

General Board of Appeal

Case ID:

1067072M

Personal Hearing

Nana Agyekum

Appellant

v

Essex Football Association

Respondent

The Decision and Written Reasons of The Appeal Board

Disclaimer:

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Appeal Board has carefully considered all the evidence and materials in this matter.

Content:	Paragraph(s):
• Introduction	1 – 2
• The Appeal Board	3
• The Grounds of Appeal	4
• The Hearing and Evidence	5 – 9
• The Decision	10 – 14

Introduction

1. This is an appeal by Mr Nana Agyekum (the “Appellant”) against a decision of Essex Football Association (the “Respondent”) that was made by the Disciplinary Commission sitting on a non-personal hearing on the 31st January 2022.
2. A summary of the facts is that as a result of a football match on the 4th September 2021, Mr Agyekum was subject to disciplinary proceedings relating to “*E3 – Improper Conduct (including violent conduct and threatening and/or abusive language/behaviour)*”. Those disciplinary proceedings were heard on the 7th January 2022 and the outcome of that hearing was that he was suspended for 3 matches (effective from the 11th January 2022). This was communicated to Mr Agyekum on the 10th January 2022 by email and to his team on the Whole Game System. On the 15th January 2022, Mr Agyekum played in a football match for Dagenham United against London Cranes First, at a time when he was suspended. Essex FA were made aware of this on the 16th September 2022 by Mr Chris Mascall, on behalf of Dagenham and Mr Agyekum. This breach resulted in a further charge being raised on the 17th January 2022 for “*E10 – (Participant failed to comply with a decision of the Association)*” which was accepted by Mr Agyekum, electing for it to be conducted in his absence. A hearing therefore took place on the 31st January 2022 and he was sanctioned accordingly for 4 matches, £25 fine and 5 penalty points.

The Appeal Board

3. This Appeal Board (“We” and “Us”) was appointed under The Football Association’s (“The FA”) Disciplinary Regulations - Appeals 2021/22 to adjudicate on this case. Assisting the board on this occasion was Conrad Gibbons as Judicial Services Officer of The FA, whom gave guidance to the board on rules and regulations as and when necessary.

For the purpose of fairness, there were no conflicts of interest raised or identified between the Appeal Board and parties in this case.

The Grounds of Appeal

4. The Appellant communicated to the Respondent by way of Notice that they had made the decision to appeal the Disciplinary Commissions decision on the following grounds (located in the FA Handbook 2021/22 under Appeals – Non-Fast Track):

Ground 1

- 4.1. *Came to a decision to which no reasonable such body come have come;*

Ground 2

- 4.2. *Imposed a penalty, award, order or sanction that was excessive.*

The Hearing and Evidence

5. The Appeal Board heard this case on the 31st March 2022 from 11.00am online via Teams. Mr Agyekum was in attendance and was represented by Mr Chris Mascall (Adult Section Lead and First Team Manager of Dagenham United FC). Further witnesses were also brought on their behalf but submissions and responses were made entirely by Mr Mascall. For the Respondent was Mr Greg Hart, Head of Football Services of Essex FA. The Appellant was reminded that this was a review and not re-hearing of the decision made by the Disciplinary Commission.
6. The following documents were presented to us for this appeal:
 - 6.1. Notice of Appeal;
 - 6.2. New evidence within document A, B, C and D;
 - 6.3. Closing statement;
 - 6.4. Response to Notice of Appeal;

- 6.5. Supplementary Correspondence;
 - 6.6. Papers of First Instance;
 - 6.7. Participant Offence History;
 - 6.8. Results Letter and Written Reasons.
7. As a preliminary matter, the Appeal Board considered an application to submit new evidence by the Appellant, in accordance with Regulation 10 of the Disciplinary Regulations in the FA Handbook 2021/22, p.167. These documents (mentioned above) included information about the initial football match in question and the approach the Appellant took in respect of informing the Respondent about the realisation that the order of suspension had been breached (albeit, arguing it was unintentional). The Appeal Board heard from Mr Mascall and Mr Hart about this new evidence and subsequently allowed the application. The reasons for allowing the application were that the content of the evidence was argued as material that should have already been before the Disciplinary Commission as per an original phone call where the Mr Mascall was led to believe by the County FA that the points made in the telephone conversation would be relayed to the Disciplinary Commission for consideration. This documentation essentially sought to capture that conversation, but reduced to writing. The Appeal Board were also satisfied that the Respondent had sufficient opportunity to respond to this material and fully considered their arguments in the Response to Notice of Appeal.

