

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL
ASSOCIATION

Date: 16 February 2022

Panel: Tapan Debnath (Football Panel Member - Chair)
Alec Berry (FA Council Member)
Tony Rock (Football Panel Member)

Appeal Board Secretary Shane Comb

Between

Stephen Hickey

Appellant

and

Norfolk County FA

Respondent

Written Reasons of the Appeal Board

The following written reasons were issued to the Appellant and the Respondent:

Introduction

1. This is an appeal brought on behalf of Stephen Hickey by Wymondham Town United FC (“the Appellant”) against the decision of a Disciplinary Commission sitting on behalf of Norfolk County Football Association (“the Respondent”) dated 14 December 2021.
2. On 17 November 2021, the Respondent charged the Appellant with breaching FA Rule E3 – Improper Conduct against a Match Official – dismissed for delaying the restart of play and refusing to leave the field of play in a fixture against Scole United FC U14 on 7 November 2021.
3. The Disciplinary Commission comprised three Commission Members who, having considered the matter on papers and noting that the Appellant accepted the charge, found the charges proven. The Commission imposed a three-match

ground ban and a fine of £15 against Stephen Hickey. Six club penalty points were awarded against the Appellant club.

4. No Disciplinary Commission written reasons were provided in the bundle of papers before this Appeal Board.

Background

5. The factual background and evidence in this case is largely not contested. Stephen Hickey and Wymondham FC accepted that Mr Hickey, the U14 team manager, delayed the restart of the match and refused to leave the field of play, for which he was sent off.
6. The match official's "Extraordinary Incident Report Form" stated that the Wymondham players contested almost every decision and that their manager also contested several of the match official's decisions. The report described the Wymondham manager as having an issue with the opposition team's assistant referee talking to Scole players. Despite being asked several times by the match official to stop and allow the match to continue, Mr Hickey, according to the Incident Report, continued to remonstrate and was consequently sent off. The game was delayed for 10 minutes.

The Parties' Submissions

7. This was an in-person Appeal Board hearing. The Respondents however did not attend because they were unable to appoint a representative to attend due to two of their members familiar with the matter being on leave.
8. As a preliminary matter, the Appeal Board considered the Appellant's request for the statements of Mr Hickey and Mr Percival to be admitted in evidence. The Appeal Board determined that the statements are relevant to the appeal and there are exceptional circumstances, namely that the Appellant had consistently sought to introduce the statements as part of its case, to justify the statements to be admitted.

9. The Appellant's first ground of appeal is that the Disciplinary Commission failed to give the appellant a fair hearing. This is on the basis that the match official was biased against Wymondham as he took no action for the Scole assistant referee infringing various rules; Mr Hickey should have been issued with a yellow card first; and two Wymondham statements that had been submitted in the "Whole Game" system were inexplicably not part of the case papers before for the Disciplinary Commission. Also, that the Disciplinary Commission failed to take account of the club's previous good record.
10. The second ground of appeal is that the Disciplinary Commission misinterpreted or failed to comply with Regulations or Rules relevant to its decision. This is on the basis that the Commission made its decision on the match official's account and did not take proper account of other evidence.
11. The third ground of appeal is that the Commission came to a finding that no reasonable tribunal could have reached on the evidence before it. The Appellant submitted that both teams played a part in creating the situation but the other team's assistant referee's actions had been disregarded; the match official did not manage the situation well; and that Mr Hickey did not swear or threaten the match official.
12. The fourth ground of appeal is that the sanction is excessive, the matter should have been assessed as warranting a low category, not a mid category, sanction.
13. The Appellant submit that there had been administrative errors in how their case has been handled. First, they had uploaded two statements (Mr Stephen Hickey and Mr David Percival, the Wymondham Club Assistant Referee) onto the "Whole Game" system but those statements were not considered by the Disciplinary Commission. Second, that they did not have sight of the match official's additional statement before they accepted the charge and requested a hearing on the papers alone.

Determination

14. The Appeal Board, having taken into account the submissions of the Appellant and having given the Appeal Bundle careful consideration, make the following observations.
15. As stated, the Disciplinary Commission did not provide written reasons. We note from the appeal papers that the Disciplinary Commission considered the evidence available to it, the nature of the offence, aggravating and mitigating factors, and the fact that Mr Hickey had no previous sanctions recorded against him. We further note that the Appellant accepted the charge against him.
16. We note also the Appellant's submission that their two statements were uploaded to the "Whole Game" system but those statements do not appear on the system. The Appellant was aware of this fact, it would appear, before the Disciplinary Commission hearing on 14 December 2021, and that they had sought to contact Norfolk CFA but without any success.
17. We further note the Appellant's submission that they may have taken a different tact, such as requesting an in-person hearing, had they seen the match official's report before they responded to the charge.
18. In our view, however, this goes to offence and Appellant mitigation and is not tantamount to an equivocal acceptance of the charges. The Appellant accepted the charge in the first instance and does so at appeal.
19. Applying the test in Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1947] EWCA Civ 1, we do not find that the Disciplinary Commission process or decision was unfair, unreasonable or flawed. The decision was neither perverse, irrational nor unlawful.

20. We have also carefully considered whether the penalty imposed was excessive. While it would have been open to the Disciplinary Commission to conclude that the matter fell in the low category offence, its conclusion that the mid category was the appropriate offence level was not unreasonable. It was certainly not outside the Disciplinary Commission's "margin of discretion" to conclude that mid category is the appropriate offence level.

21. For those reasons, we dismiss the appeal on all grounds.

Remedy

1. The Appeal Board dismisses the appeal.
2. The Appeal Board considers that in all the circumstances no order for costs is appropriate.
3. The appeal fee is to be retained.
4. The Appeal Board's decision is final and binding on all parties.

Chair: Tapan Debnath

Wing: Tony Rock

Wing: Alec Berry

Date of Written Reasons: 22 February 2022