

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

ON 23<sup>RD</sup> March 2022

David Reade QC, Daniel Mole, Glenn Moulton

BETWEEN:

LARKHALL ATHLETIC FC

Appellant

And

SOUTHERN FOOTBALL LEAGUE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The Appeal Board (“the Board”) was appointed under The Football Association’s (“The FA”) Disciplinary Regulations- Appeals 2021/22 ( “the Appeal Regulations”) to determine an appeal brought by Larkhall Athletic Football Club (“the Appellant”) by Notice of Appeal dated 14<sup>th</sup> February 2022 and a further letter of 20<sup>th</sup> February 2022 (“the Notice”).
2. By the Notice the Appellant appealed the decision of the Southern Football League (“the Respondent”), notified to the Appellant on 9<sup>th</sup> February 2022, that the Respondent had found a charge that the Appellant had, in breach of League Rule 8.39, failed to fulfil a fixture against Melksham Town FC (“Melksham”) to be proven. The Respondent having found the Appellant to be in breach imposed a fine on the Appellant of £1000 (£250 suspended until the end of the season) and ordered it to pay Melksham £500 towards that Club’s wasted expenses. The Fixture was to be replayed.

3. The appeal was heard on 23<sup>rd</sup> March 2022 by way of MS Teams. The Appellant attended by Paul Rankin (Club Chairman), Tracey Hill (Club Secretary) and Jim McLay ( Director and Covid Safety Officer). The Respondent was represented by David Martin (League Director and Finance Director) and Jason Mills (League Secretary).
4. The Board had before it:
  - a. The Notice;
  - b. Supplementary Submissions of the Appellant;
  - c. The Respondent's Response with supporting documents;
  - d. The League Rules;
  - e. An application, dated 23<sup>rd</sup> March 2022, on the part of the Appellant to adduce new evidence in the form of unredacted minutes of the Respondent, the redacted minutes having been included in the Respondent's Response.
5. The Appellant, through each of the attendees, made oral submissions which were responded to by the Respondent. The Appellant's submissions were at times discursive and were not always heralded by the Notice. The Board allowed the Appellant to develop those arguments and the Respondent did not appear to have been disadvantaged in addressing the developed arguments.
6. As addressed below there are limits on the Board's powers and on the permissible grounds of appeal and these limitations impact on the determination of any appeal. However, the Board considered the entirety of the materials that the parties put before us and the oral submissions made. If we do not explicitly refer a particular point, document or submission, it should not be inferred that we have overlooked or ignored it. We have considered all of the matters placed before us.

#### Background

7. The Appellant was due to play Melksham on 1<sup>st</sup> January 2022.
8. On the 31<sup>st</sup> December 2021 the Appellant, following a telephone call, notified Melksham by email, at 17.41, that it would not be able to field a team for the

following days fixture. The email was sent by Dr Tracey Hill and copied, inter alia, to Mr Jason Mills of the Respondent. The Respondent indicates that a telephone call had been made by Dr Hill to the Respondent, at 16.20 on 31<sup>st</sup> December 2021, raising the issue that the Appellant would be unable to field a team.

9. Dr Hill's email said that the reason for the inability to field a team was the "large number of injuries and covid cases in our squad leaving us with fewer than 9 fit available players". Her email refers to her collating the necessary evidence of injury and illness.
10. Mr Mills replied by email of 1<sup>st</sup> January 2022, 08.45, stating that the decision not to field a team was that of Club and was not sanctioned by the Respondent. The email also indicated that all further information should be forwarded as quickly as possible.
11. On 4<sup>th</sup> January 2022 the Appellant was charged by the Respondent with a breach of NLS Standardised League Rule 8.39 that it had failed to fulfil the fixture against Melksham. The Appellant responded to the charge and supplied further evidence relating to those players whom the Appellant contended were unavailable for Covid19 or injury reasons.
12. On 1<sup>st</sup> February 2022 an Emergency Committee of the Respondent considered the charge together with five other cases where clubs were charged with breach of the same Rule.
13. The decision of that Committee upholding the charge was communicated to the Appellant on 9<sup>th</sup> February 2022.

