARGE AND FIRST INSTANCE PROCEEDINGS

4. By letter dated 18 January 2022 London FA (“the Respondent”) charged Mr Delroy Hurst (“the Appellant”) with a breach of FA Rule E3 Improper Conduct Against a Match Official (including threatening and/or abusive language/behaviour). The Particulars of the Charge are important as they confirm “*it is further alleged that this constitutes Threatening Behaviour Against a Match Official as defined in FA Regulations. This refers to the allegation that he [the Appellant] approached the referee in a threatening manner or similar*”.
5. The allegations arise from a fixture between Foots Cray Lions JFC (Youth) u15 v AFC Lewisham u15 (Youth) on 10 October 2021.
6. The Referee’s Report regarding the Appellant’s behaviour states (uncorrected by us as to spelling and grammar) as follows: “*Assistant manager Delroy Hurst (AFC Lewisham) wasn't around beginning of the game. I noticed him in*

halftime break, he took substitutes and gone opposite side of the manager of the team and he gained aggressive attitude, shouting and challenging me all second half of the game. After the game he approached me and told me I ruined the game, all my decisions were shit and I am a shit referee. He refused to give his name and told me fuck off!! I managed to get his name through the club secretary as she wasn't happy with him either”.

7. The incident, along with other allegations not relevant to this Appeal, was investigated by Carl Long of the Respondent FA and a bundle of evidence prepared. As part of the investigation, the Appellant provided an undated witness statement in which he denied the allegations against him and any misconduct at all. It was confirmed during the course of the Appeal hearing that Mr Long was the person responsible for preferring the Charge, following consultation, in the usual way for such serious allegations, with the FA Regional Discipline Manager, Alex Francis. It was Mr Long's selection of the particular Charge, and this was approved by Alex Francis. The Charge and supporting evidence were sent to the secretary of the Appellant's club. Whilst the club responded to a club Charge against themselves, there was no response from the Appellant. Consequently, the case proceeded as a nil response case. An FA National Serious Case Panel Disciplinary Commission was convened with a Chairman, Mr John Murphy, sitting alone. In relation to the case against the Appellant, there being no response to Charge, the Commission determined the case on the basis of the Referee's Report and the statement that the Appellant had provided during the investigation. The Charge was found proven. The

Appellant received a suspension of 115 days, a fine of £50 and was ordered to complete an Education course. Mr. Murphy provided Written Reasons dated 20 February 2022.

APPEAL PROCEEDINGS

8. By email dated 6 March 2022, the Appellant gave notice of his intention to appeal. The available Grounds of Appeal to an Appellant are set out in the FA Disciplinary Regulations at Section C2. The grounds are that the body whose decision is appealed against:
 - a) failed to give that Participant a fair hearing; and/or
 - b) misinterpreted or failed to comply with the Rules and regulations of The Association relevant to its decision; and/or
 - c) came to a decision to which no reasonable such body could have come; and/or
 - d) imposed a penalty, award, order or sanction that was excessive.
9. The following is a summary of the principal submissions provided to the Board. 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 Board did not take such point or submission into account when the members determined the matter. For the avoidance of doubt, the Board carefully considered all the evidence and materials provided to it.
10. The Notice of Appeal set out the Appellant's complaints in detail, which

we do not need to repeat here. We were assisted at the hearing before us with clear and concise submissions from the Appellant himself. His first complaint was that he was denied a personal hearing. The second complaint, in essence, boils down to a complaint that the Commission found the case proven on the evidence before it when it should not have done so. His final complaint is that the sanction imposed was excessive.

11. The Board also heard from Mr Carl Long on behalf of the Respondent, whose submissions were equally clear and concise.
12. For reasons that will become apparent, we deal first with the second ground of appeal, namely whether the Commission reached a decision to which no reasonable body could have come.

GROUND 2 – UNREASONABLE DECISION

13. We have already referred to the evidence before the Commission from the Match Referee. The Commission when dealing with the evidence records the following at paras 21 and 22 of the Written Reasons:

21. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission. I have to assess the credibility of the witness, (that is whether the witness is attempting to tell the truth), and the reliability of the witness, that is whether, even though a witness may be attempting to tell the truth, their evidence might not be relied upon.

