

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

DOMINIC SHARPLES (Appellant)

-and-

LANCASHIRE FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Jonathan Rennie (Chair) – Independent Legal Panel Member
Nolan Mortimer – Independent Football Panel Member
Peter Clayton – Independent Football Panel Member

Secretary: Conrad Gibbons – Judicial Services Officer

Date: 24 March 2023

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal under the Disciplinary Regulations – Appeals (“the Appeal Regulations”) of The Football Association (“The FA”).
2. The Appeal Board conducted a paper hearing on 24 March 2023 to determine an appeal by Dominic Sharples (“the Player”) against the decision of a Disciplinary Commission convened by the Lancashire FA which considered the case as a paper hearing on 8 March 2023. The Commission found the case proven

and produced written reasons dated 17 March 2023.

3. The Club submitted a Notice of Appeal asserting that the Commission had imposed a penalty, award, order or sanction that was excessive.
4. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following documents:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - The Participant Offence History
 - Results Letter and Written Reasons
5. This document constitutes the written reasons for the Appeal Board’s decision. The Board considered the entirety of the materials that the parties put before it. If this document does not expressly refer to a particular point, document or submission, it should not be inferred that the Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

6. The charge arose out of a match between Bury North FC Men’s and Wellington Adults which was played on 19 February 2023 (“the Match”).
7. Following the Match, the Lancashire FA received an email from the referee saying that he had to abandon the Match in the 89th minute because a melee had ensued with punches being thrown by both sides.

THE CHARGES

8. On 21 February 2023 the Lancashire FA charged the Player with a breach of Rule E3.1 of the Rules of The FA.
9. The charge letter sets out the details of the charge in the following terms:

“It is alleged that Dominic Sharples used violent and/or threatening and/or abusive and/or indecent and/or insulting language/behaviour in respect of the fixture.

This refers to the allegation that during the game Mr Sharples engaged in a confrontation with an opposition player, which led to a mass confrontation between both teams.”

10. The Club accepted the charge and indicated that it wanted the case to be dealt with at a non-personal hearing. The Club representative for Wellington Adults accepted the charge and entered a response into the Whole Game System. There were no additional statements provided at that time and rather the response was entered into the system only as “Accept-Correspondence”.

FIRST INSTANCE DECISION

11. As indicated above, the case was referred to a Disciplinary Commission, which considered the case on 8 March 2023. The Commission had before it the referee’s report referred to in paragraph 7 above and the Charge letter and the Club’s online response entered into the Whole Game System..
12. After considering the evidence, and based on the acceptance of the specified charge, the Disciplinary Commission found the charge proven.
13. The Commission imposed a financial sanction on the Player of £50 and suspended him for 3 matches.

NOTICE OF APPEAL

14. Together with its Notice of Appeal, the Club sent a short statement explaining why, in its view, the sanction was excessive:

“I wish to appeal the fine and ban towards Dominic Sharples as he hadn’t done anything wrong apart from getting punched by the Bury North player”

15. In essence, the Club position was that this was a case where the Lancashire FA had charged the wrong player and that the Club had incorrectly accepted the charge against the Player in circumstances where the Club itself had also been charged following the Match events. The appeal statement proceeded to note that the Club had subsequently contacted the match referee who supported the appeal and

confirmed that the wrong player had been charged by the Lancashire FA.

16. The Lancashire FA provided their own response to the appeal dated 20 March 2023. The statement included the following:

“Lancashire FA has made an error and charged a wrong individual...We support the Club’s appeal and would support the expunging of the charge and the sanction against Dominic. We ask that the Board of Appeal please consider leniency with the County’s support of this appeal and do not award any costs against the decision it takes”

THE APPEAL REGULATIONS

17. Regulation 2 of the Appeal Regulations sets out the grounds on which a 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.”

18. Regulation 12 of the Appeal Regulations states:

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

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

LEGAL TEST

20. Regulation 12, cited in paragraph 18 above, makes it clear that the task of an Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.

21. Accordingly, the Appeal Board applied the following principles in its approach to the appeal in this case:

- An appeal proceeds by way of a review of the decision of the Disciplinary Commission. 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 Disciplinary Commission simply because the Board might itself have reached a different decision at first instance.
- If the Disciplinary Commission has made findings of fact which it was reasonably open to it to make, the fact that the Appeal Board might have made different findings is irrelevant.
- The principles set out above apply not only to its findings of fact, but also to the question of whether the Disciplinary Commission applied an excessive sanction. The Appeal Board cannot interfere with the sanction applied unless it was manifestly unreasonable and/or the Commission failed to determine the sanction in accordance with the relevant sanction guidelines.

DETERMINATION

22. The Appeal Board considered the parties' submissions in accordance with the principles set out above.

23. In terms of sanction, the Appeal Board noted that the Lancashire FA accepted they had made a mistake in charging the wrong Player and that they were supportive of the appeal. This was a relatively unusual situation in that the Lancashire FA had mis-interpreted the original Referee report and raised charges against the wrong Player.

24. The Appeal Board examined the Referee report which clearly stated that *"Winstanley then attempted to punch Sharples and at this point Chris Lyon of Wellington ran between the 2 players and forcibly separated the players. If the*

incident stopped there I would of sent both Winstanley and Lyon off the field for violent conduct". On a plain reading of the Referee report there was nothing to suggest that Dominic Sharples was the aggressor nor that he initiated or took part in violent conduct.

25. The Appeal Board found there to be poor administration by the Lancashire FA and a failure to properly consider the Referee report and/or to seek clarification of its terms before issuing the Charge against the Player. There was no explanation or mitigation provided as to how the error had occurred and therefore no guarantee that this might not happen again. The consequences of that error are that the original Disciplinary Commission was mis-directed and the Appeal Board time was taken up with reviewing that decision. The administrative resources of the FA were also required to facilitate and administer the Appeal Board and the underlying error was very easily avoided.
26. The Appeal Board had regard to the costs rules within Regulations 21-24 of the Appeal Regulations. The Appeal Board determined that costs amounting to £300 should be paid by Lancashire FA to the FA being the pro-rated costs of the Appeal Board for this particular case. That was considered proportionate to the wasted time of the Appeal Board. The Appeal Board expected a higher standard of professional administration from the Lancashire FA given their size and resources and the frequency with which they deal with disciplinary matters.

CONCLUSION

27. The appeal against the decision of the Disciplinary Commission is upheld for the reasons set out above. The penalty imposed by the Commission is expunged and the Player faces no sanction arising from the Charge, whilst the Lancashire FA is required to pay £300 costs as outlined above. The appeal fee shall be refunded to the Appellant.

28. The Appeal Board's decision is final and binding on all parties.

Jonathan Rennie

Nolan Mortimer

Peter Clayton

29 March 2023