#### The Appellant's Case

14. The Appellant's Notice advances three grounds of appeal:
  - a. That the Respondent misinterpreted or failed to comply with the rules or regulations relevant to its decision;
  - b. That the Respondent came to a decision which no reasonable such body could have come; and

- c. (implicitly an extension of the previous ground and a failure to afford a fair hearing) that “the sanction, including a costs charge to Melksham Town FC, was excessive and given without an opportunity for the club to challenge it, we further believe the sanction was applied without due criteria or evidence to support the decision.”

15. As we noted above in course of the hearing the Notice was developed further. All three of the attendees on behalf of the Appellant made submissions in support of the Appeal with evident passion. They all evidenced a strong sense of injustice as to the decision under appeal. No summary of their submissions would ever be adequate to express the time and energy that has clearly been applied in their preparation of the Appeal but we attempt a brief summary:

- a. The focus of the misinterpretation of the rules challenged both the NLS Steps 1-4 Covid Protocols Season 2021/2 and the communications relating to Covid based postponement requests, as articulated by the Respondent in two emails of the 21<sup>st</sup> December 2021. The challenge centred about the contention that the approach being adopted did not accord with then Government Guidance;
- b. A challenge to the account of events which had been articulated in an email sent by Melksham to the Respondent on 4<sup>th</sup> January 2022, which included that Club’s claim for wasted expenditure. The Appellant had not seen that email or the supporting documentation until it had seen the materials in the response to the appeal;
- c. That the Respondent’s email of 21<sup>st</sup> December 2021 at 12.23, which had been sent to all Secretaries and Chairpersons, which included an acknowledged mistake, on the part of the Respondent, in that it stated that 9 rather than 7 players was the minimum number of players deemed necessary to commence a match. Dr Hill’s email of 31<sup>st</sup> December referred to the 9 players and it was submitted that the Club had been led to mistakenly believe that it needed to have 9 fit players to commence a match. It was contended that had it known that only 7 players were required it would have sought to play the fixture on the basis that if was abandoned the Appellant would have been subject to lesser sanction than for the charge brought of failure fulfil the fixture;
- d. Criticisms were levelled at the composition of the Emergency Board which heard the appeal;

- e. The failure to rationalise the fine or the quantum of the expenses awarded was the subject of criticisms and challenge both as to amount and as to the reasoning.
16. Although not expressly articulated as a ground of appeal in the Notice some of the submissions could be seen as advancing an appeal on the basis that there was a failure to give the Appellant a fair hearing and we addressed the appeal on the basis that this was a ground of appeal.
17. The Appellant had sought to see a redacted minute included within the Respondent's submissions. An unredacted copy was provided to the Appellant on the day of the appeal and an application was made to adduce the unredacted part of the minute as new evidence. The Board considered this application under Regulation 10 of the Appeal Regulations but did so as part of the substantive determination of the Appeal.

#### Determination

18. The Board reminded itself of the limitations on an appeal before it. It is not required to conduct a rehearing of the charge, the appeal takes the form of a review of the documents, subject only to the possible admission of new evidence, see Rule 12 of the Appeal Regulations. On the substantive ground of whether the Respondent had reached a decision which no reasonable body could have come to the Board is not rehearing the charge and forming its own view. If it was a rehearing the Board may or may not form a different view on the charge but under the Appeal Regulations the Board has to consider whether the decision of the Respondent fell within the range of reasonable decisions which such a body could have reached on the material before it.
19. A number of points are clear. The Respondent had not consented to the postponement of the fixture and therefore the Appellant had failed to fulfil the fixture. Thus the charge under Ruel 8.39 was made out on the facts. It was clear at the hearing, and reflected in the post fixture request for evidence, that the Respondent would however consider the position on the basis of evidence submitted in the course of the charge process. Had the Appellant submitted evidence to make good the case that it had less than 13 eligible players who were fit to play, because of a combination of Covid and/or injury, the Respondent would not have pressed the charge.

