

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

NEWTON AYCLIFFE IRON HORSE (Appellant)

-and-

DURHAM FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member
Glenn Moulton – Independent Football Panel Member
Jennifer Palmer – Independent Legal Panel Member

Secretary: Conrad Gibbons – Judicial Services Officer

Date: 24 May 2022

Venue: Held remotely via Microsoft Teams

Attending: William Swinburne – Club Secretary of Newton Aycliffe Iron Horse
Mark Ives – Representative of Durham FA
John Topping – Company Secretary of Durham FA (as observer)

INTRODUCTION

1. The Appeal Board was appointed under The Football Association's Disciplinary Regulations – Appeals ("the Appeal Regulations"). No objection was raised concerning the composition of the Appeal Board.
2. The Appeal Board conducted a hearing on 24 May 2022 to determine an appeal by Newton Aycliffe Iron Horse FC ("the Appellant" or "the Club") against the decision of a Disciplinary Commission of Durham FA ("the Respondent") made on 24 April 2022 and notified to the Appellant on 25 April 2022.
3. The Appellant submitted a Notice of Appeal ("the Notice") within the requisite 14 days.
4. The Appellant did not request written reasons for the Disciplinary Commission's decision following notification of the outcome of the first instance case. When notified of the appeal the Respondent submitted a detailed Response.
5. The Appeal Board had before it a bundle ("the Appeal Bundle") containing the following:
 - Notice of Appeal
 - Evidence submissions
 - Response to Notice of Appeal
 - Papers of First Instance
 - The Appellant's Offence History
 - Results Letter
6. William Swinburne ("WS") attended the hearing and presented the case on behalf of the Appellant. The Respondent was represented by Mark Ives ("MI"). The Appeal Board is grateful to both gentlemen for their submissions and assistance, both during the hearing and in the documents within the Appeal Bundle.

7. This document constitutes the written reasons for the Appeal Board's decision. The Appeal Board considered the entirety of the materials that the parties put before it (save as indicated in paragraph 20 below). If this document does not explicitly refer to a particular point, document or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

8. The Club plays in the Durham and District Sunday League ("DDSL").
9. On 13 March 2022 the Club played a match ("the Match") against Sedgfield St Edmunds First ("Sedgfield"). Following a series of yellow and red cards in the second half, leading to brawls and to players and spectators entering the field of play, the referee abandoned the match.
10. It would appear that the referee notified DDSL of the abandonment but did not inform the Respondent. DDSL did not notify the Respondent at that time either. The referee's extraordinary incident report is dated 13 April 2022.
11. Following the abandonment of the match DDSL informed the Club and Sedgfield that the game would be deemed to have ended in a 0-0 draw. The Appellant appealed against that decision on 25 March 2022. At a hearing on 5 April 2022 DDSL allowed the appeal and ordered that the game be replayed. On 6 April 2022 DDSL informed the Club and Sedgfield that the game would be replayed on 28 April 2022. The Respondent was informed of the abandonment by DDSL on 5 April 2022 (after the hearing had been held). This resulted in the Respondent commencing disciplinary proceedings against both clubs.
12. Following the decision of the Disciplinary Commission appointed by the Respondent (see paragraph 15 below), the Club and Sedgfield were informed by DDSL that the match would not in fact be replayed and that the fixture was null and void.

FIRST INSTANCE DECISION

13. On 14 April 2022 the Respondent charged the Appellant with a breach of Rule E20 of the Rules of the Football Association on the grounds that the Club had failed to ensure players and/or officials and/or spectators conducted themselves in an orderly fashion.

14. The charge letter set out the details of the charge in the following terms:

“During the game the referee had to issue 3 yellow and 2 red cards. Whilst issuing the 2nd and 3rd yellow card a mass brawl broke out, then during the red cards another brawl in the penalty area which resulted in players and spectators entering the field of play. The referee then made the decision that he could not guarantee players safety and so abandoned the game”.

15. The Appellant denied the charge and asked for the matter to be dealt with by correspondence. A Disciplinary Commission considered the case on 24 April 2022. It found the case proven and imposed a £50 fine and a warning as to future conduct. The decision letter sent to the Appellant on 25 April 2022 also noted “both clubs responsible for the abandonment”.

THE APPEAL REGULATIONS

16. Regulation 2 of the Appeals - Non-Fast Track Regulations (“the Appeal Regulations”) sets out the grounds upon which an 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.”

