

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

DEQUANN JAMAAL EBANKS

Appellant

and

BERKS & BUCKS FA

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 (**‘the Appeal Regulations’**) to determine an appeal brought on behalf of the Appellant against the decision of the Disciplinary Commission (**‘the Commission’**) dated 18 May 2023.
2. The appeal was heard on 11 July 2023 by way of MS Teams.
3. The Appeal Board had before it (1) the papers before the Commission; (2) the Commission’s Results Letter; (3) the Written Reasons; (4) the Appellant’s Grounds of Appeal; (4) Berks and Bucks FA’s response; (5) The Appellant’s offence history.

The Appeal Board

4. The members of the Board were:
 - Yunus Lunat (Chair)
 - Gordon Mellis
 - Leon Bird
5. No objection was raised concerning the composition of the Appeal Board.

6. The Secretary of the Appeal Board was Shane Comb of the Wiltshire FA whose assistance was greatly appreciated.

Attendees

7. The Appellant appeared in person.
8. The Respondent was represented by its Head of Governance Alastair Kay, with Ryan Davies in attendance.
9. The Appeal Board is grateful to all parties for their submissions.

First Instance Decision

10. On 31 March 2023 the Respondent charged the Appellant with a breach of FA Rule E3 - Improper Conduct (including threatening and/or abusive language).
11. The Appellant denied the charge and requested a personal hearing.
12. A Disciplinary Commission found the charge proven and placed it within the low range but decided not to impose a sanction but to issue a caution and to warn as to future conduct.
13. The Appellant appealed the decision on the ground that it was a decision which no reasonable body could have come to and that the sanction was excessive.

The Appeal Regulations

14. Regulation 2 of the Regulations sets out the 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.”*
15. Regulation 12 states:

“An appeal shall be by way of a review on documents only.

Submissions

16. The Appeal Board carefully considered the written submissions made.
17. 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.
18. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided, and submissions made, with regard to this case.
19. Submissions were made by the Appellant that:
 - (i) The Commission was not satisfied on the evidence as to the original allegation which formed the basis of the charge namely "I'll blood you up."
 - (ii) The Commission however concluded that the Appellant's admission in the hearing that he had said "don't get slapped" could amount to threatening to the receiver.
 - (iii) The Appellant explained that the comment was intended to convey the message "calm down my brother, relax" as the other coach who was very agitated and angry.
 - (iv) The Appellant confirmed that he had provided this explanation to the Commission at the hearing.

It was argued by the Appellant essentially that there was insufficient evidence to find the charge proven.

20. On behalf of the Respondent Mr Kay submitted that it had no further observations regarding the outcome of the case and that it was satisfied to rely upon the written reasons provided by the Chair.

The Legal Test

21. As is clear from Regulation 12 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.

22. In accordance with the above the Appeal Board retired to consider the parties' submissions.
23. The Appeal Board considered the Regulations and the submissions.

Conclusion

24. The Appeal Board unanimously allowed the Appeal on the basis that the decision was one which no reasonable body could have reached. The Commission had found the charge proven on evidence which was not within the case bundle, namely the comment "don't get slapped". There could be no evidence of anyone feeling threatened by this comment because it was not within the knowledge of any witnesses when the investigation was conducted. More significantly, it was inconceivable how the comment could be viewed as threatening in light of the explanation provided by the Appellant, which was an attempt to restrain the other coach who was agitated and angry. The Panel was unanimous that in light of the explanation provided by the Appellant no reasonable body could have concluded that the comment "don't get slapped" was threatening.
25. The Appeal Board made no order as to costs.
26. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

12 July 2023
Yunus Lunat (Appeal Board Chair)
Gordon Mellis
Leon Bird