

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

ON 14<sup>th</sup> April 2022

David Reade QC, Robert Purkiss, Glenn Moulton

BETWEEN:

TAMWORTH 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 Tamworth Football Club (“the Appellant”) by Notice of Appeal dated 23<sup>rd</sup> March 2022.
2. By the Notice the Appellant appealed the decision of the Southern Football League (“the Respondent”), notified to the Appellant and Biggleswade Town FC (“Biggleswade”) on 11<sup>th</sup> March 2022, that the abandoned fixture between the Appellant and Biggleswade, abandoned on 11<sup>th</sup> December 2021, should be replayed on League Cup Tie Terms.
3. The appeal was heard on 14<sup>th</sup> April 2022 by way of MS Teams. The Appellant attended by Steve Lathbury (Vice Club Chairman), Andy Jones (Club Secretary) Robert Andrews (Chairman), Bob Repton (Chief Safety Officer) and Archie Baynhan (Acting Secretary). 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 and the supporting materials of the Appellant;
  - b. The Respondent's Response with supporting documents;
  - c. The League Rules;
  - d. An application, on the part of the Appellant to adduce new evidence in the form of a statement from Mr Bob Repton.
5. The Appellant, through Mr Lathbury, made oral submissions which were responded to by the Respondent's Mr Martin. The Appellant's submissions strayed into seeking a rehearing of the original decision, which had been made on the basis of written submissions. The Board reminded the Appellant of the Board's powers and of the permissible grounds of appeal and these limitations impacting on the determination of any appeal in that it did not take the form of a rehearing.
6. Prior to the hearing the Board has sought clarification of the specific ground for the appeal it having been indicated that it was on the ground that the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision. Following the request for clarification the Appellant stated that it also wished to rely on the ground that the Respondent had come to a decision that no reasonable such body could have come. Having confirmed with the Respondent at the commencement of the Appeal that it would suffer no prejudice in addressing that additional ground the Board permitted the appeal to proceed on that additional ground.
7. 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

8. Because of the decision of the Board as addressed below the Board are circumspect in their articulation of the background facts.
9. The game between the Appellant and Biggleswade at Tamworth was abandoned at half time on 11<sup>th</sup> December 2021 following Biggleswade's refusal to return to the field of play. The reason cited by Biggleswade was that it was alleged that one of the Appellant's spectators had made a racist remark.

10. The abandonment was the subject of an FA investigation. That investigation was concluded by 17<sup>th</sup> February 2022. The conclusion of the investigation was that no formal disciplinary action was being taken against either club.
11. The Respondent invited observations from both clubs by email of 18<sup>th</sup> February 2022, in order that it could deal with the matter of the abandoned match under Standardised League Rules 8.32-8.35. As a consequence the Respondent received statements from both clubs and, in the case of the Appellant, video and photographic evidence. The Respondent additionally received from the FA a report from the match referee. The Board noted that the Respondent did not conduct a separate investigation and that there was a lack of clarity about whether the Respondent's Board had received and considered all the material supplied by the Appellant to the FA (this included, for example, sound recordings and sixteen witness statements).
12. The matter was considered at the Respondent's Board meeting, via Zoom, on 10<sup>th</sup> March 2022. Members of the Respondent's Board who were considered to have conflict of interest were not involved in the decision. Whilst there had been a question mark over this by the Appellant following clarification at the Appeal hearing the Appellant accepted that the issue was one for the Respondent and that conflicted members of the Board of the Respondent had not taken part in the decision.
13. As noted the matter was considered on the documents alone.
14. The Respondent's decision of 11<sup>th</sup> March 2022 was that the abandoned fixture should be replayed on League Cup Tie terms. It is of note that the reasons articulated that the Board had found that Biggleswade had been responsible for the abandonment of the fixture but that no further action was taken. The direction that the match be replayed also directed that it be replayed on League Cup Tie Terms which would be financially beneficial to Biggleswade.
15. The reasoning for the decision is brief but it was explained by the Respondent that the volume and urgency of decisions meant that it typically did not give detailed reasons.

#### New Evidence

16. The Appellant sought to adduce new evidence in the form of a witness statement from Mr Bob Repton. It was explained that this had been supplied to the FA for its investigation but had been omitted by accident from the material submitted to the Respondent.

17. In those circumstances the Board concluded that there was no good explanation for the failure to adduce the evidence at the time of the original decision and the evidence should not therefore be admitted.

#### The Appellant's Case

18. The thrust of the Appellant's appeal was that both the FA and the Police investigations had not substantiated that the racist abuse had occurred and that Biggleswade had failed to follow the Football Association protocol following the alleged remark. Tamworth also sought to challenge the replaying of the game which they contended created a "dangerous precedent". They contend that it would open the risk of a losing team making an allegation of a racist remark in order for the game to be abandoned and replayed. The appeal also suggested that there was the risk of bias in the composition of the Board of the Respondent hearing the charge but following clarification, as noted above, that was not pursued.

