

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

TAMWORTH FOOTBALL CLUB

Appellant

and

SOUTHERN FOOTBALL LEAGUE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The appeal board (**‘the Appeal Board’**) was appointed under The Football Association’s (**‘The FA’**) Disciplinary Regulations – Appeals 2021/22 (**‘the Appeal Regulations’**)¹ to determine an appeal brought by the Appellant by Notice of Appeal Letter to FA Discipline dated 23 February 2022 (**‘the Notice’**), against the decision of the Southern Football League (**‘the Respondent’**) dated 9 February 2022.
2. The appeal was heard on 30 March 2022 by way of MS Teams.
3. The Appeal Board had before it (1) the papers before the Respondent; (2) the Respondent’s Results Letter; (3) the papers of first instance; (4) the Appellant’s Grounds of Appeal; (5) the Respondent’s response; (5) The Appellant’s offence history.

The Appeal Board

4. The members of the Board were:
 - David Winnie (Chair);
 - Glenn Moulton;
 - Daniel Mole.

¹ The FA Handbook 2021/22

5. No objection was raised concerning the composition of the Appeal Board.
6. The Secretary of the Appeal Board was Conrad Gibbons, the Judicial Services Officer and whose assistance was greatly appreciated.

Attendees

7. The Appellant was represented at the hearing by Mr Andy Jones, (**‘Mr Jones’**) General Secretary for the Appellant and Mr Bob Andrews (**‘Mr Andrews’**), Chairman of the Appellant.
8. The Respondent was represented by Mr Jason Mills (**‘Mr Mills’**), League Secretary for the Respondent and Mr David Martin (**‘Mr Martin’**), League & Finance Director for the Respondent.
9. The Appeal Board is grateful to Mr Jones, Mr Andrews, Mr Mills and Mr Martin and Mr Hart for their submissions and assistance both during the appeal hearing, and in the documents within the Appeal Bundle.

Brief Background

10. The Appellant was due to play a league fixture against Hednesford Town FC on Saturday 1 January 2022 (the **“Fixture”**). However, the Appellant suffered an outbreak of Covid -19 amongst six of its playing squad. In addition, five further squad players were unable to play due to injury. Lastly, the Appellant had two players out on loan that it was unable to recall and three players were feeling unwell on the day.
11. As a consequence of the above, the Appellant submits that it was unable to fulfil the Fixture
12. This matter was brought by the Respondent via a charge letter dated 4 January 2022 (**‘Charge Letter’**) from Mr Mills to Mr Jones.
13. The Appellant formally responded denying the charges and requested that the matter be dealt with on the papers.

First Instance Decision

14. On 4 January 2022, the Respondent charged the Appellant under Standardised Rule 8.39 of the Rules of the Pitching in Southern Football League (the ‘**Rules**’) – failure to fulfil a fixture.
15. A hearing was conducted by the Respondent on 1 February 2022 and the Appellant was found guilty of failing to fulfil a (League) fixture.
16. The Respondent found the matter proven and passed the following sanction against the Appellant:
 - A fine of £1,000, but suspended £500 of that until the end of the current playing season (payable only if the Appellant is found guilty of a breach of the same rule).

The Appeal Regulations

17. In essence, there are four grounds upon which upon which the Appellant could seek to make an appeal against the decision of the Respondent.
18. Regulation 2², of the Regulations, sets out four grounds upon which the Appellant may appeal the first instance decision(s) – 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.”*
19. Regulation 12³ 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.”*
20. On behalf of the Appellant, Mr Jones and Mr Andrews submitted that the Respondent had:

² FA Handbook 2021/2022, p.166

³ Ibid, p. 166.

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

Submissions (Introduction)

21. The following is a summary of the principal submissions made to the Appeal Board.
22. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that the Appeal Board did not take such point, or submission, into consideration when it considered the matter.
23. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided, and submissions made, with regard to this case.

Submissions

24. Mr Andrews and Mr Jones submitted that the Respondent had imposed a penalty, award or sanction that was excessive for the following reasons:
 - a) The claim that the Appellant had 48⁴ registered players was incorrect and misleading and not, in fact, the players available to the Appellant on 1 January 2022.
 - b) Mr Jones stated that whilst there was 33 players registered, many were injured or suffering from Covid-19. The Appellant was placed in an impossible position as players had called off at the last minute through illness and injury.
 - c) There was not enough time for the Appellant to gather sufficient evidence. The evidence produced by the Appellant suggests that there was 24 players available. However, Mr Jones stated that the Appellant actually had only 12 or 13 players available on 1 January 2022.
 - d) The Appellant was in the process of deregistering players to reduce the squad size, however, the Appellant was in the process of getting players back that had been loaned to other clubs, but was unable to do so given the tight timeframe – 24 hours or so – before the game.