20. Once that point is appreciated the issues around the interpretation of the rules, based on the Covid guidance, fall away. Even if all of the players who were said to be unable to play through Covid or injury were taken into account the Respondent was looking at the roster of registered players which showed that - 13 players would still have been available. This led to submissions about the position of dual registered players, registered that is within another league. The Board understood the Appellant's arguments about the practicalities of calling on such dual registered players but the position of the Respondent under the Rules was clear: a registered player was treated as being eligible to play unless they were unfit through Covid or injury.
21. On that basis the Respondent reached a decision that Appellant did not have fewer than 13 eligible players who were fit to play and therefore that the charge was proven. It cannot be said that this was decision that no such reasonable body could have reached.
22. As to the issue of the minimum number of players required to play a match a mistake was acknowledged to have been made by the Respondent in the email of 21<sup>st</sup> December and that was not corrected until after the 1<sup>st</sup> January 2022. That was a misinterpretation of the Rules but not the rule with which the Appellant was charged with a breach. The Appellant's position that it would have attempted to play the fixture with 7 players had it appreciated the true position. The Appeal Board noted that there was some ambiguity within the Appellant's written and verbal submissions in relation to the number of players available to the Appellant on 1 January 2022, for example in closing the Appellant said that 6/7 players had been available. The Panel also noted the Respondent's decision that the misinterpretation of the Rules had no material bearing on the Appellant's failure to fulfil the fixture.
23. Taking those matters into account could it be said that the sanction imposed by the Respondent was excessive? The sanction was £1000 (£250 suspended until the end of the season) which fell within the middle of the applicable sanctions range for breach

of the rule, £500 to £2,000. Whether again the Board would have imposed a different sanction is not the issue, the issue is whether the sanction imposed was excessive. Set against the range of available sanctions and the facts, including the Appellant's case that it would have sought to play the fixture were it not led to have had the mistaken belief as to the minimum number of players, it cannot be said to be excessive.

24. As to fair hearing the Appellant raised issues in the course of oral submissions as to apparent bias on the part of the Emergency Committee through the inclusion of certain members. Having heard the Respondent on the issue of composition the Board is satisfied that it was properly constituted. Further on the topic of a fair hearing the Appellant challenged the failure to provide it with the opportunity to see and challenge the expenses claimed by Melksham. It is clear that the Respondent, when its reasoning was explained, rejected the substantial part of the expenses claimed, which were in excess of £6,000, and reached a conclusion, that £500 should be paid in expenses, which could not be considered to be excessive having regard to the late cancellation of the fixture and the elements of the sums claimed. Having heard the challenge of the Appellant at this hearing we cannot conclude that a different result would necessarily have been reached on this point had they been given that opportunity at an earlier stage.
25. As to the new evidence and the unredacted passage, which related to an awareness on the part of the Respondent of different approaches to Covid postponement in other leagues, we have concluded that in the light of our reasoning on the Covid issues in this appeal that the unredacted material did not meet the test of relevance to justify its admission as new evidence.
26. Before articulating our conclusions we do wish to take the opportunity to make some observations about the practices of the Respondent. They have not led us to conclude that the appeal should be allowed but we invite the Respondent to reflect on these points and consider whether it should change its present practice:
  - a. The Respondent did not articulate the reasons for upholding the charge to the Appellant and this were not expressed until an appeal had been entered. The

Appellant was then compelled to appeal, even if it wanted to understand the reasons for decision. We think that it would be better practice to express the reasons at the time decision was made, there is then at least the possibility that an appeal, with its consequent cost and time expenditure, might be avoided;

- b. If material is to be considered on the issue of expenses, for which a Club may be found to be liable, then that Club ought to be given the opportunity to comment on the claimed expenses before a decision is made.

### Conclusion

27. Returning to the present grounds of appeal for the reasons we have articulated the appeal is dismissed. The penalties imposed by the Respondent stand. The Appeal Board considers that in all the circumstances no order for costs is appropriate, but the Appellant must forfeit the appeal fee.
  
28. The Appeal Board's decision is final and binding on all parties.

David Reade QC  
Daniel Mole,  
Glenn Moulton  
23<sup>rd</sup> March 2022