IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

Between

GRAHAM CIUDISKIS

-v-

BERKSHIRE AND BUCKINGHAMSHIRE FOOTBALL ASSOCIATION

WRITTEN REASONS FOR DECISION

Appeal Board Panel	Lyndon Harris (Chair)
	Alec Berry
	Ellie Menezes
Secretary to the Appeal Board	Shane Comb
Appellant	Graham Ciudiskis
	Samantha Ciudiskis (Treasurer and Secretary)
	Andy Bone (Director of Development, Manager and Coach)
Respondent	Alistair Kay (Head of Governance, Berkshire and Buckinghamshire FA)

Introduction

1. Graham Ciudiskis ('the Appellant') is associated with Abingdon Abbotts Football Club. At the relevant time, he occupied the position of manager. He was charged with, and subsequently found guilty of, breaching FA Rule E3.1, Improper conduct against a match official, including abusive language or behaviour. The sanction imposed was a two-match ban from 2 May 2023 with the end date to be confirmed, with a £40.00 fine (mitigated from a £55.00 fine).

2. He appeals against the decision of the County FA, the Berkshire and Buckinghamshire FA ('the Respondent'). There are three grounds of appeal (see Section C (Appeals-Non-fast track) of the Regulation 11, Disciplinary Regulations):

    a. 2.1 failed to give that Participant a fair hearing.

    b. 2.3 came to a decision to which no reasonable such body could have come.

    c. 2.4 imposed a penalty, award, order or sanction that was excessive.

3. We considered the appeal bundle (extending to 37 pages) which included written submissions by the parties.

4. On 20 June 2023, at the appeal hearing (conducted via MS Teams) beginning at 1830 hours. The start time had been delayed by 30 minutes due to the Chair being delayed. At the outset of the hearing, the parties (and the other members of the panel and the secretary) were thanked for their patience and accommodation.

Fresh evidence

5. As a part of the appeal proceedings, we were asked to rule on an application by the Appellant to adduce fresh evidence at the appeal hearing and a separate application by the Respondent to adduce fresh evidence at the appeal hearing. We determined those applications prior to the appeal hearing and handed down our written reasons dated 19 June 2023. In summary, we refused both applications, noting that we would allow the parties to renew their applications orally at the appeal hearing, noting in particular that the evidence which was the subject of the Respondent's application may arise as rebuttal evidence depending upon the way in which the Appellant's submissions were made and developed. That ruling should be considered alongside these written reasons.

Background

6. On 8 April 2023, a fixture took place between Summertown Stars AFC First and Abingdon Abbotts First in Division 1 of the Oxfordshire Senior Football League.

7. The match official, Keith Godfrey, stated in his report to the respondent that in the 77th minute and after giving an offside decision against Abingdon, the appellant "how the fuck is that offside it came of his own player". Mr Godfrey further stated that having already spoken to him regards to other comments, he issued a red card and sent him off from the side of the pitch.

8. A charge was raised against the appellant by the respondent on 11 April 2023. The case papers were made available via the WholeGame system. Abingdon Abbotts were asked to respond to the charge by 25 April 2023. No response was received, and the respondent proceeded to allocate the case to a Disciplinary Commission, to be considered on 28 April 2023, by correspondence.

Submissions

9. In written submissions, the Appellant made three points. We summarise them very briefly here, though we make clear we considered them in their entirety in writing.

10. The submissions were as follows (see appeal bundle, page 4):

    a. First, that the match official's report was incorrect and unreliable as to what was said and by whom (and a narrative of the circumstances was provided in Mr Ciudiskis' statement).

    b. Second, that no one at the Club had seen any notification on the WholeGame system and had the charge been known about, it would have been responded to, with evidence.

    c. Third, the sanction was excessive given 12 years of "unblemished records" and a good reputation as a fair playing coach.

11. These written submissions were supplemented by oral submissions.

12. In relation to Ground 1, the Appellant accepted that the notification on the WholeGame system had "been missed, for whatever reason" by him/the Club, but returned to the point that he could not respond to a charge he did not know about and thus, the hearing at first instance was unfair. The Appellant reiterated that he "didn't do it" (referring to the allegation of the use of abusive language). Later in submissions, he stated that he didn't use the words alleged and had he done so "we wouldn't be here". In relation to Ground 1, the Appellant also reiterated the point made in written submissions regarding the fresh evidence application that "we're all volunteers" and further submitted that he ought to have been "chased" when there was no reply. We asked whether it was correct to characterise this ground as relating solely to the fact that the Appellant

was not able to respond at first instance (and thus could not put his case) because he was unaware of the charge. He confirmed that it was.