⁴ See page 31 of the Appeal bundle

25. On behalf of the Respondent, Mr Mills submitted that it had not imposed a penalty, award or sanction that was excessive on the Appellant.
26. In summary, the Appeal Board understood these submissions to be:
- a) NLS steps Covid Protocols – season 2021/22⁵ had been agreed by the leagues and the Alliance Committee and thereafter issued to the clubs in 2021. This sets out the criteria that clubs must follow when requesting a postponement. These protocols became FA policy and the clubs were obliged to comply.
 - b) There was regular contact between the Respondent and its member clubs (including the Appellant)
 - c) The Respondent (Mr Mills) had notified all club secretaries and chairpersons via an email on 21 December 2021⁶ stating that the basis for considering a postponement was that Covid -19 cases within the club meant that available players was less than 13 from the total number of players registered with the League for the club. Mr Mills also stated that a minimum of 9 fit players deems a match playable and injured players should not be considered by the club as a reason for an application to postpone a match.
 - d) Lastly, the sanction given to the Appellant was well within the Rules⁷ for a proven charge of this nature.

Legal test for all grounds of appeal

27. As is clear from Regulation 12⁸, the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.
28. Guidance on how this review should be carried out is to be found in, inter alia:

- (a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

⁵ See page 14 of the Appeal bundle

⁶ Ibid at page 15 of the Appeal bundle

⁷ Ibid at page 78 of the Appeal bundle

⁸ The FA Handbook 2021/2022 at P.168

“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission’s decision as unreasonable.”

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

“It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to ‘second guess’ the Commission; ...

... We are permitted to ‘intervene’ only when there has been an error of principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone ‘plainly wrong’.”

29. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Respondent. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the Appeal Board to substitute its own decision for that of the Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;

- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong (“Wednesbury” unreasonable and/or irrational and/or perverse) or if wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the Appeal Board to interfere with factual findings of the Respondent is where there is no proper evidential basis for a finding of fact that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- The test for the Appeal Board in determining whether the Respondent acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;
- Any Appellant who pursues an appeal on the ground that a Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome.

Discussions on the ground[s] submitted

30. In accordance with the principles set out immediately above, the Appeal Board retired to consider the parties’ submissions.

Additional Ground

31. The Appellant had appealed the Respondent’s decision on the ground that it had imposed a penalty, award, order or sanction that was excessive.
32. Nevertheless, it had become apparent through the Appellant’s submissions (and had been noted by the Appeal Board) that the Appellant was also making an appeal on the ground that the Respondent had made a decision to which no such reasonable body could have come.
33. Whilst this additional ground had not been explicitly raised in the paperwork, the Appellant had (through its oral submissions) sought to rely on this ground.
34. As such, the Appeal Board also considered this additional ground in its deliberations.

The First Ground

35. The Appeal Board noted that the Respondent was to refer to the Rules, Appendix 'A' – Fees and Fines Tariffs⁹ when considering sanction, specifically, clause 8.39 – failure to fulfil fixture. Whether the sanction was within the realms of reasonableness with reference to the Rules would determine whether the appeal was upheld on this ground.
36. When considering clause 8.39¹⁰, the minimum fine that the Respondent could impose was £500 and the maximum fine was £2,000.
37. It was noted that the Respondent had fined the Appellant a sum in the mid-range of the permissible financial sanctions, but suspended £500 of this on the basis that no further occurrence of the same breach occurs during the current season. As such, the Respondent had fined the Appellant the minimum sum allowed under the League Rules.
38. Accordingly, the Appeal Board did not think the imposed sanction was excessive.

Second Ground

39. The Appeal Board then considered whether the Respondent had made a decision to which no such reasonable body could have come.
40. The Appeal Board agreed that the Appellant had evidenced that six players were unavailable due to COVID-19 and that a further five players were unavailable due to injury. There was no evidence to support the claim that two players were unavailable due to being on loan at other clubs. However, the Appeal Board agreed to accept this at face value.
41. The Appeal Board observed that no evidence had been provided at the time of the game, or at any time since, to support the claim that three players were unavailable due to illness. It therefore concluded that these players were available to the Appellant on the day of the game.
42. After careful consideration of the submissions, the Appeal Board agreed that sufficient players had been available to the Appellant on the day of the game. The Appeal Board noted the

⁹ See Page 108 of the Appeal bundle

¹⁰ Ibid at p. 108

Appellant's suggestion that the Respondent had restricted the de-registration of players. However, it was concluded that this had no material bearing on the outcome.

43. Having given due consideration to the Appellant's submissions on this ground, it was unsustainable to suggest that the Respondent had (a) misinterpreted or failed to comply with the Rules or come to a decision to which no reasonable such body could have come.

Conclusion

44. In summary, the Appeal Board unanimously dismissed the Appeal on the grounds raised
45. The Appeal Board made no order as to costs and the appeal fee is to be forfeited.
46. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Signed:

A handwritten signature in black ink, appearing to read 'David Winnie', with a stylized flourish at the end.

David Winnie

[for and on behalf of the Appeal Board]

08 April 2022