17. Regulation 12 of the Appeal Regulations 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.”

18. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

PRELIMINARY MATTERS

19. In its Notice the Appellant sought leave to adduce new documentary evidence, namely:

- a text message exchange between one of the Appellant’s committee members and the referee on the day after the Match;
- various emails (both pre-dating and post-dating the disciplinary hearing) dealing with the consequences of the abandonment of the Match.

20. The Appeal Board dealt with the request as a preliminary matter. It accepted the Respondent’s submission that the requirements of Regulation 10 had not been satisfied as far as the text message exchange was concerned and refused the application to admit it in evidence.

21. As far as the emails were concerned, the Appeal Board took the view that the emails that pre-dated the Disciplinary Commission only became relevant after the decision was taken to declare the Match null and void. There was therefore no reason for the Appellant to have included them as part of its case before the Disciplinary Commission. It considered that those emails and the emails that post-dated the Commission’s decision were relevant in the sense

that they evidenced the timeline of events around the status of the Match. The Appeal Board indicated that it would consider the emails for that reason.

22. The parties were also told that the Appeal Board needed further clarification on the precise sequence of events and that in particular it wanted to establish who had taken the decision to declare the Match null and void. In the course of his oral submissions MI assisted the Board on these points.

SUBMISSIONS (INTRODUCTION)

23. The following is a summary of the principal submissions made to the Appeal Board. It does not purport to contain reference to all the points made. As indicated above, the absence in these reasons of any particular point or submission should not imply that the Appeal Board did not take that point or submission into consideration when reaching its decision.

24. For the avoidance of doubt, the Appeal Board carefully considered the materials provided and the submissions made.

THE APPELLANT'S SUBMISSIONS

25. In its Notice the Appellant expressly referred to two of the grounds of appeal cited in paragraph 16 above. It submitted that the Disciplinary Commission had:

- failed to give it a fair hearing; and/or
- imposed a penalty, award, order or sanction that was excessive.

26. In essence the Appellant's case, both in its Notice and in WS's oral submissions, was that it had not had a fair hearing because it had responded to the charge and asked for the hearing to be dealt with by correspondence on the understanding that the Match was going to be

replayed on 28 April 2022. Had it known that there was a possibility of the Match being declared null and void, it would have asked for a personal hearing.

27. WS indicated that the Club felt very aggrieved at the way in which decisions had been made and that everything had been done backwards. The Club had done what was required of it throughout. It had accepted the findings of the Disciplinary Commission and paid the fine immediately on being notified of the outcome on 25 April 2022, in the belief that the Match would be replayed later that week. It was only the following day, 26 April 2022, that it was told that the Match had been declared null and void (initially by someone from Sedgefield rather than by DDSL).

28. In the course of his submissions WS conceded that the Appellant was not challenging the sanction imposed by the Disciplinary Commission as excessive, but rather the wider ramifications of the decision.

THE RESPONDENT'S SUBMISSIONS

29. Although not expressly required to do so, in its written submissions the Respondent addressed all four of the grounds cited in Regulation 2.

30. In terms of the two grounds of appeal expressly relied upon by the Appellant, the Respondent submitted as follows:

- The only thing that the Appeal Board had to consider was the decision of the Disciplinary Commission; it had no jurisdiction to review the decision regarding the outcome of the Match (which was in accordance with the Standard Code of Rules);
- There was nothing to suggest that the hearing held by the Respondent was unfair;

- If the Appellant was unhappy with the way that DDSL had handled matters, the appropriate course would have been to appeal to the sanctioning authority [the Respondent];
- The sanction imposed by the Disciplinary Commission was within the range set for the offence in the Sanction Guidelines and was not therefore excessive.

31. In considering in its written submissions whether the Disciplinary Commission had come to a decision that no reasonable body could have reached, the Respondent noted that the Appellant in its Notice had said that it was to be expected that both clubs were found guilty because the referee's report was "inadequate & in-factual". It further noted that the Appellant had had the opportunity to make submissions to the Disciplinary Commission, but had chosen simply to rely on the initial statement sent to the Respondent when asked for its observations on the Match. The Respondent therefore submitted that the Appellant should not be given a second chance to defend the case.

32. In opening his oral submissions MI indicated that he would table the Respondent's reply as it stood and would not take the Appeal Board through the written submissions again.