13. In relation to Ground 2, he submitted that the match official's report was vague, highlighting that the report quoted the words allegedly used, but included the caveat 'or words to that effect'. He reiterated that he "did not do it". We asked whether it was correct to characterise this ground as relating to the reliability of the match official's report and whether on that basis the Respondent's decision was one no reasonable body could have arrived at. He stated that that was correct, that the decision was unreasonable "because I didn't do it".

14. The Appellant was taken to page 18 of the bundle, the Extraordinary Incident Report Form. It was pointed out that the E3.1 charge relating to improper conduct against a match official (our emphasis). The Appellant submitted that the Extraordinary Incident Report Form did not state that the abusive words were said to a match official; he also submitted that similar or the same words were said "about 20 times a game".

15. We sought to clarify whether it was accepted that the Appellant had been spoken to by the match official previously in the game (as stated in the Extraordinary Incident Report Form). The Appellant confirmed that he did not accept that. He reiterated that he did not say the words alleged, that the report was ambiguous, that it was unreliable and that it did not state that it was said to the match official.

16. In relation to Ground 3, the Appellant submitted that the penalty imposed was excessive because he was "innocent". We asked whether there were any other submissions that the Appellant wished to make in relation to this ground (noting that the grounds stood alone, e.g. we could find in favour of the Appellant in relation to Ground 3 but against him in relation to Grounds 1 and 2), the Appellant stated that there was no point in the appeal hearing if the panel would simply accept the word of the match official and deny him the opportunity to put his side. The Appellant was reminded that the appeal panel operates within the regulatory framework set by the FA and that the appeal proceedings were not a re-hearing but an appeal concerning the propriety of the original decision. The Appellant was reminded that he was afforded the opportunity to make submissions on the three grounds set out above and that the appeal panel would consider those submissions, having not predetermined anything. Finally, the Appellant was reminded that the application to adduce fresh evidence had been refused, and written reasons had been communicated. No further submissions were made.

17. The Respondent declined to make oral submissions but offered to answer any questions the panel may have. No questions were asked.

18. We provided the parties with the opportunity to make closing submissions. We noted that the hearing concerned a narrow issue and that the oral submissions (like the case papers) were concise. We reiterated that neither party should feel as though they ought to make closing submissions but they had the opportunity to do so if they wished. Neither chose to make any closing submissions.

Approach to the appeal

19. We have reminded ourselves of the following principles applicable to an appeal of this nature, including:

    a. An appeal such as this proceeds by way of review of the decision of the panel below. It is not a rehearing of the evidence and arguments at first instance.

    b. It is not open to the Appeal Board to substitute its own decision for that of the panel below simply because the Board might themselves have reached a different decision at first instance.

    c. If the panel below has reached findings of fact which it was reasonably open to the panel below to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant.

    d. The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the panel below. Evidential assessments of the panel below 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.

    e. The test for the Appeal Board in determining whether the panel below 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.

Discussion and decision

20. At the outset of the hearing, we reminded the parties that the appeal proceedings were not a re-hearing, nor were they an opportunity to through submissions attempt to introduce the fresh evidence that had been the subject of the unsuccessful applications. We are grateful to the parties for conducting the hearing in accordance with that reminder.

21. As noted above, these written reasons should be read in conjunction with the ruling in relation to the application to adduce fresh evidence. Neither party sought to renew their application orally at the appeal hearing.

Ground 1

22. In relation to Ground 1, although the panel has sympathy with the position the Appellant finds himself in, we remind ourselves that that is not the test to be applied. In submissions it became clear that it was accepted that the papers had been properly served on the WholeGame system. It therefore appeared that the fact that the Club and the Appellant were unaware of the charge was down to what might be described as an 'admin error' on the part of the Club (our phrasing, not the Appellant's).

23. In any event, the Appellant, rightly in our view, accepted that this was the Club's responsibility. It was said that the Respondent should have "chased" the Appellant when no response was received. We find no merit in that point. As we stated in our ruling on the fresh evidence applications, Clubs must monitor the WholeGame system.