#### The Respondent's Case

19. The Respondent provided a more detailed explanation than was contained in its letter of 7<sup>th</sup> April 2022. The Respondent made clear that it had considered the matter under Standardised League Rules 8.32-8.35 and 4.2.
20. The Respondent explained that the FA investigation had not concluded that no event had occurred and having considered statements from Biggleswade the Respondent had concluded that in all probability "racial abuse had been made". It was noted that within the statements there was a statement from a Biggleswade player that he had heard a racist shout from a Tamworth Spectator. No other person heard the alleged comment, and this was not audible on the video footage.
21. The Respondent explained that its Board had concluded that as Tamworth were only one nil in the lead and the second half had yet to be played it was unlikely that this was a false allegation. The Respondent concluded that Biggleswade had been justified in their decision not to play the second half and that as the match had been abandoned at half time this could not be said to constitute a result so as to award Tamworth the 3 points. It therefore wished the match to be replayed. The Respondent also considered the travel costs which Biggleswade had incurred and considered that it should not be out of pocket for this expense and therefore ordered the match to be replayed on League Cup (Financial) Terms.

22. On the question of the Football Association protocol the Respondent said that there was no published protocol issued within the National League System.

### Discussion

23. Whilst the Respondent stated that Rules 8.32-8.35 and 4.2 had been considered the Board was keen to understand what rule had been applied as Rules 8.32-8.35 appear to apply to abandonment in a variety of situations. The Respondent explained that it had concluded that Rule 8.34 applied. That Rule provides that:
- “In the event of a match being abandoned due to the conduct of one Club or its members or supporters the Board has the power to order that the match is not replayed and to award either one or three points to the Club not at fault. It cannot levy a financial penalty due to the conduct of a Club.
24. The Board noted that the other rules applied in situations where the abandonment was beyond the control of either club or that it was a consequence of the conduct of both.
25. The Board also noted that Rule 4.2 gave the Respondent a wide power to issue orders or instruction. The Panel also noted Rule 8.36 which details with financial compensation for a club found not be at fault in the case of an abandonment.
26. The Board noted and recognised the concern expressed by Tamworth about the possible manipulation of allegations leading to abandonment. The Board was not however conducting a rehearing and it was in the nature of the appeal that Biggleswade were not present to put forward their own position.
27. The Board were however concerned that the decision of the Respondent was inherently contradictory. Having stated that Rule 8.34 applied the logical conclusion was that the Respondent had decided that Biggleswade were at fault for the abandonment and not Tamworth. The finding was not that Tamworth were jointly at fault for the abandonment, otherwise rule 8.35 would have applied. Despite this Tamworth found themselves:
- a. Having to replay the match, despite the fact it was abandoned when they were winning and
  - b. Suffering a deduction in the revenue generated by that replay in that the match was being replayed on League Cup terms.
28. As to Biggleswade it had been found to be at fault but despite this the decision was:
- a. That it should have the match replayed and the original half time disadvantage, that they were losing one nil, be wiped away,

- b. That the financial losses for Biggleswade associated with the abandonment should be mitigated by the game being played on League Cup terms. This in itself appeared to contradict rule 8.36 which looked to financially compensate the Club not found to be at fault and not the reverse. The decision would most likely result in Biggleswade making a financial gain from the decision to divide any profit between the two clubs after expenses had been deducted.
29. In these circumstances the Board concluded that the decision of the Respondent was so inherently contradictory that it was one which no reasonable such body could have reached. The Board therefore allowed the appeal. The Board did not uphold the first ground of appeal, that the Respondent had misinterpreted or failed to comply with the Rules and/or regulations of the Association.
30. The Board considered whether it should exercise its powers to determine the original decision itself. However, this clearly could impact on Biggleswade who were not present and could not be heard. The Board therefore decided that the correct course of action was to remit the matter back to the Respondent to re determine the issue.
31. In doing so, and without seeking to limit or direct the Respondent in that decision, the Board noted that the Respondent had a variety of powers and considerations for the rehearing, including but not limited to the below,
- a. Ordering the match to be replayed without consideration of financial benefit.
  - b. To void the fixture.
  - c. To award the match points to a Club.
32. As such the Respondent should consider notifying both the Appellant and opposition of the rehearing in the case that they would wish to make submissions.

### Conclusion

33. The Board therefore allows the appeal and the existing decision is set aside. The matter is remitted back for fresh consideration by the Respondent.
34. The Board considers that in all the circumstances no order for costs is appropriate, but the appeal fee will be returned to the appellant.
35. The Board's decision is final and binding on all parties.

David Reade QC  
Robert Purkiss,

Glenn Moulton

19<sup>th</sup> April 2022