33. MI submitted that there had been no failing by the Respondent and minimal failings by the Appellant and WS. The fact that the process had got out of kilter was down to the referee and DDSL. The referee had not notified the abandonment to the Respondent as he should have done and DDSL had acted incorrectly because it should have awaited the outcome of the disciplinary action taken by the Respondent against the clubs.

34. MI assisted the Appeal Board with the documentation in the bundle, specifically:

- an Excel document which had the following entry under "Notes": *Club misconduct. Abandoned fixture. Club fined £50.00 and warned as to future conduct. Both clubs are responsible for the abandonment. The fixture is to be classed as null and void*";

- An email dated 26 April 2022 from Tracey Lavery of the Respondent to Graham Lilley of DDSA sending amended minutes and a subsequent email from Graham Lilley to WS saying that the Respondent “*have now decided that the Fixture will be Null and Void as they blame both sides for the Abandonment in the original game*”.

35. MI confirmed that the Excel document was the documentary evidence kept by the Respondent in relation to the case against the Club. He explained that after the outcome of the Disciplinary Commission DDSL had sought the Respondent’s advice and had been told that the Rules required a match to be declared null and void when both teams were responsible for its abandonment. He took the Appeal Board to the relevant Rule (paragraph 7 of Rule 20E of the Standard Code of Rules). He stressed that the Disciplinary Commission had not made any decision about what should happen regarding the Match. It had been concerned only with the E20 charge. In response to a question from the Appeal Board, MI said that it is good practice for a Disciplinary Commission to indicate in its decision that both clubs were responsible for the abandonment where that was the case. He also stressed that matters of misconduct are dealt with by the county FAs; leagues cannot re-determine decisions and must accept the findings of fact made.

36. MI could not comment specifically on the emails, other than to say that Ms Lavery was probably just recording the advice that she had given to DDSL, which was in accordance with the Rules. He reiterated that the Disciplinary Commission had dealt only with the charge before it, as evidenced by the fact that the decision letter made no reference to the Match being null and void (albeit, as noted, the decision letter did attribute responsibility for the abandonment of the match which, in accordance with MI’s submissions, had the de facto effect of determining the match result).

37. WS was given the opportunity to comment on the Respondent’s submissions. He repeated that he felt the process had been very unfair. The Club had gone to DDSL for advice and if the advice given was wrong it should not be held against the Club. He felt that Sedgefield were at fault for the abandonment and that because there was nothing in the referee’s report

to say that both teams were to blame, the Disciplinary Commission was wrong to conclude that.

DETERMINATION

38. The Appeal Board carefully considered the parties' submissions. Having heard MI's submissions it accepted that the Disciplinary Commission that heard the case on 24 April 2022 did not exceed its jurisdiction and did not direct that the Match be declared null and void.

39. The Appeal Board also accepted that the Club would have acted differently, namely by requesting a personal hearing, had it not been given the assurance, following its appeal to DDSL, that the Match would be replayed.

40. Further, the Appeal Board accepted that its role was limited to deciding the appeal before it and that it had no role when it came to the consequences of that decision.

41. However, in the Appeal Board's view, when deciding whether a participant has had a fair hearing it is necessary to look at the whole process leading up to the decision of the Disciplinary Commission, not just the decision reached by the Commission at the hearing itself.

42. In the particular, and unusual, circumstances of this case, the Appeal Board felt that the overall process had been unfair. While acknowledging the blame attached to the referee and DDSL for their failings, it did not accept that the Respondent was blameless. In light of the assurance given to the Club and Sedgefield that the Match was to be replayed, the Respondent should have taken steps to ensure that they were told that that decision had been premature and that no decision could be made regarding the outcome of the Match until the disciplinary process had concluded. In the interests of fairness and transparency, given that the Respondent knew that DDSL had already decided that the Match should be replayed (and indeed set a date for the replay), the Club should have been informed that the Disciplinary

Commission could find that both clubs were at fault for the abandonment and that if it did this would in turn compel DDSL to declare the match null and void in accordance with the Standard Code of Rules.

43. The Appeal Board therefore allowed the Appellant's appeal on the ground that the Appellant did not get a fair hearing. It did not find any of the other grounds of appeal in Regulation 2 proven.

44. The Appeal Board made the following orders:

- The case be remitted back to be heard by a fresh Disciplinary Commission as a personal hearing.
- The appeal fee be refunded to the Appellant.
- No order as to costs.

45. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport
Glenn Moulton
Jennifer Palmer

30 May 2022