Ground 1

8. In respect of the first ground, it appeared to the Appeal Board that Mr Mascall was arguing more so in regards to the level of sanction not being low enough. The Appeal Board reminded Mr Mascall to focus his arguments on why the Disciplinary Commission could not have come to the decision that it did. Mr Mascall eventually responded and put forward the point that had the commission been relayed the conversation with the County FA,

originally had on the 16th January 2022, they would have been aware that Mr Agyekum already served a number of suspensions and it was not just to serve anymore. The Appeal Board put to Mr Mascall that where the Appellant had accepted being in breach of the suspension, it follows that the charge would have been proven. Mr Mascall eventually appreciated this point and that breach would have to be marked with some kind of sanction rather than retrospectively. Mr Mascall also argued that the Disciplinary Commission were wrong to decide that notice had been received as per the letter of mitigation outlining the same argument.

8.1. In response to these arguments, Mr Hart maintained what was already argued in the Response to the Notice of Appeal and reminded the panel that any such conversation that would have been had between the Appellant and the Respondent would not necessarily provide for a guaranteed outcome at a later hearing. This point was accepted by the Appeal Board. In terms of notice, Mr Hart pointed to a screenshot within the bundle that contained the full email (in the name of the Appellant) that would have been used as correspondence for the result sent on the 10th January 2022.

Ground 2

9. In respect of the second ground, Mr Mascall said that the Appellant reporting himself could not attract anymore of a lower sanction and that the Disciplinary Commission were wrong to place this in the mid-range category. He felt the Disciplinary Commission may have been unsure and decided to place this within a safe-zone being the middle. He stressed that it was the Appellant's own initiative that spurred this entire set of circumstances and this has not been reflected in the sanction. He argued that the phone call conversation led them to believe that the Disciplinary Commission would take into account the number of matches that the Appellant had already been left out of. He pointed to a passage of communication within the new evidence (that was arguably in the phone call too) where it was allegedly

discussed that any games the Appellant had already served would have retrospectively counted towards any new sanction. While the Appeal Board did not necessarily agree that this approach would have been taken, it noted the point that positive conduct was taken after receiving a sanction.

9.1. In response to these arguments, Mr Hart echoed that the Disciplinary Commission had stayed within the sanction guidelines as permitted and endorsed the Response to the Notice that any telephone conversations would be in respect of advice regarding the options available in answering the charge and providing details of why a charge is admitted so that the commission can take this into account.

The Decision

10. The Appeal Board did not accept the Appellant's first ground of appeal that the Disciplinary Commission came to a decision which no reasonable such body could have come to. Rather, it found that the Disciplinary Commission were right to come to a decision with the papers before them (clearly demonstrating notification by way of email and the Whole Game System). Even when considering the new evidence presented to us, the Appeal Board found that this added context towards sanction rather than a change of liability of the original charge. The Appeal Board also reminded itself that the Appellant had also accepted the original charge and it therefore follows that a case would be found proven.

11. The Appeal Board unanimously allowed the appeal on the second ground in that the Disciplinary Commission had imposed a sanction that was excessive. The Appeal Board accepted the arguments that reporting yourself to the County FA could not be more of an honest and credible approach to misconduct. Only 1 game had been played while under suspension and once informed of the correct process, the remainder of games were duly served under suspension. The Appeal Board did not agree with the written reasons where the Disciplinary Commission said that the Appellant's lack of knowledge of the suspension

was not relevant when they decided on sanction. While it does form part of an appeal, the Disciplinary Commission should have taken it into account as a relevant factor. It also did not appear that the Disciplinary Commission had afforded any credit for a guilty plea to this matter. Overall, the Appeal Board felt that there were not enough explored reasons to justify the charge falling in the mid-range category, for which a sanction of 3 matches (plus 1 for playing a suspended match) was found to be excessive in any event.

12. The Appeal Board exercised its powers under Regulation 21 of the Non-Fast Track Appeal Regulations 2021-22, and determined that the breach was in the low category of the County FA Sanction Guidelines Table 2021/22; directing that the original sanction is decreased as such:

12.1. In addition to the one match played under suspension, the Appellant is imposed an additional one-match suspension. In total, there is a 2-match suspension imposed;

12.2. A fine of £10 is imposed.

12.3. For clarification, this suspension remains on the same terms as issued by the Disciplinary Commission.

13. There is no order made as to costs and the appeal fee is to be returned.

14. The Appeal Board's decision is final and binding on all parties.

Alban Brahim, Chair

Roger Burden

Davide Corbino

6th April 2022