22. Where there are discrepancies between witnesses, it is for the Commission to accept which witnesses to accept and which to reject. Even where there are discrepancies between witnesses or within a witness's own (sic) evidence, it is for the Commission to assess if the discrepancy is important. Having considered which evidence to accept

and which to reject, the Commission then has to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established. “

14. The Commission’s approach to the assessment of evidence and the standard of proof was clearly correct. At para 24 (ii) the Commission records:

“Mr Hurst - the Referee’s evidence appeared credible and consistent. Outlining the verbal abuse and confrontational behaviour towards him by Mr Hurst; Mr Hurst’s evidence is very different in terms of not mention of swearing and him raising only polite questioning of the Referee’s eyesight and competence. On balance, the Commission consider it more likely than not that Mr Hurst’s conduct did amount to threatening and abusive behaviour towards the Match Official;”

15. We make no criticism of the Commission’s preference of the evidence provided by the Referee on the balance of probabilities and there is nothing in the approach to the evidence that we find could be described as unreasonable.

16. However, in our judgment, the Commission, having accepted the evidence has fallen into clear error in finding the specific Charge proven. In a case where the allegation is one of Threatening a Match Official there is no alternative lesser charge that can be preferred against a Participant. Mr Long on behalf of the Respondent confirmed this to be the case. This was, therefore, an “all or nothing” Charge. The Particulars supplied to the Appellant¹ are crystal clear. The Respondent had nailed their colours to the mast and alleged that the Appellant had approached the referee in a threatening manner or similar.

17. Regulation 96.1 of Part D of the FA Disciplinary Regulations 2021-22 provides:

¹ See para 4 above

Threatening behaviour: words or action that cause the Match Official to believe that they are being threatened. Examples include but are not limited to: the use of words that imply (directly or indirectly) that the Match Official may be subjected to any form of physical abuse either immediately or later, whether realistic or not; the raising of hands to intimidate the Match Official; pretending to throw or kick an object at the Match Official.

18. When considering the Written Reasons, it is clear to us that the Commission failed to address whether the evidence of the Referee in fact amounted to threatening behaviour. We have already indicated that the Commission was right to accept the evidence of the Referee, but that evidence does not demonstrate the necessary degree of behaviour which amounts to that which can be properly defined as threatening. Whilst the examples set out in Regulation 96 are non-exhaustive, in our judgment there was insufficient evidence before the Commission to allow it to conclude that the behaviour was in fact threatening. The behaviour is undoubtedly offensive, insulting and abusive, but it is not threatening. In fairness to the Referee, he does not describe the behaviour as threatening. We are unanimously driven to the conclusion that, in finding the behaviour to be threatening, the Commission has reached a decision that no reasonable tribunal could have reached. Therefore, the Appellant succeeds in his appeal on this ground.

OUTSTANDING GROUNDS

19. Given our conclusion above, it is not necessary to record in any great detail

the outstanding grounds of appeal. However, for completeness, the Board agrees with the Respondent's submission that the original hearing was conducted appropriately in the circumstances of what was, on the face of the case, a nil response case. The Appellant was not denied a fair hearing. Therefore, we would have dismissed this ground of appeal.

20. Had the Board been required to consider the sanction imposed in this case, we would have had no hesitation in dismissing that ground of appeal also. It is clear to us that the Commission applied the correct entry point, together with aggravating and mitigating features before reaching a sanction that was, in our view, wholly appropriate to the Charge as proven and within the range provided within the sanction Guidelines.

CONCLUSION

21. For the reasons outlined above we allow the appeal. We quash the finding of the Commission and record a verdict of not proven. The sanction imposed, which has been stayed pending the outcome of the appeal, is quashed. The appeal fee shall be remitted to the Appellant. We make no order as to costs.

Mr. Simon Parry (Chairman)

Mr. Paul Tompkins

Mr. Greg Fee

21 April 2022