24. Ground 1 therefore was essentially a complaint that the hearing was unfair because he was unable to present evidence and make submissions. We find no merit in that submission. As we have stated above, the responsibility of responding to charges lies with the Club and the Appellant. It is their responsibility to make sure they are aware of charges. It was clear from the bundle that the Appellant was aware of the dismissal and so we find that in addition to the general responsibility to check the WholeGame system, he and the Club (given the assertion that Mr Bone and Mrs Ciudiskis were present and witnesses to the incident) were on notice that a charge may be incoming.

25. We are satisfied that the hearing was a fair hearing. Any prejudice to the Appellant at first instance was a result of his/the Club's lack of awareness of the charge, which was a direct result of their failure to check/check properly the WholeGame system. Ground 1 fails.

Ground 2

26. Ground 2 concerned the reliability of the match report. We note the submissions of the Appellant as to the lack of detail and absence of an assertion that the words were said to him as the match official.

27. We see some force in those submissions. Certainly the Extraordinary Incident Report Form is not particularly detailed. However, it is clear that the words reported by the match official

immediately followed a decision by him. The words clearly related to the match official's decision and thus would constitute improper conduct against a match official.

28. We remind ourselves of the principles to be applied on an appeal (as to which, see the Approach to the appeal section, above). In particular, we note that evidential assessments of the panel below 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. That is a very high bar for an Appellant to reach.

29. As we have said, although we see some force in the Appellant's submissions regarding the lack of detail in the Extraordinary Incident Report Form, it cannot be said that it's assessment of the evidence was "clearly wrong". The fact that this panel may have reached a different conclusion on the facts is not a reason to uphold the appeal. That is not the purpose nor function of the appeal hearing.

30. We note that the only evidence before the first instance panel was the report from the match official. The first instance panel found that, on the balance of probabilities, the Appellant had said the words alleged and thus had breached Rule E3.1.

31. We are satisfied that the first instance panel applied the correct principles and legal test. It cannot be said that they reached an unreasonable or irrational decision on the facts. Ground 2 fails.

Ground 3

32. The submissions in relation to Ground 3 were essentially that the sanction was excessive because the Appellant was not guilty of the charge and thus he was 'fined for something he didn't do'.

33. Nevertheless, we have considered whether the sanction was excessive based on the findings of the first instance panel. We note that the panel placed the offence within the medium category (1-3 match ban and a £10-50 fine). We note that the lower category carries a 0-2 match ban and £0-35 fine and thus there is a degree of overlap between the two categories.

34. Having dismissed the appeal on the first two grounds, we must proceed on the basis that the charge was proved. Thus, our consideration is whether the sanction for that offence is excessive. Again, we remind ourselves of the legal principles and the proper approach on an appeal such as this. It is not for the appeal panel to substitute its view for that of the first instance panel. The question for us is whether the sanction was excessive. We find that it is not, particularly when seen against the background of the match official having spoken to the

Appellant during the game prior to the incident with which we are concerned. We note that the Appellant disputes that, but as set out above, we have found that the first instance panel's decision to accept the match official's account was not procedurally unfair, irrational or unreasonable. Thus, that is the basis on which we must consider the sanction imposed.

35. The sanction was not excessive. Discipline is important and match officials have a difficult role (as acknowledged in the Appellant's written submissions). Ground 3 fails.

Conclusion

36. We understand that the Appellant will be disappointed with the outcome and was passionately professing his innocence during the appeal hearing. We remind the parties of the purpose of appeal proceedings, namely that they are not a rehearing but are a challenge – on public law 'unreasonable/irrational' principles – to the propriety of the decision of the first instance panel. The Appellant had the opportunity to respond at first instance (but did not do for the reasons outlined above). The Appellant had the opportunity to make submissions in writing and orally to the appeal panel. Those submissions were considered carefully and at length. The Appellant has had a fair hearing.

37. For the foregoing reasons, the panel dismisses the appeal on all three grounds. In accordance with Regulation 21 of the Non-Fast Track Appeal Regulations, the original sanction is ordered to remain.

38. There will be no order as to costs.

39. The appeal fee is forfeited.

40. The parties are reminded that the Appeal Board's decision is final and binding on all parties.

Lyndon Harris (Chair)
Ellie Menezes
Alec Berry

Appeal Board of the Football Association

21 June 2023